Impact Assessment support study for the revision of Directive (EU) 2015/413 facilitating cross-border exchange of information on road-safety-related traffic offences

Final Report

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ABSTRACT

The Impact assessment support study for the revision of Directive (EU) 2015/413 analyses the problems identified in detection of specific road-safety-related traffic offences (‘detection phase’), cross-border investigation (‘investigation phase’) of these offences and cross-border enforcement of imposed sanctions (‘enforcement phase’).

Three policy options, including relevant sub-options, are proposed to address the objectives of the revision. The preferred option consists of measures to improve the control of compliance with road-safety-related traffic rules in place and establishes streamlined mutual assistance and recognition procedures between Member States (‘Lex Specialis’) to improve cooperation in the cross-border investigation phase.

ABSTRAIT

L'étude d'appui à l'analyse d'impact pour la révision de la directive (UE) 2015/413 analyse les problèmes recensés lors de la détection d'infractions spécifiques en matière de sécurité routière («phase de détection»), des enquêtes transfrontalières («phase d'enquête») sur ces infractions et de l'application transfrontalière des sanctions imposées («phase d'application»).

Trois options stratégiques, y compris des sous-options pertinentes, sont proposées pour atteindre les objectifs de la révision. L'option privilégiée consiste en des mesures visant à améliorer le contrôle du respect des règles en matière de sécurité routière mises en place et établit des procédures simplifiées d'assistance mutuelle et de reconnaissance entre les États membres («Lex Specialis») afin d'améliorer la coopération lors de la phase d'enquête transfrontalière.

ABSTRAKT

In der unterstützenden Folgenabschätzungsstudie zur Überarbeitung der Richtlinie (EU) 2015/413 werden die Probleme analysiert, die bei der Feststellung spezifischer die Straßenverkehrssicherheit gefährdender Verkehrsdelikte („Feststellungsphase"), bei grenzüberschreitenden Ermittlungen („Ermittlungsphase") und bei der grenzüberschreitenden Durchsetzung verhängter Sanktionen („Durchsetzungsphase") festgestellt wurden.

Mit Blick auf die Ziele der Überarbeitung werden drei politische Optionen, einschließlich einschlägiger Unteroptionen, vorgeschlagen. Die bevorzugte Option umfasst Maßnahmen für eine verbesserte Kontrolle der Einhaltung der geltenden Straßenverkehrsvorschriften und führt vereinfachte Amtshilfe- und Anerkennungsverfahren zwischen den Mitgliedstaaten („Lex Specialis") ein, um die Zusammenarbeit in der Phase der grenzüberschreitenden Ermittlung zu verbessern.

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ABBREVIATIONS

Abbreviation	Meaning
ADAC	Allgemeiner Deutscher Automobil-Club e.V.
AFSJ	Area of Freedom, Security and Justice
ANPR	Automatic Number Plate Recognition
CARE	Community database on road accidents
CBE Directive	Directive (EU) 2015/413 facilitating cross-border exchange of information on road-safety-related traffic offences
CEF	Connecting Europe Facility
COM	Communication
EC	European Commission
ECJ	European Court of Justice (Court of Justice of the European Union)
EEC	European Economic Community
eEDES	e-Evidence Digital Exchange System
EETS	European Electronic Toll Service
EIO	European Investigation Order in Criminal Matters (Directive 2014/41/EU)
ETSC	European Transport Safety Council
EUCARIS	European Car and Driving Licence Information System
FD	Framework Decision 2005/2014/JHA on the application of the principle of mutual recognition to financial penalties
FIA	Fédération Internationale de l'Automobile
GDPR	General Data Protection Regulation (Regulation (EU) 2016/679)
ISA	Intelligent Speed Assist
JHA	Justice and Home Affairs
LED	Law Enforcement Directive (Directive (EU) 2016/680)
LEZ	Low Emission Zone
MLA Convention	Convention on Mutual Assistance in Criminal Matters between Member States of the European Union (established by Council Act of 29 May 2000)
MoI	Ministries of Interior
MoJ	Ministries of Justice
MoT	Ministries of Transport
MS	Member State
PA	Police authorities
PM	Policy measure
PO	Policy option
RESPER	RESeau PERmis de conduire
ROADPOL	European Roads Policing Network
SCDB	Speed Camera Database
SO	Specific Objective
SWD	(Commission) Staff Working Document
SWOV	Stichting Wetenschappelijk Onderzoek Verkeersveiligheid (NL)
TA	Transport Authorities
TFEU	Treaty on the Functioning of the European Union
UVAR	Urban vehicle access regulation
VRD	Vehicle Registration Data

1 INTRODUCTION

1.1 Background and aim of the report

This is the Final Report of the **Impact Assessment support study for the revision of Directive (EU) 2015/413 facilitating cross-border exchange of information on road-safety-related traffic offences** (hereafter referred to as the CBE Directive).

The Final Report, covering all tasks carried out in the study so far and considering the comments made earlier in the process, provides an analysis of findings along with evidence-based preliminary conclusions and recommendations.

1.2 Content of this report

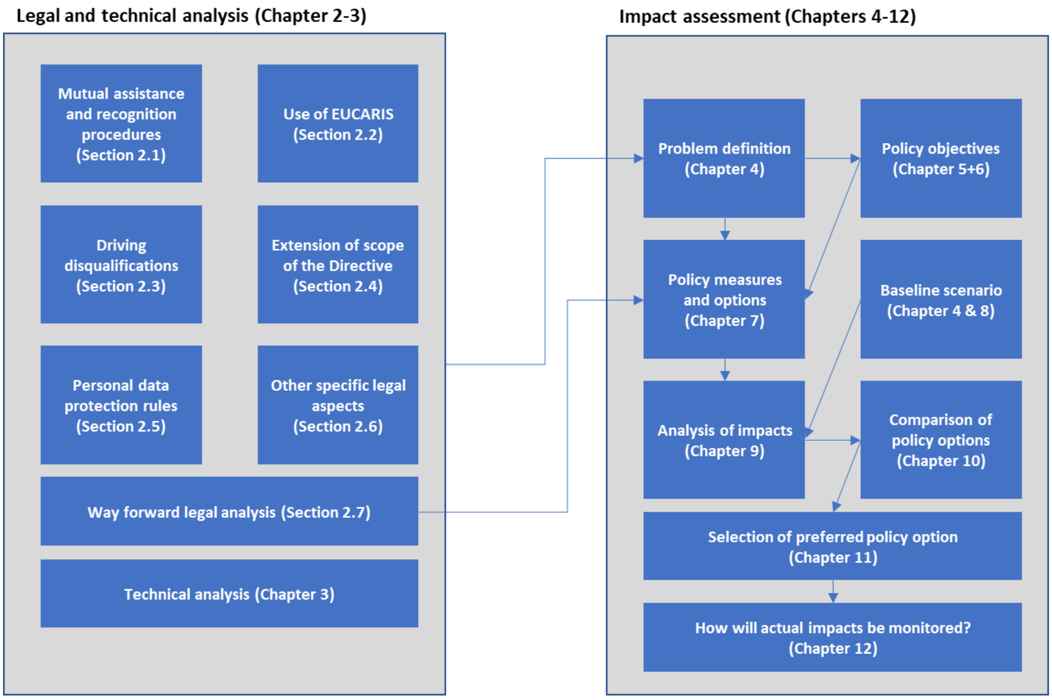
The CBE Directive is considered to be complex in terms of legal issues and interlinkages between legislation under competence of DG HOME and DG JUST, as well as specific technical issues. This study has therefore taken an approach in which this report is broken down into **two sections**.

1. In the first section, a thorough legal and technical analysis is conducted, with emphasis on the legal analysis. In particular, considering the scope of the revision (which other offences could be added under the scope from a legal point of view), the protection of fundamental rights in the cross-border provision of information to presumed offenders (language regime, applicable procedures), the legal status of EUCARIS, the mutual recognition of financial penalties and the mutual recognition of driving disqualifications. The legal analysis is then complemented by a technical analysis, in which the feasibility of digitising procedures and the use of IT platforms in relation to the CBE Directive is further analysed. These legal and technical analyses shape the scope of the revision and provide an assessment of the identified problems, determining which of these problems can be solved within the CBE Directive and which observed issues fall outside the scope of the CBE Directive. Moreover, the technical and legal analyses recommend possible improvements and which technical solutions are in place to further increase the efficiency/effectiveness of the CBE Directive.

2. The first section provides a foundation for the impact assessment which is included in the second section of this report. The second section closely follows the Better Regulation Guidelines and provides the problem analysis, reasons for EU intervention, policy objectives, policy measures and options and the analysis of impacts, providing the basis for the comparison of policy options and, eventually, the selection of the preferred policy option.

The structure of the report is visualised in Figure 1.1.

Figure 1.1 Structure of the report



The following chapters are included in this report:

- Section 1: legal and technical analysis:
  - Chapter 2 contains the legal analysis;
  - Chapter 3 contains the technical analysis.

- Section 2: impact assessment:
  - Chapter 4 presents the problem analysis and expected development of problems in a baseline scenario;
  - Chapters 5 and 6 provides the reason for EU intervention and the policy objectives;
  - Chapter 7 provides the identified policy measures and the policy options;
  - Chapter 8 provides the baseline scenario;
  - Chapter 9 provides the assessment of impacts;
  - Chapter 10 describes the comparison of policy options;
  - Chapter 11 describes the selection of the preferred policy option;
  - Chapter 12 presents an overview of operational indicators that could be used to monitor the impacts of the revision.

SECTION 1: LEGAL AND TECHNICAL ANALYSIS

2 LEGAL ANALYSIS

This chapter addresses the main legal issues with the current functioning of the CBE Directive, the broader legal framework through which enforcement of traffic offences operates. It explores possible measures to address the legal issues (Section 2.7). The legal analysis addresses the questions that were included in Annex II to the Task Specification. Finally, this chapter includes a technical analysis (Section 2.8).

The findings from the legal and technical analysis will be used to complement the problem definition (Chapter 4), to further shape policy objectives (Chapter 6), and in the subsequent definition of policy measures and options (Chapter 7).

The following legal issues are addressed:

- Mutual assistance and recognition procedures in cross-border investigation of road traffic offences (Section 2.1);
- Legal analysis of EUCARIS use (Section 2.2);
- Cross-border enforcement of driving disqualifications in the EU (Section 2.3);
- Possible extension of the scope and proposal to appropriate legal basis (Section 2.4);
- Personal data protection rules (Section 2.5).

The analysis also considers the following issues (Section 2.6):

- Non-transparent use of debt recovery/collection companies, detention of vehicle or vehicle registration documents, or application of guarantees (in road-side controls) in cross-border enforcement of road traffic rules, including:
    - Specific information/statistical data e.g. on the number of road traffic offences where debt recovery/collection companies are involved in the enforcement;
    - Existing practices in Member States concerning confiscation of vehicles or application of various guarantees and the reasons behind such actions are gathered through desk and field research to support the analysis. The findings of the analysis are considered in the comparison of the policy options.

2.1 Legal analysis of mutual assistance and recognition procedures

The procedure for the cross-border investigation of road traffic offences and the enforcement of related sanctions consists of the following main steps:

1. Detecting and registering an offence (detection);
2. Identifying the presumed offender (cross-border investigation);
3. Sending an information letter/penalty notice (investigation/prosecution); and
4. Enforcement of the sanctions (post-conviction stage).

The CBE Directive is a cooperation tool supporting the cross-border enforcement of sanctions for road-safety-related traffic offences in the following steps:

- it allows for the identification of the owner/ holder of the vehicle with which an offence was committed; and
- it allows the Member State where the offence has been committed to issue an information letter and send it directly to the presumed non-resident/foreign offender.

In summary, the CBE Directive is aimed at enabling Member States to gather information with regard to the offence:

- to get the vehicle owner/holder data;
- to send out an information letter to the vehicle owner/holder;
- to obtain information on the offender (driver), if needed;
- to start the collection of the fine.

The CBE Directive is followed up by other EU tools and national laws and regulations covering investigation and enforcement procedures. In some cases, existing EU investigation and enforcement tools are cross-referenced in the Directive. These are mainly:

1. European Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union (MLA Convention) (cross-border investigation);
2. Directive 2014/41/EU regarding the European Investigation Order in criminal matters (EIO) (cross-border investigation);
3. Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties (cross-border enforcement of financial penalties).

However, certain gaps exist in the CBE Directive as well as in the interpretation and application of the EU instruments mentioned above. As a result, the Directive is less effective and cross-border enforcement of sanctions for road traffic offences is limited. The main gaps are discussed below.

i. Investigation under the CBE Directive mechanism

Firstly, in some cases, the investigation mechanism put in place in the CBE Directive does not allow identification of the 'offender' (Step 2 of the procedure above). This may be due to:

1. Information on the vehicle owner or holder not being available in the national VRD, as the register may not be updated (e.g. when the residence has changed, or when the owner has deceased);
2. Impossibility to identify the offender through the simple exchange of VRD, in cases where a strict driver liability regime[1] (see Section 4.2.4) applies in the Member State where the offence has been committed.

To tackle the problems identified above, one needs to rely on other EU legal instruments for judicial cooperation in criminal matters (such as using an MLA-request or by initiating the procedures under the European Investigation Order).

ii. Investigation follow-up mechanisms at EU level

The existing cross-border legal instruments available in the EU are not tailored to investigate millions of automatically detected road traffic offences under the CBE Directive. This is because these instruments (MLA Convention and the European

[1] Strict driver liability regime. A penalty is issued only to the driver of the vehicle. In cases where an offence is detected using automated/manual checking equipment (e.g. when the driver is not identified on the spot), this means that the driver needs be identifiable from the picture produced by the equipment in order to issue a penalty.

Investigation Order) are targeting to facilitate investigation procedures for criminal matters. The existing instruments require certain procedural safeguards that are perceived to be cumbersome by administrative authorities when it concerns the investigation of minor road traffic offences. These findings are validated by desk research and through consultation with stakeholders[2].

The MLA Convention of 29 May 2000 establishes a system of Mutual Assistance in Criminal Matters between the Member States of the European Union. Pursuant to Art. 3 of the Convention, mutual assistance shall be afforded, also concerning proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Member State, or both, by virtue of there being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters. The cooperation procedure provides for an obligation of the requested State to comply with the requirements of the requesting State provided that the formalities and procedures are not contrary to the fundamental principles of law in the requested Member State, considering the required deadline. It includes the cooperation in the service of procedural documents, when needed. A certain level of procedural protection of the potential offender is offered under the MLA. Pursuant to Art. 5(3), in relation to the right of the offender, the Convention provides for a restricted obligation for translating the documents as it states "*where there is reason to believe that the addressee does not understand the language in which the document is drawn up, the document, or at least the important passages thereof, must be translated into (one of) the language(s) of the Member State on the territory of which the addressee is staying. If the authority by which the procedural document was issued knows that the addressee understands only some other language, the document, or at least the important passages thereof, must be translated into that other language*".

Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order (EIO) in criminal matters, which replaces to a major extent the MLA Convention, is a major step forward for judicial cooperation within the EU and the main legal tool to gather cross-border evidence. It provides for a judicial decision (EIO) issued or validated by a judicial authority of a Member State ('the issuing State') to have one or several specific investigative measure(s) carried out in another Member State ('the executing State') to obtain evidence. A competent authority may be a judge, a court, an investigating judge or a public prosecutor competent in the case concerned; or any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. Prior to its transmission to the executing authority, the EIO must be validated after examining its conformity with the conditions for issuing an EIO under the Directive. Pursuant to Art. 4 of the Directive, it is provided that an EIO may be issued: *"(a) with respect to criminal proceedings that are brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State; (b) in proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters […]"*. Such procedures with its safeguards are experienced to be cumbersome for investigating a high number of (minor) road traffic offences, that are often qualified as administrative.

A report on the implementation of the EIO Directive was published on 20 July 2021[3]. The report shows that the EIO is frequently used and that most of the EIOs issued were

2 Also consider the Annex or the Stakeholder Consultation Report (SCR).

3 Report on the implementation of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, COM(2021) 409 final.

successfully executed. Although the Directive became the core instrument for gathering evidence in the EU, there are still difficulties regarding certain of its key provisions, such as the grounds for non-recognition and non-execution listed in Article 11. The Commission will continue to assess Member States' compliance with the Directive and take appropriate measures to ensure conformity with its provisions throughout the EU. Yet, during this assessment, no Member State mentioned the application of EIO to investigate road traffic offences. Therefore, evidence obtained from Member States in this impact assessment, concerning the limited use of EIO to investigate minor road traffic offences, appears to be in line with the report on the implementation of Directive 2014/41/EU.

Our understanding of the problem suggests a need for more effective EU mechanisms concerning mutual assistance and recognition in cross-border investigation of road traffic offences when these are qualified as administrative.

> Outcome of the survey[4] shows that the majority of Member States have a mixed system of sanctions applying to road traffic offences with the same offence being qualified as administrative or criminal (depending on the seriousness of the offence). Almost 40% of the consulted Member States confirmed that the procedures under MLA and the EIO are generally used in investigations. Some Member States indicate that these procedures are mainly launched when investigating serious cases, such as enforcement of driving under the influence of alcohol that caused an accident. However, as these offences are not detected without the driver's identification on the spot, it is our understanding that the use of these procedures for the investigation of the offences under the CBE Directive is negligible (as mentioned above no MS confirmed the use of the procedures under MLA and the EIO for the investigation of road traffic offences – these procedures are rather used for the investigation of serious accidents). Furthermore, serious accidents are often caused by offences qualified as criminal. Member States indicated that there is a need for a new procedure aimed at the identification of the driver or owner/holder of the vehicle in case the exchange of vehicle registration data (VRD) is not sufficient, and that this system should be based on police cooperation.

iii. Other obstacles

Practices in certain Member States (namely Germany and Sweden) have shown that the main obstacles and challenges in cross-border cases regarding road traffic offences occur in the investigation phase. The main challenges are identified in relation to the following steps:

1. identification of the driver;
2. service of the penalty notice to the presumed offender; and
3. protection of fundamental rights (right of the person to be heard and to appeal the decision and right to be addressed in a language the person understands).

Two other Member States (Spain and Belgium) consider that the inadequate cross-border enforcement of financial penalties represents one of the most urgent issues to be addressed. The positive impact of the CBE Directive on non-resident road users' compliance with road traffic rules, through the deterrent effect of sanctions, can only be achieved if the sanctions are properly enforced.

[4] Survey 2, directed a Ministries of Justice and launched in December 2020.

iv. Areas for concern in the procedure for enforcing final decisions

It should be noted that the CBE Directive does not provide for procedures to enforce financial or other kinds of sanctions. Framework Decision 2005/214/JHA[5] ('FD') is the EU instrument for the mutual recognition of the Member States' administrative or judicial decisions on financial penalties. The FD applies to all criminal offences. In case of certain offences, the double criminality principle[6] is lifted, i.e. these offences give raise to recognition and enforcement, if they are punishable in the issuing State and as they are defined by the law of the issuing State. Article 5, listing such offences, explicitly mentions road traffic offences ("conduct which infringes road traffic regulations").

While the instrument has proved successful in facilitating the cross-border enforcement of financial penalties in general, practice indicates that the recognition and enforcement of financial penalties imposed for road traffic offences give rise to difficulties. These difficulties are related to the heterogeneous nature (qualification) of road traffic offences in Member States and due to some characteristics of the judicial cooperation instrument.

Notably, the FD specifies a number of conditions under which it is not possible to recognise and/or enforce the decision, although mutual recognition is the underlying principle for cooperation. For instance, as a condition for the cross-border enforcement of financial penalties (pecuniary sanctions) imposed for criminal and administrative offences, these shall be grounded on decisions subject to a judicial review under a procedure similar to criminal proceedings[7]. Considering the difference between Member States, as to the applicable judicial review procedure for road traffic offences, this may cause the failure of the mutual recognition established by the FD. When financial or administrative authorities deal with road traffic offences - regardless of whether these offences are qualified as administrative or criminal - not applying adequate review may lead to refusal of the decisions. In this regard, the ECJ[8] has clarified that the decisions concerning road traffic offences can be refused only exceptionally, particularly if the protection of fundamental rights is at stake (for example, when the person concerned has not had sufficient time to contest that decision). Even so, it is noted that the FD does not contain a detailed provision on the service of documents and translation. This may also hamper Member States' cooperation under the FD. For most (criminal) offences (other than road traffic offences), rules on how the decision is served to the alleged offender are quite similar in Member States (use of registered post or notification by judicial officer, translation requirements, etc.). It turns out that this is not the case for the notification of road traffic offences, which can lead to the refusal of recognition.

Another issue of the application of the FD to road traffic offences is linked to the existence of different legal liability regimes (this point is further elaborated in Section 4.2.4, problem driver g). The existence of varying liability regimes can lead to the recognition being refused in situations where the decision of the issuing Member State is based on vehicle owner/holder legal liability while the executing State applies driver liability.

Finally, some of the grounds for non-recognition, listed in Article 7 of FD, may play a significant role in practice when dealing with road traffic offences. For example, Art. 7(2)(h) of FD indicates that an executing Member State may decide not to recognise a decision if the financial penalty is below EUR 70. Since many (minor) traffic offences are sanctioned with a smaller financial penalty, the threshold foreseen in this article appears to be too high.

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5 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.

6 The alleged crime must be criminal in both the issuing State and the executing State.

7 See ECJ, Judgement in Case C-60/12, Baláž.

8 See ECJ Judgement in Case C-671.

2.2 Legal analysis of EUCARIS use

As there are no technical or economic problems encountered with the application of EUCARIS, the following analysis only focuses on legal issues that have to be addressed.

EUCARIS is an information exchange system that provides an infrastructure and software to countries enabling them to share, among others, relevant information on road transport. The system was first set up in 1994 by five vehicle and driving licence registration authorities (BE, DE, UK, LU and NL). In 2000, a multilateral EUCARIS Treaty was signed among the governments of these countries to exchange information via the software, and laid down provisions to:

- ensure that the central vehicle and driving licence registers of the contracting Parties are accurate and reliable;
- assist in preventing, investigating and prosecuting offences against the laws of individual States in the field of driving licences, vehicle registration and other vehicle-related fraud and criminality; and
- exchange information rapidly in order to increase the efficiency of administrative measures taken by the relevant authorities according to the legal and administrative regulations of the contracting Parties.

Since then, the contracting Parties agreed to allow each other access to their respective central vehicle registers and central driving licence registers concerning specific data sets considered useful for the application of the Treaty. It is worth noting that the European Commission is not a contracting party to the Treaty (i.e. the European Commission is not involved in the exchanges between MS through EUCARIS).

As far as the exact functioning of the EUCARIS platform is concerned, it creates a decentralised and interconnected system of national registration authorities and databases acting as hubs. Specifically, EUCARIS consists of a system where information collected in the respective national registries is directly shared with no intermediation. Participating Member States are connected in a mesh network where each of them communicates directly to another Member State. Since there is no central component needed for the communication, national registration authorities remain the holder of all data. The EUCARIS applications use s-TESTA ("secure Trans European Services for Telematics between Administrations”). The decisions related to the technical side of the mechanism fall under the competence of a Technical Working Group, which consists of representatives from all EUCARIS Treaty members. Budgets are set at the General Assembly, and the funding of the common expenses incurred in implementing the Treaty are borne by the members in equal shares. The costs of operating and applying EUCARIS by the members on their territory are borne by the member concerned.

Different EUCARIS applications have been developed along the years, considering other legal bases. These include the application of exchange of vehicle and driving licence data (based on the EUCARIS Treaty), the application for exchange of vehicle owner/holder and insurance data (based on Prüm Decisions), or the application to exchange information on road traffic offenders (based on bilateral agreements).

Member States may be part of an “agreement” that allows them to use one EUCARIS application and not others, without being part of the initial EUCARIS Treaty that sets the system up. The organisation structure of EUCARIS allows fast implementation of new functionalities. New developments are financed by participating Member States. In several cases, the European Commission refers to the EUCARIS applications for the effective functioning of its legislative instruments. There is no evidence of any type of agreement between the European Commission and EUCARIS, having been executed for the use of those applications.

What is important for the purpose of this study is the EUCARIS application under the Prüm Decisions i.e. Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA. These Decisions contain rules for operational police cooperation and information exchange, which lay down the conditions and procedures for mutual online access to national databases for automated search and supply of DNA profiles, fingerprint data and certain national vehicle registration data (recently amended Prüm Decisions - Prüm II (COM(2021) 784 final) also include the exchange of facial images).

In particular, Article 12 of Council Decision 2008/615/JHA regulates the automated searching of vehicle registration data, "for the prevention and investigation of criminal offences and in dealing with other offences coming within the jurisdiction of the courts or the public prosecution service in the searching Member State, as well as in maintaining public security". For this purpose, it requires that Member States shall allow other Member States' National Contact Points (NCPs) access to national VRDs relating to vehicle owners/holders and vehicles, with the power to conduct automated searches in individual cases. For the purpose of data supply, each Member State is required to designate a National Contact Point for incoming requests.

Council Decision 2008/616/JHA establishes provisions for the administrative and technical implementation of the forms of cooperation set out in Decision 2008/615/JHA. As far as VRD exchange is concerned, Article 15 lays down the principles of automated searching, demanding Member States to use to this end "a version of the European Vehicle and Driving Licence Information System (EUCARIS) software application especially designed for the purposes of Article 12 of Decision 2008/615/JHA, and amended versions of this software."

For the purpose of the Prüm Decisions, a new EUCARIS software application was put in place using EUCARIS as the technical platform for the exchange of data.

The data elements of the VRD to be exchanged are specified in Decision 2008/616/JHA (Chapter 3 of the Annex), where it is also mentioned that the EUCARIS software application supports different user roles and each cluster of services has its own authorisation. This means that (exclusive) users of the ''Treaty of EUCARIS" — functionality' may not use the ''Prüm — functionality". The EUCARIS application also offers different variables to search for, depending on the legislative act on which the search relies.

2.2.1 EUCARIS in the CBE Directive

The CBE Directive expressly mentions EUCARIS in Recital 12, where it is stated that *"existing software applications should be the basis for the data exchange and should facilitate the reporting by Member States to the Commission, and advantage should be taken of the EUCARIS software application, which is mandatory for Member States under the Prüm Decisions as regards VRD".* A further, indirect (legally neutral), reference is made in Article 4, under which Member States are mandated to ensure security and protection of the data transmitted, as far as possible using existing software applications such as the one referred to in Article 15 of Decision 2008/616/JHA and amended versions of those software applications.

The Directive relies on the already existing legal basis for EUCARIS application to exchange VRD, referring in many instances to the Prüm Decisions. The coupling with the Prüm Decisions emerges from a number of Recitals (e.g. 10, 11, 12, 23, 26), where it stipulates that, in order to facilitate access to respective VRDs by Member States, improve the exchange of information and speed up the procedures in force, the provisions concerning the technical specifications and the availability of automated data exchange set out in the Prüm Decisions should, as far as possible, be included in the Directive. More importantly, Article 4 requires that searches be conducted to comply with the procedures described in Decision 2008/616/JHA. Also, Article 9 notes the link between the two acts, empowering the Commission to adopt delegated acts to update the CBE Directive in the light of technical progress to consider relevant changes to Prüm Decisions. This may impact the content of its Annex I (data elements necessary to conduct searches through access to national VRDs).

It is emphasised that, pursuant to Decision 2008/616/JHA (Article 15(5)), in the implementation of Article 12 of Decision 2008/615/JHA, Member States may give priority to searches related to combating serious crime. In addition, the Prüm application does not foresee the possibility to rely on EUCARIS (or another comparable system) for investigation purposes, including the electronic, real-time exchange of information, documents, or evidence, while evolving technology might well support this possibility.

Under the current CBE Directive framework, Member States are required to take all necessary measures to ensure that the exchange of information is carried out by interoperable electronic means "*without exchange of data involving other databases which are not used for the purposes of this Directive*" (Art. 4(4)). The interpretation of this provision has been very strict, confining the exchange of data (and the use of EUCARIS) only to VRDs. This affects the functioning of the CBE Directive, as the content of vehicle data registers (and hence information exchanged via EUCARIS on the basis of the Prüm Decisions) is not always sufficient to investigate road traffic offences. For example, note that some Member States require driver identification, which is not possible only through VRD exchange. Furthermore, only a specific set of information included in VRD is to be exchanged via EUCARIS (laid down in Annex I of the Directive).

2.3 Legal analysis of cross-border enforcement of driving disqualifications in the EU

A detailed legal analysis of cross-border enforcement of driving disqualifications in the EU is presented in Annex 3. In particular, analysis is provided on how to envisage a system of cross-border enforcement and execution of the disqualifications. Additionally, Annex 3 provides an overview of (i) the existing national Member States' driving disqualification and demerit/penalty point schemes – virtual driving licences for non-resident offenders; (ii) the relevant legal framework and the reading provided by the EU Court of Justice; (iii) the state of play of cross-border enforcement of driving disqualifications in the EU also in light of relevant case-law.

As it emerges from the analysis carried out, the EU framework on mutual recognition of driving disqualifications and their cross-border enforcement is currently unclear and without a proper legal basis. In the past, the Convention on driving disqualifications of 1998 (Council Act of 17 June 1998) laid down applicable rules, but this instrument did not enter into force due to the lack of ratifications by Member States (only seven Member States ratified it) and was therefore repealed in 2016.

The principle of mutual recognition among Member States is not stated clearly in the Driving Licence Directive.

Annex 3 highlights that the very existence and content of an obligation of mutual recognition of driving disqualifications is not straightforward. The Driving Licence Directive under Art. 11(4) contains a relevant provision in this regard, but only limited to driving disqualifications imposed on resident drivers and with a wording that has triggered some doubts (as shown by the multiple requests for preliminary rulings to the

ECJ). Furthermore, as also stressed by the ECJ (see Annex 3), such an obligation is not effective and enforceable until a system for the exchange of information on disqualifications between Member States is implemented, enabling all Member States to verify if a disqualification imposed abroad is pending or has been imposed on a driving licence applicant.

A mechanism to allow cross-border exchange of information on driving disqualifications and facilitate enforcement is needed.

The CBE Directive is aimed at facilitating cross-border enforcement of sanctions related to road-safety-related traffic offences by electronic exchange of vehicle registration data. As such, driving disqualifications, which are non-monetary, administrative sanctions, may apply to some of those offences and fall under the CBE Directive mechanisms. In most Member States, disqualification measures are frequently triggered by the offences under the CBE Directive (see Annex 3). However, the use of the CBE Directive as a cross-border enforcement tool for driving disqualifications, by adding specific provisions to this end, might lead to legal issues. This may be due to the limited scope of the CBE Directive, causing driving disqualifications to follow different enforcement rules depending on the offence they accompany. The cooperation mechanism for cross-border enforcement would apply only when this type of sanction applies to road traffic offences falling under the scope of the CBE Directive. By contrast, the cross-border enforcement of disqualifications not stemming from the offences under the CBE Directive (e.g. imposed for non-safety-related traffic offences, or on health grounds that are not related to any traffic offence) would remain unregulated, absent any mechanism akin. This would result in different enforcement possibilities depending on the pursued offence/reason for the driving ban. Such a solution would not be satisfactory, unless cross-reference to the procedures under the CBE Directive is made in other relevant EU legislation.

Effective enforcement of driving disqualifications may also imply that:

- Updated information on imposed driving disqualifications is made available for consultation to all Member States at any time, when a search is needed, through a digital platform;
- New provisions on the cross-border enforcement of driving disqualifications are enacted under Justice Cooperation legal basis (see Annex 3), regulating e.g. the notification mechanisms for final decisions between the relevant authorities, the exchange of licence, the grounds for non-recognition of the penalty based on breach of fundamental rights of presumed offenders, the practical execution of the foreign sanction abroad;
- A clear link between RESPER and the software application used under the CBE Directive for enforcement purposes is established.

2.4 Revision of the scope of the CBE Directive and its effect on the possible EU legal basis

A possible widening of the scope of the CBE Directive is to be assessed in light of the objectives pursued by the Directive, the legal consequences of a similar revision (including the possible impact on the legal basis) and the practical feasibility.

2.4.1 Rationale of the currently covered road traffic offences

Initially, the offences covered by the European Commission's proposal for the CBE Directive were speeding, driving under the influence of alcohol ('drink-driving'), not using a seat belt, and failing to stop at a red light. The Commission deliberately chose to limit the scope of the Directive to the four traffic offences that (i) were responsible for the greatest number of serious accidents and deaths on the EU roads and (ii) were all considered offences in the 27 EU Member States (MSs). In addition, during the legislative works, the Parliament and the Council agreed to include four new areas that (iii) had by then acquired sufficient maturity as offences and also (iv) posed a risk to the safety of the driver and other road users, also taking into account the technological progress that had been made in detecting certain offences (i.e. driving under the influence of drugs, failing to wear a safety helmet, using a mobile phone or other communication devices whilst driving, and use of a forbidden lane).[9]

The Evaluation[10] found that (with the only exception of drink-driving and driving under the influence of drugs, see below) the scope of the CBE Directive is, overall, adequate. This is because the Directive covers offences that:

- Are a major threat for road safety and the main contributing factors in fatalities on EU roads and represent the vast majority of offences committed by non-resident drivers;[11]
- Can be detected automatically or without stopping a vehicle and/or identification of the driver on the spot (remote detection);
- Are consistent with the CBE Directive's objective, as defined in its Article 1 (i.e. to ensure a high level of protection for all road users in the Union).

2.4.2 The Evaluation findings on the CBE Directive's scope

In the framework of the Evaluation, it was assessed whether the CBE Directive's scope is appropriate in terms of targeted road traffic offences or needs to be amended. The consultation carried out on that occasion revealed that 13 Member States' authorities welcomed the addition of other offences (while 6 Member States did not see the need to expand the list of offences covered). While not all 13 Member States mentioned the same offences, 9 Member States and two NGOs mentioned at least one of the following offences: not keeping sufficient distance from the vehicle in front, dangerous overtaking and dangerous and illegal parking. The positions of national authorities varied from the opinion that the CBE Directive's scope should be expanded to include all traffic offences (Croatia) to a minimalist approach favoured by Slovenia according to which the scope of the directive should remain the same. Furthermore, it was noted that a minority of stakeholders, i.e. two on top of 43 consulted (who also participated in the European Commission public consultation on the Evaluation of Directive (EU) 2015/413[12]) had supported the inclusion of the offence of failing to pay the toll for the use of road infrastructures ('tolling offences'), to the extent that they have an indirect impact on road safety. Anyway, the Evaluation Study found that there was insufficient evidence allowing for the conclusion that further offences should be added to the scope of the CBE Directive.

2.4.3 New assessment on the inclusion of additional road traffic offences

To assess the option of extending the scope we take the cue from and then build on the findings and consultations already carried out within the Evaluation Study, and then

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9 See Commission's proposal, COM(2008) 151 final, and Parliament's plenary sitting and committee's reports (https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-462.590+01+DOC+PDF+V0//EN&language=EN; https://www.europarl.europa.eu/doceo/document/A-8-2015-0001_EN.pdf).

10 Commission Staff Working Document on the evaluation of cross-border exchange of information on road traffic offences (SWD (2016) 355 final) and Report from the Commission to the European Parliament and the Council on the application of Directive (EU) 2015/413 facilitating cross-border exchange of information on road-safety-related traffic offences (COM (2016) 744 final + Annex.

11 E.g. in Hungary 99% of the offences committed by non-residents are speeding offences, in Belgium, around 80% of the offences committed by non-residents are covered by the CBE Directive) - this was confirmed by 100% of the stakeholders consulted.

12 The Consultation was opened in the period 27/11/2015 - 19/02/2016.

explore the effects on the choice of correct legal basis (Section II). A separate analysis is conducted for UVARs related offences, given their specific characteristics (see Annex 4).

The following analysis refers to the remaining offences and is structured in different sections. Each section focuses on specific road traffic offences, grouped into broad categories and sub-categories.

We note that, even where we deem a given option legally feasible, this does not exclude that other issues may arise from a policy or technical perspective. This includes the need to strike a balance between the target of having a potentially all-encompassing enforcement tool with the risk of being less functional (though the inclusion of all road traffic offences would have a positive impact on equal treatment of drivers), and that of having a very efficient enforcement tool but significantly reduced in scope, or the lack of technical feasibility of the proposed solution.

Offences not detected automatically or without stopping the vehicle and/or identification of the driver on the spot

As it is clear from Recitals 1 and 6 in the preamble to the CBE Directive, the Directive pursues the aim of improving road safety throughout the EU, by setting up a system of cross-border exchange of information in order to facilitate the identification of the owner/holder of a vehicle with which a certain traffic offence is committed. This allows the authorities of the Member State in which the offence has been committed, to serve notice on the owner/holder of the vehicle. Such exchange is a precondition for the issue of a sanction when the vehicle is not registered in the Member State where the offence has been committed.

It is argued that such an identification system is of particular value in relation to road traffic offences detected by automatic devices (e.g. using roadside cameras) where the offender's identity cannot immediately be established. Accordingly, the Evaluation already noted that the CBE Directive has a very limited impact on those offences which are not detected automatically and whose detection does require stopping the vehicle. The study considered that this was the case for the offences of drink-driving and drug-driving, where the driver of a vehicle is compelled to take an alcohol test or a drug test. Contrary to the current Study, the Evaluation assessed whether there was a need to reduce the scope of the Directive. In that context, it was found that the inclusion in the scope of the Directive of offences that cannot (automatically) be detected without stopping the vehicle, is irrelevant for the enforcement of such offences against non-resident drivers. It also casts some doubt as to the logical consistency of the Directive. The consultation with stakeholders confirmed that the mechanism put in place by the Directive cannot be applied for the enforcement of drink and drug-driving and for all other offences that can be detected only when the vehicle is stopped and the driver identified on the spot. The vast majority of the consulted stakeholders confirmed that these offences should thus be left outside of the scope of the CBE Directive since the VRD exchange does not improve the cross-border enforcement of sanctions for them.[13]

From a legal view, this practical inconsistency between the Directive’s objective (focused on automated enforcement) and scope (enlarged to cover not automatedly enforceable offences) may result in legal uncertainty, besides lacking practical utility and affecting the measure's effectiveness. This finding is common to all offences that cannot be detected automatically and, as such, it reflects in the case-by-case analysis to be carried out on each individual offence, depending on the outcome of the technical analysis.

[13] It was observed, however, that reducing the scope of the Directive did not appear to be strictly necessary in order to ensure its better functioning (moreover, on a political level, the removal of such offences from the scope of the CBE Directive would have been non-advisable).

Offences detected automatically i.e. without stopping the vehicle and/or identification of the driver on the spot

In light of the recent technological progress, there are possibly an ever-growing number of road traffic offences that will be detected automatically. This may support much more effectively the inclusion of such offences within the scope of the CBE Directive. It would also ensure equal treatment of road users, as soon as the technology is accessible in Member States. Hence, the revised Directive should foresee the possibility to include any offence apt to be automatically detected[14] in the near future, keeping account of the likely evolution of automatic detection systems.[15]

Road-safety-related offences

The CBE Directive currently covers the exchange of information on offences that are related to road safety. In practice, all offences currently encompassed in the Directive's scope pose a direct threat to road safety, insofar as they punish behaviour that endanger either the driver or both the driver and other road users, potentially causing serious traffic accidents and physical damage (injury or deaths). In this respect, see also Recital 3 of the Directive. Indeed, the Directive's objective, laid down in Article 1, is "*to ensure a high level of protection for all road users in the Union by facilitating the cross-border exchange of information on road safety-related traffic offences and thereby the enforcement of sanctions, where those offences are committed with a vehicle registered in a Member State other than the Member State where the offence took place*".

In principle, the extension of the scope to cover other road traffic offences that endanger road safety (e.g. failure to keep a safe distance from the vehicle in front, parking in a way that puts in danger other road users[16], dangerous overtaking, crossing solid white line(s), not respecting forbidden access, driving the wrong way, overloaded vehicle) do not appear to present any major legal issue, as they are in line with the overarching objective of the CBE directive.

As far as legal basis is concerned, the EU has broad legislative powers under Article 91 TFEU and is competent to take measures to improve road safety. Therefore, the inclusion of new road safety-related offences does not have any impact on the current legal basis of the CBE Directive, as it does not modify the main purpose and content of the measure. The correct legal basis of the revised CBE Directive would hence remain Article 91(1)(c) TFEU. Consequently, as this is an area not falling within the EU's exclusive competence, the Union should only act where the principle of subsidiarity is respected. The addition of new offences as such is to be assessed against the principles of proportionality[17] and subsidiarity (as per Article 5(3) and Protocol No 2 TEU).

In so far as other traffic offences that endanger road safety (namely, failure to keep a safe distance from the vehicle in front, dangerous parking, dangerous overtaking,

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[14] It is worth mentioning that in many occasions, 'automatically detected offences' are mentioned throughout the text. Automatically detected offences not only relate to offences that are detected using camera systems, but relate to all detected offences in which the driver is not identified on the spot. Hence, automatically detected offences are those offences in which only the license plate of the vehicle is detected (and the driver is not identified).

[15] For example, we noticed that on 5 January 2020, Regulation (EU) 2019/2144 (new General Safety Regulation) entered into force, aiming to enhance road safety and the protection of vehicle occupants and vulnerable road users. In particular, the first paragraph of its Article 6 provides that, as of July 2022 all new motor vehicles shall be equipped with advanced vehicle systems, such as: intelligent speed assistance; alcohol interlock installation facilitation; driver drowsiness and attention warning; advanced driver distraction warning; emergency stop signal; reversing detection; event data recorder. However, as stated in Recital 14, event data recorders should operate on a closed-loop system, in which the data stored is overwritten, and which does not allow the vehicle or holder to be identified.

[16] The offence of dangerous parking should be distinguished from parking offences consisting in incorrect parking and/or non-payment of parking fees/taxes.

[17] In all cases, Union actions should be restricted to what is necessary to achieve the objectives defined in the Treaties.

crossing solid white line(s), not respecting forbidden access, driving the wrong way, overloaded vehicle) are not any different from those already encompassed in the CBE Directive's scope, the Commission's previous assessment on the respect of these principles applies similarly. It was demonstrated that the objectives of the Directive (i.e. enhancing road safety, reducing the number of road fatalities) cannot be sufficiently achieved by the Member States.

As to the offence of overloaded vehicles, we note that this is linked to the application of Council Directive 96/53/EC on maximum weights and dimensions of vehicles[18] (as amended in 2002[19], 2015[20], and 2019[21]). This Directive applies to the dimensions, weights and certain other characteristics of some motor vehicles and their trailers and establishes, in the framework of the common transport policy, common standards permitting improved use of road vehicles in traffic between Member States. Despite this link, there is no legal concern in the addition of such offence in the scope of the revised CBE Directive. Indeed, Directive 96/53/EC mandates Member States to prohibit circulation of vehicles that do not conform to given characteristics and to allow circulation of the vehicles under specific circumstances. It also requires Member States to take measures to ensure that conform vehicles carry proof of compliance and clarifies when the vehicles can be subject to random checks. This is only regarding compliance with common standards on weight, as common standards on dimensions checks can only be made where there is a suspicion of non-compliance with the Directive. If this offence is added to the CBE Directive's revised scope, it would only entail that the reference to Directive 96/53/EC should be made (as similarly for the offence 'failing to wear a seat-belt' which is currently defined under Article 3(e) of the CBE Directive as "*not complying with the requirement to wear a seat-belt or to use a child restraint in accordance with Council Directive 91/671/EEC (11) and the law of the Member State of the offence").* This being said, we highlight that it is important to provide a clear definition of the offence (to be included under Article 3 of the CBE Directive) considering that common standards and description of such offence should be agreed with Member States. The possibility of automatically detecting the offence has also to be verified.

Similarly, the offence of not keeping sufficient distance from the vehicle in front needs to be further investigated from a technical and legal point of view (accuracy of measurement and the tolerance applied to vehicles with and without intelligent driver assistance systems). As to its definition, common standards are recommended here.

In this context, it has to be noted that some stakeholders (e.g. ROADPOL, ordinary citizens) called for harmonised EU rules concerning the creation and use of emergency lanes to help save lives in serious accidents, especially on motorways (the forbidden use of an emergency lane is already covered by the CBE Directive).

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[18] Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorized dimensions in national and international traffic and the maximum authorized weights in international traffic, OJ L 235, 17.9.1996.

[19] Directive 2002/7/EC of the European Parliament and of the Council of 18 February 2002 amending Council Directive 96/53/EC laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic, OJ L 67, 9.3.2002.

[20] Directive (EU) 2015/719 of the European Parliament and of the Council of 29 April 2015 amending Council Directive 96/53/EC laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic, OJ L 115, 6.5.2015.

[21] Decision (EU) 2019/984 of the European Parliament and of the Council of 5 June 2019 amending Council Directive 96/53/EC as regards the time limit for the implementation of the special rules regarding maximum length for cabs delivering improved aerodynamic performance, energy efficiency and safety performance, OJ L 164, 20.6.2019; and Regulation (EU) 2019/1242 of the European Parliament and of the Council of 20 June 2019 setting CO2 emission performance standards for new heavy-duty vehicles and amending Regulations (EC) No 595/2009 and (EU) 2018/956 of the European Parliament and of the Council and Council Directive 96/53/EC, OJ L 198, 25.7.2019.

Non-safety related road traffic offences

For all other road traffic offences such as tolling offences, non-payment of parking fees/taxes, access to restricted areas/low-emission zones, non-payment of vehicle insurance, etc., the link with road safety is inexistent or indirect. In our opinion, including these offences in the scope of the CBE Directive without revising its purpose would affect its logical consistency. As noted, the focus on road safety and the objective to reduce the number of road fatalities has been present since the publication of the Directive and reflects its objectives and content. Consequently, this group of offences could be included in the revised scope, only in so far as the objectives of the Directive (Article 1) are revised and broadened. This would require several different impact assessments.

The 'scope' related approach of the legal act, has been followed, indeed, by the Union legislator, with the adoption of the EETS Directive[22] aimed at ensuring compliance with the 'user pays' and 'polluter pays' principles. The EETS Directive provides for the payment of fees for the use of road infrastructures and is aimed at achieving the widespread deployment of interoperable electronic road toll systems[23] in the Member States and the neighbouring countries.

Due to the lack of consistent classification across the Union and their indirect link to the use of the infrastructure, parking fees are left outside the scope of the EETS Directive (see Recital 7 of the Directive).

Problems related to the cross-border enforcement of the obligation to pay road fees, which may hamper further deployment of electronic road toll systems, are due to be addressed in the EETS Directive itself. Applying a system for cross-border exchange of information (whether the offence of failing to pay a road fee in national law is classified as an administrative offence or as a criminal offence) shall rely on existing tools such as the system used for exchanging information on road-safety-related traffic offences provided for in the CBE Directive. This is essential for reasons of consistency and efficient use of resources,

The EETS Directive provides for the delegation to the Commission, according to Art. 290 of the TFEU, to amend Annex I (which is the same as Annex I in the CBE Directive) in order to facilitate the cross-border exchange of information on the vehicles and owners or holders of vehicles for which there was a failure to pay road fees. The power to adopt acts is delegated to the Commission also in respect of laying down the details for the classification of vehicles for the purposes of establishing the applicable tariff schemes, further defining the obligations of the EETS Directive users regarding the provision of data to the EETS provider and the use and handling of the onboard electronic equipment, laying down the requirements for interoperability constituents regarding safety and health, reliability and availability, environment protection, technical compatibility, security and privacy and operation and management; the general infrastructure requirements for interoperability constituents; and the minimum criteria of eligibility for notified bodies.

Based on this background (and consistently with the Evaluation), we believe that including offences for non-payment of electronic road toll system in the scope of the CBE Directive would conflict with the provisions under the EETS Directive and in any case, would affect its consistency and coherence. It must be noted that rules related to

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22 DIRECTIVE (EU) 2019/520 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 March 2019 on the interoperability of electronic road toll systems and facilitating cross-border exchange of information on the failure to pay road fees in the Union.

23 Means a toll collection system in which the obligation, for the user, to pay the toll is exclusively triggered by and linked to the automatic detection of the presence of the vehicle in a certain location through remote communication with On Board Equipment in the vehicle or automatic number plate recognition.

access to urban areas (UVARs), particularly low-emission zones are also based on the principles of "user pays" and "polluter pays". The obligation for the user to pay the toll is exclusively triggered by and linked to the automatic detection of the vehicle's presence in a certain location, through remote communication with an On-Board Equipment in the vehicle, or automatic number plate recognition (ANPR).

A specific "*Analysis on the legal implications concerning the proposal of inclusion of UVAR related offences in the scope of the CBE Directive*", was carried out by Studio Legale Grimaldi during the Inception phase[50]. The analysis has considered four main problematic issues: the definition of UVARs and UVARs related offences; the impact of UVARs related offences on the legal basis of the Directive; the exchange of data needed between Member States to allow the enforcement of UVARs related offences; data protection and protection of fundamental rights in connection with the enforcement of UVARs offences.

2.4.4 Analysis of the possible Legal Basis

The amendment of the CBE Directive's scope and purpose also entails the need for analysing the legal basis, depending on the interpretation embraced in applying the 'centre of gravity test'. The analysis when deciding about the appropriate legal basis must focus on the main purpose of the measure at stake and the enforcement of a given Union policy.

In view of the amendments proposed to the CBE Directive (also consider the Impact Assessment performed under Section 2), the legal basis that come into consideration are:

- Under Title V of the Treaty on the Functioning of the European Union, which regulates the Area of Freedom, Security and Justice (AFSJ):
  - Art. 82(1) TFEU, providing for EU level competence on judicial cooperation in criminal matters in the Union basing it on the principle of mutual recognition of judgments and judicial decisions;
  - establish minimum rules "to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, taking into account the differences between the legal traditions and systems of the Member States;"
  - Article 87(2) TFEU, providing for EU level competence to "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".
- Under Title VI of the Treaty of the Functioning of the European Union, which regulates Transport:
  - Article 91(1) TFEU, providing for EU level competence to enact legal measures that implement the objectives of the common transport policy, which, among others, includes measures to improve transport safety (under Art. 91(1)(c) TFEU).

The legal nature of Title V legal basis provides a clear, restricted framework for the use of the legal provisions in the area of criminal and police cooperation. Furthermore, the history of the CBE Directive itself proves that there is a risk of potential conflicts between Title V and VI legal bases. Nevertheless, the EU jurisprudence provides certain guidance on establishing the appropriate legal basis.

ECJ Case Law

Some guidance is provided by European Court of Justice ('ECJ') case law, especially its findings in Case C- 43/12,[24] which concerned the CBE Directive. We observe that the historical choice of legal basis for the CBE Directive has been already quite controversial[25], as the Directive was proposed on the basis of Article **91(1)(c) TFEU** (at the time Article 71 TEC) which provides a general competence to enact measures to improve transport safety; then adopted on the basis **of Article 87(2)(a) TFEU**, that provides a competence to establish police cooperation measures in relation to the prevention, detection and investigation of criminal offences, concerning the collection, processing, analysis and exchange of relevant information; and then challenged in the European Court of Justice and annulled, to return to the first legal basis chosen by the Commission.

Based upon the ECJ's past practice, an implicit general criminal law competence of the EU is recognised in addition to that found in Art. 83(2) TFEU (so-called functional criminal law competence) which allows using a legal basis outside Title V (police cooperation legal basis), even when the measure contains elements that pertain, broadly speaking, to criminal or police cooperation. However, along the lines suggested by the ECJ's judgement in Case C- 43/12, and consistently with previous case law**, it is argued that enforcing measures can be correctly adopted outside Title V only if the criminal law or police cooperation aspect of the measure is merely incidental to another substantive policy (e.g. transport) that represents the 'main aim' of the instrument.** By contrast, if the CBE Directive ends up pursuing principally the objective of establishing a system of exchange of information, and only indirectly objectives related to road transport,[26] a shift in the legal basis will be determined in favour of an ASFJ (Title V) legal basis, as the purpose of enforcement will prevail.

As the analysis does not univocally point in one direction and it remains possible that any final choice is challenged in the Court, we briefly present hereinafter some arguments towards one or the other option.

a) Claims for Transport legal basis (Title VI TFEU)

A review of the ECJ case law suggests that the Court, when faced with complex legal basis litigation with regard to conflicts between legal bases in the area of police cooperation and other legal bases, has tended to favour the latter. Previous judgments have consistently held that the correct legal basis for EU measures related to the approximation of criminal law (such as can be the case of the detection, prevention and enforcement of sanctions for road traffic offences) will be determined primarily by reference to the content and aim of the proposed

[24] Judgement of 6 May 2016, C-43/12, ECLI:EU:C:2014:298.

[25] This is because, during the legislative debate leading to the approval of the CBE, a number of Member States expressed doubts as to the appropriateness of the legal basis chosen by the Commission for its proposal. Those delegations questioned whether there actually existed any Union competence on the basis of which the proposed directive could be adopted. After two years of blocked discussions, the Council reached a political agreement at the Transport Council of 3rd December 2010. Council's text substituted the former transport legal basis with the new Article 87(2) of the Treaty on police cooperation on "the collection, storage, processing, analysis and exchange of relevant information". On 25 October 2011, the Parliament and the Council hence adopted the directive using Article 87(2) TFEU as the legal basis (despite the Parliament had backed the Commission's choice, taking the view from the outset that transport safety was the correct legal basis).

[26] As contended by the Parliament in Case C-43/12, supported in that regard by the majority of the intervening Member States, even with the limited scope.

EU legislative act. In both pre-Lisbon cases[27] and more recent judgments[28], the Court held that the legal bases of transport policy and environmental policy had priority over third pillar provisions providing for a criminal law competence. According to the ECJ, this should apply notwithstanding the fact that there may be **ancillary elements** relating to criminal law or police cooperation.

b) Claims for police and/or judicial cooperation legal basis (Title V TFEU)

Police cooperation legal basis

A critical reading of Case C- 43/12 has questioned the ECJ's acceptance of the argument that the Directive was predominantly concerned with the enhancement of road safety rather than with the prosecution and fighting of crime. In the opinion of the Advocate General Bot in C-43/12, *contra* the findings of the Court, the Recitals and the content of the CBE Directive already suggest that its aim is to enable more effective enforcement in relation to road traffic offences through the creation of a system of exchange of information. According to this interpretation, the objective of ensuring a high level of protection for all road users in the Union by improving enforcement of road-safety-related traffic offences (Art. 1 CBE Directive) is encompassed in the objectives that the Union shall pursue according to Article 67(3) TFEU (to *ensure a high level of security…to prevent and combat crime*, *…measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws*). *A fortiori*, a thorough review of the Directive, **especially after a possible scope enlargement (to other road traffic offences) and removal of the reference to road safety**, could suggest that it is rather a measure aimed to enhance the enforcement of sanctions for road traffic offences.

Ultimately, it was argued that the Court's decision was premised on a too-narrow understanding of 'police cooperation' under Art. 87 TFEU, particularly with regard to the terms 'criminal offences' and 'criminal enforcement'[29]. Such narrow interpretation entails that the scope for using legal bases of criminal and police cooperation becomes very confined. The alternative and broader interpretation Article 87(1) TFEU proposed by the Advocate General, is that the provision concerns not only police cooperation relating to criminal offences but *any* police cooperation involving any national competent authorities including those charged with the prevention of road traffic offences[30]. This is also confirmed by the fact that the CBE Directive applies regardless of whether such offences are classified as criminal in the Member States.

These opposite views and the very existence of much case law show that the issue of the correct legal basis is not straightforward and is open to challenge in litigation.

Judicial cooperation legal basis

With (proposed) new elements of judicial cooperation being added to the revised CBE Directive, it could seem appropriate to rely on Art. 82 TFEU for the legal basis. The first

27 See e.g. *Ireland v Parliament and Council* (C-301/06); *Commission v Council, Environmental Crimes* (C-176/03); *Commission v Council, Ship Pollution* (C-440/05).

28 See e.g. *Commission v Council* (C-137/12); *Commission v Parliament and Council* (C-43/12); *UK v Council* (C-656/11); *UK v Council* (C-81/13); *Commission v Council* (C- 377/12); *UK v Council* (C-81/13).

29 According to the Court, art. 87 TFEU could not be used as legal basis because the system for exchange of information not only relates to criminal offences but also administrative offences.

30 AG Bot referred to the EU institutions' views on the matter to support his argument: Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, OJ 2005 L 76/16, recital 4, art. 5(1); The Stockholm Programme — an open and secure Europe serving and protecting citizens, OJ 2010 C 115/1, at [3.1.1].

paragraph of the provision endorses the principle of mutual recognition of judgments as the cornerstone of judicial cooperation in criminal matters and governs the approximation of national laws in specific areas of particularly serious cross-border crimes. It seems arguably irrelevant for the case of road traffic offences. By contrast, the second paragraph may well come into play insofar possible new provisions to be added to the Directive set a streamlined cooperation mechanism for the investigation of the offences and enforcement of sanctions for these offences. As such, the Directive could be deemed as having as object and be aimed at the facilitating police and judicial cooperation in cross-border criminal matters, or even the mutual recognition of judgments and judicial decisions.

Based on the analysis of ECJ Case Law and reasonings thereto, even when possibly new elements of judicial cooperation are being added to the revised CBE Directive, the following conclusions may be reached:

- Despite some contrary views of the doctrine recalled above, it would not be advisable to base the revised Directive on Article 87(2)(a) TFEU, in open contrast with the clear ECJ precedent. Although concerning, as part of its object, the exchange of relevant information in the context of police cooperation and regarding the prevention, detection and investigation of (criminal) offences, the revised Directive would definitely maintain, and even reinforce, its main aim of enhancing road safety. All considerations made in the 2012 Judgement remain relevant;
- Likewise, it does not seem necessary to rely on Art. 82(1) TFEU, since neither the facilitating the mutual recognition of judgments and judicial decisions, nor the police and judicial cooperation for enforcement purposes would be the main aim of the act.

All in all, the Court favours Union-friendly basis over police and/or judicial cooperation (ASFJ) basis. Therefore, the scope of transport legal basis should be interpreted broadly, as covering any measure which is ultimately intended to meet road policy objectives, although having a functional or incidental criminal law element. Since the (revised) Directive still seeks to improve road safety, and the latter forms a key part of the EU transport policy, the revised CBE Directive should hence be adopted on the basis of Article 91(1)(c) TFEU.[31]

Besides, establishing a transport legal basis is advisable over any legal basis in Title V or a combined one, due to characteristics of these policy areas in terms of the EU - Member States balance of powers. Indeed, although both transport and AFSJ are shared competence of the Union (Art. 4 TFEU), the transport basis is more "integration-friendly", being one of the Community's first common policy areas (former 1st pillar), which aimed to the creation of a common transport market. In practice, this means that the EU has the power to harmonise national legislations.

Conversely, AFSJ concerns highly delicate matters involving sovereignty, traditionally belonging to the former 3rd pillar, where the intergovernmental decisional method was used. This results in specific limits still existing to the harmonisation of laws in the ASFJ area that can impede the approximation of national criminal law systems through mutual recognition or EU secondary law. The EU does not have a comprehensive competence for legal harmonisation of criminal substantial and procedural law, even under the Lisbon Treaty.

[31] See also Joined Cases C-184/02 and C-223/02 Spain and Finland v Parliament and Council EU:C:2004:497, paragraph 30, for interpretation of Article 91(1)(c) TFEU.

Notably, limits to the EU powers for acts in the AFSJ are:

- Possibility for the EU to establish only “minimum rules” for the approximation of national law, which gives Member States room for broad discretionary power, and only by means of Directives (Art. 82 TFEU);
- Approximation of national criminal law must be “necessary” ensuring respect for the “legal systems and traditions of the Member States” (Art. 67(3) and Art. 82(2) TFEU);
- The “emergency brake” mechanism (MSs’ right of objection when harmonising criminal law to stop an ongoing EU legislative procedure in the Council) may be used by a MS if a planned EU measure were to affect “fundamental aspects of its criminal justice system”, as defined by the MSs themselves (Art. 82(3) TFEU);
- Denmark and Ireland have opt-outs from legislation adopted by the EU in the AFSJ. For Ireland, there is a flexible opt-in or opt-out of legislation and legislative initiatives on a case-by-case basis. For Denmark, there is a more rigid opt-out that exempts it, as a matter of EU law, from participating in ASFJ policy areas, which are instead conducted on an intergovernmental basis. Hence, it would be necessary to conclude a parallel intergovernmental agreement between the EU and Denmark to apply EU measures adopted under the AFSJ. The choice of AFSJ legal basis might therefore affect the geographical implementation of the Directive, reducing the territorial scope of the proposal, with these Member States potentially being excluded in line with their prerogatives under the Treaties;
- Some measures in the ASFJ area require ‘special legislative procedures’ (e.g. measures laying down the conditions and limitations for police cooperation (Article 89 of the TFEU)).

2.5 Legal analysis of personal data protection rules

To allow cross-border enforcement of the offences under the CBE Directive, Member States need to be given access to vehicle data that includes both personal (such as information on the vehicle’s owner/holder) and non-personal (such as vehicle’s information) elements.

Directive 95/46/EC[32] is the instrument on data protection that governs the data exchanged under the existing CBE Directive, by means of:

- the right to take action to rectify, erase or block data;
- the obligation to set a time limit for the storage of data;
- the right to have data processed fairly for specified purposes and on a legitimate basis;
- the principle of equivalence of remedies like compensation and judicial redress;
- the right to information on data recorded and transmitted.

As emphasised in Recital 7 of the CBE Directive, the road-safety-related traffic offences covered by the CBE Directive are not subject to homogeneous treatment in the Member States, in terms of legal nature, and the CBE Directive applies regardless of the qualification of the offence under national law (as administrative or criminal). In contrast, the applicable legal framework on data protection depends on the nature of the competent authority (administrative body or police and justice authorities) and on

[32] 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, 23.11.1995, now replaced by the GDPR.

the purpose of the processing (i.e. whether data are stored and exchanged for purpose of enforcement of administrative or criminal offence).

Significant developments in recent years have occurred due to new EU legislation on data protection that came into force with new obligations and the growing availability, usage and exchange of (new) data from new sources. Today, Directive 95/46/EC and Decision 2008/615/JHA are repealed and superseded respectively by the General Data Protection Regulation / GDPR (Regulation (EU) 2016/679[33]), and by LED (Directive (EU) 2016/680)[34]. The latter specifically protects personal data when being used by police and criminal justice authorities for purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. This is the first instrument that takes a comprehensive approach in the field of law enforcement, as opposed to the previous ad hoc approaches whereby each law enforcement instrument was governed by its own data protection rules.

Cases falling within the CBE Directive’s scope are therefore to be analysed in light of both, the GDPR and LED, depending on what is the purpose of processing data in a given case. The new legal framework enhances the protection of data by providing a higher standard of protection for the data subject, compared to previous legislation. In principle, this may result in enhanced caution when processing data for investigation purposes, as well as avoid the risk of disclosing personal data of persons who have not committed any offence.

LED and GDPR are built upon similar principles. Both GDPR and LED establish that all personal data be processed lawfully and fairly. GDPR additionally requires the data to be processed transparently. Further, both require the data to be processed for specific, explicit and legitimate purposes, be adequate, relevant and, limited to what is necessary, accurate and, when necessary, kept up to date; stored in the form allowing for identification for no longer than necessary and in a manner ensuring appropriate security. They also contain security requirements obliging national authorities to take technical and organisational measures to ensure a level of security for personal data that is appropriate to the risk and impose more specific security measures where data processing is automated.

Article 62(6) of the LED requires the Commission to review some legal acts which regulate processing by the competent authorities for law enforcement purposes to assess the need to align them with the LED. Additionally, to also make the necessary proposals to amend those acts to ensure a consistent approach to the protection of personal data within the scope of the LED. As a result, in June 2020, the Commission published a Communication on the “*Way forward on aligning the former third pillar acquis with data protection rules*” (Brussels, 24.6.2020 COM(2020) 262 final). It lists the acts that, according to the review, should be aligned and a timetable to achieve this objective. The CBE Directive is clearly encompassed in the abovementioned list. As a result, the CBE Directive should be amended to align with the new framework, namely both the GDPR and the LED.

As also recalled in the Commission’s Communication, a difference should be clearly emphasised between cases when the road-traffic-related offence is qualified as ‘administrative’ and when it is qualified as ‘criminal’. References to Directive 95/46 should hence be amended to include both GDPR and LED, including also a distinction of the applicable law, depending on the nature of the sanction. This will allow distinguishing cases where the standards of data protection are those of one or the other instrument.

[33] Idem.
[34] Idem.

In the case of administrative offences, the GDPR automatically replaces Directive 95/46/EC and the application of the correct legal framework for processing personal data is ensured. In practice, by virtue of Article 94 of GDPR, all references to the repealed Directive 95/46 shall be intended as references to this Regulation.

In the case of criminal offences, all references to Decision 2008/615/JHA should be replaced by references to the LED: the access to the data exchanged under the Prüm Decision, and their subsequent processing, as mentioned in Recital 23 of the current CBE Directive, needs to be aligned with the LED by providing a clear reference to the applicability of the LED in such cases.

Furthermore, the alignment with LED should ensure that the obligation to send an information letter to the owner or holder of the vehicle, or the otherwise identified person suspected of committing the road-safety-related traffic offence, on initiating the investigation or prosecution and granting them specific information is without prejudice to the right to information under Article 13 of the LED.

2.6 Evaluation in other specific areas (use of debt-recovery/collection companies)

Task 5a of the ToR aims to identify areas that might relate to the revision of the CBE Directive and to assess to what extent issues and recommendations brought forward in the evaluation of instruments in these specific areas should be considered when conducting an impact assessment on the revision of the Directive. This refers to, in more specific terms: the non-transparent use of debt-recovery/collection companies; the detention or confiscation of vehicle or vehicle registration documents; the application of guarantees in cross-border enforcement of road traffic rules:

- As to the non-transparent use of debt-recovery/collection companies. It appears that, given the insufficiency of the EU mechanism for cross-border enforcement of the financial penalties regarding road traffic offences, the authorities make use of debt collection agencies to recover fines. Operating across Europe, agencies are appointed by the authorities in one country to act on their behalf to recover fines in another country. If the person who committed the offence finds themselves in this situation, they can expect to hear either from European Municipality Outsourcing (EMO), or from Euro Parking Collection (EPC). Such private or public bodies often operate under non-transparent conditions. For example, outsourced private bodies representing Member States local/municipal authorities send pre-information letters, at the very beginning of the procedure, to inform offenders of the allegedly committed road traffic offence with the possibility to settle the financial penalty without further administrative steps. If the penalty is not paid, the pre-information letters can be followed by the letters issued by various legal companies (advocates, debt collectors) representing debt collectors or the authorities of the Member State in which the offence was committed, in the Member State of the residence of presumed offender. Sometimes, such letters are sent directly to presumed offenders by such legal companies without any pre-information. Consequently, citizens are confused as it is often not clear what is the applicable procedure, the relationship between the outsourced private company and the financial penalty issuing public authority, what is the penalty and what the commission payment for the company (handling fee). The debt collectors and/or outsourced private bodies very likely cannot not be excluded from the service of the documents mentioned above (though personal data protection might be an issue). Nonetheless, the question is whether such practice is in line with other relevant EU law (e.g. MLA Convention or FD 2005/214 particularly if road traffic offence is qualified as criminal). It appears to be useful to provide precise definition of the information letter/penalty notice and which entity can issue, transmit and service it that is currently missing;

- As to the confiscation/detention of vehicles. Preliminary desk research (Belgium, Germany, Italy, Spain and France) indicates that the confiscation/detention of a vehicle usually occurs as a consequence of the offences, such as driving an uninsured vehicle, driving without a licence, driving under the influence of alcohol or excessive speeding. Moreover, when serious offences or serious incidents occur, the confiscation of the vehicle can be imposed (a very recent, draconic sanction scheme in Denmark). Sporadic complaints of EU citizens indicate that there might be an issue with the application of confiscations/detention of vehicles or vehicles' documents (e.g. vehicle number plates in Greece) in cross-border cases, especially when such action is found disproportionate to the committed offence (quite often a parking offence where the driver is not present/identified on the spot);
- As to the application of collateral guarantees in cross-border enforcement of road traffic rules, this refers to the practice of pledging collateral as security for repayment of a debt (in this case the financial penalty imposed for the road traffic offence), to be forfeited in the event of a default debt (that is when a borrower fails to pay their loan when it is due). The collateral is something that the debtor owns that the creditor (including public authorities) can take if the debtor fails to pay off the debt. This can be any item of value that is accepted as an alternate form of repayment, in case of default. If payments are not made, assets can be seized and sold. From our analysis, it seems that this is not a common practice in the case of financial penalties for road traffic offences (that is, if the debt to be repaid is the financial penalty due to the State). Nonetheless, EU citizens sporadically complain about such practices where some belongings (e.g. mobile phones) are seized, if the offender is not able to pay the financial penalty on the spot (e.g. in Austria). Furthermore, it is noted that in some Member States (e.g. Italy[35]) any agreement by which it is agreed that, in the event of non-payment of credit within a given term, the ownership of an asset given as a guarantee by mortgage or pledge, passes into ownership to the creditor is forbidden. As the application of collateral guarantees is only possible in road-side checks when the driver is identified on the spot, it appears to be irrelevant for the remote detection of the offences under the CBE Directive.

It is noted that both the confiscation/detention of vehicles and the application of collateral guarantees in cross-border enforcement of road traffic rules are encompassed by the broader issue of the respect of fundamental rights in enforcement actions, including road-side controls across the EU territory. While any national system may have its own peculiarities[36] (*and the specific assessment of any of them against EU*

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[35] Art. 2744 of the Italian Civil Code, entitled "Divieto del Patto Commissorio".

[36] For instance, according to the **Greek** Highway Code, seizing of the number plate's car owner, as a result of a parking offence can be a possibility. In fact, according to Law 2696/1999 and 3542/2007, parking illegally represents a violation and can be charged with a fine of EUR 80 to EUR 150, together with the removal of the licence plate from 10 to 20 days, depending on the gravity of the offence. In the case of very serious violations, you can be punished by removal and seizure. This measure concerns both foreigners' and residents' vehicles. Regarding the role of the traffic officers, they are not authorised to collect fines (this represents a peculiarity of the Greek system) but can only issue a ticket to be paid in any bank.
Another example is the **Austrian** Road Traffic Regulation 1960 (Straßenverkehrsordnung (StVO)) under which fines for exceeding speed limits can reach very high amounts and also imprisonment in case of non-recoverability, and the Administrative Penal Act 1991 (Verwaltungsstrafgesetz (VStG)) that foresees inter alia: (§ 50) that specially trained law enforcement officers may be authorized to impose and **collect summary penalty notices** for certain administrative offences noticed by them on duty or personally admitted to them; (§37) that the authority may order the defendant, **by means of an administrative decision**, to deposit an adequate amount of security or to guarantee such an amount by pledging a security or naming a suitable surety guaranteeing payment and (§37a) that **police officers are**

law is outside the scope of this Study) it remains that seizure orders, collection of securities/collateral, temporary bails, and any other preventive enforcement measures require strict adherence to the fundamental principles enshrined, *inter alia*, in the Charter of Fundamental Rights of the EU and national Constitutions. As such, any interference with the right of freedom and/or of property must strike a fair balance between the general interest of the State and those of the protection of the fundamental rights of the individual. In practice, this means that any similar measure (especially whether undertaken by administrative/police authorities, rather than judicial bodies, e.g. during road-side controls) shall only be allowed under strict conditions, including the **proportionality** between the means employed and the purpose pursued, and respect of the right to **information** (and translation in a language understood by the individual concerned by the measure) and of the principle of **equal treatment** between residents and non-residents/foreigners. Although the Member States have a margin of appreciation in this regard, the EU has a power – and duty – to watch over the respect of the Treaties.

2.7 Way forward legal analysis

Addressing the critical issues identified as an outcome of the legal analysis, would require the adoption of a comprehensive simplified framework in the CBE Directive, tailored for road traffic offences covered thereto, and possibly including:

- Establishment of a legal liability regime at EU level for road traffic offences committed with a foreign vehicle;
- Simplified investigation of the offences and enforcement mechanism for sanctions (financial penalties) embedded in the Directive, tailored to road traffic offences and protecting fundamental rights;
- Strengthened role and capacity of the National Contact Points;
- Ensured compliance with the new data protection rules.

2.7.1 Establishment of a legal liability regime at EU level for road traffic offences committed with a foreign vehicle

One of the main issues hampering the functioning of the CBE system, as it arises from this Study as well as previous assessments, is the "*impossibility to identify the offender through the simple exchange of VRD, in cases where a strict driver liability regime applies in the Member State of residence of the offender and the offence is committed in a Member State where the owner/holder liability regime applies*".

The most straightforward way of solving this problem is the introduction of a common/uniform legal liability regime based on vehicle owner/holder liability for road traffic offences committed with a foreign vehicle. This seems to be in line with existing EU road safety legislation. For example, liability without fault (i.e. strict liability) regulated at EU level can be found in Regulation 561/2006[37] (liability of transport undertaking for infringements committed by drivers of the undertaking).

authorised to collect temporary bail from persons caught in the act of committing an offence. Provisions under §37 and §37a are upon conditions that there is the substantiated suspicion of impossibility or disproportionate effort needed for prosecution or enforcement compared to the legal interest protected by criminal law and that the security (including secured property) or temporary bail do not exceed the maximum fine that could be imposed.

[37] Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85,OJ L 102, 11.4.2006, p. 1–14.

In particular, harmonisation of the liability regime is foreseen in Regulation 561/2006 on the basis of the following considerations *"Difficulties have been experienced in interpreting, applying, enforcing and monitoring certain provisions of Regulation (EEC) No 3820/85 relating to driving time, break and rest period rules for drivers engaged in national and international road transport within the Community in a uniform manner in all Member States, because of the broad terms in which they are drafted. Effective and uniform enforcement of those provisions is desirable if their objectives are to be achieved and the application of the rules is not to be brought into disrepute. Therefore, a clearer and simpler set of rules is needed, which will be more easily understood, interpreted and applied by the road transport industry and the enforcement authorities".*

Action at EU level seems justified as the subsidiarity and proportionality requirements are met:

- Subsidiarity: The fact that legal systems on liability are regulated at national level does not, *per se*, impinge on the respect of the subsidiarity principle. The principle rules out Union intervention when an issue can be dealt with effectively by Member States. However, the Union is entitled to act when the criteria of 'necessity' (i.e. Member States are unable to achieve the objectives satisfactorily) and 'added value' of an action carried out at Union level are fulfilled. Both requirements are met by the measures in question since they are aimed at facilitating the establishment of the European road safety area (see the related Communication of 20 July 2010) and at avoiding the so-called 'Forum shopping'. An action at EU level, by reason of its scale or effects, would therefore produce more significant benefits compared to action taken solely at the level of the Member States, as the objectives of road safety cannot be sufficiently achieved by the Member States;
- Proportionality: As regards the standard of review of compliance with this principle, the ECJ considers that the EU has broad discretion in areas in which its action involves political, economic and social choices. Accordingly, a measure can only be challenged if it is deemed manifestly inappropriate in relation to the pursued objective[38], regardless of whether it is the only or the best possible. In the Court's view[39], if the measure concerned has an impact in all Member States, it requires striking a balance between the different interests involved. The EU is hence obliged to take into consideration not the particular situation of each single Member State, but that of all EU Member States, in light of the measure's objectives.

2.7.2 Simplified investigation and enforcement mechanism tailored to road traffic offences embedded in the revised CBE Directive

By streamlining the existing procedures, i.e. their simplification and digitisation, with new mechanisms designed explicitly for traffic offences, the current bottlenecks/costs can be removed or mitigated. Member States would have more incentive to make use of a smooth process to retrieve modest sums of money. At the same time, offenders that constitute a risk to the safety on roads within the Union will be punished.

The revision of the CBE Directive could contemplate a simplified procedure for the assistance in the investigation phase and cooperation in the sanction enforcement phase, with the transmission of relevant decisions imposing a financial penalty and its enforcement documents in an electronic format. The procedure should consider the innovations occurring due to the digitisation of processes and automation of vehicles.

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[38] See e.g. the proportionality assessment in Case C-220/17 and in Case C-482/17, paragraph 77.
[39] See previous footnote.

In addition, detection of offences is due to be automatic under the current version of the CBE Directive.

Step 1**.** The first step of the procedure should allow to the National Contact Points (appointed under art. 4 of the CBE Directive) access to National VRDs, through EUCARIS, or another equivalent portal, providing relevant information on the owner of the vehicle. In addition to the VRD, it could be helpful to give access to the national Driving License Registries to double-check the information on the residence and address of the owner of the vehicle. This could be done through EUCARIS which is already providing its services for the exchange of information to RESPER or the central hub provided by DG MOVE. However, specific provision allowing for this additional search should be included in the revised version of the CBE Directive to establish the legal basis. The exchange of data must be in an electronic structured format between National Contact Points. Once the relevant data is obtained, the National Contact Point issues the "information letter". This instrument is already foreseen in the CBE Directive (Article 5) and a template is provided in Annex II. However, at present, the information required in the template is generally optional or depends on the availability of the information in the registries. In the revised version of CBE Directive, the use of the information letter should be obligatory. This informative document summarises all relevant details of the penalty issued, including instructions on the deadlines for voluntary payment, legal consequences of not paying, and available appeals procedures. The information letter must be translated in the language the offender would understand (see recital 15 of the CBE Directive) and include, as an attachment, a copy of the penalty issued in the original language. Proper protection of personal data must be ensured with reference to the obligation for National Contact Points to abide by the GDPR or LED rules in the processing of personal data.

The Information letter should also provide details of the bank account where the penalty can be paid, and any additional conditions. The reduction of the sanction if payment is immediately made after receiving the information letter, for example, could represent an incentive for voluntary payments and abatement of administrative costs related to the enforcement procedure. The Commission should consider providing financial support to the National Contact Points for translation services and electronic equipment.

A definition of the information letter could be included in the revised CBE Directive to enhance legal clarity. It should have a broad scope encompassing any type of written act (e.g. in the form of formal notification, registered mail, etc.) It should also contain all **mandatory** elements or follow a **mandatory template** provided for in the CBE Directive and delivered with effective means that ensure acknowledgement of receipt by the interested person.

Delivery of Information Letter

While the delivery time of the information letter is not clearly defined in the Directive, the methods of conveyance are. Recital 15 ". Member States should consider sending the information concerning road-safety-related traffic offences in the language of the registration documents, or in the language most likely to be understood by the person concerned, to ensure that that person has a clear understanding of the information which is being shared with the person concerned. Member States should apply the appropriate procedures to ensure that only the person concerned is informed and not a third party. To that effect, Member States should use detailed arrangements similar to those adopted for following up such offences including means such as, where appropriate, registered delivery".

Services such as registered delivery are quite common within the EU, as it allows for the sender to be notified if the letter has been received or not, and can be carried out by both private and public postal services. Alternatives can be used in some countries. In Italy, for example, certified email accounts have started replacing registered mail. However, there should be a similar system available at EU level and compulsory for everybody. Also, electronic addresses should be available in VRDs or Driving License registers.

As detailed in Annex II of the Directive, the owner/holder of the vehicle or the otherwise identified person has 60 days to respond to the information letter if they want to have further information, settle the fine or exercise their right to defence. Furthermore, if the executing State decides to pursue the case further, it has to respond within the limit of 60 additional days.

Within the context of the Salzburg Forum[40], the contracting parties of the CBE Agreement have agreed, in compliance with their national laws, to shorten the 60-day time limit allowed to the offender for responding to the information letter and to the National Contact point to reply in case of clarifications required.

Step 2. Further cooperation in investigating who is personally liable for a detected offence may be needed if the data in the databases consulted by the NCP do not allow the identification of the current residence of the offender or the new owner of the vehicle, or the identity of the driver (if strict driver liability regime applies). This risk should be minimised if specific improvements are made to the VRDs, as suggested in the policy measures proposed in Chapter 6 (e.g. providing information on the former owner/holder of the vehicle). A suitable option could be to provide for default objective liability of the owner/holder of the vehicle. They will then be interested in ensuring that the former owner/holder of the vehicle or the driver who has committed the offence is identified. This solution seems to be the best option available to improve cross-border enforcement of sanctions, given that under the current CBE Directive's mechanisms, the identification of the driver is not always possible. For example, when the executing Member State applies the driver liability regime and requires pictures proving the identity of the driver, the CBE Directive mechanisms find two obstacles: a) often pictures of the vehicle committing the offence are taken (automatically detected) from the rear, and it is impossible to see the driver of the vehicle; b) when available, pictures of the driver/offender must be verified with the Member State of residence of the offender and this raises issues at EU level which currently remain unsolved. Under the Salzburg CBE Agreement, Member States have agreed to exchange evidence through EUCARIS that may include pictures or any other relevant document/proof.

An alternative option would be the introduction of the 'offence of non-cooperation in identification of the driver/offender' among the offences under the CBE Directive. This offence would apply in the case where the vehicle owner/holder fails to state who was driving the vehicle at the time when the offence was committed, despite being requested to do so by an authority. Offences related to non-cooperation are covered by the Salzburg Forum Agreement (Art.1) as long as they are foreseen by the national law of the state of the offence. A similar addition to the offences under the CBE Directive would not necessarily entail a change of legal basis (if the objective of road safety remains dominant). However, adding the offence of 'non-cooperation in identification of driver/offender' could also be problematic for two reasons. Firstly, unlike all other offences covered in the CBE Directive, it would not be committed abroad, although it may have a transnational nature (where it is understood as the cooperation between a national of one Member State with the authorities of a different Member State). Secondly and above all, it does not exist in all Member States. In fact, as part of the defendant's rights granted in national Constitutions and criminal codes, some Member States foresee a right to silence (i.e. right to remain silent when questioned) or right to avoid self-incrimination, which is an expression of the legal principle according to which '*nemo*

40 The Salzburg Forum is a multilateral agreement in which countries with similar legal systems agree on a streamlined approach for investigating and enforcing financial penalties for road traffic offences.

tenetur se detegere'. The principle usually also applies to persons close to the defendant (family/spouse), who are not obliged to provide information against the defendant or to testify against him. The right may include the provision that adverse inferences cannot be made by the judge or jury regarding the refusal by a defendant to answer questions before or during a trial, hearing or any other legal proceeding.

Based on the considerations above, the CBE Directive should now provide for a simpler mechanism of cooperation in relation to the investigation of road traffic offences where NCP of the Member State of the offence request, through the recourse to electronic exchange ensuring the authenticity of the request and protection of data/information exchanged (EUCARIS), the cooperation of the NCP in the Member State of residence of the offender. There must be the obligation to use only one channel of communication between the authorities. Protection of data may include the provision of a clause stating the NCP receiving the data is obliged to process them only for the purpose received. NCP plays a key role of coordination of the investigation phase, given the difficulty of having a cross-border system of direct communication between competent authorities (i.e. police to police cooperation). The NCP, instead, may be in an easier position to liaise with all the National authorities and identify the competent one. Interconnection of databases at the National level facilitates this exercise and expedites the process.

It is recommended to consider the opportunity to ensure flexibility of the provisions in the CBE Directive, allowing to adapt to forthcoming technological innovations in the transport sector and vehicle equipment. Soon, such developments may well facilitate the investigation of road traffic offenders (e.g. through access to specific vehicle data) and solve many outstanding problems.

Step 3. The third step refers to the design of a streamlined procedure for cross-border enforcement of decisions on financial penalties[41], which would run along the Framework Decision 2005/214/JHA, qualifying as a Lex Specialis. This instrument is designed mainly for ensuring the enforcement of penalties related to serious criminal offences. Nevertheless, according to Recital 4, the Framework Decision should also cover financial penalties imposed in respect of road traffic offences and at Art. 5, 'infringements to road traffic regulations, including serious breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods' are included in the list of criminal offences where double criminality check is abolished. We have seen in the course of the Study, however, and it has been testified by stakeholders consulted, that the recourse to the Framework Decision in the case of road traffic offences is limited. This is mainly due to a procedure of enforcement tailored for criminal offences, which is lengthier and involves additional procedural safeguards and stricter conditions for mutual recognition than national procedures, while the financial penalty for road traffic offences that can be recovered is usually of low value.

The revised CBE Directive could provide for a system for mutual recognition of sanctions related to road traffic offences similar to the FD mechanism, irrespective of their qualification as criminal or administrative offences (or irrespective of whether the sanctions are dealt with by administrative or judicial authorities).

[41] 'Decision' in the Framework Decision means a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by: (i) a court of the issuing State in respect of a criminal offence under the law of the issuing State;(ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;(iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;(iv) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in point (iii).

Above all, the new process should take advantage of the ongoing development of digitisation[42] of justice. The possible new mechanism could also provide for the electronic administrative transmission of documents, through EUCARIS (see also below) and/or another equivalent system, between National Contact Points and subject to the protection of personal data in accordance with GDPR or LED. Significant deviations from the Framework Decision would primarily lie in the competent authority for the mutual recognition of final decisions and the allowed grounds for non-recognition.

National Contact Point under the CBE Directive, should be the central authority responsible for the transmission and reception of the certificates referring to the final decision on a financial penalty stemming from CBE road traffic offence. The information about the decision would be transmitted, in the form of a simplified translated electronic certificates, by the National Contact Point of the issuing State, using a secure electronic system, able to certify the authenticity (e.g. digital signature) and the accuracy of the certificate with reference to the penalty decision behind it. The certificate will be translated into the official language of the Member State where the offender resides. The National Contact Point of the executing State shall check if there are any grounds for non-recognition (as listed in the same CBE Directive based on a simplified FD list), and if not, will recognise the decision without further formalities. Moreover, the executing State should always be able to request, through the National Contact Point, the issuing State to provide the full text of the original decision or additional information needed to execute the decision. Any document concerning administrative or judicial authorities may be exchanged through e-CODEX[43] or eEDES.[44]

A specific number of grounds for non-recognition (partially considering the list at Art. 7 of the FD), to ensure the protection of fundamental rights, shall be foreseen:

Grounds for non-recognition and non-execution

- Incomplete or incorrect certificate – to guarantee correct execution of the decision;
- Decision against the sentenced person in respect of the same acts delivered in the executing State or delivered and executed in any other State. – to comply with the *ne bis in idem* principle;
- Statute barred decision according to the law of the executing State. – as above;
- The person concerned (i) in case of a written procedure was not, in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law, of his right to contest the case and of time limits of such a legal remedy (unless the certificate states: that the person was informed personally, or via a representative, competent according to national law, of the proceedings in accordance with the law of the issuing State), or (ii) did not appear personally (unless the person has indicated that he or she does not contest the case). – this should be retained to guarantee the right to fair trial, in compliance with Art. 6 ECHR.

Grounds for suspension

The certificate must be translated into the official language or one of the official languages of the executing State. The execution of the decision may be suspended for the time necessary to obtain its translation at the expense of the executing State (to guarantee the right to fair trial, which includes right to understand the charges and the trial, i.e. right to interpretation and translation).

42 For details see under Chapter 3 (Section 1) of this Study.

43 About ten million people are currently involved in cross-border civil proceedings. e-CODEX provides them with digitised access to legal means and aims to boost judicial cooperation by improving the interoperability between legal authorities within the European Union.

44 e-Evidence Digital Exchange System.

Since the main source for the obligation of cooperation would remain the already existing Framework Decision, but made suitable for administrative offences, and the ultimate purpose of the revised Directive would survive (improving road safety by facilitating the enforcement of sanctions), it seems that the legal base of the CBE Directive could remain Article 91(c) TFEU. The reinforced 'cooperation aspect' is absorbed in the reference to the already existing cooperation tools (Lex Generalis) and justified by the need, outlined in Article 91 TFEU, to consider the distinctive features of transport when implementing the common Transport policy through measures aimed to improve transport safety.

A specific new provision may include the establishment of fair accrual of monies from fines between issuing and executing Member States. This does not entirely derogate from the Framework Decision as it already foresees (Art.13) that the funds obtained from the enforcement of decisions shall accrue to the executing State unless otherwise agreed between the issuing and the executing State, leaving it to the discretion of Member States.

All other technical and administrative arrangements for the procedure and the certificate could be specified through an implementing act:

- Harmonised form of the certificate for transmission of decisions;
- Technical specifications for the establishment of an electronic structured connection between competent National Contact Points;
- Harmonised terms regarding the serving of the decision to the offender by the NCPs in the executing State and related modalities.

The CBE application should be without prejudice to the coexisting Prüm application, used for the remaining (mostly criminal) cross-border offences.

2.7.3 Creating EUCARIS CBE Application, separate from the Prüm Application or update the reference to Prüm relying on "Prüm II"

By allowing the use of EUCARIS to accede further databases/registers in addition to vehicle data registers, for the purposes of CBE Directive, cross border investigation is likely to improve. EUCARIS could indeed enable competent national authorities, through the NCP, to access VRDs and Driving Licence Registries.

From a technical standpoint, EUCARIS system has a high level of adaptability and is extensible with new messages and new functionality at minimal costs, allowing access to further data, but the legislation needs to be updated to keep pace with technological progress. This might be done by decoupling the CBE Directive from the Prüm Decisions.

Decoupling from Prüm Decisions

Automated searching of vehicle registration data is regulated at Article 15 of Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

It is provided that for automated searching of vehicle registration data Member States shall use a version of the European Vehicle and Driving Licence Information System (EUCARIS) software application especially designed for this purpose. Automated searching of vehicle registration data shall take place within a decentralised structure. The information exchanged via the EUCARIS system shall be transmitted in encrypted form. The data elements of the vehicle registration data to be exchanged are specified in Chapter 3 of the Annex to the

Decision. It is expressly provided that in the implementation of searches of vehicle registrations, Member States **may give priority to searches related to combating serious crime.**

Prüm Decisions and the CBE Directive, although with a different legal basis, govern the same factual situation that is the exchange of information in the fields of justice and home affairs to combat (cross-border) offences (see the respective objectives laid down in Articles 1). However, on the one hand, Prüm Decisions, with a particular focus on terrorism and serious crime, regulate the automated exchange of certain VRD *"for the prevention and investigation of **criminal offences** and in dealing with **other offences coming within the jurisdiction of the courts or the public prosecution service**… as well as in maintaining public security".*[45] Furthermore, Prüm is about combatting crime, which not necessarily needs to be cross-border.

On the other hand, the CBE Directive regulates the automatic exchange of the same VRD for the investigation of specific offences only (namely, the eight selected road-safety-related traffic offences listed in Article 2), and has a particular focus on cross-border enforcement.

According to a EUCARIS representative, interviewed on the subject, the procedure for exchange of information through EUCARIS could be decoupled from Prüm Decisions. EUCARIS has specific datasets for both data exchanges and they are not closely coupled. The CBE Directive and Prüm Decisions both use EUCARIS (i.e. the same system), as well as the same exchange functionalities, however, the datasets are independent. The CBE Directive messages do not interfere with Prüm Decisions messages. The Prüm requirements are at a higher level than for the CBE Directive, as in the former, information is exchanged for high profile criminal activities (security importance) and technical specifications are set accordingly. Under the CBE Directive, the level of severity of offences is lower, there the slightly lower data protection under the CBE Directive level is acceptable. For the CBE Directive, it is possible that the NCP may declare that certain information is not to be disclosed (i.e. valid reason to not exchange the information), however, for Prüm, no exceptions are allowed and information will always be exchanged. As EUCARIS uses the TESTA infrastructure, it may not be necessary for the CBE to have additional security measures within EUCARIS.

Besides, it is noted that a proposal for a Regulation on automated data exchange for police cooperation ('Prüm II') was adopted on 8 December 2021[46]. The revision enables the incorporation of modernised data protection safeguards in line with the current EU legal framework on data protection law. A wide array of possible amendments has been proposed by the feasibility study on improving information exchange under the Prüm Decisions (published in May 2020). These mainly focus on five areas, namely (a) improving the automated data exchange, (b) improving the follow-up procedure, (c) introducing new data categories such as facial images, (d) introducing a new IT architecture, and (e) exploring the possibility of linking Prüm to other information systems and embedding interoperability solutions. As a result, a valid and easier alternative to decoupling would be the reference to the new amended framework ("Prüm II"), which remedies certain shortcomings identified by the study and encompasses new

[45] Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime OJ L 210, 6.8.2008, p. 1–11. The same is for other information exchanged under the Decisions, that is DNA profiles and dactyloscopic data. https://ec.europa.eu/anti-fraud/sites/antifraud/files/docs/body/prumtr.pdf.

[46] COM(2021) 784 final.

solutions resulting from changes in the technological landscape and maximise the performance of the Prüm network.

Member States consulted also expressed their interest in the improvement of the EUCARIS application for the CBE Directive purposes, extending also functionalities and services provided like in the Salzburg Forum CBE Agreement.

The recourse to EUCARIS may be referred to explicitly in the revised text of the CBE Directive. It seems that no major legal barrier prevents this, as the CBE Directive *de facto* constitutes a Lex Specialis *vis-à-vis* the Prüm Decisions that already mandate the use of EUCARIS for given purposes. The specific subject matter of the CBE Directive (Lex Specialis) is hence encompassed by the more general subject matter of the Prüm Decisions (Lex Generalis). As observed earlier, where there is identity of subject matter, the law governing the more specific topic overrides the law governing the general aspects of the matter and can deviate from it. As previously remarked, Art. 288 TFEU does not outline any type of hierarchical relationship between EU acts that differ from each other only by their structural characteristics and by the effects they are intended to produce towards their recipients.

The specific EUCARIS CBE Application for investigation of CBE offences, which would make the CBE Directive autonomous from the Prüm Decisions, would leverage the availability and reliability of EUCARIS and its adaptability to new applications, without the need to develop a new EU tool.

The European Commission is obliged to control and monitor the implementation of EU law as well as its effective and efficient application. With EUCARIS, as an inter-governmental, decentralised tool where the European Commission is not a contracting party, the execution of its control and monitoring powers is limited and not independent. Moreover, there is a general tendency to interconnect all existing databases in order to improve the investigation of all kinds of offences. It has been assessed that EUCARIS would be able to cope with such an increased demand from a technical perspective. From a legal perspective, this would require preliminarily the creation of a clear governance structure with an ad hoc agreement among EUCARIS, all Member States and the Commission. As already stated above, although the EUCARIS Treaty is an Inter-governmental instrument, it is open to new partners which may adhere to one specific application only. The Commission should hence become party of EUCARIS CBE application and an agreement, involving Member States and EUCARIS should clarify, among others, rules on the ownership and management of data. In particular, Member States shall remain the owner of data in the national databases and responsible for data protection rules in their processing; EUCARIS shall be the service provider for the exchange of data between Member States and ensure compliance with data protection rules in the elaboration of such data (e.g. for statistical purposes); the Commission shall have access to all statistical data elaborated by EUCARIS and be entitled to use them for reporting obligations and policy making. Against this background, due attention should be paid to the possible need for the EU to launch a tender procedure in accordance with rules on EU institutions' procurement financed from the general budget[47] and with the procedural options set therein. These rules and procedures aimed at enhancing transparency, accessibility, and accountability, would entail the

[47] See Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28October 2015 amending Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union (OJ L 286, 30.10.2015, p. 1) hereinafter EU Financial Regulation, and Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1–222), implicitly repealing the EU Financial Regulation.

participation of EUCARIS, together with other tenderers offering comparable services, in a selection process to be awarded a contract for services with the Commission.

The recourse to EUCARIS CBE application would imply also:

- Inclusion of a specific provision, parallel to Article 15 of Decision 2008/616/JHA, demanding that for automated searching for the purpose of the Directive, Member States use a version of the EUCARIS software application especially designed for the purposes of the CBE Directive (Article 4), and amended versions of this software;
- Amendment to the CBE Directive, repealing all references to the past Prüm Decisions[48];
- Development of a separate set of implementing provisions of a technical nature to replace those under the Prüm Decisions, CBE offences related searches, Decision 2008/616/JHA's Annex (Chapter 3). This includes common data-set for automated search of vehicle registration data, provisions on security features, provisions on technical conditions of the data exchange;
- Finally, it may be recommended to consider how to support the additional financial burden on Member States for the extension of services provided by EUCARIS in the framework of the CBE functionality. In general Member State pays for the access to EUCARIS services irrespective of the number of times they use the services, the size of the Country and its population

2.7.4 Ensure compliance with data protection

The revised provisions shall include the obligation for Member States to take the following measures:

- The processing of personal data for the purposes of the Directive is limited to types of data identified in the legal act;
- Personal data are accurate, kept up-to date and requests for rectification or erasure are handled without undue delay;
- Establish a time limit for the storage of personal data;
- Ensure that personal data processed under the Directive are used only for these purposes:
  - identification of suspected offenders in view of the obligation to pay financial penalties for committed road traffic offences;
  - identification of the vehicle and the owner/holder of the vehicle having committed a road traffic offence;
- Ensure that the data subjects have the same rights of information, access, rectification, erasure and restriction of processing, and to lodge a complaint with a data protection supervisory authority, compensation and an effective judicial remedy as provided for in Regulation (EU) 2016/679 or, where applicable, Directive (EU) 2016/680;

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[48] EUCARIS is created by the Council's Prüm decisions and is used in the context of the CBE. However, there is a lack of legal basis, both in the use of EUCARIS in relation to road safety/administrative offences (meaning it falls outside the legal basis of the Prüm decisions) and in terms of provisions that provide for its use in the CBE Directive (meaning the CBE makes to provision for its use in the context of road safety). The CBE only refers to EUCARIS in preamble para. 10 as it is.
There is also the additional problem of data protection, and for the purposes of the GDPR, the purposes should not be "generally shared" between Prüm and Prüm II on the one hand and CBE on the other. The use of the same system should be possible, albeit with clear distinction between the collection, storage, and processing of data for each, and access rights and the related other provisions in the GDPR. So the use of EUCARIS and the data collected under Prüm should be possible, but there needs to be clear reference to the legal basis in the main provisions of the CBE directive, and additional safeguards must be taken for data protection purposes (separate the two).

- Ensure that any person concerned shall have the right to obtain, without undue delay, information on which personal data recorded in the Member State of registration were transmitted to the Member State in which the offence was committed, including the date of the request and the competent authority of the Member State issuing a financial penalty decision;
- All new possibilities of electronic exchange of information for cross-border investigation and enforcement of road traffic offences shall comply with current data protection rules (see below).

Cross-border exchange of facial images

The processing of photographs is considered as processing of sensitive data when used for purposes of identification of a natural person[49.] Facial images allowing identification are indeed 'biometric data', which enjoy enhanced protection under EU data law[50].

Under the GDPR in principle, the processing of such data is prohibited, unless specific conditions are met. Member States law may also set further conditions or limitations. Among the GDPR conditions[51] that allow the processing of sensitive data such as facial images for identification purposes, there is:

- the processing necessary for judicial purposes[52], whenever courts are acting in their judicial capacity. To rely on this condition, data concerned should be processed by judicial authorities;
- the processing necessary for reasons of substantial public interest[53], on the basis of EU or Member State law. In this case processing must (i) be proportionate to the aim pursued, (ii) respect the essence of the right to data protection and (iii) provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

However, **data exchange under the enhanced CBE mechanism is likely to fall within the scope of the LED rather than the GDPR**, as the LED applies to both domestic and cross-border processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. This also includes police activities without prior knowledge if an incident is a criminal offence or not, operations performed by automated means, and transmission of personal data to a recipient not subject to the LED. Public authorities concerned include judicial authorities, but also the police or other law-enforcement authorities and any other body or entity entrusted by Member State law to exercise public authority and public powers for enforcement purposes. The application of the GDPR remains unaffected for any other processing of personal data outside the scope of the LED. A criminal offence within the meaning of LED is an autonomous concept of Union law as interpreted by the ECJ.[54]

Under the LED, there seems to be more room for processing facial images carried out by a non-judicial authority. The Directive does allow the processing of sensitive data by enforcing authorities, including police and others (see above), where strictly necessary, subject to

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49 Art. 4(14) and Recital 14 GDPR, and Art. 13(3) LED).

50 Article 10 LED; Article 9 GDPR and Article 10 Regulation (EU) 2018/1725.

51 GDPR, Art 9. Conditions are: Data subject's explicit consent; Necessary for legal claims or judicial purposes; Necessary for employment, social security and social protection law; Vital interests; Legitimate activities with a political, philosophical, religious or trade union aim; Personal data that is manifestly public; Substantial public interest; Provision of health care; Archiving purposes in the public interest, scientific or historical research purposes or statistical purposes; Public interest in the area of public health.

52 GDPR, Art 9(2(f).

53 GDPR, Art 9(2)(g).

54 See Recital 13 LED.

appropriate safeguards for the rights and freedoms of the data subject and if authorised by Union or Member State law[55].

Accordingly, it suffices that the exchange of facial images be grounded on a rule of law (e.g., express provision contained in EU act) and that appropriate safeguards are foreseen.[56] These could include:

- the possibility to collect those data only in connection with other data on the natural person concerned,
- the possibility to secure the data collected adequately,
- stricter rules on the access of staff of the competent authority to the data,
- the prohibition of transmission of those data.

Finally, it is recalled that for the purposes of personal data protection, the LED is relied on both by the Prüm framework and the European Investigation Order (EIO) Directive (where LED replaces the repealed Framework Decision 2008/977/JHA). Therefore, as long as full respect for fundamental principles for data processing such as proportionality, necessity and purpose limitation are ensured, as regards personal data protection, the exchange of facial images (biometric data) would not necessarily require the use of major EU criminal justice instruments, such as the issuing of an EIO. Instead, it could correctly fall under the exchange of information in the context of police-to-police cooperation.

[55] LED, Art 10(a). Other possible conditions (here less relevant) are "to protect the vital interests of the data subject or of another natural person", Art 10(b); or "where such processing relates to data which are manifestly made public by the data subject", Art 10 (c).

[56] For what concern the guarantees when it comes to transfer biometric data, the EDPB stated in 2019 that: "*In compliance with the data minimization principle, data controllers must ensure that data extracted from a digital image to build a template will not be excessive and will only contain the information required for the specified purpose, thereby avoiding any possible further processing. Measures should be put in place to guarantee that templates cannot be transferred across biometric systems. In any case, the controller shall take all necessary precautions to preserve the availability, integrity and confidentiality of the data processed. To this end, the controller shall notably take the following measures: compartmentalize data during transmission and storage, store biometric templates and raw data or identity data on distinct databases, encrypt biometric data, notably biometric templates, and define a policy for encryption and key management, integrate an organisational and technical measure for fraud detection, associate an integrity code with the data (for example signature or hash) and prohibit any external access to the biometric data.*

3 TECHNICAL ANALYSIS: DIGITALISATION OF EU JUSTICE SYSTEMS

The Covid-19 crisis has also posed serious challenges to the normal functioning of justice systems. It highlighted that in order to help build resilient national systems, and to ensure that access to justice for businesses and citizens is more efficient and accessible, digital technologies are essential. Moreover, in line with the political priority of a Europe fit for the digital age and as part of a new drive for European democracy, digitalisation represents an important objective to achieve.

In order to tackle the challenges posed mainly by the Covid-19 pandemic, on 2 December 2020, the European Commission adopted a package of initiatives modernising the EU justice systems and supporting their advancement into the digital age and improving EU cross-border judicial cooperation between competent authorities.

The two main elements of the package are:

1. the Communication[57] on the digitalisation of justice in the EU;
2. the new Strategy on European judicial training for 2021-2024[58].

Amongst other things, the Commission initially carried out a fact-finding mapping exercise[59] of 'digitalisation mapping', which gave the state of play of digitalisation of justice both at the national and EU levels. This led to the broad conclusion that there are areas in many justice systems that could notably benefit from digitalisation. This mapping exercise, based on a comprehensive review of existing sources, as well as on additional surveys conducted specifically for this specific purpose, is provided in the staff working document accompanying the Communication.

3.1 The Communication

The Communication[60] on the digitalisation of justice in the EU, provides a toolbox of measures, in line with the principles of proportionality and subsidiarity, which promote the use of digital tools by the Member States. The Communication was adopted following the publication of the report on Cross-border digital criminal justice[61], which analysed the existing challenges that may hamper cross-border communication and the exchange of case-related data. Cooperation is recommended in a digital and secure way. A total of seven solutions were identified.

The Communication's objective is twofold. First, at the Member State level, the use of Information and Communication Technologies (ICT) should be sped up and brought to even levels. Second, at the EU level, cross-border judicial cooperation between competent authorities is to be improved.

57 Digitalisation of Justice in the European Union A toolbox of opportunities; COM/2020/710 final: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2020:710:FIN.

58 https://ec.europa.eu/info/sites/info/files/2_en_act_part1_v4_0.pdf.

59 Commission staff working document accompanying the Communication (Digitalisation of justice in the European Union - A toolbox of opportunities); SWD/2020/540 final: https://eur-lex.europa.eu/legalcontent/EN/ALL/?uri=SWD:2020:540:FIN.

60 Digitalisation of justice in the European Union A toolbox of opportunities; COM/2020/710 final. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2020:710:FIN.

61 Cross-border Digital Criminal Justice. Final Report. (2020). Deloitte. https://op.europa.eu/en/publication-detail/-/publication/e38795b5-f633-11ea-991b-01aa75ed71a1/language-en.

The following four of the presented tools of the Communication were identified as for interest in developing the new procedures under the revised CBE Directive:

- Making digital the default option in cross-border judicial cooperation: The European Commission has adopted a legislative proposal[62] in order to digitalise cross-border judicial cooperation procedures in civil, criminal, and commercial matters.
- Fighting cross-border crime: The Case Management System of Eurojust needs to be updated. This System allows the Agency to cross-check different cases to coordinate the EU fight against serious cross-border crime including terrorism. Also, these amendments to the Eurojust mandate will introduce a hit/no-hit link between the European Public Prosecutor's Office (EPPO) and Europol, allowing them to be aware of ongoing investigations and prosecutions. In 2021, the Commission presented legislative initiatives on the creation of a Joint Investigation Teams Collaboration Platform[63], and on digital information exchange on cross-border terrorism cases[64];
- Better access to information and interconnection: Member States should strive to digitalise their registers and work towards their interconnection. Electronic databases are easy to consult, they also minimise costs for users and are resilient to crises:
- IT tools for cross-border cooperation:
  - e-CODEX ('e-Justice Communication via Online Data Exchange'): the main digital tool for secure cooperation in civil, commercial and criminal law proceedings across borders;
  - eEDES ('e-Evidence Digital Exchange System'): is another digital tool[65], built on e-CODEX, which some Member States use in order to exchange, in a rapid and protected way, European Investigation Orders, mutual legal assistance requests and associated evidence, in digital format. Another aim of the Commission, through the adoption of the legislative proposal, is to encourage all Member States to connect to eEDES.

In particular, the tools of the proposed toolbox are organised as follows:

- financial support to Member States: to leverage the potential in order to create long-term impact;
- legislative initiatives: to determine the requirements for digitalisation, to boost better access to justice and improve cross-border cooperation, the field of Artificial Intelligence included;
- IT tools: that can be developed in the short to medium term and used in all Member States;
- promotion of national coordination and monitoring instruments: which would consent to regular coordination, monitoring, evaluation, and exchange of experiences and best practices.

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62 Proposal for a Regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the judicial cooperation; COM(2021) 759 final: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0759.

63 Proposal for a Regulation establishing a collaboration platform to support the functioning of Joint Investigation Teams and amending Regulation (EU) 2018/1726; COM(2021) 756 final: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0756.

64 Proposal for a Regulation amending Regulation (EU) 2018/1727 of the European Parliament and the Council and Council Decision 2005/671/JHA, as regards the digital information exchange in terrorism cases; COM(2021) 757 final: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0757.

65 Cross-border Digital Criminal Justice. Final Report. (2020). Deloitte. https://op.europa.eu/en/publication-detail/-/publication/e38795b5-f633-11ea-991b-01aa75ed71a1/language-en.

Throughout 2021, the European Commission (the Joint Research Centre), developed a monitoring, analysis, and foresight programme on justice-relevant digital technology.

e-CODEX

- Description: provides access to cross-border justice for citizens, businesses and legal professionals throughout Europe;
- Goals: both national and international exchange of information by electronic means (over Internet) between public and private parties (citizens included) in the Justice Domain;
- Use-cases: among others, eEDES and a transfer of a 'certificate' or a file supporting the cross-border execution of financial penalties for road traffic offences;
- Problem: There is a risk that EUCARIS and e-CODEX will offer services for the same business processes – two parallel solutions should be avoided in order to keep the practice as simple as possible.

In recent years, several efforts have been made to harmonise EU cross-border judicial procedures, with the purpose of fostering judicial cooperation in civil and criminal matters. In light of this, several laws have also been introduced to help businesses and individuals deal with the cross-border litigation topic. As a specific result of this effort, the EU Commission and a group of EU Ministries of Justice started to develop infrastructure, with the aim to support the communication and the exchange of legal information in EU cross-border judicial procedures. This initiative was shaped by an EU-cofunded project named 'e-Justice Communication via Online Data Exchange' ('e-CODEX').

e-CODEX[66] was an EU co-funded project, that ran from December 2010 to May 2016[67]. It involved 20 countries, mainly through their Ministers of Justice and their representatives, and was launched under the multiannual European e-Justice Action Plan 2009-2013, with the aim to work on the digitalisation of cross-border judicial proceedings and communication between judicial authorities. In particular, its focus was targeted on the transmission of documents and data in the legal domain. Thus, the transport of data and documents represents the key element of the solution.

The e-CODEX infrastructure translates national documentation standards to the e-CODEX standard through mapping, in order to ensure reliable data transport. The technology has been tested in practice (with real parts and real cases).

As of today, the e-CODEX system, considered by the European Commission in its Communication[68], as the main tool and the *"golden standard"* for creating a decentralised, interoperable, and safe network of communication, between national information systems in cross-border criminal and civil proceedings - representing a digital tool that, through a European digital infrastructure, offers easier access to justice, making judicial procedures more efficient, transparent and economical in order to ensure cross-border communication in the field of justice.

In particular, e-CODEX consists of a package of software, which allows the connectivity between national systems, enabling its users to electronically send and receive documents, evidence or other information in a secure and prompt way. e-CODEX is a decentralised network of e-CODEX access points established with every e-CODEX

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66 https://www.e-codex.eu/sites/default/files/2019-08/Velicogna_Lupo-2016-From_drafting_common_rules_to_implementing_elect_0.pdf.

67 e-CODEX is funded through the ICT Policy Support Programme under the Competitiveness and Innovation Framework Programme (CIP).

68 Digitalisation of justice in the European Union A toolbox of opportunities; COM/2020/710 final. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2020:710:FIN.

participant. Without replacing the existing back-end systems in the Members States, e-CODEX interlinks national and European IT systems in the e-Justice domain[69]. This secure electronic information exchange between existing national solutions is facilitated by an interoperability layer for electronic signatures. This validation tool recognises a person's signature using a certificate issued in their home country in order to prevent fraudulent exchanges.

All technical solutions are based on the principle of subsidiarity. e-CODEX does not change existing solutions or laws in the participating countries. Participating countries accept the legal validity of documents and information on identity and signatures of other Member States, introducing a circle of trust. As the technical components are open source, they can be used, advanced and linked to any national system.[70]

The main benefits are increased security and reliability along with saving time in completing cross-border processes.

Thus, e-CODEX allows the establishment of reliable, speedy, interoperable and secure decentralised communication networks between national IT systems supporting cross-border civil and criminal proceedings. e-CODEX simplifies the access of citizens and businesses to legal information, means and procedures. It therefore represents a key technological enabler in the context of cross-border juridical proceedings, which aims, through digitalisation, to modernise communication, including within different projects.

Moreover, this EU co-funded project[71] strives to increase the exchange of cross-border legal information and improve businesses' and citizens' access to legal means in Europe, creating interoperability between legal authorities within the EU, without affecting national standards.

The political commitment to the digitalisation of justice and its importance has been confirmed through several institutional documents, from the Joint Roadmap for Recovery[72], approved on 23 April 2020 by the EU Council. In addition to the green transition it recognises digital transformation as a priority for the EU economy relaunch and modernisation, to the European Commission Communication[73] of 27 May 2020, "Europe's moment: Repair and Prepare for the Next Generation", that states that the digitalisation of justice systems can improve, along with access to justice, even the operation of the business environment. Hence, enlightening the digital capabilities of law enforcement will preserve their ability to protect citizens effectively.

On 2 December 2020, the European Commission provided an important element that supports the digitalisation of cross-border judicial cooperation: "Proposal for a Regulation on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX) (Regulation (EU) 2022/850).

Currently, the e-CODEX system is financed by an EU grant and managed by a consortium of the Member States and other organisations. Between the end of the current consortium and the takeover of the system by an EU agency, another entity will have to guarantee the system's sustainability. In particular, as of 1 July 2023, the Commission will assign this system to the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice

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69 https://www.e-codex.eu/faq-e-codex.

70 https://www.e-codex.eu/technical-solutions.

71 https://www.e-codex.eu/sites/default/files/2019-08/e-codex_general_digital_0.pdf.

72 https://www.consilium.europa.eu/media/43384/roadmap-for-recovery-final-21-04-2020.pdf.

73 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Europe's moment: Repair and Prepare for the Next Generation". COM/2020/456 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1590732521013&uri=COM:2020:456:FIN.

('eu-LISA')[74]. This is an EU Agency whose mission is to provide a long-term solution for the operational management of large-scale IT systems, essential in the implementation of the asylum, border management and migration policies of the EU.

eEDES

- Description: the e-Evidence Digital Exchange System (eEDES) is a secure online portal for electronic requests and responses concerning e-evidence. It is one of the e-CODEX use cases;
- Goals: to exchange European Investigation Orders, mutual legal assistance requests in criminal proceedings, and associated evidence;
- Problem: requires better take-up by Member States and further digital tweaks;
- Approach: investigate to see how smoothly e-Codex runs and how the take-up on Member State level is.

The Early Detection and Exclusion System (EDES) is a system established[75] by the European Commission to reinforce the protection of the Union's financial interests and to ensure sound financial management. The purpose of the EDES is the protection of the Union's financial interests against unreliable persons and entities applying for EU funds. The EDES Database (EDES-DB) lists these enterprises.[76]

The e-Evidence Digital Exchange System (eEDES) is a digital tool which some Member States voluntarily use in order to exchange European Investigation Orders, mutual legal assistance requests in criminal proceedings and associated evidence in a digital format and in a rapid, simple and protected way. Authorities currently send requests and receive evidence by postal or electronic means that do not always ensure the necessary levels of security. eEDES is designed to improve the efficiency and speed of existing cooperation procedures, while ensuring the security of exchanges and enabling verification of the authenticity and integrity of transmitted documents. It is also designed to be interoperable with national case management systems.

eEDES is based on the Council Conclusion from 9 June 2016[77] and referred to in the EIO Directive (Recital 6 of Directive 2014/41/EU).[78] eEDES uses the e-CODEX system.[79] The iSupport is an electronic case management and secure communication system for the cross-border recovery of maintenance obligations.[80] The Commission encourages all Member States to swiftly connect to eEDES.

The Commission aims to further develop eEDES. In particular, it should be expanded to enable secure communication between competent authorities and relevant service providers in the framework of the e-Evidence Regulation, once adopted, and between Member States' authorities and the relevant agencies. [81] Going forward, the technical components developed for eEDES could evolve into reusable tools for the digitalisation of EU cross-border civil, commercial and criminal legal acts. In this regard, the future scope of eEDES will be laid down in the legislative proposal on the digitalisation of judicial cooperation procedures.[82] Thus until 2024, the Commission plans to support Member States by developing and extending common tools for the digitalisation of

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74 https://www.eulisa.europa.eu/About-Us/Who-We-Are.
75 https://ec.europa.eu/info/strategy/eu-budget/how-it-works/annual-lifecycle/implementation/anti-fraud-measures/edes_en.
76 https://ec.europa.eu/info/strategy/eu-budget/how-it-works/annual-lifecycle/implementation/anti-fraud-measures/edes_en.
77 https://www.consilium.europa.eu/media/24300/cyberspace-en.pdf.
78 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.130.01.0001.01.ENG.
79 https://ec.europa.eu/info/sites/default/files/communication_digitalisation_en.pdf p15.
80 https://ec.europa.eu/info/sites/default/files/communication_digitalisation_en.pdf p15.
81 https://ec.europa.eu/info/sites/default/files/communication_digitalisation_en.pdf p16.
82 https://ec.europa.eu/info/policies/justice-and-fundamental-rights/digitalisation-justice/digitalisation-cross-border-judicial-cooperation_en.

cross-border cooperation in civil, commercial and criminal matters (based on work on eEDES).[83]

eEDES is tailored to the needs of the European criminal justice community and is built on open standards, thus easily applicable in all Member States. Thus, eEDES is a viable option for cross-border juridical cooperation. To make eEDES an even better option, further developments need to be undertaken to implement all envisaged functionalities. Furthermore, the eu-LISA Regulation may need to be amended if the agency should be mandated by a legal basis to host the eEDES platform.[84]

European e-Justice Portal

- Description: the portal provides information on justice systems and improving access to justice throughout the EU, in all the EU languages;
- Goals: improve access to information in the area of justice for citizens and businesses by becoming the future electronic one-stop-shop in the area of justice;
- Problem: lack of implementation and interoperability of 'external' technical systems to the e-Justice portal (for the moment).

The eJustice Action Plan[85] and eJustice strategy[86] for 2019-2023 foresees the following objectives[87]:

- Improve access to information in the area of justice;
- Continue the digitalisation of judicial and extrajudicial proceedings to offer easier and faster access to the courts;
- Ensure the technical implementation and management of the national e-justice systems to facilitate interconnection and interoperability between member states' systems.

Regarding the first objective, the European e-Justice Portal is conceived as a future electronic one-stop-shop in the area of justice for citizens and businesses, facilitating the government-to-citizen and to-business connection. As a first step, the portal provides information on justice systems and improves access to justice throughout the EU, in the EU languages. Additionally, the European e-Justice Portal assists people, businesses, lawyers and judges find answers to legal questions. It contains information on legal aid, judicial training, European small claims and videoconferencing, as well as links to legal databases, online insolvency, business and land registers. The portal also includes user-friendly forms for various judicial proceedings.

Further plans for the eJustice portal include among others the following:

- Government to Citizen:
  - developing AI tools for the eJustice Portal including an interactive chat bot[88];
  - enabling online payment of court fees via the eJustice Portal[89];

83 https://ec.europa.eu/info/sites/default/files/communication_digitalisation_en.pdf p16.
84 https://op.europa.eu/en/publication-detail/-/publication/e38795b5-f633-11ea-991b-01aa75ed71a1/language-en.
85 https://data.consilium.europa.eu/doc/document/ST-11724-2018-REV-4/en/pdf.
86 https://www.consilium.europa.eu/en/documents-publications/public-register/public-register-search/results/?AllLanguagesSearch=False&OnlyPublicDocuments=False&DocumentNumber=12794%2F3%2F18&DocumentLanguage=EN.
87 https://www.consilium.europa.eu/en/press/press-releases/2018/12/06/eu-continues-developing-european-e-justice/.
88 https://data.consilium.europa.eu/doc/document/ST-11724-2018-REV-4/en/pdf p.15.
89 https://data.consilium.europa.eu/doc/document/ST-11724-2018-REV-4/en/pdf p.16.

- implementing an ePayment function for fees on the eJustice Portal[90];
- implementing the Debtors Information System, which means creating a central platform for debtors and potential creditors to access information on their situation (for debtors, on their own situation, for potential creditors, on the situation of possible debtors), which could be hosted on the eJustice Portal[91].

- Government to Business:
  - Improving the 'Find a lawyer function' in order for citizens to find easy access to lawyers;
  - offering access to databases of translators and interpreters through the eJustice Portal.[92]
- Government to Government:
  - providing a way to communicate digitally with a Member State's central authority through the eJustice portal[93];
  - serving as a single access point for interconnected national registers, relevant to the field of justice[94].

Despite these aforementioned plans for the e-Justice portal, so far it is mainly used for citizen information purposes and the envisaged digital information and payment exchange systems have not yet been implemented. The e-Justice portal is also focused towards government-to-citizen information exchange, rather than government-to-government exchange, thus it may not duplicate existing platforms and technical solutions such as EUCARIS or e-CODEX, but may complement them with a government-to-citizen focus. A complete integration of all of these aspects into one platform under the e-Justice portal banner may also be possible.

e-IDAS

- Description: EU Regulation on electronic identification and trust services for electronic transactions within the internal market;
- Goals: ensuring the use of national electronic identification schemes (eIDs) to access public services available online in other EU countries and creating a European internal market for trust services;
- Use-cases: National eIDs of EU Member States;
- Problem: non-residents and foreigners cannot always use these trust services;
- Approach: investigate how non-residents and foreigners can be included in these trust services so the use of eIDs might be a viable option for cross-border juridical cooperation.

Regulation (EU) 910/2014[95] on electronic identification and trust services for electronic transactions in the internal market (eIDAS - electronic IDentification, Authentication and trust Services), serves as a means to facilitate secure and seamless electronic transactions within the European Union. Member states are required to recognise electronic signatures that meet the standards of eIDAS.

eIDAS ensures that people and businesses can use their own national electronic identification schemes (eIDs) to access public services available online in other EU countries, making these processes more convenient while ensuring security. eIDAS also creates a European internal market for trust services by ensuring that electronic signatures and other certificates will work across borders and have the same legal status

90 https://data.consilium.europa.eu/doc/document/ST-11724-2018-REV-4/en/pdf p.19.
91 https://data.consilium.europa.eu/doc/document/ST-11724-2018-REV-4/en/pdf p.28.
92 https://data.consilium.europa.eu/doc/document/ST-11724-2018-REV-4/en/pdf p.29.
93 https://data.consilium.europa.eu/doc/document/ST-11724-2018-REV-4/en/pdf p.18.
94 https://data.consilium.europa.eu/doc/document/ST-11724-2018-REV-4/en/pdf p.6.
95 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0910.

as their traditional paper-based equivalents. eIDAS sets the standards and criteria for simple electronic signature, advanced electronic signature, qualified electronic signature, qualified certificates and online trust services. Furthermore, it rules electronic transactions and their management.

The intent of eIDAS is to drive innovation through improved interoperability and transparency.

Through eIDAS, Member States are required to recognise eIDs from other Members States. Regarding transparency, eIDAS provides a clear and accessible list of trust services that may be used within the centralised signing framework. By adhering to the guidelines set for technology under eIDAS, EU businesses and public administrations are pushed towards higher levels of innovation regarding trust services.

Examples of processes made easier by eIDAS include submitting tax declarations, enrolling in a foreign university, remotely opening a bank account, setting up a business in another Member State, authenticating for internet payments or bidding online for tenders. In practical terms, for example, EU nationals can register for Belgian online services such as the online tax submission system by using their national eID. When attempting to log into the Belgian system the person can choose to log in via their own national eID and the Belgian administration will automatically accept this form of identification.[96]

Yet, these services are restricted to persons in possession of Member State issued eIDs, which is generally limited to nationals. Thus, eIDAS enabled trust services cannot solely be relied upon (e.g. in cross-border juridical cooperation regarding road traffic offences, non-nationals or residents from other EU countries are (for now) excluded from using these services). For example, there are various websites and apps in Member States (e.g. Spain) allowing payment of fines and monitoring procedural stages. However, access to these websites and apps requires registration via national ID cards microchips of residents/nationals. Non-residents/foreigners cannot use these trust services and they would not be able to pay for their road traffic offences through the aforementioned app. Additionally, the question remains open as to whether this can be perceived as discriminatory treatment and would thus pose legal issues.

3.2 Digitalisation efforts in light of the CBE Directive

In light of the Strategy for Digitalisation of Justice in the European Union (SWD(2020) 540 final), this section provides an analysis of the application of IT technologies, including specific recommendations based on the analysis in three areas: investigation of road traffic offences; enforcement of sanctions; and the digitalisation of communication between governments and citizens/businesses. The analysis is based on desk research complemented by two in-depth interviews (with EUCARIS and the Salzburg Forum representatives), and *ad hoc* email exchanges.

The scope of this analysis is based on the following methodology, divided by phases:

- Phase 0 (overarching): Accessing necessary information through desk research, interviews, and general communication in order to establish the prevailing status quo of digitalisation efforts in light of the CBE Directive and related legislation;
- Phase 1: Investigation of road traffic offences (G2G): Establishing the procedural point of view of the investigation of road traffic offences. This phase

96 https://sma-help.bosa.belgium.be/en/eidas#7258.

will determine from both a legal and technical point of view whether (cross-border) police-to-police cooperation is possible through a digital means of communication. This phase explores whether EUCARIS can be used as a platform for such means under the CBE Directive, both legally and technically;

- Phase 2: Establish a dedicated portal that would facilitate access, sharing/exchange and reuse of information and data related to cross-border investigation of road traffic offences and cross-border enforcement of sanctions for these offences:
  - Phase 2a: Digitalisation of communication between Member States (G2G): Analysing the possibility of creating a platform where a list of National Contact Points (NCPs) and authorities entitled to issue information letters/penalty notices are made available. Furthermore, if necessary, to enable authorities to exchange templates of documents to verify their authenticity;
  - Phase 2b: Digitalisation of communication (G2C/B and C/B2G): Analysing the possibility of creating a platform for communication between governments and citizens/businesses, as prescribed in the Strategy for Digitalisation of Justice in the European Union (SWD(2020) 540 final). The platform, in addition to the current source of information related to the offences as described in the CBE Directive Article 8 (Going Abroad website), aims to also include information on sanctions, appeal procedures, and payment schemes. An interaction is also foreseen between authorities and citizens/businesses to ask questions, ensure that the penalty notice is legitimate/authentic ahead of payment, as well as receive information on any procedural aspects they are not familiar with in another country. In short, the aim of such G2C/B and C/B2G communication is to streamline and facilitate the receipt and payment of fines and consultation in the case of violation of any existing road traffic rules across the European Union.
- Phase 3: Enforcement of sanctions: Assessing the use of digital tools for exchanging and storing decisions in one digitised system, considering the protection of fundamental rights and the necessary security conditions for the handling of sensitive data. This phase researches the mutual recognition of sanctions between governments' authorities, i.e., exchanging information on the relevant decisions to road traffic offences. Phase 2 will delve into the potential use of the EUCARIS platform for the enforcement phase, as well as the possibility of using e-CODEX (and e-Justice portal).

Case studies

To complement the findings of the desk research, two in-depth interviews were carried out. The two separate stakeholders are EUCARIS representatives and a Salzburg Forum representative (Austria). The reason for reaching out to EUCARIS mainly revolves around understanding the platform's technical possibilities, as well as the foreseen and potential efforts in updating it to achieve the goals mentioned in the previous chapter. The Salzburg Forum representative, in turn, was interviewed to better comprehend the digitalisation efforts in place and/or foreseen for the exchange of information among the participatory countries.

EUCARIS

EUCARIS has varying functionalities, depending on the legal base it is used for and the European Commission Directorates-General (DGs) at hand. For DG MOVE, in addition to the CBE Directive, EUCARIS is also used under Directive (EU) 2019/520 (toll systems). Furthermore, EUCARIS is used in most countries (five countries use the Commission Central Hub instead) to exchange driving licence information based on the 3rd Driving Licence Directive. As part of Regulations (EC) No 1071/2009, 1072/2009, 1073/2009 and 1213/2010, EUCARIS is used by some of the Member States as the interface to the central hub of the Commission for the exchange of information on tachograph cards and information on transport undertakings (ERRU). For DG HOME, EUCARIS is used for the Prüm services, exchanging information on vehicles and their owner/holder to fight crime and terrorism, based on Council Decisions 2008/615/JHA and 2008/616/JHA. For DG TAXUD, EUCARIS is used for Council Regulation (EU) 2018/1541 amending Regulations (EU) No 904/2010 and (EU) 2017/2454 as regards measures to strengthen administrative cooperation in the field of value-added tax (VAT). DG GROW uses EUCARIS for the exchange of the Certificate of Conformity (CoC) (also called IVI, which means 'initial vehicle information'). DG CONNECT also refers to EUCARIS for eCall. As a note, many DGs cooperate for the exchange of information, however, their approach is different. For DG MOVE, a series of legislation leaves open the type of communication that is used (CBE and toll systems refer to the Prüm Council Decisions), i.e. Member States can either use the Central Hub provided by DG MOVE or EUCARIS. However, for CBE and Toll systems, the use of EUCARIS is mandatory, via a reference to the Prüm Decisions. The DG GROW and DG TAXUD legislations explicitly mention the use of EUCARIS.

Though EUCARIS is used for the exchange of information under various EU legislation, the European Commission is neither a party to the Treaty nor has a specific agreement been signed to date, thereby making EUCARIS an intergovernmental system. There is no direct relation between the European Commission and EUCARIS (including CBE and MOVE functionalities). Rather, the relationship is always between the European Commission and the Member States. The latter have the responsibility to deliver information on the data exchanges, which are stored nationally. EUCARIS, in turn, supports the delivery of the statistics and collects logs in order to share them with the European Commission on an annual basis. The European Commission may specify the exact information that is needed to be extracted by EUCARIS (if available). EUCARIS, for example, does not have access nor is it responsible for sharing statistics on the number of casualties in the Member States. Indeed, EUCARIS is not a central system, so each country keeps logs of their respective exchanges.

The participating Member States also sponsor the setting up of new EUCARIS functionalities and its development. The average yearly cost for a Member States amounts up to ca. EUR 35K per year. The generic fee per connection is EUR 24K in 2021 (a country can have more than one connection) and ca. EUR 2-4K per service that is being developed (one-off development costs). Sometimes, certain user groups do not pay additional operational costs, as they are included in the generic fee. Further amounts add up according to the services used by the country at hand and depending on the software that has to be developed. In the Netherlands, for instance, EUR 48K was paid for EUCARIS in total for the year 2021. In countries where less services are used; the costs are ca. EUR 30K.

There are two types of National Contact Points (NCPs) to carry out searches by using EUCARIS under the CBE Directive. NCPs for incoming requests provide the VRD data, so they process incoming requests from abroad; NCPs for outgoing requests are responsible for the processing of outgoing requests and incoming responses and forward the information to the authorities that use the data for their legal tasks. In most cases, the two NCP roles are combined in one NCP, but sometimes the two are situated in different organisations, depending on the Member State. The role of NCP is often designated to the Registration Authority, but can also be at ministries of transport, interior, and justice as well. In the Netherlands, users of EUCARIS include the customs organisation, tax authorities, and the Road Traffic Services. In Ireland, for example, the requesting NCP organisation is the Police and the responding NCP is located in the vehicle register authority (under Prüm).

There are various relevant elements concerning the use of EUCARIS for investigation purposes:

- synchronous communication and immediate response (online/real time);
- batch mode: multi-vehicle, asynchronous processing, ca. 24 hours;
- single request: couple of seconds over Europe;
- broadcasting request to all member states: 10-20 seconds.

As regards the potential asynchronous process, the investigation is not carried out by an NCP. Rather, it is carried out by police/municipality/another organisation. It may take weeks before receiving a response, depending on the type of communication used during the investigations, e.g. phone calls, visits, et cetera.

Salzburg Forum

The Salzburg Forum is a security partnership between the Central European countries of Austria, Bulgaria, Croatia, the Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia.[97] The Salzburg Forum is the frontrunner in close cross-border cooperation in the EU and also cooperates with non-EU countries like Switzerland and Liechtenstein for road traffic purposes. The Salzburg Forum CBE Memorandum of Understanding and the CBE Agreement[98] covers the eight traffic offences depicted in the CBE Directive, and additionally covers follow-up procedures aimed at identifying the person driving the vehicle. The agreement was signed by Austria, Hungary, Croatia and Bulgaria in order to facilitate cooperation for cross-border enforcement of road-safety-related traffic offences in the specific bordering countries listed above.

The Salzburg Forum affiliates were among the first countries to fully utilise EUCARIS for the digital exchange of information and have thus expertise in the digitalisation of the exchange of information. Unlike the Member States under the CBE Directive, the Salzburg Forum countries also use EUCARIS for the exchange of information under the follow-up procedures. The contracting parties may also exchange additional information, such as pictures of drivers e.g. from driving licence registers.

There are four EUCARIS services in place for the Salzburg Forum:

- exchange of information to request identification (name and address) of the driver (driver at the time of infringement);
- check of the presumed offender’s address;
- service of the information letter sent by police authorities or other responsible organisations;
- when investigation has not resulted in payment: it is possible to exchange the final decision of the court for the execution of the financial penalty in the country of residence of the offender (a lot of documents exchanged with mostly unstructured data in attachments).

From their years-long experience, they can share the following recommendations:

1. Accelerate digitalisation in the Member States

According to the Salzburg Forum, one of the main issues for the CBE Directive is the lack of digitalisation in the Member States. Legal acts provide for the digital exchange of information, but the lack of digitalisation of the data in question precludes these legal acts to be effective.

2. Develop strong national contact points that facilitate all cross-border communication

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97 http://www.salzburgforum.org/.

98 http://www.salzburgforum.org/Treaties_and_Agreement/CBE_MoU.html, http://www.salzburgforum.org/Treaties_and_Agreement/CBE_Agreement.html.

Instead of fostering direct cooperation between the different legal entities in the Member States, the Salzburg Forum stresses that there should be one national contact point per Member State with a strong position within the country. This contact point shall then take care of the relationship with relevant legal authorities in their countries and facilitate the information exchange to the other Member States. This shall also not be called 'police-to-police cooperation' but 'mutual legal assistance', as 'police' has a diverging legal concept in the 27 Member States.

3. Make smart one-time investments to be able to use EUCARIS properly for years

From their experience, the Salzburg Forum states that there is an initial investment of approximately EUR 100,000 for each Member State to install the national EUCARIS backend systems. The different forms used should also be translated into the relevant languages. From then on, there are no direct costs related to the exchange of information, as long as proper maintenance of the technical equipment is ensured.

Findings and Recommendations

This section presents the findings and recommendations concerning the application of IT technologies in light of the CBE Directive, gathered from desk research and case studies.

Investigation of road traffic offences

Under Prüm II, it is foreseen that the exchange of vehicle registration data is exchanged between Member States via the EUCARIS software (Art. 19). It is a possibility for the CBE Directive to use EUCARIS for the exchange of information for investigation purposes (as is done under the Salzburg Forum). However, the EU legal basis should enable this option, as the investigation of road traffic offences, such as gathering the necessary information on the offender, concerns rather police and administrative bodies than judicial entities Technically, EUCARIS can provide the service to exchange different types of evidence, including the pictures (facial images) of presumed offenders. Within the Salzburg Forum, the organisation of the exchange of evidence is arranged differently in each contracting party. The information goes through the NCPs and then carries on investigation through other authorities. There is a possibility of interconnection through NCPs, however, differences can arise, e.g. the process could be smoother in one country over the other. It is a logical choice to use EUCARIS for this, especially given that it is technically possible.

A functionality to exchange attachments containing unstructured data and facial images is implemented for RESPER with EUCARIS, to check the validity and the originality of a driving licence. RESPER has been implemented in 22 EU Member States as a EUCARIS service and has a secure messaging functionality where a scanned driving licence or pictures can be exchanged. EUCARIS and RESPER have an existing interconnection, with the legal basis of RESPER set out in the 3rd Driving Licence Directive (which however does not mention EUCARIS). Five EU Member States opt to rather use the DG MOVE-provided Central Hub, and the other 22 use EUCARIS.

The legal basis is the most important starting point for any interoperability (national databases or European systems) (as the EUCARIS technical feasibility is ensured). It is to be made clear why any additional information is necessary to be included in the CBE EUCARIS exchanges. In a technical sense, information must be available at the NCP levels. The necessary data can be copied in with slight modifications. However, for other registers, it may become more complex.

For interoperability with other registers and databases, the main issue to consider is transparency. Member States should apply GDPR or LED themselves and guarantee that data centres fall under their jurisdiction or the jurisdiction of the EU. Therefore, data storage in the cloud is not always possible. Only a closed and protected cloud is a possibility.

The use of EUCARIS will be continued under Prüm II for the exchange of vehicle information, as well as the extended functionalities. It was also suggested to make the driving licence picture available, which will serve as an element for facial image scanning. On the EUCARIS side, there are no technical complications in achieving this exchange: most authorities that give vehicle information based on the Prüm legislation are also keepers of driving licence data.

As for the future of the CBE Directive, it is also technically feasible for EUCARIS to serve as the platform for exchanging driving licence information. However, the necessary legal basis would have to be included. As regards the Salzburg Forum EUCARIS functionalities, the information letter is sent to the address available in the VRD, however, given the interconnection with the driving licence information, a re-enquiry is possible to check whether the address is correct or different. A picture is also available from the driving licence, and further document scans may be exchanged to continue investigation. The documents are exchanged in the form of attachments, only between the national authorities. The documents are not stored in EUCARIS. Under the Salzburg Forum, privacy is ensured, as pictures are only exchanged for specific purposes, with an Agreement signed for the purpose. Only the national authorities are liable for data protection and respecting GDPR, as well as acting as data controllers – not EUCARIS.

The national registries' instant and automated update is crucial for the efficient exchange of information. EUCARIS can efficiently handle the exchange of information between registries. The costs for interoperability are to be covered at both levels: EUCARIS and Member States. There are no fees for the exchange of information, only for the development of the software and a basic fee per connection, for overall IT tasks (e.g. monitoring of the system) and to support Member States in keeping the system up and running. It is technically feasible to exchange a large quantity of data. The specific EUCARIS CBE platform is one of many services provided by EUCARIS, even if more databases are included in the exchange of information under the CBE Directive. Some exchanges take more capacity, especially vehicle data received from manufacturers. EUCARIS is also highly scalable, so even if it reaches full capacity, a new additional platform can be added to re-direct information (i.e. upgrading, upscaling, outscaling).

Digitalisation of communication between governments

Member State authorities, NCPs and other relevant governmental actors involved the CBE Directive application may wish to communicate with each other and exchange information (such as templates of information letters/penalty notices). A dedicated portal (G2G) or EUCARIS itself could serve as a place for authorities to share information for verification purposes in a secure way and ensure authenticity of documents.

Portal option

One option for information exchange between authorities is through a dedicated portal. The consortium held a meeting with DG JUST unit B3 colleagues to explore the possibilities of expanding the existing e-Justice Portal and the e-CODEX function. The following points were highlighted:

- The e-Justice Portal is a continuously updated one-stop-shop that targets citizens, where they can find information on, for example, legal proceedings and legal professionals;
- The e-CODEX provides the possibility of secure online exchange of information, based on eDelivery. It is possible to exchange multiple formats of data and include signatures and proofs of delivery, among others. The main actors are the respective authorities;
- The eEDES is a secure online portal for electronic requests and responses on e-evidence, based on eCODEX. It has a functionality of a court database. However, the eEDES is not relevant for the sharing/exchange of information

concerning road traffic offences, since the investigation procedures under the CBE Directive would likely rely on police-to-police cooperation.

It appears that the e-Justice Portal does not contain specific information related to road traffic offences (e.g. information on appeal procedures or payment of penalties). The platform used for secure online exchange of information is e-CODEX, using eDelivery functionalities, through which it is possible to exchange data in multiple formats. It also allows, inter alia, electronic signatures and proofs of delivery. The information is provided (and maintained) by Member States authorities.

As regards the investigation procedures, eEDES (based on e-CODEX), is a secure online portal which some Member States use to swiftly and securely exchange European Investigation Orders, mutual legal assistance requests and associated evidence in digital format instead of by post.

For the digitalisation of communication between governments, there are two aspects to consider: i) access to information and ii) interaction possibilities. Providing access to information could be implemented by the expansion of the Going Abroad website (more information below)/e-Justice Portal/Your Europe website. As for interaction and exchange of information and data, as is already being done, is possible through EUCARIS and designated NCPs (as also document authenticity can be ensured). e-CODEX works in a similar manner, as stated above.

EUCARIS option

EUCARIS supports Member States by implementing the technical means to support communication and secure exchange of information. However, there are two issues:

1. The Member State that provides information is not familiar with all administrative bodies that are allowed to make requests under certain legislation. If a request is made via an NCP, it has the responsibility to check whether the requesting party is indeed a Competent Authority as meant in the EU legislation in question and has been designated by the responsible Ministry in the Member State concerned;
2. Once the response message with the requested data has arrived in the requesting Member State, it is the responsibility of that Member State to guarantee that the data is processed in a legitimate way. In case of data protection breach, the NCP may play a role in the necessary investigations and follow-up.

Although there are no technical problems for EUCARIS to deal with many requesting administrative bodies, EUCARIS strongly advises to stick to the current architecture of data exchange between Member States via one or a limited number of NCPs.

Documents’ authenticity is entirely dependent on the Member States. Concerning data exchange through EUCARIS, two possibilities exist: structured data exchange and PDF attachments. Authenticity is ensured in the data exchange by providing an electronic signature at both the requesting and responding sides, ensuring the authenticity of the data as well as the documents. EUCARIS involved in the signing procedure of the structure data exchange to ensure that the transport of data is guaranteed as well as the authenticity of the information. Next to this data protection during the data exchange, it is possible to add a digital signature on data itself ensuring that it was delivered by a certain party. This signature is permanent and remains when the data is stored and when documents are exchanged by PDF attachments. EUCARIS is not aware of any requests for these permanent digital signatures.

Digitalisation of communication between governments and citizens/businesses

Member State authorities are to ensure that information can be shared and exchanged with citizens and businesses. This is foreseen with the establishment of a portal (or renewal of the Going Abroad website available currently or expansion of another existing portal). Therefore, there are two distinct activities that should be provided:

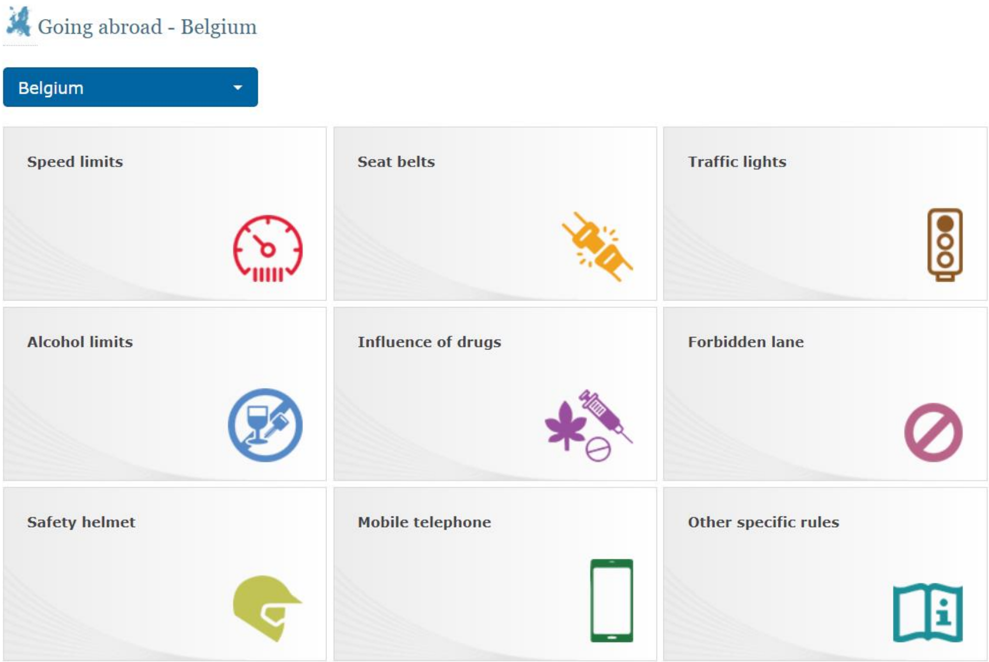
1. availability of public information for consultation;
2. exchange of sensitive information between authorities and citizens/businesses.

The Single Digital Gateway Regulation[99] aims to 'guide citizens and companies to information on national and EU rules, rights and procedures and the website where they can carry out these procedures online'[100]. Furthermore, performing administrative procedures online will not only be made available to national users, but also cross-border users (foreseen to be achieved by December 2023). The Single Digital Gateway will be accessible by one single centralised web portal run by data from national and EU level networks – a common user interface within the existing Your Europe[101], providing access to EU and national websites. In light of mobility, several procedures such as registering motor vehicles and obtaining told or emission stickers will be possible on the Single Digital Gateway. The portal to be created for the CBE Directive is to ensure access to information for citizens and businesses should be compatible with the interface established under the Single Digital Gateway Regulation.

The way to ensure this is through the creation of a dedicated portal, that will (potentially) replace the Going Abroad[102] website, which is also available as an app and provides information on road safety rules. The Going Abroad website is available for consultation for public information. It was established according to Article 8 of the CBE Directive. It categorises the necessary information for all Member States on the eight offences of the CBE Directive, as depicted in Figure 3.1. The website information can be structured as a database, which means that all information can be processed per country and per offence category. It is currently not possible to interact or request any further information.

99 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.295.01.0001.01.ENG.
100 https://ec.europa.eu/growth/single-market/single-digital-gateway_en.
101 https://europa.eu/youreurope/index_en.htm.
102 https://ec.europa.eu/transport/road_safety/going_abroad/index_en.htm.

Figure 3.1 Going Abroad Country-Information Page



Source: Screenshot of the Going Abroad website, Belgium page.[103]

Currently, the Going Abroad website does not satisfy (future) information needs of citizens, businesses, and governments. The new website/portal should contain more information necessary to ensure that road users do not commit offences depicted in the CBE Directive. The section on 'Other specific rules' requires to be further expanded upon, to create further main categories on the home page. Furthermore, it may be expanded with supplementary information about road traffic rules, security equipment information (as already included but not in a structured manner), sanctions, appeal procedures, as well as payment schemes. The portal could also provide further links to governments' and relevant authorities' or organisations' websites to read more information, and potentially contact points for questions (thereby fulfilling the interactive function when **non-sensitive** data are exchanged).

The Going Abroad website and the application do not provide the possibility to exchange information, in the sense to potentially pay fines or to monitor procedural stages and service of various documents. Indeed, following the example of the Single Digital Gateway, Member States are to feed the new/revamped portal with data and functionalities made available to nationals and cross-border citizens. Translations to all official EU languages are also to be considered, whether that service will be provided by the European Commission or outsourced to a separate organisation.

As for the interactive perspective, there are two available options as concerns the exchange of **sensitive** information between authorities and citizens/businesses. Firstly, a list of contact points can be made publicly available (such as on the e-Justice Portal which is not linked to Single Digital Gateway) or the functionality of the website can be based on eDelivery[104]. eDelivery is not a network *per se* but rather a standard, technical specification that enable the creation of a network based on eDelivery nodes. eDelivery is one of the eight sets of open and reusable digital solutions known as Building Blocks developed by the European Commission's Connecting Europe Facility (CEF) programme. The Building Blocks can take the form of a technical framework, a standard, a software,

103 https://ec.europa.eu/transport/road_safety/going_abroad/belgium/index_en.htm.
104 https://ec.europa.eu/cefdigital/wiki/display/CEFDIGITAL/eDelivery.

a software as a service (SaaS), or any combination thereof. The key use case for eDelivery is for different organisations to exchange data (whatever type of data) via a public or private network by deploying an eDelivery node that is connected to each organisations' backend. Everyone who wants to be part of that network must then deploy a node. There are software implementations of this node offered by the European Commission (Domibus[105]) and by the market.

eDelivery also provides the necessary authenticity and security measures for the exchange of documents containing sensitive information. eDelivery relies on an identity verification mechanism (of the identity of the eDelivery nodes involved in the exchange), encrypted messages, and protection against loss or unauthorised information. Furthermore, digital signatures are used for both outbound and inbound messages, as for the latter, the receiving eDelivery node sends a digitally signed acknowledgement of message reception.

In 2020, Wavestone carried out a cost analysis on the setting up and operating of an eDelivery Access Point. It is used for the secure and interoperable exchange of data across sectors and borders in the EU. Figure 3.2 below shows the full breakdown of the cost analysis. It was found that the Total Cost of Ownership (TCO) for a European Institution to set up and operate an eDelivery Access Point adds up to EUR 86K.

Figure 3.2 Cost analysis breakdown

Cross-border projects carried out by European Institutions			
Cost Item	**One-off**	**Yearly ongoing**	**Total (two-year)**
eDelivery Access Point	34 000	24 000	58 000
Technical onboarding activities	20 000	8 000	28 000
TCO (without custom connector/plug-in)	**54 000**	**32 000**	**86 000**
Custom connector/plug-in (lower bound)	*24 000*	*9 000*	*33 000*
CEF Telecom programme-funded projects	**CEF Telecom programme-funded projects**		
Cost Item	**One-off**	**Yearly ongoing**	**Total (two-year)**
eDelivery Access Point and plug-in/connector	**62 000**	**N.A**	**N.A**

Source: The cost of setting up an eDelivery Access Point, European Commission, 2020.[106]

As for the digital delivery of information letters/penalty notices, several countries that apply the eID system can be showcased as good practice examples. In Belgium, the 'itsme®'[107] application allows citizens to log in without a card reader and access online payments (through participating banks) as well as public services offered by the government[108]. Furthermore, with the integrated CEF eSignature[109], official documents can be signed securely as well. The application is also aligned with the eIDAS Regulation and provides a "high level of identity assurance". To be noted, itsme® does not replace the official Belgian eID, but rather acts as an additional tool to process online digital public services.

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105 https://ec.europa.eu/cefdigital/wiki/display/CEFDIGITAL/Domibus.
106 https://ec.europa.eu/digital-building-blocks/wikis/display/CEFDIGITAL/2021/01/21/The+cost+of+setting+up+an+eDelivery+Access+Point
107 https://www.itsme.be/en.
108 https://www.itsme.be/en/blog/new-partnership-egov.
109 https://ec.europa.eu/cefdigital/wiki/display/CEFDIGITAL/eSignature.

For example, a website was created by the Justice Public Federal Service for the payment of road fines online[110]. On this website, Belgian citizens can log in with their national eID or itsme®, or log in as a company with a digital key (which must be created in advance through the governmental portal eGov[111]). From there, it is possible to pay and check if the payment is in order; dispute the fine; submit an appeal; or correct an invalid payment. It is also possible to connect without an eID, by filling in the data provided on the penalty notice. The portal also highlights that the Belgian police or Justice authorities will never contact persons directly through email or SMS, even if these are connected to their eID accounts – all services are to be consulted through the portal in the so-called e-Box. It is to be further investigated whether the fine payment may be done for non-residents of Belgium. In Italy, as another example, the online payment of fines for road traffic offences is also possible for residents. There are two possibilities: if the fine was issued by the municipal police, it can be paid through the municipality's website where the offence was made; if the fine was issued by the State Police or the Carabinieri, the Poste Italiane[112] offers a service to pay the fine online (along with multiple other online digital public services). The Municipality of Bologna offers an online payment services of road traffic fines to non-residents through the municipal portal, by entering information about the vehicle and the information found on the penalty notice. It is not required to verify identity through an eID services. However, with the lack of eIDAS adoption in all EU Member States, at the moment, ensuring seamless cross-border services for online digital public services is subject for future discussion and analysis.

Electronic exchange of information facilitating enforcement of sanctions

The enforcement of sanctions phase concerns the electronic exchange of forms between competent authorities through an IT platform. As explained above, under the Salzburg Forum, certificates/final decisions are exchanged through EUCARIS. If the proceedings did not result in payment, the final decision is transferred to the country of presumed offender residence to collect the fine there. Within the Salzburg Forum, the process is identical to the e-CODEX exchange. However, penalties exchanged with the Salzburg services are related only to traffic offences while e-CODEX focuses on general financial penalties for all kinds of cases.

In theory, it is possible to connect EUCARIS and e-CODEX, and send requests to transfer the final decision with e-CODEX. A connection is necessary between the two systems in order to communicate. Technically, it is feasible but complex, and requires a legal basis as well. The requirements are not yet clear. The e-justice portal supports mutual assistance in exchanging documents, but it is limited to the final step for the transfer of final decisions (not related to investigation). Communication during the 'investigation phase' cannot be covered by e-CODEX (only the fine collection phase). In the investigation phase, it is easier to rely on NCPs for the necessary communication.

The architecture of the EUCARIS and e-CODEX systems are different. EUCARIS uses the TESTA network of the European Commission, which is highly secure. EUCARIS was subject to an audit and was found to be in line with privacy and data protection requirements. e-CODEX relies on the open internet and also provides services to private organisations. e-CODEX recommends the use of the Domibus gateway, maintained by the European Commission as part of CEF eDelivery. As for the particular case of road traffic investigation, within the Salzburg Forum countries, road traffic offences are covered by the police domain and Ministries of Interior whereas e-CODEX is made for Ministries of Justice (exchange of decisions). Therefore, e-CODEX is not widely used for road traffic offences.

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110 https://www.amendesroutieres.be/.
111 https://iamapps.belgium.be/rma/generalinfo?redirectUrl=/rma/&language=fr.
112 https://www.poste.it/paga-online.html.

EUCARIS always communicates between NCPs, and each one is responsible for the authorities within its own Member State. With e-CODEX however, there is a directory of addresses of legal stakeholders throughout Europe who can send messages to other stakeholders (therefore it should be known whom to contact and more is necessary to be known about the addressee). e-CODEX provides more information about legal partners.

As for connecting EUCARIS and e-CODEX, both systems can also be used in different phases. EUCARIS is most suitable in the first phase (investigation), and when it is certain that there is no possibility to collect the fine, the second step is transferring the final decision to the other country by using e-CODEX. It also depends on the organisation of the Member State. EUCARIS and e-CODEX are complementary to be used in different phases, therefore there is no need to be compatible. If absolutely necessary, it is technically possible to establish an interconnection in future.

NCPs are sufficiently equipped for the exchange of information. However, NCPs are not equipped to support the follow-up procedures to the CBE Directive to investigate who was the driver. It is recommended that the NCPs should not be responsible for investigation activities (may be different per Member State). The NCP is usually not in the same unit/department that is also responsible for investigation. To take the example of the Salzburg Forum, the NCP does not carry out the investigation, but should contact the right authority (useful for the coordination role). For EUCARIS, NCPs ensure the GDPR coordination role, i.e. ensuring the privacy and security conditions of the information exchange.

For the delivery of notices concerning final decisions on financial penalties/sanctions, a notification occurs if a Salzburg Forum CBE Agreement contracting party has received the notice (the final decision): response to what has been done and status (e.g. cancelled). The exchange process is organised within EUCARIS, including the notification, which is a technical message that indicates that the request has been received and started its processing. However, the outcome of the enforcement (e.g. penalty payment) is not (yet) included in EUCARIS (the latter’s involvement ends at the transfer with notification that has been received). The delivery of the information may be added later onto the software, provided there is a relevant legal basis.

Overview

The aim of this chapter was to provide an analysis and use-case overview of the currently in use EUCARIS platform for the investigation purposes of the CBE Directive, and in parallel, to consider other possibilities for the purposes of investigation of road traffic offences, enforcement of sanctions, and the digitalisation of communication between governments and citizens/businesses. To conclude on the findings of the chapter, please find below the main takeaways, complimented visually by Figure 3.3 below, which focuses on the main recommendations to implement, and multiple viable options when relevant (i.e. options *a* and *b*).

Investigation

To date, it is foreseen under Prüm II that the exchange of vehicle registration data is exchanged between Member States via the EUCARIS software. The CBE Directive can use EUCARIS for the exchange of information for investigation purposes. However, the necessary legal basis would have to be included.

Digitalisation of communication between governments

There are two aspects to consider for G2G communication: i) access to information and ii) interaction possibilities. A dedicated portal (G2G) or EUCARIS itself could serve as a place for authorities to share information for verification purposes in a secure way and ensure authenticity of documents.

Providing access to information could be implemented by the expansion of the Going Abroad website/e-Justice Portal/Your Europe website. As for interaction and exchange of information and data, as is already being done, is possible through EUCARIS and designated NCPs (as also document authenticity can be ensured). Although there are no technical problems for EUCARIS to deal with many requesting administrative bodies, EUCARIS strongly advises to stick to the current architecture of data exchange between Member States via one or a limited number of NCPs.

Digitalisation of communication between governments and citizens/businesses

There are two aspects to consider for G2C/G2B communication: i) availability of public information for consultation and ii) exchange of sensitive information between authorities and citizens/businesses.

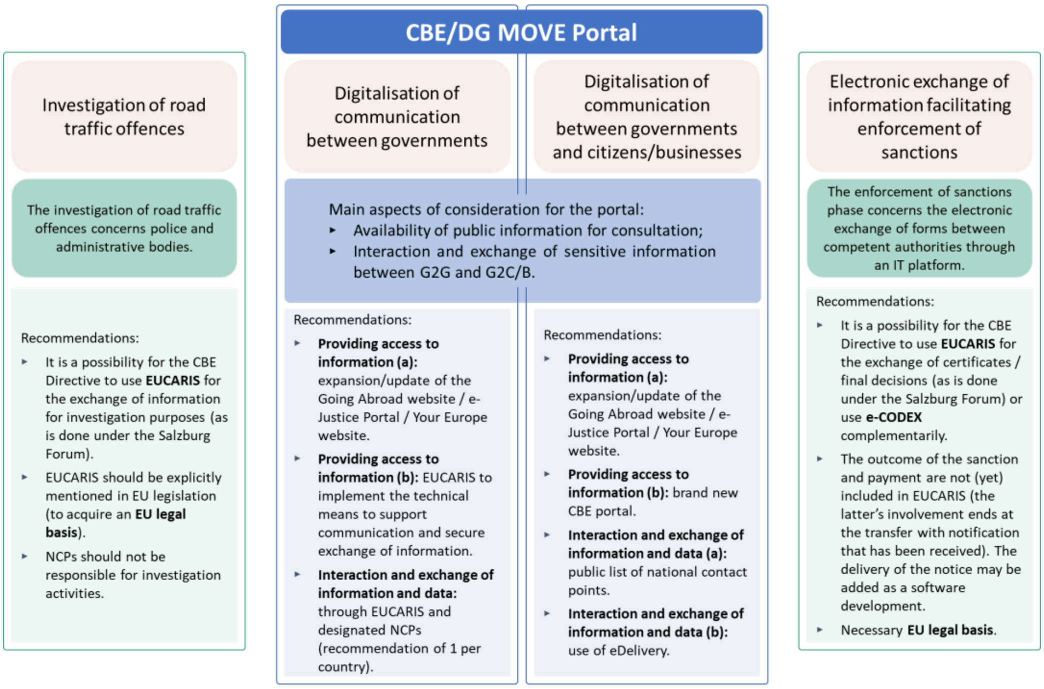
There are multiple existing portals that provide access to information on procedures related to the CBE Directive, such as the e-Justice Portal, Your Europe website and the Going Abroad website. In the future, the Single Digital Gateway will also enable procedures for EU citizens related to mobility. It is a possibility to extend the previously mentioned portals with relevant information, or update the Going Abroad website in particular made for the CBE Directive, or create a brand-new CBE portal.

As for interaction and exchange of information, following the example of the Single Digital Gateway, Member States are to feed the new/revamped portal with data and functionalities made available to nationals and cross-border citizens as well as businesses. For example, the currently set up websites/portal may create a public list of national contact points for the various subjects related to road traffic offences. As another option, Member States can set up and operate an eDelivery Access Point.

Electronic exchange of information facilitating enforcement of sanctions

The enforcement of sanctions phase concerns the electronic exchange of forms between competent authorities through an IT platform. EUCARIS always communicates between NCPs, and each one is responsible for the authorities within its own Member State. With e-CODEX however, there is a directory of addresses of legal stakeholders throughout Europe who can send messages to other stakeholders (therefore it should be known whom to contact and more is necessary to be known about the addressee). EUCARIS and e-CODEX are complementary to be used in different phases, therefore there is no need to be compatible (i.e. EUCARIS especially made for the investigation phase). If absolutely necessary, it is technically possible to establish an interconnection in future. However, it is recommended to rely solely on one system in order to not overcomplicate the various phases.

Figure 3.3 Overview of final recommendations related to the digitalisation of procedures under the CBE Directive



SECTION 2: IMPACT ASSESSMENT

4 PROBLEM DEFINITION

This chapter presents our understanding of the current CBE Directive, considering input from the stakeholders, as expressed in the surveys and during two workshops that were held. Some findings from interviews will be expressed. Before the problems are identified and analysed, the legal framework in which the CBE Directive operates is briefly described.

Conceptual framework of the CBE Directive

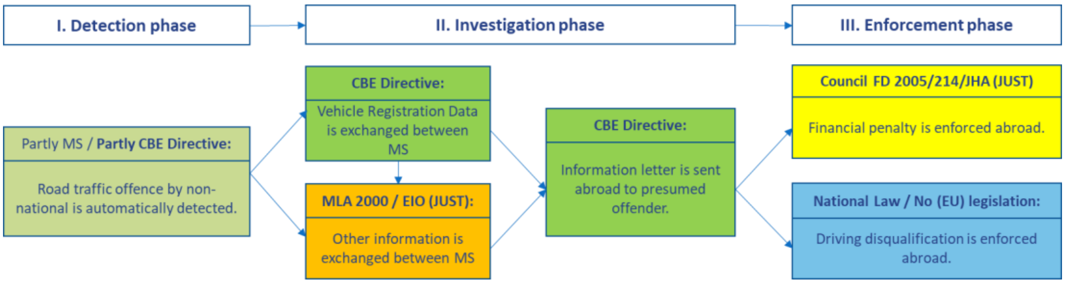
The CBE Directive offers an instrument for public authorities to retrieve information on the presumed offender of a traffic offence, in cases where the offender could not be/was not identified on the spot, for eight types of road-safety related traffic offences. In cases where the offence is detected, but the driver is not identified on the spot, only the license plate of the vehicle with which the offence was committed is registered. Such a situation could, for example, be a speeding offence that is detected with automatic checking equipment (a speed camera). The CBE Directive allows public authorities to, via the EUCARIS platform, make requests in VRD of other Member States, to identify the owner/holder of the vehicle with which the offence was committed and his/her address. As a result, the public authority is able to send an information letter to the address of the presumed offender, in order to hold him or her accountable for the offence that was committed. This should incentivise drivers to adapt their driving behaviour (e.g. by not committing the offence anymore) and should ensure that all EU road users face the consequences, irrespective of the Member State in which the vehicle was registered. In that sense, the Directive aims to increase the equal treatment of EU citizens and have positive impacts on road safety.

However, the problem analysis conducted below indicates that the CBE Directive is not able to reach its full potential. By revising the Directive, the enforcement of traffic offences that are committed by foreign registered vehicles, in which a driver is not identified on the spot, could be made more effective and efficient. The problem analysis will show that some issues originate within the CBE Directive itself, but also that the effectiveness of the CBE Directive depends to a large extent on the effectiveness of other legislative acts on the European level. For example, when the information from the VRD is not sufficient to identify the presumed offender, or if actual information on the driver (instead of the owner/holder) is necessary for the enforcement, Member States need to rely on other EU legislative acts (such as the EIO or the MLA Convention) or make use of bilateral agreements. Another issue is that, even if the Member State can send an information letter or penalty notice to the presumed offender in another Member State, the enforcement of the sanction (in cases of non-payment) is dealt with by Framework Decision 2005/214/JHA. Our analysis shows that these legislative acts (EIO, MLA Convention and Framework Decision) are not always effective in the enforcement of penalties for road traffic offences. Finally, there is no EU law that deals with the mutual recognition of driving disqualifications.

The framework above is broken down into three phases, the detection phase, the investigation phase and the enforcement phase. The first phase concerns (issues with) the detection of the offence, in situations where the driver is not identified on the spot. The second phase concerns the investigation of the offence, by identifying the presumed offender and submission of an information letter or penalty notice on the basis of a detected license plate issued in another EU Member State. The third phase concerns the cross-border enforcement of the penalty, in case the issued penalty notice results in non-payment by the (presumed) offender.

One should note that these phases are sequential. That is, if an issue occurs in the investigation of the offence, which causes the investigation to fail, then the process stops and the enforcement phase does not originate. This approach is illustrated in Figure 4.1.

Figure 4.1 Conceptual framework of the existing CBE Directive



Based on the conceptual framework that is sketched above, several problems have been identified. The conceptual framework has been broken down to reflect the different pillars that jointly lead to the cross-border enforcement of sanctions for road traffic offences, namely:

- Problem 1: Issues with the detection of the offence;
- Problem 2: Issues with the cross-border investigation of the offence;
- Problem 3: Issues with the cross-border enforcement of financial penalties;
- Problem 4: Issues with the cross-border enforcement of driving disqualifications.

On top of issues that occur within the enforcement chain (Problem 1 to Problem 4), our findings indicate that in practice fundamental rights of EU citizens are differently protected in Member States. The differences in protection of fundamental rights not only affects EU citizens, but these differences can also lead to a lack of mutual recognition of (final) decisions on financial penalties between Member States. Therefore, another problem is included in the problem tree:

- Problem 5: differences in the protection of fundamental rights of (presumed) offenders.

Finally, DG MOVE currently is unable to adequately monitor and evaluate the functioning of the CBE Directive. Ideally, more data would need be provided by Member States to successfully monitor its functioning. Therefore, a sixth problem is included in the CBE Directive:

- Problem 6: Insufficient information for the evaluation of the effects of the CBE Directive.

Each of the six identified problems is discussed separately (Sections 4.1-4.6) and causal pathways have been included for each problem.

4.1 Problem 1 – Road safety related traffic offences committed by a foreign registered vehicle are not (or incorrectly) detected

As is explained in the legal analysis, the enforcement of traffic offences committed by drivers in foreign registered vehicles starts with the detection of the vehicle in which the offence was committed. In this stage, issues with the CBE Directive can already be observed in practice.

The first problem focuses on the issues related to the detection of the vehicle with which an offence was committed. The analysis will show that speeding is the most frequently detected offence under the CBE Directive, and that the scope of the CBE Directive already covers most road-safety-related offences that are (currently) detectable without the need to identify the driver.

It is assessed that about 90% of all detected (speeding) offences are detected by using automatic checking equipment (e.g. without driver identification), and that at EU level, on average 15% of detected offences are committed by drivers in foreign-registered vehicles (although huge differences exist per Member States, largely depending on their geographical location). Finally, the analysis for problem 1 suggests that disparity in technical standards for automatic checking equipment between Member States is not considered to be problematic for the cross-border enforcement of sanctions.

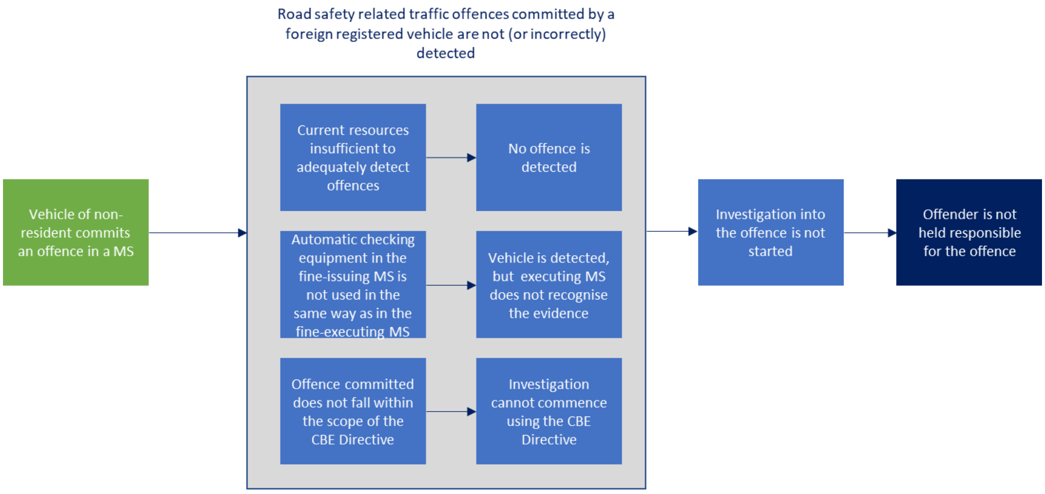
The summarised findings above are broken down into different problem drivers in the analysis that follows. A graphic presentation of Problem 1 is offered in Annex 2.

Causal pathway of problem 1

The starting point for the CBE Directive is a road safety offence committed in a Member State by a driver in a foreign registered vehicle. In principle, an investigation into the road safety offence starts when an offence is committed and detected. When the offence cannot be detected, or is incorrectly detected, no investigation can start and the CBE Directive cannot be used. This is visualised in Figure 4.2.

If the offence cannot be detected, or is incorrectly detected, the offender will not be held responsible for the offence committed. If the offence is detected but does not fall under the scope of the CBE Directive and/or the methods of use for the detection equipment of the issuing Member State are not in line with those in the executing Member State, then the national authorities will have to incur costs to collect additional evidence on the offence in the investigation phase. In this causal pathway, the driver/offender will not incur any costs as the driver/offender is not informed of the fact that he or she committed an offence. However, it has a negative impact on overall road safety, as this driver has no incentive to adapt his or her driving behaviour.

Figure 4.2 Causal pathway for problem 1



4.1.1 Problem driver a. Current resources (technical and manpower) insufficient to adequately detect offences

The CBE Directive facilitates the identification of the presumed offender when the presumed offender has not been identified on the spot. In order to identify the presumed offender when using the CBE Directive, the police authority should obtain the licence plate of the vehicle with which the offence was committed. Hence, the CBE Directive is most commonly used when an offence is detected with 'automatic checking equipment', such as speed cameras.

Our analysis reveals that there is a substantial difference in the degree to which Member States detect traffic offences covered by the CBE Directive as there is a large difference in the number of checking equipment per Member State (also see Table 4.1).

It should be noted that not all Member States seem to keep statistics on the number of offences committed at a national level. For example, Italy and Germany have a very decentralised system, in which the different regions are responsible for enforcing road traffic rules and no country-wide statistics are available at the national level. Some other countries simply state that they do not keep statistics on the number of road traffic offences.

We find that the most frequently detected offence, in which the driver is not identified on the spot, is speeding. Information on the (total) number of speeding offences was gathered from 20 Member States. In these 20 countries, almost 42 million speeding offences were detected. The findings are presented in Table 4.1. The reporting year differs between Member States, depending on the latest year for which information was available[113]. The retrieved information for most Member States concerns reporting year 2019 (15 out of 20 Member States). For some other Member States information is available for earlier years (5 out of 20 Member States).

Table 4.1 Number of speeding offences per Member State, and assessment for EU27

Member State	Speeding offence	# Speed cameras[114]	Reporting year
AT	5,900,000	1,238	2019
BE	4,042,196	1,639	2019
DK	521,000	20	2019
EE	66,426	71	2018
EL	234,169	324	2019
ES	2,938,400	1,570	2019
FI	690,000	1,004	2019
FR	12,900,000	2,560	2019
HR	326,292	286	2019
HU	549,173	254	2019
IE	24,248	4	2019
LV	357,012	112	2019
LT	175,912	290	2019
LU	254.711	28	2017
NL	7,814,043	404	2019
PL	3,769,173	645	2014
PT	398,039	99	2019
RO	626,444	85	2019

113 Some Member States provided information for 2018 and some provided information for 2019. It is our understanding that these numbers should be fairly similar (also when comparing statistics from Belgium, France and the Netherlands) and therefore we do not see large issues with aggregating the information for 2018 and 2019. For some Member States (PL and SI) no information was obtained in the course of the study. As a result, figures from the Evaluation study of the CBE Directive in 2016 were used, which was conducted by Grimaldi Studio Legale.

114 Including cameras that both detect speeding and violating a red light.

Member State	Speeding offence	# Speed cameras[114]	Reporting year
SI	166,500	95	2014
SK	278,081	13	2019
Total subset (20 Member States)	**42,075,812**	**10,741**	

Sources: National Statistics (online), surveys, information provided to DG MOVE under Art. 6 of the Directive, Speed Camera Database (SCDB.info).

It should be noted that Table 4.1 concerns **all** speeding offences (both committed by foreign and domestic registered vehicles). Moreover, these speeding offences concern both the ones that are detected without identification of the driver (relevant to the CBE Directive) and those that are detected in which the driver is identified on the spot.

Share of detected offences in which the driver is not identified on the spot

ETSC Pin Flash Report 36 (2019)[115] found that more than 80% of traffic offences detected in 2016 were detected with fixed or time-over-distance cameras (i.e. without identification of the driver). It must be noted that the PIN Flash Report finds huge differences between Member State, with some countries (such as Romania or Slovenia) detecting around 0% of traffic offences with fixed or time-over-distance cameras, whereas other countries (such as France, Belgium and Portugal) detect almost 100% of speeding offences with fixed or time-over-distance cameras.

It seems that the current share of speeding offences detected with fixed or time-over-distance cameras is higher since an increasing trend is visible in the ETSC Pin Flash Report (also consider the data tables in Annex 6). Moreover, some Member States for which the share was fairly low have indicated that they aim to increase the number of fixed and time-over-distance cameras in the coming years (in the survey and correspondence with DG MOVE in 2018).

In our analysis, we assume that 90% of all speeding offences are detected with fixed or time-over-distance cameras, and that the driver is not identified on the spot. This assumption takes into account that ETSC (2019) found that more than 80% of traffic offences in 2016 were detected by automatic means and that this share seemed to have increased over the period 2009 – 2016. However, we consider that it is realistic to assume that there will always be speeding offences that will be detected in which the driver can be identified on the spot and thereby assume that the share is 90% for the years for which the Member States in Table 4.1 provided information.

By applying this assumption, it seems that the 20 Member States for which data is available detected more than **38 million speeding** offences without the driver being identified on the spot.

Share of detected offences committed by drivers in foreign registered vehicles

Based on desk research, information provided to DG MOVE under Art. 6 of the CBE Directive, and the first questionnaire, data is obtained on the share of offences that are committed by foreign registered drivers. In total, 17 Member States were able to provide information on the share of speeding offences that are committed by foreign-registered vehicles (Table 4.2).

Table 4.2 Share of speeding offences committed by foreign registered vehicles

Member State	Total # of speeding offences committed	Of which committed by foreign vehicles	% committed by foreign registered vehicles
AT	5,900,000	1,608,217	27%

[115] https://etsc.eu/reducing-speeding-in-europe-pin-flash-36/.

Member State	Total # of speeding offences committed	Of which committed by foreign vehicles	% committed by foreign registered vehicles
BE	4,042,196	436,016	11%
DE[116]	10,929,263	1,432,464	13%
EE	110,419	23,495	21%
ES	2,938,400	109,000	4%
FI	690,000	6,000	1%
FR	12,900,000	2,564,873	20%
HR	326,292	30,000	9%
HU	549,173	497,364	91%
LT	175,912	13,357	8%
LU	241,010	100,933	42%
LV	357,012	108,434	30%
NL	7,814,043	1,006,788	13%
PL	3,769,173	204,610	5%
PT	398,039	12,012	3%
SI	166,500	6,680	4%
SK	278,081	25,305	9%
Total subset	**51,585,513**	**8,185,548**	**16%**

Sources: National Statistics (online), surveys, information provided to DG MOVE under Art. 6 of the Directive.

The table shows that the share of offences committed with foreign vehicles differs greatly among Member States. This is as expected, as holiday and transit countries (Austria, Luxembourg and France) attract a lot of non-residents, while the more remote countries (Portugal and Finland) are likely to attract less foreign traffic.

The 17 Member States, for which data was available, seem to offer a fairly representative image of all Member States in Europe, considering their geographical location and socio-economic factors. Although the share of detected offences with foreign registered vehicles differs significantly between Member States, it seems that (on average) around 16% of all speeding offences are committed by drivers in foreign vehicles. It should be noted that a similar finding was obtained during the Impact Assessment study conducted in 2008, where a share of 15% was found. The Evaluation of 2016 found a (weighted) average of 14%.

Hence, the share of speeding offences committed by foreign drivers can be estimated at (roughly) 15% in Europe[117], although huge differences exist per Member State.

[116] Information from 6 Bundesländer. As Germany did not provide information on the total number of offences, the information is only used to identify the share of offences committed by foreign registered drivers in Germany, and not the total number of offences. Therefore, Germany is not included in Table 4.1, but the information from six Bundesländer is included in Table 4.2.

[117] Data provided by Hungary indicates that almost all (automatically detected) speeding offences are committed by vehicles registered abroad. There are some doubts as to the accuracy of this information. However, if data from Hungary is not taken into account, the (weighted) average share of offences committed by foreign registered vehicles drops from 16% (Table 4.2) to 15%. Thereby, the data provided by Hungary does not bias the results; (not) including this data would not change the overall estimate.

This indicates that, from the identified 38 million speeding offences that are detected without identification of the driver on the spot in 20 Member States (Table 4.1), some 5.7 million are committed by foreign-registered vehicles in these 20 Member States.

Extrapolation to EU27: detected offences committed by drivers in foreign-registered vehicles

Although information on the total number of speeding offences is available for 20 Member States, information is lacking for 7 Member States, including some of the larger ones (such as Italy and Germany).

Based on the number of deployed speed cameras in these countries, see Table 4.1, an estimate can be derived for the seven Member States for which data is unavailable. Of course, this analysis implicitly assumes that the number of speed cameras is an important factor in the number of offences detected. It should be noted that the number of detected offences also depends, for example, on applicable speed limits and road characteristics. Nevertheless, it is our understanding that the 20 Member States, for which information is available, offer a representative image for EU27, suggesting that taking the 'average' number of detected offences per speed camera is a robust indicator for estimating the total number of offences committed in the EU27 by considering the number of cameras deployed.

In the 20 Member States that provided information, the average annual number of automatically detected speeding offences per speed camera is estimated to be (around) 3,500. Based on this number, an assessment can be made for the other seven Member States. It estimated that these seven Member States detected another 54 million speeding offences in 2019. From these 54 million speeding offences, it is assumed that about 90% is detected without identification of the driver, and that 15% is committed by drivers in foreign-registered vehicles (please note that these assumptions are derived from ETSC Pin Flash Report 36 (2019)[118] and Table 4.2).

This indicates that, EU-wide, about 13.8 million speeding offences are detected which have been committed with foreign registered vehicles, without the driver being identified on the spot.

It is hard to test the quality of the imputed values as, to our knowledge, there is no information available on the number of speeding offences in the EU. The numbers retrieved by stakeholder consultation have been compared with earlier provided numbers (for example during the Evaluation). This has not led to substantial differences for the Member States that provided data. However, two large Member States, Italy and Germany, have in both cases not provided the number of speeding offences. Since these two Member States jointly account for almost 50% of total speed cameras, the validity of the assessment largely depends on whether the estimates for these Member States are plausible.

Data from 2006[119] revealed that Italy issued some 1.3 million speeding tickets in 2006. However, it is our understanding that speed enforcement has developed significantly since then. The impact assessment support study for the initial CBE Directive, conducted in 2007, gathered information on the number of checking equipment that was installed in 2004. It found that, for a subset of Member States[120], some 5,200 units were installed. When compared with the current number of checking equipment for these countries, it is found that the number of checking equipment is now almost 6 times higher (at 30,000 units) in these Member States. Therefore, although our estimate is

118 Pin Flash Report 36.

119 Gathered by ETSC (2011), Traffic Law Enforcement across the EU: Tackling the three main killers on Europe's roads, (https://etsc.eu/wp-content/uploads/Traffic_Law_Enforcement_in_the_EU.pdf).

120 The IA Support Study from 2007 gathered information for 16 Member States (AT, BE, CY, CZ, FR, DE, EL, IE, IT, LT, MT, NL, PL, SI, ES and SE).

substantially higher than the number of speeding tickets in 2006, we believe that this is due to the massive increase in detection equipment installed over the past fifteen years.

Based on the information provided by Germany (required under Art. 6 of the Directive), it seems that six Bundesländer (of the 16 Bundesländer in Germany) provided some statistics on the number of speeding offences. No information is available on which Bundesländer provided information. From this information, it seems that these six Bundesländer detected almost 11 million speeding offences in 2018. The imputed values for Germany, based on the number of speed cameras, however, would suggest that Germany had to detect about 15 million speeding offences in total. Although there is no information on the differences in speed enforcement efforts between Bundesländer in Germany, the estimate of 15 million speeding offences may be too low. Nevertheless, we do not believe that it is a (very) substantial underestimation, and therefore (conservatively) will use the estimate of 15 million offences. This is a conservative working assumption, as a lower number of speeding offences in the assessment leads to a smaller reduction, in absolute terms, of accidents and fatalities in Germany and therefore an underestimate of the road safety benefit for this country (should the Directive be revised).

Other traffic offences under the CBE Directive

It is our understanding that speeding is the most commonly detected offence under the CBE Directive. This was found in the Evaluation (2016), supported by views from Member States and further substantiated by data from EUCARIS for the year 2019, which revealed that speeding offences account for 96% of searches through the system. Just as for speeding, Member States were asked to provide the number of offences committed for the seven other offence categories that are included under the CBE Directive. The response rate to these questions was lower (with 10 to 13 Member States being able to provide the number, depending on the offence category). Where possible, additional information was derived from statistical sources at national level.

Based on these analyses, adopting the assumptions that were also adopted under the 'speeding assessment' we find that there are approximately 430.000 automatically detected offences for the seven other offences under the CBE Directive, which are committed by drivers in foreign-registered vehicles. This finding is consistent with the number of requests made in EUCARIS[121], as the number of detected speeding offences represents more than 95% of all detected offences in our analysis.

Assessment of problem driver a

The assessment above indicates that the number of detected offences under the CBE Directive differs substantially between Member States. For the twenty Member States that provided information in Table 4.1, it seems that Member States with more detection equipment (speed cameras) also detect more offences. This indicates that the CBE Directive is more effective in Member States that have a high number of detection equipment. To make the best use of the CBE Directive, Member States could therefore install more automatic checking equipment on their roads.

Although the extent to which Member States install checking equipment is (strictly) not part of the CBE Directive, the number of checking equipment significantly determines whether the CBE Directive is effective in enhancing road safety. Therefore, it is important to understand whether Member States have issues with increasing the number of checking equipment. If Member States lack the resources to either invest in this equipment, or by investing in the manpower needed to investigate these offences,

[121] The number of requests made in EUCARIS is not used as an indicator for the number of detected offences, as the number of requests only signals the number of investigated offences. This is further discussed under Problem 2.

this is of interest for the revision of the Directive (considering its importance to the effectiveness of the Directive).

During and shortly after the first Expert Workshop (June 2020), experts from Spain, Austria and Sweden[122] indicated that for them the lack of resources is not a problem. None of the other respondents explicitly stated that they have a problem with the resources available. Based on the information it is possible to conclude that a lack of resources is not a major problem. This conclusion was confirmed by ROADPOL.[123]

Considering the above, it is concluded that the number of checking equipment significantly affects the number of detected offences in which the driver is not identified on the spot. Hence, the number of checking equipment is an important factor in the number of offences that could (potentially) be investigated under the CBE Directive. The level of checking equipment installed varies greatly between Member States. However, there is no information or stakeholder views that suggest that a lack of manpower/resources is perceived as a problem that hampers the functioning of the CBE Directive. Therefore, we consider the size of this problem driver to be small. It should be noted that, although a lack of financial resources has not been brought forward as an issue, the lack of checking equipment in some countries does not contribute to enhancing road safety, especially as our analysis finds that checking equipment is an effective tool for enforcement road traffic rules (as our analysis reveals that the annual number of detected offences per speed camera is 3,500 in the EU). Thereby, investments in checking equipment could be incentivised to make the CBE Directive more effective and to contribute to an enhancement of road safety.

Expected development of the problem driver

We expect that the number of checking equipment *will increase* in the coming years.

This is due to the following factors:

- **Historic trends**. The impact assessment for the initial CBE Directive, conducted in 2007, gathered information on the number of checking equipment that was installed in 2004. It found that, for a subset of Member States, some 5,200 units were installed. When compared with the current number of checking equipment for these countries (see Table 4.1), it is found that the number of checking equipment is now almost 6 times higher (at 30,000 units) in these Member States. In our view, there is no reason to believe that this number will decrease in the coming years;
- **Member State assessment**. From the survey, Member States indicate that they expect the number of automatic checking equipment to increase or remain constant in the coming years. Especially with regard to automatic checking equipment that focuses on the non-use of seatbelts and illegal use of mobile phones, Member States expect an increase in the number of checking equipment. With regards to automatic methods to detect drink-driving or drug-driving, Member States are unclear about how the number of checking equipment will evolve;
- **Technological innovations**. In the problem assessment, it was noted that speeding currently accounts for the majority of requests under the CBE Directive. However, technological innovations make it increasingly possible to also detect other offences without identifying the driver on the spot. For example, some Member States are conducting or have conducted pilots with the automatic detection of using the mobile phone while driving or failure to

[122] Based on written responses, received from DE, CZ, FI, AT, ES, SE, NL, CY and EUCARIS, gathered from the Expert Group meeting of MS.
[123] During the exploratory interview.

use the seat belt[124] [125] [126]. In 2020, the Netherlands started using cameras that can remotely detect the use of a mobile phone. Although there is not much experience with these systems yet, it seems likely that it increasingly becomes possible to detect different types of offences with cameras.

There is no information suggesting that Member States will run into resource issues in the coming years. In the current situation, it seems that resource issues do not affect the number of checking equipment installed. Finally, it should be noted that road traffic rule enforcement through cameras also results in obtaining revenues from fines. Of course, these fines become part of a general budget, and are not specifically earmarked to finance road safety measures or for enforcement purposes, but it does signal that there is some (financial) incentive for Member States to install checking equipment.

4.1.2 Problem driver b. Disparity of technical standards and methods of use for automatic checking equipment between Member States

The use of automatic checking equipment to detect road traffic offences affects the working of the CBE Directive extensively. The CBE Directive has been designed, to a large extent, to facilitate the cross-border enforcement of sanctions for road traffic offences detected by automatic checking equipment. It stands to reason that if the use of automatic checking equipment is poor at a national level, the CBE Directive can have a limited impact on enforcing the road traffic rules and as a result, on road safety.

Automatic checking equipment is used for the enforcement of traffic rules. In order for the enforcement to be effective on a cross-border level, the enforcement procedure should be mutually recognised between Member States.

To our knowledge, the lack of harmonisation considering technical aspects of checking equipment has not been subject to large issues in the past few years. The Evaluation concluded that national courts require, for the validity of a sanction for a road traffic offence, that the automatic checking equipment used by national enforcement authorities to detect such offence complies with standards established in national legislation. Also, consider the examples below.

Case studies examples as mentioned in the Evaluation

The national courts of some Member States, such as Italy, require that the checking equipment used to detect offences is tested on a yearly basis (decision of the 'Corte Costituzionale' of 18 June 2015 no. 186. Other interesting principles stated by Italian courts concern the requirement that the checking equipment needs to be previously signalised (Corte di Cassazione (Supreme Court), Order number 680 of 13 January 2011).

The Administrative Court of Madrid established that a fine is not valid if it is not accompanied by a document proving the reliability of the detecting equipment and its compliance with relevant Spanish rules (Juzgado de lo Contencioso-Administrativo no. 23 de Madrid – February 2013[127]). The Court of Administrative Litigation of Palencia has annulled a fine of EUR 300 and the loss of two points imposed on a driver by the Department of Traffic of the City of Palencia because it was not possible to properly identify the radar with which the alleged

124 https://etsc.eu/new-spanish-safety-cameras-to-detect-seat-belt-use/.
125 https://www.rtlnieuws.nl/nieuws/nederland/artikel/5197193/slimme-camera-automobilist-telefoon-handen-boete.
126 https://www.vrt.be/vrtnws/nl/2020/12/15/belgie-test-cameras-die-je-beboeten-voor-filmpje-kijken-of-belle/.
127 http://www.elconfidencial.com/motor/2013-02-20/nuevo-varapalo-judicial-al-ayuntamiento-de-madrid-por-las-multas-en-los-semaforos_697877/.

infringement was detected and consequently, it was not possible to check whether such instruments complied with the applicable standards foreseen by Spanish legislation (Juzgado de lo Contencioso-Administrativo de Palencia – December 2014[128]).

During the Evaluation, as well as during this study, stakeholders were consulted on if national courts would not recognise a sanction for a road traffic offence in another Member State as it did not comply with minimum technical (or legal) standards. None of the stakeholders that responded to the survey[129] stated that their national courts have problems with specific requirements for evidence in road traffic offences detected via automatic checking equipment.

In conclusion, although the Member States often seem to have minimum standards concerning automatic checking equipment, there is no evidence suggesting that this resulted in legal issues in cross-border cases (for example if two Member States adopt different minimum standards). This has been further confirmed during interviews and surveys.

Therefore, we consider the size of this problem driver to be small.

A second issue related to the use of automatic checking equipment relates to the method of use. In particular, whether an automatic checking equipment device takes a photo from the front or the back of the vehicle. Some countries adopt a strict driver liability regime, and as such, require a photo with the driver being visible to identify the offender. However, due to privacy issues and other considerations at the national level, some Member States only take photos from the back, which makes it unable to identify the driver. As problem driver g. (Section 4.2.4) will show, the method of use of checking equipment significantly affects the investigation (Problem 2) of road traffic offences.

Expected development of the problem driver

The analysis above suggests that, according to Member States practices, the lack of harmonised standards for checking equipment have not resulted in issues concerning the enforcement of cross-border cases. However, this issue *might increase* in the near future.

Problem driver a) indicated that the number of traffic offences for which the detection would become possible in the near future is likely increasing as a result of technological innovations. This would make it possible to (for example) detect the use of a mobile phone while driving without identifying the driver. As the technical possibilities to detect various offences with automatic checking equipment are increasing, the technical specifications for this checking equipment will increasingly become an important factor in enforcement. This implies that also the required specifications are becoming more important. As different Member States are conducting different pilots with new cameras, and some pilots have already been put into practice (for example in the Netherlands), there is a risk that different technical requirements for equipment at the national level would create problems in the enforcement of sanctions at EU level. As no Member State, nor any other expert, was able to provide an assessment as to what extent this would occur, the rationale behind this logic could not be validated. However, it is our understanding that, even if issues would originate, these would likely be fairly small.

[128] http://www.diariopalentino.es/noticia/ZE56E24BC-9C85-9956 5958D565770A3524/20141210/juez/anula/multa/no/e st ar/bien/identific ado/radar/capital.

[129] Results from 1st survey to Transport Authorities, Transport Ministries, Ministries of Interior and Police authorities.

Considering the method of use, stakeholders indicate that it is unlikely that Member States will (without an action at EU level) converge in the methods of use. This is because Member States adopt their own legal framework considering the method of use, and because investments in automatic checking equipment are costly.

4.1.3 Problem driver c. Limited number of road traffic offences included in the Directive

The CBE Directive currently includes eight road-safety related traffic offences (Article 2):

- speeding;
- failing to use a seat-belt;
- failing to stop at a red traffic light;
- drink-driving;
- driving while under the influence of drugs;
- failing to wear a safety helmet;
- the use of a forbidden lane;
- illegally using a mobile telephone or any other communication device while driving.

As was already noted under problem driver a), speeding is the most commonly detected offence under the CBE Directive. This is also because most other offences are (in the current situation) not detected without the driver being identified. For example, the detection of an offence concerning the use of alcohol requires a breath test, which can only be executed after the driver has been stopped (and thus identified). The text box below briefly describes the process through which the current scope of the CBE Directive was established.

Process of establishing the current scope of the CBE Directive (included under Art. 2)

The scope of the proposal for the current CBE Directive had been limited to the four traffic offences, which were responsible for the greatest number of fatalities in the EU and considered as an offence in all EU Member States at the time. These included, speeding, driving under the influence of alcohol ('drink-driving'), not using a seat belt, and failing to stop at a red light. In addition to them, during the legislative process leading to the adoption of the current Directive, the Parliament and the Council agreed at second reading to include in its scope four new areas that had by then acquired sufficient maturity as offences. These offences also posed a risk to the safety of the driver and other road users, also considering the technological progress that had been made in detecting certain offences. These are driving under the influence of drugs, failing to wear a safety helmet, using a mobile phone or other communication device whilst driving, and using a forbidden lane.

The fact that the CBE Directive only allows for the exchange of information of a preselected set of road-safety related traffic offences might decrease its effectiveness in making European roads safer. For this reason, and because there is political will in Member States, the scope of the CBE Directive could be extended. During the recent evaluation of the CBE Directive and in subsequent instances (e.g. the stakeholder's feedback to the Inception impact assessment/Road map), and information gathered during the first CBE Workshop, certain Member States and stakeholders have asked to extend the number of offences covered by the Directive.

Stakeholders who advocate for the extension of the scope argue that by extending the scope of the CBE Directive, the Directive would provide a mechanism to follow-up on more offences, in total, causing a higher number of foreign offenders to be investigated, strengthening the overall (cross-border) investigation of Member States, ultimately leading to a higher level of road safety. Although some bilateral agreements, for example between Belgium and the Netherlands and between Belgium and France[130], already have a broader scope than the CBE Directive (even covering all road traffic offences), including these offences under the CBE Directive, would allow for the exchange of relevant information between Member States more efficiently and consistently (for those offences not yet covered by the CBE Directive) than is currently the case. Moreover, the CBE Directive has an impact on fairness (e.g. equal treatment of resident and non-resident drivers). Member States that want the scope of the CBE Directive to be revised, argue that, without the scope extension, residents and non-residents could be treated differently (e.g. negative impact on fairness), with regard to the offences falling outside of the scope (e.g. follow-up of parking offences).

Table 4.3 provides an overview of the proposed scope extensions by Member State/ stakeholder. Here we can see that four Member States find that the current scope is sufficient. Six Member States do not have an opinion / do not know. Among stakeholders there is no clear agreement as to the type and number of the offences to be included. The main extensions of the scope suggested are to include (dangerous) parking offences, to include UVARs and LEZ and/or to include all road traffic offences that can be detected by using automatic (or manual) checking equipment.

Table 4.3 Overview of proposed scope extensions by stakeholder

MS/stakeholder	Proposed extension of scope										Source
	Not keeping sufficient distance from the	Overloaded vehicles	Dangerous overtaking	Dangerous and illegal parking	Failure to pay parking fees	Failure to pay toll	Failure to pay fees/fines UVARS, LEZ	Other[131]	Scope is sufficient	N/A	
Austria	X	X	X	X	X		X	X			1st workshop
Belgium		X		X			X				1st Workshop
Croatia	X	X	X	X	X	X	X	X			Evaluation
Czechia			X				X	X			Evaluation, 2nd WS
Germany	X		X	X			X				1st workshop
Estonia									X		Evaluation
Greece			X					X			Evaluation
Spain	X		X	X							1st workshop
Finland										X	Evaluation
Italy										X	Evaluation
Lithuania			X					X			Evaluation
Netherlands				X	X		X				Interview, 2nd WS

130 https://mobilit.belgium.be/nl/weg/rijden/verkeersregels-en-sancties/overtredingen/het-buitenland
131 E.g. crossing white lines, not respecting forbidden access, driving in the wrong way or emergency lane, illegal manoeuvres.

MS/stakeholder	Proposed extension of scope										Source
	Not keeping sufficient distance from the	**Overloaded vehicles**	**Dangerous overtaking**	**Dangerous and illegal parking**	**Failure to pay parking fees**	**Failure to pay toll**	**Failure to pay fees/fines UVARS, LEZ**	**Other[131]**	**Scope is sufficient**	**N/A**	
Sweden			X					X			Evaluation
Slovakia			X								Evaluation
France					X		X				1st + 2nd workshop
Estonia											Evaluation
Hungary									X		Evaluation
Poland									X		Evaluation
Slovenia									X		Evaluation
Portugal										X	Evaluation
Luxembourg										X	Evaluation
Romania										X	Evaluation
Latvia										X	Evaluation
	Stakeholders (NGO, consumer organisation, …)										
EUROCITIES							X				IAA feedback
City Antwerp					X		X				IAA feedback
ASECAP						X					OPC evaluation
ASFA						X					OPC evaluation
AITF[132]				X	X						IAA feedback
GART[133]					X						IAA feedback
FNMS[134]					X						IAA feedback
VNG[135]					X		X				IAA feedback
NORPARK					X						IAA feedback

In general, the Member States propose to include those offences that can be automatically detected and/or have impacts on road safety. In essence, the CBE Directive is only useful for offences where the driver was not identified on the spot and only the number plate of the vehicle is known. This mainly includes offences that are detected by using automatic checking equipment. This is also the argument used in the Evaluation, when researching if an extended scope was necessary. The Evaluation of 2016 concluded that the primary offences that could then be detected using automatic checking equipment were already included in the Directive. More information on this can be found in Section 2.4.

The size of problem driver c is hard to establish. On the one hand, our findings indicate that most road-safety-related traffic offences (where a driver is not identified on the spot) are included under the CBE Directive. More specifically, some offences that are currently included under the scope of the Directive cannot be detected without driver identification (such as driving under the influence of alcohol or drugs). In terms of equal treatment of EU citizens, Member States would like to extend the scope to also cover

132 Association des Ingénieurs Territoriaux de France.
133 Groupement des Autoritës Responsables de Transport.
134 Fédération Nationale des Métiers du Stationnement.
135 Association of Netherlands Municipalities.

offences that (sometimes) only have a (very) weak link with road safety, such as non-payment of parking fees.

Statistics obtained from France via desk research[136] indicate that, in 2019, 54,212 offences for dangerous overtaking were detected, 32,439 offences for not keeping sufficient distance were detected, 17,042 offences were detected for the use of overloaded vehicles and 155,224 offences were detected for driving in the wrong way. Furthermore, the number of (road-safety-related) UVAR offences detected in France was 7,090. Considering that France detects some 12.9 million speeding offences, the inclusion of other road-safety-related offences would likely not increase the number of cross-border cases to a large extent. Considering the findings from the survey and the numbers obtained for France, we assume that enhancing the scope of other road-safety-related offences (except UVAR) would increase the number of detected offences by 2.01%.Please note that non-payment of parking fees is not included in this assessment, as it is considered to be unrelated to road-safety and therefore cannot be included under the CBE Directive. Information on dangerous parking was not derived in our assessment due to the unavailability of statistics.

Based on information from France, we estimate that the number of other road-safety-related offences which are currently not included under the CBE Directive, and are detected by making use of automatic means, is 2% of the number of CBE-offences. The total number of automatically detected CBE-offences, in which the offence was committed with a vehicle that was listed abroad, is estimated at 14.2 million offences (13.8 million speeding offences and 430,000 other CBE-offences). Adopting this assumption, we find that there are additionally some 300,000 violations of other offence categories, that are currently not included under the CBE Directive (such as driving on a forbidden lane). These are currently not under the scope of the CBE Directive.

For more details on the legal possibilities for extending the scope of the CBE Directive, refer to Section 2.4.

Expected development of the problem driver

As a result of technological innovations, it might be the case that more offences will be detected remotely/contactless/without stopping the vehicle/without identification of the driver on the spot in the future. This is in line with expected developments of problem drivers a and b. Although the scope was deemed relevant at the time the current CBE Directive was adopted, new technological developments might make it possible in the future to also detect other types of road-safety-related traffic offences without driver identification. Thereby, it is our understanding that, although the most important road-safety-related offences are already included under the CBE Directive, not increasing the scope to other road-safety-related offences that can (or will be) detectable via automatic means in the future might limit the effectiveness of the CBE Directive under the baseline scenario. Thereby, it is our understanding that the limited effectiveness of the Directive, as not all road-safety-related offences that will be detectable by automatic means, are observed in the current situation (due to the limited detection of these offences without driver identification), *might increase in the future.*

136 https://www.onisr.securite-routiere.gouv.fr/sites/default/files/2021-04/Bilan_Infractions_Points_2019_v4.pdf

4.2 Problem 2 – Inadequate cross-border investigation of traffic offences

The second problem focuses on the issues related to the investigation of a road traffic offence to identify the presumed driver/offender (who actually committed the offence). The analysis will show that there are various reasons as to why an investigation might fail. Although the size of each separate factor is hard to determine, there is some evidence concerning the number of investigations that fail.

Based on the searches/requests made via EUCARIS, for which the output is obtained by the Study Team, it is found that around 10% of requests were not successful (e.g. do not return a name of the owner/holder or the address) in 2019. These issues are related to problem driver d, e and f.

However, even if the owner/holder of the vehicle is identified through VRD exchange, this does not necessarily lead to the submission of a penalty notice/information letter. For example, the address of the owner/holder could be wrong or the presumed offender could not be reached and more investigation is needed. Some Member States require the identification of the actual driver of the vehicle instead of the owner/holder (consider problem driver g). The CBE Directive does not provide an instrument for the exchange of additional information (e.g. when information from the VRD turn out to be insufficient), but also existing instruments under the realm of DG JUST (MLA Convention and EIO) to exchange this information are hardly used (consider problem driver h).

There is not much information available on the number of penalty notices issued when compared to the number of offences detected. France provided information, in which it is found that between 80 to 85% of all detected offences have resulted in the issuance of a penalty notice to the presumed offender. In information provided to DG MOVE under Article 6 of the CBE Directive, six Bundesländer in Germany indicate that penalty notices were not sent in about 15% of cases in 2018. Information from the Czech Republic seems to indicate that a penalty notice was sent in about 75% of cases. In Hungary, this share is close to 80%.

Hence, although information is lacking from many Member States, it seems that on the EU level, about 20% of investigations fail (e.g. a detected offence does not result in the issuance of an information letter). Based on information from EUCARIS, we assume that half of these failed investigations are due to technical issues, as 10% of all requests fail. This indicates that the remaining 10% of failed investigations relates to other, legal issues (such as the need to access driving license data and/or because the driver could not be identified).

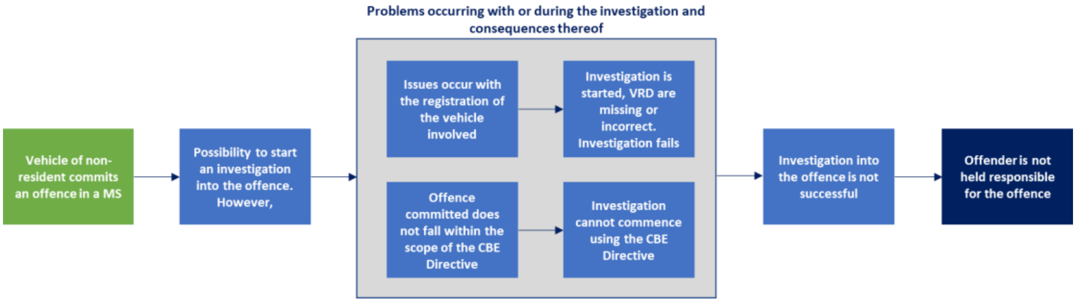
The summarised findings above are broken down into different problem drivers in the analysis that follows. A graphic presentation of Problem 2 is offered in Annex 2.

Causal pathway of problem 2

The starting point for the CBE Directive is a road safety offence committed in a Member State by a non-resident driver. In principle, an investigation into the offence starts after an offence is detected and registered. Often, it is the police who starts and conducts such an investigation. However, as shown in Figure 4.3, several problems can occur within this process, making it difficult to start the investigation or bring the investigation to a successful ending.

In Figure 4.3 the offence is detected and registered and efforts are made to identify the offender in order to follow up on the offence committed. If the investigation fails, the offender is not informed on the fact that they committed an offence. As the offence can thereby be committed with impunity, this driver has no incentive to adapt the driving behaviour.

Figure 4.3 Causal pathway for problem 2



4.2.1 Problem driver d. Different, erroneous or not up to date content of vehicle registers across Member States

This problem driver has various aspects. Firstly, according to Article 4(1) of and Annex I to the CBE Directive, there are mandatory requirements for data elements to be found within national vehicle register databases (VRDs) which are necessary to conduct a search for an offender. The data elements relating to vehicles[137] are mandatory to complete when available in national registers, and the data relating to owners/holders of the vehicles[138] are not all mandatory. Indeed, if the address and name of the offender are not available in the VRD, it is not possible to follow up with them. Though required, even mandatory data may not always be de facto available. For this reason, a Member State may oversee the non-completeness of its VRD and also not attempt to complete all necessary data, leading to erroneous or not up to date content that may hamper the investigation of an offender.

The results of the survey targeted at Member States provides insight into the type of data that is kept in the Member States' VRDs. This highlights that there is limited data that is unavailable, with most mandatory data being collected in the Member States' VRDs, as shown in Annex 8. More particular, the survey indicates that the most vital information for the investigation (name of the owner/holder and their address, if the Member State of the vehicle registration was correctly identified) are available in the VRDs of all respondents. Also, most Member States include the date of birth of the owner/holder in the VRD. Hence, it is the understanding that the necessary information to investigate offences is already available in national VRDs.

However, in some cases, additional information might facilitate the investigation of the offence. For example, the mandatory inclusion of vehicle types might be needed to investigate speeding offences. Trucks, trailers, buses and coaches are currently equipped with speed limitation devices and are therefore subject to different rules on speeding than passenger cars or vans. Also, when offences such as violating Low Emission Zones (LEZ) or Limited Traffic Zones (LTZ) would be added to the scope, the CBE Directive would need to allow the exchange of additional vehicle data (such as the emission class of the vehicle). It is important to note that this information may already

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137 Registration number; Chassis number/VIN; Member State of registration; Make; Commercial type of the vehicle; EU Category code (e.g. car, moped).

138 Mandatory data are First name, Address, Date of birth, Legal entity; Registration holders' name/Owners' name.

be included in the VRD, however the exchange of this information is currently not foreseen under the CBE Directive[139].

Moreover, some Member States need to investigate the actual driver of the vehicle at the time when the offence was committed, for example by matching the photo from a camera with the (passport/ID card/driving licence card) photo of the vehicle owner/holder (also see problem driver g).

Secondly**,** when a vehicle is re-registered or sold from one country to another, there is a risk that the data on the owner/holder of the vehicle may not be updated in both countries in due time. Therefore, the information on the vehicle owner/holder may differ in the two countries, which hinders the identification of the offender. In addition, specific conditions apply to car re-registration across the EU, depending on the length of stay/use of the car in the other Member State. From a legal perspective, there are no rules and thus no deadlines for the Member State of the previous registration to withdraw the vehicle from the register[140], therefore a vehicle may be registered in two countries at the same time, which hampers the identification of the actual offender and might even lead to the wrong person receiving a penalty notice for an offence that this person did not commit.

A study on the second-hand car market in Europe in 2014[141] revealed that approximately 3-4% of second-hand car purchases concerned a cross-border purchase. The study team has not identified cases in which the above-described situation has occurred. There have been some cases in which a person intentionally chose to not re-register the vehicle and committed traffic offences abroad[142]. Nevertheless, this intentional fraudulent behaviour was not the result of a legal gap (e.g. that a Member State did not remove the vehicle from its register) but the result of deliberately not re-registering the vehicle. It should further be noted that this issue is not related to the CBE Directive, which concerns the exchange of information included in VRD, but related to legislation on managing and maintaining the VRD. Therefore, it would be more appropriate to revise Directive 99/37/EC, especially concerning the provision in Article 5(2) thereof[143]. Hence, there is no evidence suggesting that this second issue is a significant problem.

Thirdly**,** information on final users/keepers of vehicles owned by a company/lease/rent/test-drive institution are not exchanged. Information that is exchanged only reveals the company name, thereby limiting the effectiveness of the cross-border exchange of information for the mentioned specific cases. Moreover, the exchange also results in an administrative burden for these organisations when they receive the information letter for the offence. From information available in their register, the organisation needs to forward the penalty notice received to the presumed offender (i.e. the driver of the vehicle at the time of the offence). It should be noted

139 In accordance with Section II.6 of Annex I to Council Directive 1999/37/EC, the registration certificate *may* include information on the vehicle category under component J and information on exhaust emissions under component V.

140 Article 5(2) of Directive 99/37/EC on the registration documents of vehicles (OJ L 138, 1.6. 1999, p.57).

141 https://commission.europa.eu/system/files/2018-05/2ndhandcarsreportpart1-synthesisreport_en.pdf

142 A similar issue was observed in Germany, where fraudulent behaviour with regards to (intentional) non re-registering a vehicle lead to a situation in which a German resident received sanctions from the Netherlands for cross-border offences she had not committed. Although it should be noted that this did not involve a (lack of) cross-border re-registration, but referred to the not re-registering a vehicle domestically (e.g. the new owner of the vehicle should have registered in Germany, but intentionally did not do so). This case was provided by DG MOVE.

143 It should be noted that the Commission already proposed some common rules for the cross-border re-registration of vehicles in the EU in 2012 (https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52012PC0164), but the proposal was not approved by the Council and was later withdrawn.

that rental companies might pass on the administrative burden to the presumed offender by charging an admin fee[144].

GDPR[145] rules can make forwarding these fines to the presumed offender more difficult. For example, it can take multiple weeks (or even months) to deliver a penalty notice to car rental/leasing companies and automobile institutions offering test-drives, when the vehicle is used for committing a traffic offence abroad. In many countries, re-contacting the responsible authorities with the information on the presumed offender has to be done by paper, which takes up even more time. Furthermore, depending on the type of lease, as explained in an interview for the study by Leaseurope, the penalty notices are firstly sent to the national centralised database and then forwarded to the leasing company, which then forwards it to the user of the vehicle. The request is repeated after 45 days. In terms of keeping the data long enough to ensure that a fine is responded to, there can be a reliance on the GDPR as the processing of personal data is justified by a legal obligation, which is the CBE Directive. The process, in addition, can potentially be repeated more times if the leasing company relies on the GDPR's legal base of legitimate interest[146] to keeping personal information, as leasing contracts include the payment of fines by the drivers at the moment of the infraction.

In conclusion, it seems that the third issue that is developed under problem driver c) results in an administrative burden for owners of company/lease/rent/test-drive vehicles that might be overcome if a system was put into place that directly allows the Member State, in which the offence was committed, to identify the actual user/keeper of the vehicle at the time the offence was committed.

It should be noted that the GDPR also requires the exchanged data to be accurate. This provision is very strict; incorrect personal data should not be shared. This indicates that, in case national VRDs are outdated and/or contain the wrong information, the data cannot be exchanged as per Regulation (EU) 2016/679. Hence, issues concerning problem driver d) not only hamper the functioning of the CBE Directive, as a presumed offender cannot be found, but it might also violate provisions under the GDPR if the exchanged personal data is inaccurate. GDPR rules provide Member States with an obligation to ensure that information in the VRD is error-free and up-to-date.

Expected development of the problem driver

The analysis reveals that the current size of the problem driver d is small. It is the understanding that issues with erroneous content of VRD will likely resolve themselves, as the GDPR requires exchanged information to be accurate and up-to-date. This should give Member States enough reason to safeguard the data quality included in the VRD. As a result, it does not seem necessary to impose additional rules on the quality of the VRD content.

There is not sufficient evidence to conclude that the existing legal gap, relevant to the cross-border re-registration of vehicles, currently results in substantial EU-wide issues, despite examples indicating that the consequences for individuals involved might be large. Moreover, it is our understanding that the legal gap should be addressed by another Directive, making this issue contextual to those affecting the functioning of the current CBE Directive.

Not allowing the exchange of information on the final user/keeper of the vehicle via VRD leads to an administrative burden for owners of company-, lease-, rental and test-drive vehicles, as sometimes this information is available in national VRDs. A particular

144 For example consider https://www.rentalcars.com/en/guides/rental-problems/traffic-fine-in-rental/.
145 Regulation (EU) 2016/679.
146 https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations/legal-grounds-processing-data/grounds-processing/what-does-grounds-legitimate-interest-mean_en.

provision, allowing the exchange of other information that might be included in the VRD (such as the end user at the time when the offence was committed) might be able to overcome some of this burden. Without a revision of the CBE Directive, this issue will likely persist.

4.2.2 Problem driver e. Use of databases other than vehicle registers to identify the offender is not allowed

The CBE Directive does not allow access to databases which are not used for their intended purposes (Article 4 (4)). The CBE Directive therefore effectively only allows the exchange of information that is included in the VRD. However, for some Member States this information is not sufficient to investigate the offence.

For example, Member States that adopt a (strict) driver liability regime have no means to check whether the driver of a foreign vehicle (identified from the photo taken by the automatic checking equipment) is the same as the vehicle owner/holder that is registered in the VRD. This would require access to the driving licence register (RESPER) or passport or ID card databases. Please note that this requirement comprises the same problem that is described under problem driver b.

Moreover, Member States indicate that they would like to investigate certain offences further. For example, they would like to know whether the vehicle driver has a valid driving licence. Information on this is not included in the VRD.

This problem driver was validated as important following stakeholder consultation. In a voting session during the consultation, regarding the exchange of information between Member States, increasing the interconnectivity of the systems received the highest number of votes, 15 of 39 (38%). To be more precise, many stakeholders would like the CBE Directive to also provide access (via an interface) to other already existing databases on the EU level.

> During an interview with the EUCARIS Secretariat, it was pointed out that all Member States are connected to RESPER which can be used for enforcement purposes. In general terms, stakeholders are of the opinion that access of police authorities to different databases/registers would improve the cross-border investigation.

Expected development of the problem driver

The issue that Member States cannot exchange additional information, although this is required for the investigation, will likely persist in the future if the CBE Directive is not revised. At EU level, there is a tendency to interconnect or establish EU-wide databases (or repositories) for the exchange of information (consider for example the e-CODEX projects[147]). Hence, it is expected that more information could potentially be available to Member States to investigate offences and that more data could potentially be exchanged. As more data will become available in the future to investigate offences, it is our expectation that the problem of limited access to databases will *increase in the future*. Stated differently, the benefit of enhancing the cross-border exchange of information under the CBE Directive is expected to increase, as more information will likely become available to investigate offences in the future.

[147] https://www.e-codex.eu/projects.

4.2.3 Problem driver f. IT problems at national level (contextual)

IT problems at the national level might hinder the availability of the VRD database when a search/request is made through EUCARIS. The requesting Member State is then unable to retrieve information on the vehicle owner/holder, which means that the investigation fails.

Information on the number of failed requests revealed that less than 1% of all requests made in 2019[148] returned a (technical) error. Most technical errors occur when the vehicle register of the receiving Member State could not be accessed (about 0.6% of the total number of requests or 68% of the requests that were returned due to a technical error). Proportionally to the total number of requests, France had the highest amount of system return errors, representing almost 5% of all requests. Other countries that had between 1% and 2% were Austria, Luxembourg and Portugal. The error rates were of low significance in all other countries.

In the survey, only one Member State (Portugal) indicated that it sometimes experienced interoperability problems between the vehicle registers at the regional and national level, which could affect the availability of the VRD when a request was made. Poland indicated that it sometimes experienced problems with accessing data from other countries, but that this was only a temporary problem.

Hence, it is our understanding that IT problems at the national level, leading to inaccessible information from the VRD for Member States that request the data, play only a minor role. The number of failed cases as a result of vehicle registers being unavailable is less than 1% and often the VRD is only temporarily down.

Moreover, it should be noted that IT issues at the national level fall outside of the CBE Directive. Although IT issues might hamper the functioning of the Directive, this issue cannot be resolved by a revision, making problem driver f 'contextual'.

Expected development of the problem driver

The current size of this problem driver is assessed to be small, and is *likely not to grow in the future*. As digitalisation is expected to increase in the EU (consider EU efforts regarding DigitalEurope, such as KPIs for eGovernment in 2025[149]), IT issues at the national level concerning accessibility of the VRD are likely to decrease even further.

4.2.4 Problem driver g. Different legal liability regimes applied by Member States

Even if the exchange of VRD is working accurately, the procedures, as laid down in the CBE Directive, might offer insufficient evidence to investigate the offender. This mainly has to do with the fact that Member States adopt different legal liability regimes.

Currently, these legal liability regimes can be categorised as follows:

- Owner/holder liability regime. A penalty is issued to the owner/holder of the vehicle, based on information included in the VRD, unless the owner/holder provides information on the driver/offender;
- Strict owner liability regime. Although the driver/offender is materially responsible for the infringement, the payment of the fine may be requested

148 The EUCARIS Statistics of the year 2019 were provided to DG MOVE as part of the study. The database can be found in Annex 9 of this document.

149 https://www.digitaleurope.org/resources/success-indicators-for-2025/

indistinctly to the owner/holder or to the driver/offender, even when the owner/holder identifies the driver/offender;

- Driver liability. A penalty is issued to the owner/holder of the vehicle with a request to identify the driver. If the owner/holder does not identify the driver, he is liable for the offence and has to pay the fine;
- Strict driver liability regime. A penalty is issued only to the driver of the vehicle. In cases where an offence is detected using automated/manual checking equipment (e.g. when the driver is not identified on the spot), the driver has to be identified from the picture produced by the equipment in order to issue a penalty.

Especially for countries that adopt a strict driver liability regime, only the actual vehicle driver can be held accountable for the offence. For these Member States, the CBE Directive provides too little evidence to follow-up detected offences, as it allows only the identification of the vehicle owner/holder (via the VRD) which is not necessarily the person that was driving the vehicle when the offence was committed. For example, enforcement authorities in Sweden have to provide evidence that the alleged offender was the driver of the vehicle with which the offence was committed. They cannot require the owner of the vehicle to identify the driver because this would contradict the privilege against self-incrimination foreseen by their national legislation. Besides Sweden, Germany also applies a strict driver liability regime.

In order for these Member States to follow up on offences, they need to be able to identify the driver. This means that they need to match the camera picture, in which a driver is visible, with information coming from another source. Such another source could be a passport photo, a picture included on the driving licence database (RESPER) or a photo included in an ID card database, or in the VRD. However, information on the characteristics of the vehicle owner/holder is only seldom included in VRD (such as a photo) and the usage of other databases is currently not allowed under the CBE Directive (also consider problem driver e). The CBE Directive is therefore likely less efficient in these Member States, as they rely on procedures in other Member States to identify the actual driver. There are of course other legal frameworks through which additional evidence can be exchanged, but their use is quite limited (also consider problem driver h).

Expected development of the problem driver

Currently, legal liability regimes, traffic rules and sanction schemes are decided upon at Member State level. Specifically, Germany and Sweden have problems when using the CBE Directive, due to the strict driver liability regime. It should be noted that Finland used to have the same problems as Sweden and Germany. However, Finland has recently decided to apply the vehicle owner/holder legal liability regime that significantly facilitates the prosecution of foreign offenders. Currently, there is no reason to believe that (all) Member States will converge in this respect. This view was supported by Member States in interviews and the workshop. Therefore, we expect the size of this problem to *remain constant*.

It should be noted that it is uncertain how this problem driver will evolve in the future, particularly regarding the transition to automated/autonomous driving and the possible shift in liability from the driver to other entities[150].

[150] European Commission, Directorate-General for Mobility and Transport, Montalvo, C., Willemsen, D., Hoedemaeker, M., et al., Study on the effects of automation on road user behaviour and performance: final report, Publications Office, 2020 https://op.europa.eu/en/publication-detail/-/publication/6d947c46-140d-11eb-b57e-01aa75ed71a1/language-en/format-PDF/source-search

4.2.5 Problem driver h. Limited recourse to the MLA Convention and EIO by the Member States

When the information exchanged between vehicle registers does not provide sufficient evidence for the investigation of a road traffic offence, the CBE Directive does not provide specific provisions on how additional information should be exchanged between Member States. Therefore, the exchange of evidence follows existing EU procedures laid down in other legal acts. The two instruments providing for mutual legal assistance between the Member States' competent authorities are the Convention on Mutual Assistance in criminal matters between Member States ('MLA Convention') and Directive 2014/41/EU regarding the European Investigation Order in criminal matters (EIO). Although the EIO has become the main legal tool to gather cross-border evidence, replacing the traditional acts mainly used for this purpose earlier, it co-exists with other instruments, including the MLA Convention, which can also be used under certain conditions. In some aspects, the two instruments are hence complementary. Both of them regulate the cooperation between Member States' judicial, police and customs authorities in cross-border investigations and are applicable for the purpose of cross-border gathering of evidence within the EU. To this purpose, they establish rules on cross-border investigative measures such as procedures for requests of assistance in investigations (e.g. transmissions and formalities), transfer of persons held in custody, hearing of foreign witnesses or experts, telephone interceptions, etc.

Following its introduction in 2017, the EIO offers judicial authorities a simpler and faster alternative to the traditional instruments for requesting evidence (providing for a single standard form for obtaining evidence, strict deadlines, limited possibilities for refusal by the executing State). However, the MLA Convention remains applicable (i) to investigative measures falling outside of the scope of the EIO, namely the setting up of a joint investigation team and the gathering of evidence within such a team (Article 13 MLA), and (ii) by Member States not bound by EIO, i.e. Ireland and Denmark, (in accordance with Protocols No. 21 and 22 annexed to the TEU and the TFEU). Both instruments' legal scope of application covers mutual assistance between Member States' judicial authorities in investigation in criminal matters and in administrative matters only to a limited extent. Specifically, they are applicable to 'proceedings brought by administrative authorities only '*where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters" (Article 3 MLA and Article 4 EIO).*

Although the MLA Convention and the EIO provide a proper legal framework for the exchange of information, identifying procedures to be followed and ensuring that the fundamental rights of EU citizens are safeguarded, their applicability for the exchange of evidence on road traffic offences is considered to be limited in practice.

This has two main reasons. First, the exchange of information is done by justice practitioners, whereas the investigation and follow-up of offences is often conducted by police authorities. This means that, in practice, a police authority from the issuing Member State first needs to request justice practitioners in "their" Member State to request information from another Member State. The justice practitioners in the requested Member State need to consider this request, and often request "their" police authorities to provide the information. This information is then transferred from the police authorities in the requested Member State to "their" justice practitioners, which pass it on to the justice practitioners in the issuing Member State. Finally, the justice practitioners in the issuing Member State send this information to the police authority which then continues the investigation. This process can be quite time-consuming, especially when considering the low severity of the offence it concerns (a road-safety-related traffic offence, usually speeding) and the associated (financial) penalty that is usually quite small.

Secondly, the exchange of the evidence foreseen under the two instruments can be used for criminal and administrative offences. However, as mentioned above, both instruments specify that 'the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters'. This means that appeal procedures for offences should be addressed in all cases by a criminal court, even when the offence is classified as administrative in the issuing Member State.

Because of these reasons, Member States do not make much use of the MLA Convention and the EIO for road traffic offences, especially when the presumed offender committed an offence that is classified as administrative. Member States did indicate, in their replies to the survey, that they made use of bilateral agreements to exchange the evidence or the multilateral CBE Agreement of the Salzburg Forum.

One of the outcomes of the stakeholders' consultation carried out in the context of the 2016 Evaluation was that many Member States declared not to avail themselves of the MLA Convention in investigations concerning road traffic offences. In the recent report on the implementation of the EIO Directive[151], no Member State has mentioned the application of EIO to investigate road traffic offences.

As noticed above, recent outcomes of the survey carried out for this Study confirm those findings, showing that the majority of Member States have a mixed system of sanctions applying to road traffic offences with the same offence being qualified as administrative or criminal (depending on the seriousness of the offence). Latvia, Lithuania and Slovakia indicated that they used both instruments, Austria indicated that it only used the EIO and Iceland indicated that it only used the MLA Convention. Iceland, Lithuania and Austria indicated that these instruments were in practice only used when investigating criminal offences (such as drinking under the influence of alcohol or drugs) and not commonly used in the investigation of misdemeanours such as minor road traffic offences.

It is our understanding that this problem driver has a restrictive effect on the investigation procedure under the CBE Directive, as in practice Member States seem to (effectively) only use information included in the VRD to investigate administrative offences[152]. If the VRD does not provide sufficient evidence, the procedures under the MLA Convention and the EIO are considered to be cumbersome when it concerns the exchange of evidence related to minor road traffic offences. It appears that these instruments are rather used for the investigation of (serious) road traffic accidents than for road traffic offences.

Information from the workshop

During the 2020 CBE workshop, the stakeholders stressed that the cross-border investigation mechanism could be improved through digitisation and police-to-police cooperation. Austria and Spain recommended designing an *ad hoc*[153] digitised mechanism for the investigation of road traffic offences under the CBE Directive, considering that this should not interfere with the subsidiarity principle. In the 2021 workshop, the EUCARIS Secretariat explained that they have developed a software for the exchange of vehicle owner/holder data in relation to parking offences (non-payment of fees as well as dangerous parking), which is used in the framework of bilateral treaties. From a technical point of view, the software is at an advanced stage, it

[151] COM(2021) 409 final

[152] Earlier information from EUCARIS revealed that the overwhelming majority (96%) of requests concern speeding offences, which in many countries is considered to be an administrative offence (if the speed limit was only slightly exceeded).

[153] Austria refers to the Salzburg CBE Agreement within this context, as it offers administrative and criminal justice practitioners the possibility to send the CBE relevant requests for mutual legal assistance (MLA) in a digitised way. Spain does not provide further clarification.

can easily cover additional offences, and allow the exchange of files for investigation purposes between Member States.

Expected development of the problem driver

The current size of this problem driver is considered to be substantial. Although DG JUST is currently working on a digitalisation strategy, possibly increasing the efficiency of the exchange of evidence, the information exchange will still be tailored to criminal offences and its applicability to administrative offences is likely to remain limited. Hence, it is expected that the size of this problem driver will *remain constant*.

In the revision of the CBE Directive, possible measures aimed at a better-suited procedure for the exchange of evidence for administrative offences should be considered. Particularly interesting in this respect is the procedure that is set up in the context of the multilateral CBE Agreement of the Salzburg Forum.

4.3 Problem 3 – Inadequate cross-border enforcement of financial penalties

If the investigation of the offence is successful, a penalty notice is sent to the presumed offender abroad. The issuing Member State (the Member State sending the penalty notice) then awaits the financial payment from the presumed offender. If the presumed offender does not pay the financial penalty voluntarily, the issuing Member State would need to enforce the decision in another Member State (executing Member State).

The 'voluntary' payment rate

The Evaluation of 2016[154] found that in about 50% of investigated cases, in which a road traffic offence was committed by a foreign registered vehicle, a financial payment was made voluntarily after an information letter/penalty notice was sent. In the remaining 50% of the cases, the financial penalties were practically not enforced. Interestingly, the voluntary payment rate seems to have increased in the past years. For this IA Support Study, Member States were asked to provide information on the number of voluntarily paid penalty notices. Some Member States, such as NL, BE and FR keep statistics on the share of penalty notices provided to foreign offenders that are paid voluntarily (NL, BE, FR, HU). Some other Member States provided estimates (ES, CZ). The results are presented below (Table 4.4).

Table 4.4 Share of 'voluntarily' paid penalty notices

Member State	Share of voluntarily paid penalty notices
NL	81%
FR	89%
BE	87%
HU	48%
LU	79%
ES	Approx. 80%
AT	Approx. 60%

Sources: National Statistics (online), interviews, information provided to DG MOVE under Art. 6 of the Directive.

[154] SWD(2016) 355 final and the supporting study (https://op.europa.eu/en/publication-detail/-/publication/77b97427-3c33-11e6-a825-01aa75ed71a1/language-en)

The Evaluation study of 2016 estimated the voluntary payment share to be 50%. It found a number of 54% in Belgium, around 75% in the Netherlands, almost 90% in France, 35% for Hungary and 50% for Spain. The assessment in the Evaluation was mainly conducted on the same subset of countries for which information was gathered in the context of this study (Table 4.4). This indicates that the share of voluntarily paid notices in these countries improved since 2016.

It should be noted that NL, BE and FR are not necessarily representative for the EU, as these countries also engage in bilateral agreements with each other. On the other hand, these countries represent more than 25% of all speeding offences committed in Europe (also consider Table 4.1), indicating that the voluntary payment rate in these countries has a high relevance in the EU context. Based on the increase observed in the subset of Member States, we assume that the voluntary payment rate has increased, from 50% to 70% on an EU level.

It is not entirely clear why the voluntary payment rate has increased, but the provided legal framework, through the (full) implementation of the CBE Directive in Member States, might have had an impact. Furthermore, Member States in this subset are (nowadays) sending automatically translated penalty notices, indicating that the information available to presumed offenders has increased (also consider Problem 4).

Although the 'voluntary' payment rate has increased, there is still a considerable amount of penalty notices that are not paid voluntarily[155].

The CBE Directive mainly specifies instruments through which information can be exchanged to identify the owner/holder of the (foreign registered) vehicle in which an offence was committed.

Under the CBE Directive, there is no procedure to ensure the mutual recognition of financial penalties by Member States. Under Recital 15 of the CBE Directive, in case of non-payment of a financial penalty (imposed on a non-resident), Member States can follow-up according to other applicable legal instruments, including instruments on mutual legal assistance and mutual recognition. Most notably, Member States can make use of the procedures specified under Framework Decision 2005/214/JHA[156] ('the Framework Decision') to request the Member State in which the offender resides to enforce the financial penalty. It is our understanding that approximately 95% of requests to recognise the decisions using the Framework Decision are related to road traffic offences.

Framework Decision 2005/214/JHA

The EU instrument for the mutual recognition of a Member State's administrative or judicial decisions on financial penalties issued by a foreign authority is Framework Decision 2005/214/JHA[157] ('the Framework Decision'). It enables a judicial or administrative authority to transmit a decision involving a financial penalty directly to an authority in another EU country and to have that decision recognised and executed without any further formality. The

[155] It should be noted that, in practice, a payment rate of 100% will never be reached, since appeal procedures are sometimes successful, indicating that the presumed offender is not always found guilty (and is therefore 'right' not to pay voluntarily).

[156] Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, OJ 2005 L 76, p. 16, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

[157] Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, OJ 2005 L 76, p. 16, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

scope of the instrument covers the enforcement of penalties based on criminal offences and administrative offences on condition that these are grounded on decisions subject to a judicial review under a procedure similar to criminal proceedings (Framework Decision, Article 1).[158] Thus, the difference among Member States as to the applicable judicial review procedure for road traffic offences (e.g. criminal or administrative) influences whether the mutual recognition established by the Framework Decision on cross-border enforcement of penalties can be used. In many EU jurisdictions, road traffic offences are qualified as minor administrative offences, subject to limited judicial review, and their recognition is de facto not pursued under this EU framework. Furthermore, as it arises from desk research and consultations, some Member States signed and operate on the basis of bilateral or multilateral agreements, involving also EFTA countries[159] to cover cross-border enforcement issues with a streamlined procedure and tailor-made for fines based on road-traffic offences (also consider Annex 6).

The third problem focuses on the issues related to the cross-border enforcement of financial penalties. The analysis will show that this instrument is mainly tailored to the mutual recognition of offences that are categorised as 'criminal' and to a lesser extent for offences that are categorised as 'administrative'. Most road traffic offences are considered to be administrative offences, indicating that the mutual recognition of financial penalties described under Framework Decision 2005/214/JHA is not ideal for road traffic offences.

The summarised finding above is further described in the analysis that follows. A graphic presentation of Problem 3 is offered in Annex 2.

Causal pathway problem 3

The majority of CBE related investigations results in the identification of the presumed offender. Under problem 2, we estimated that 80% of the investigations are successful (indicating that a penalty notice is provided to the presumed offender). Based on this information, the authorities can send the driver / offender a penalty notice. In most cases, the offender voluntarily pays the fine. In such a case, the Member State in which the offence was committed receives the payment and can recover the costs made during the investigation phase.[160] As was described above, we estimate that in general (approximately) 70% issued penalty notices are paid voluntarily.

In case the offender does not voluntarily pay the fine, national authorities of the Member State where the offence was committed, need to try to collect the fine. This requires assistance from national authorities in the country where the offender resides. This is an area where problems can occur, as Figure 4.4 highlights. One recurring issue is that a road traffic offence committed is seen as a criminal offence in one country and as an administrative offence in the other. The applicable EU legal framework for mutual

[158] A "'decision' shall mean a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by:… (iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters" (Framework Decision Article 1 (a) (iii)).

[159] The Salzburg Forum CBE Agreement among Austria, Hungary, Croatia and Bulgaria of 2012; The Nordic Police Cooperation Agreement of 1 January 2003 among Iceland, Norway, Sweden, Denmark and Finland; The Bilateral Agreement between France and Luxembourg of 2004: The Bilateral Agreement between France and Switzerland of 2009; The Bilateral Agreement between Austria and Germany of 19888 (operational since 1990); The Police Cooperation Agreement among Austria, Switzerland and Lichtenstein of 2012.

[160] Fines paid often become part of the general budget. The police authorities as well as the other authorities involved in the follow-up of road safety offences committed are paid from this general budget. Hence, one could state that the costs incurred during the investigation phase are covered by the offender.

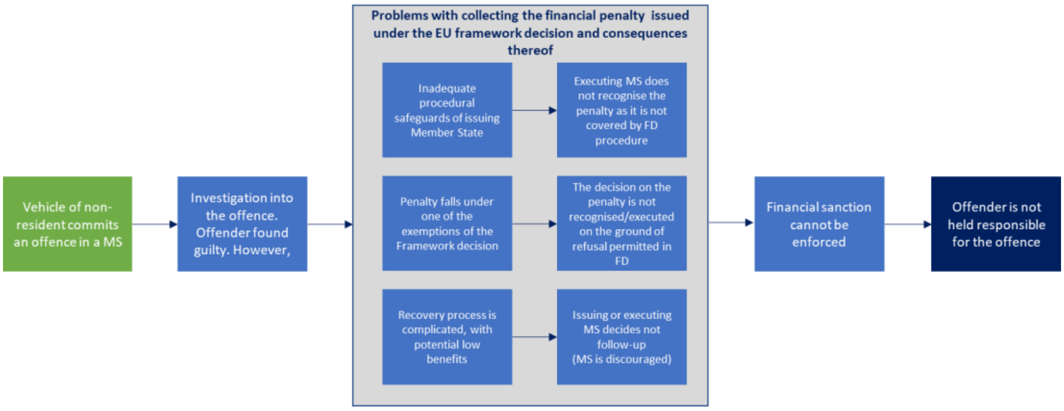
assistance to collect penalties is based on mechanisms which are made mainly for criminal matters. When road traffic offences are qualified as administrative offences and dealt by courts having jurisdiction purely in administrative matters or by administrative authorities (e.g. tax or financial administrations), national authorities of the executing state can refuse to cooperate in the collection of the fine because the request and procedure to be followed by the existing EU rules might not meet the stricter demands for procedures established under criminal courts. Since a criminal court will therefore not recognise the decision, the offence does not have to be recognised according to the Framework Decision[161].

Consequently, it is found that the application of Framework Decision 2005/214/JHA rarely results in enforced decisions when it concerns traffic offences. The Evaluation found that the overall rate of enforcement of road traffic penalties under the Framework Decision varies from 0 to 1%[162]. Member States confirm that this assessment is considered to be accurate.

Moreover, according to the Framework Decision (Article 13), the Member State in which the offence was committed (issuing state), does not receive the payment of the financial penalty, as it remains in the executing state, unless otherwise agreed between the two countries concerned. As a result, the costs made for the investigation and enforcement of the financial penalty in the issuing state are usually not recovered if cross-border enforcement instruments are used. For this reason, the Member State in which the offence is committed, might conclude that the efforts to collect a financial penalty do not outweigh the incurred costs and decide not to further pursue the matter.

In these cases, the driver does not bear any costs as he or she does not have to pay the fine and also no legal action from their side is required. The driver is not held responsible for the offence. This is shown in Figure 4.4.

Figure 4.4 Causal pathway for problem 3



161 This issue is particularly affecting the Czech Republic, as Germany does not recognize their decision to enforce road traffic offences committed by vehicles that are registered in Germany.

162 Our information suggests that, in practice, a cross-border recovery procedure is rarely initiated if an offender does not pay voluntarily. If mutual recognition procedure would be initiated under Framework Decision 2005/214/JHA, the recovery rate is expected to be higher than from 0 to 1%. This is particularly relevant for the Member States which apply same legal liability regimes or apply compatible legal proceedings in the case of road traffic offences. Based on the information received from Germany, Sweden and the Netherlands, from 55% to 70% of decisions under the Framework Decision seem to be mutually recognised. However, the number of initiated procedures under the Framework Decision is extremely low in the EU. Thereby, if an offender does not pay the financial penalty voluntarily, we estimate that only from 0 to 1% of the financial penalties are enforced as the Member States have no other instrument to apply than the Framework Decision (besides using debt collecting companies).

4.3.1 Problem driver i. The mutual recognition procedures for cross-border enforcement of financial penalties not tailored to mass detection of road traffic offences qualified as administrative

The EU instrument for the recognition of a Member State's administrative or judicial decisions on financial penalties issued by a foreign authority is Framework Decision 2005/214/JHA. The Framework Decision contains strong requirements for the procedure to be followed and, in Article 7, it lists numerous grounds for the non-recognition of decisions on financial penalties.

However, the strict procedural requirements are not always met in the context of (less serious) road traffic offences. The first issue with the application of the Framework Decision for road traffic offences stems from the classification of the offence (criminal or administrative).

According to the ECJ, the scope of this instrument covers the cross-border enforcement of financial penalties (pecuniary sanctions) imposed for criminal and administrative offences. However, administrative offences can only be mutually recognised on condition that these are grounded on decisions subject to a judicial review under a procedure similar to criminal proceedings.

EU Court of Justice

The ECJ[163] has provided elaboration on the definition of 'a court having jurisdiction in particular in criminal matters' and clarified that it is 'an autonomous concept of Union law and must be interpreted as covering any court or tribunal which applies a procedure that satisfies the essential characteristics of criminal procedure.' In practice, it means that in front of such a body a series of specific procedural guarantees apply, namely: the right to interpretation and translation, the right to information about rights, the right to legal advice and legal aid before and at trial, and the presumption of innocence. Consequently, the mutual recognition of financial penalties under the Framework Decision 2005/214/JHA cannot take place when the decision is adopted by a judicial or administrative authority of a Member State which does not foresee the above-mentioned minimum procedural guarantees.

The ECJ clarified further that:

- the fact that the penalty at issue in the main proceedings is administrative in nature has no bearing on the obligations incumbent on the competent authorities of the Member State of execution[164];
- Article 7(2)(g) and Article 20(3) of the Framework Decision must be interpreted as meaning that where a decision requiring payment of a financial penalty has been notified in accordance with the national legislation of the issuing Member State, indicating the right to contest the case and the time limit for such a legal remedy, the authority of the Member State of execution may not refuse to recognise and execute that decision provided that the person concerned has had sufficient time to contest that decision, which is for the national court to verify, and the fact that the procedure imposing the financial penalty in question is administrative in nature is not relevant in that regard [165]. In short, denial of requests can only be the exception, also when fundamental rights infringements may be at stake.

[163] Case C-60/12 – Baláž - judgment of 14 November 2013, ECLI:EU:C:2013:733, pt 42.
[164] C-671/18 CJIB pt 49.
[165] C-671/18 CJIB pt 50.

Hence, the difference between Member States as to the applicable judicial review procedure for road traffic offences which can be qualified as criminal or administrative has a serious impact on whether the mutual recognition established by the Framework Decision can be used. In some Member State jurisdictions, road traffic offences are dealt by financial administrations/tax authorities (regardless of whether these offences are qualified as administrative or criminal) or by administrative authorities, not applying adequate review that may lead to a refusal of the decisions. It should be noted that most speeding offences (e.g. speeding offences where the driver exceeded the speed limit by a few kilometres per hour) are classified as administrative in the majority of Member States.

Since most requests under the CBE Directive currently concern speeding offences (also consider problem driver a), the financial penalty is mostly related to administrative offences.

The different qualifications of traffic offences among Member States, and consequent procedural rules and related procedural rights, may limit the applicability of the Framework Decision's mechanism.

The MLA Convention, the European Investigation Order (also consider problem driver h) and Framework Decision 2005/214/JHA (problem driver i) are instruments for judicial cooperation in criminal matters. Due to a peculiar concept of administrative-criminal law in their national systems, certain Member States (i.e. Austria, Germany, etc.) are able to make recourse to such instruments also for administrative cooperation when the judicial review procedure applicable is the same as in criminal proceedings. Experience shows that, more often, it is very difficult for the issuing administrative courts/authorities to meet the requirements and standards needed to be able to activate cooperation mechanisms under the above-mentioned EU instruments (i.e. to meet the requirements for service of procedural documents, remedies or translation).

This creates an unbalanced system, since only a few Member States can benefit from the cross-border enforcement mechanisms currently available at EU level. The Framework Decision, as it targets criminal offences, has to provide the presumed offender with an accurate protection of fundamental rights (such as the right for a fair trial). However, there is some doubt as to which of the strict procedural requirements specified under the Framework Decision are proportionate when considering administrative road traffic offences.

Besides the classification of the offence (as administrative or criminal), Article 7 of the Framework Decision provides numerous grounds for the executing State for the non-recognition of a decision involving a financial penalty. In particular, under the mutual recognition principle, the executing state, without applying additional formalities, has to take all the measures necessary for the enforcement of the foreign decision, if transmitted according to the rules. The grounds for refusal to recognise or enforce such a decision must be interpreted restrictively[166]. Nevertheless, in practice, the erroneous interpretation and transposition of Article 7 appears to limit the scope of the Framework Decision, because it increases the number of cases to reject decisions. For example, the particular ground of refusal of the financial penalties which amount to less than EUR 70 may have a direct impact on the mutual recognition of financial penalties related to road traffic offences, which often do not reach this limit.

Furthermore, procedural rules applicable to the review of sanctions for road traffic offences differ in the Member States. For example, different deadlines for the submission of penalty notices (information letters) to non-resident offenders and for issuing administrative/judicial decisions to recognise the penalties, might result in statute-

[166] C-60/12, Baláž, pt 29, C-671/18 CJIB pt 31.

barred execution of the decisions, as laid down in Art. 7(2)(c) of the Framework Decision.

Finally, it should be reckoned that the procedure under the Framework Decision can become quite time-consuming and therefore costly for a Member State. When enforcing a financial penalty abroad using the Framework Decision, the revenues stemming from the financial penalty accrue to the executing State (the Member State where the presumed offender resides) unless Member States jointly agree on another division (Art. 13). Hence, there is often no (financial) incentive for the Member State in which the offence took place to start the procedure under the Framework Decision.

Besides the financial gain being inexistent or very small, the whole procedure, from detecting and investigating an offence to enforcing the financial penalty, is more tedious if the vehicle has a foreign licence plate. Respondents were asked how much time they spent on investigating an automatically detected offence, differentiating between domestic and foreign vehicles. The findings indicate that, on average, the investigation time is 15 minutes when it concerns an offence committed in a foreign vehicle[167] and 8 minutes when it concerns an offence committed in a domestic vehicle. Moreover, when sending a penalty notice to a foreign country, stakeholders indicate that there are translation costs involved as the penalty notice should be translated into a language that is known to the presumed offender. Finally, mailing charges (post stamps) are higher when a notice needs to be sent across borders.

Besides additional time spent on investigating an offence and providing the presumed offender with a penalty notice, the enforcement of financial penalties is more complex. When enforcing financial penalties domestically, the local authorities have the ability to do so within their national law (and they tailor this approach to their national legislation as efficiently as possible). The procedure under the Framework Decision, although well-functioning in general, is more burdensome than using only national procedures (especially for administrative offences). The fact that it is more cumbersome to investigate and enforce penalties when the offence was committed with a foreign-registered vehicle results in higher follow-up costs for cross-border enforcement.

When compared with the 'benefits', the financial payment made by the presumed offender, it is also reckoned that the penalties associated with road traffic offences can be very low (between EUR 30 and EUR 40), even if they are qualified as criminal offences. This might deter Member States from investigating the offence in the first place. Indeed, some Member States indicated that they simply do not act to enforce financial penalties provided to non-resident citizens, as this procedure would be too costly when compared to the revenues that this might lead to.

The number of (automatically) detected road traffic offences in 2005 was substantially lower than is the case nowadays. The impact assessment for the initial CBE Directive, conducted in 2007, gathered information on the number of checking equipment that was installed in 2004. It found that, for a subset of Member States[168], some 5.200 units were installed.

When compared with the current number of checking equipment for these countries (see Table 4.1), it is found that the number of checking equipment is now almost 6 times higher (at 30.000 units) in these Member States. This finding is further substantiated by Table A.5 on the number of issued speeding tickets in Member States. From this table, it becomes clear that the number of tickets has increased by 33%

[167] In reality, the difference might be significantly larger as the problem analysis shows that not all traffic offences are investigated.

[168] The impact assessment in 2008 retrieved information for Austria, Belgium, Cyprus, Czech Republic, France, Germany, Greece, Ireland, Italy, Lithuania, Malta, Netherlands, Poland, Slovenia, Spain and Sweden.

between 2010 and 2017. Finally, the number of requests/searches made through EUCARIS has increased substantially in the period 2014 – 2019. In 2014, around 1.4 million requests were made through EUCARIS, and this number increased to almost 12 million requests in 2020. This corresponds to an increase of 800% over a period of six years. The data is obtained for different years, and thereby one should be careful in making comparisons. Nevertheless, these developments (in number of checking equipment, searches through EUCARIS and detected offences) all suggest that enforcement intensity has increased substantially in the past two decades.

Stakeholder views on the Framework Decision in relation to the CBE Directive

The Czech Republic, contributing to consultations in the framework of the CBE workshop of 26 June 2020, stated that, in their opinion, while there were instruments for judicial recognition and execution of foreign decisions in criminal matters, a specific instrument for administrative cross-border recognition and execution of administrative sanctions (typically financial penalties, but also driving disqualifications) for road traffic offences was missing. The Czech Republic argued that an *ad hoc* procedure for road traffic offences qualified as administrative offences should cover the phases of cross-border investigation and cross-border enforcement of imposed (administrative) penalties/sanctions for driving offences.

This is based on the opinion, shared with other stakeholders, that current existing instruments for international cooperation used for the execution of sanctions for road traffic offences, are not tailored to cover the enforcement of administrative offences. Hence, the current practice is that a substantial number of requests for the mutual recognition of financial penalties fail as procedural guarantees are often not met.

According to practical experience in Germany, it appears that the proceedings under Framework Decision 2005/214/JHA work very well, especially in the case of road traffic offences. It is the opinion of German authorities that any other instrument would face the same obstacles in the cross-border investigation of road traffic offences. It is also not clear why criminal offences regarding road traffic should have a different standard when it comes to fair trial rights and human/fundamental rights guarantees than other criminal offences. Germany did not appear to be aware of the difficulties in the functioning of the mechanism of mutual recognition of financial penalties when a road traffic offence is qualified differently in the executing Member State and the issuing Member State. Thus, Germany strongly supports measures to facilitate the investigation of cross-border road traffic offences but will not support an additional system of cross-border enforcement of sanctions.

From 2010 to June 2020, Germany has received about 84,000 incoming requests. About 78,000 cases have been closed so far. Approximately 29% of the total cases were rejected, i.e. 18.3% of the total cases were rejected for reasons not related to the Framework Decision (e.g. the person concerned has deceased/moved to another State/to an unknown address/cannot be found). Around 10% were rejected for other reasons.

Finland stated that the grounds for non-recognition of road traffic financial penalties based on Framework Decision 2005/214/JHA were not often applied. The reason for the non-execution of sanctions was usually related to the problem of identification of the offender (e.g. the VRD is not updated as the offender has moved out of the country and the new residence is unknown in Finland).

Sweden also reported that the most common ground for non-enforcement of financial penalties was the inability to locate the offender. Apart from that, it was also common that the certificate accompanying the transmission of the decision was incomplete. In general, under national law, the enforcement procedure would provide for the confiscation of assets of the debtor for a maximum of two years. The same procedure would apply to any infringement committed by drivers of foreign vehicles, but the enforcement procedure was more difficult.

Spain indicated that the (perceived) inability to enforce decisions on financial penalties for road traffic offences was the main problem that the country experienced. It therefore suggested that the revision of the CBE Directive should focus on resolving this issue.

France expressed the view that the Framework Decision did not really work for the issue at hand. A lot of requests failed which was due to the Framework Decision. Hence, France would support a streamlined and tailored approach for the mutual recognition of financial penalties (instead of relying on the Framework Decision).

Expected development of the problem driver

As was mentioned before, the enforcement of sanctions and mutual recognition procedures are currently out of the scope of the CBE Directive.

The qualification of road traffic offences (criminal or administrative) is currently under the competence of Member States. In the CBE workshops (organised by ECORYS in June 2020 as well as in January 2021), Germany, supported by the Netherlands, refused to include any specific rules on the mutual recognition of financial penalties imposed for road traffic offences to the revision of the CBE Directive. Germany considers existing rules under the Framework Decision, which apply to all criminal offences, as sufficient. For Spain however, new rules on the mutual recognition of financial penalties is the most important issue of the entire revision. Also, other Member States such as France and the Czech Republic requested specific rules on the mutual recognition of financial penalties to be included. According to the information available to the Commission, such rules would also be welcome in Italy and in Romania. The issues observed when using the Framework Decision for road traffic offences (qualified as administrative) will likely persist. To overcome them, Member States might engage in bi- or multilateral agreements to develop mutual recognition procedures.

There is sufficient reason to believe that the number of checking equipment (and therefore the number of detected offences) will increase in the coming years. Information from the European Transport Safety Council (ETSC) indicates that the number of automatic checking equipment has been increasing over the past ten years. Also, recent news articles on this issue included on the ETSC webpage, seem to indicate that the installed checking equipment will increase in the future[169]. Finally, due to technological developments, some Member States are conducting or have conducted pilots with the automatic detection of using the mobile phone while driving or of the failure to use the seat belt[170] [171] [172]. Therefore, it is likely that the request from some Member States for a more streamlined and tailored approach in the mutual recognition of financial penalties will persist.

169 https://etsc.eu/tag/speed-cameras/.
170 https://etsc.eu/new-spanish-safety-cameras-to-detect-seat-belt-use/.
171 https://www.rtlnieuws.nl/nieuws/nederland/artikel/5197193/slimme-camera-automobilist-telefoon-handen-boete.
172 https://www.vrt.be/vrtnws/nl/2020/12/15/belgie-test-cameras-die-je-beboeten-voor-filmpje-kijken-of-belle/.

4.4 Problem 4 – Inadequate cross-border enforcement of driving disqualifications

If the investigation of the offence is successful, and the applicable sanction concerns a driving disqualification, the issuing Member State has no (European) instrument to enforce this decision abroad.

The CBE Directive mainly specifies instruments through which information can be exchanged to identify the owner/holder of the (foreign registered) vehicle with which an offence was committed. It does not specifically provide instruments to enforce sanctions.

Driving disqualifications may consist of the restriction, suspension, withdrawal or cancellation of driving licences; measures that are no longer subject to a right of appeal. They are imposed for particularly serious or reiterated road traffic offences, usually road-safety-related ones, which may vary depending on the Member State.

In fact, some rules on mutual recognition of driving disqualifications are enshrined in Article 11 of the Driving Licence Directive 2006/126/EC[173] (hereinafter the 'Driving Licence Directive').[174] Nonetheless, the existence of an obligation of mutual recognition of disqualifications, as well as its content, has been challenged in Court on several occasions, due to doubts stemming from the wording of the Driving Licence Directive (and its predecessor, Directive 91/439/EEC[175]) and to the different treatment of disqualifications imposed on residents and non-residents.

EU Court of Justice

The current framework results from the layered interpretation of Article 11 provided by the Court. Under this, it results that EU-wide effect of driving disqualifications is only guaranteed

[173] Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences; *OJ L 403, 30.12.2006, p. 18–60.*

[174] Article 11 reads: "*Various provisions concerning the exchange, the withdrawal, the replacement and the recognition of driving licences:*
1. Where the holder of a valid national driving licence issued by a Member State has taken up normal residence in another Member State, he may request that his driving licence be exchanged for an equivalent licence. It shall be for the Member State effecting the exchange to check for which category the licence submitted is in fact still valid;
2. Subject to observance of the principle of territoriality of criminal and police laws, the Member State of normal residence may apply its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive to the holder of a driving licence issued by another Member State and, if necessary, exchange the licence for that purpose;
3. The Member State effecting the exchange shall return the old licence to the authorities of the Member State which issued it and give the reasons for doing so;
4. A Member State shall refuse to issue a driving licence to an applicant whose driving licence is restricted, suspended or withdrawn in another Member State;
A Member State shall refuse to recognise the validity of any driving licence issued by another Member State to a person whose driving licence is restricted, suspended or withdrawn in the former State's territory;
A Member State may also refuse to issue a driving licence to an applicant whose licence is cancelled in another Member State.
5. A replacement for a driving licence which has, for example, been lost or stolen may only be obtained from the competent authorities of the Member State in which the holder has his normal residence; those authorities shall provide the replacement on the basis of the information in their possession or, where appropriate, proof from the competent authorities of the Member State which issued the original licence;
6. Where a Member State exchanges a driving licence issued by a third country for a Community model driving licence, such exchange shall be recorded on the Community model driving licence as shall any subsequent renewal or replacement.
Such an exchange may occur only if the licence issued by the third country has been surrendered to the competent authorities of the Member State making the exchange. If the holder of this licence transfers his normal residence to another Member State, the latter need not apply the principle of mutual recognition set out in Article 2."

[175] Council Directive 91/439/EEC of 29 July 1991 on driving licences, OJ L 237, 24.8.1991, p. 1–24.

when it is the Member State of residence applying the measure (and amidst a ban for applying for a new licence in another Member State). Otherwise, when the disqualification targets a non-resident, the latter is always allowed to keep driving through all of the EU, except for the territory of the country where he was convicted. All the more, outside an express ban to this effect (or when other Member States are not duly informed of a pending ban) the non-resident driver will be able to apply for a new licence in his country of residence, to recover the right to drive everywhere, as the new permit is to be recognised, in principle, even in the country of offence. The same might be done by a driver disqualified in his own country, by changing his residence before applying for a new permit.

Another issue is that, because there is no harmonised legal framework, it is almost impossible to recognise decisions abroad. For example, some countries are using demerit points, whereas other Member States only adopt direct driving disqualification schemes. This raises the question on how a demerit point scheme should be enforced if the executing Member States does not have such a provision.

The summarised findings above are broken down into different problem drivers in the analysis that follows. A graphic presentation of Problem 4 is offered in Annex 2.

Causal pathway problem 4

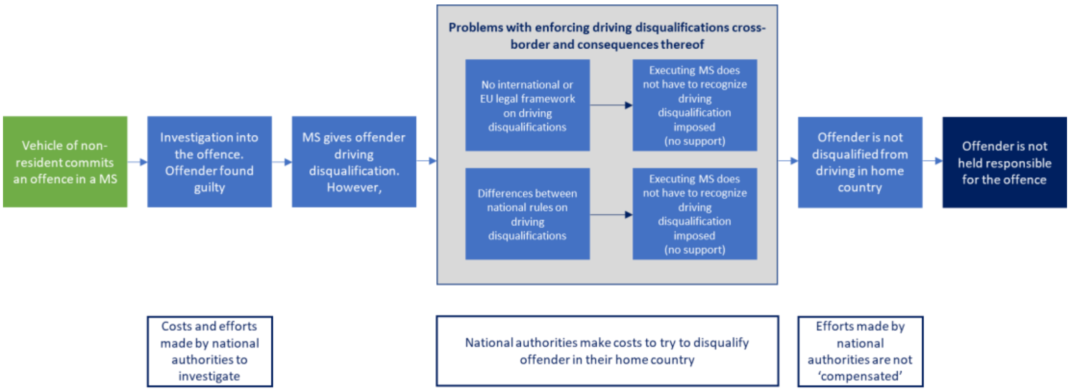
Besides a financial penalty, an offender who committed a road traffic offence can also be punished with a driving disqualification (either restriction, suspension, withdrawal or cancellation). In some Member States (e.g. Greece), there are no financial penalties applied to certain offences under the CBE Directive, but exclusively driving disqualifications (i.e. administrative sanction). This means that the offender is not allowed to drive (temporarily or permanently) in the country where the offence has been committed. Despite the principle of mutual recognition of driving disqualifications within the EU under the Driving Licence Directive and at international level among Contracting Parties to the UN Vienna Convention on Road Traffic (1968),[176] so far, the system is not working properly, due to the lack of exchange of information between Member States and the lack of a clear legal framework ensuring proper implementation of the principle of mutual recognition of disqualifications. Currently, the mutual recognition of disqualifications seems to be working only in the framework of bilateral agreements addressing this matter with detailed rules. To our knowledge, only one agreement in Europe exists in this respect, namely between the United Kingdom and Ireland.[177]

As a result of the problems described above, foreign offenders are often only disqualified from driving in the country where they have committed the offence but can still drive in all other EU Member States, except the ones where bilateral agreements (including more detailed provisions) handle the situation. This is a major issue, if one considers the serious risk on the road safety of drivers circulating within the EU who have their driving licence suspended or withdrawn in one of the Member States for serious and reiterated breaches to road traffic rules. The causal pathway is provided in Figure 4.5.

[176] The 2006 consolidated version of the Convention on Road Traffic, done at Vienna on 8 November 1968, is available under: https://unece.org/DAM/trans/conventn/Conv_road_traffic_EN.pdf).

[177] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/560719/EM_Ireland_driv_disqual.pdf

Figure 4.5 Causal pathway for problem 4



For an in-depth analysis of the legal issues and possibilities regarding driving disqualification, refer to Section 2.3 (legal analysis) and Annex 3 of this report.

4.4.1 Problem driver j. Inadequate/missing EU rules on driving disqualifications (contextual)

An EU framework for uniform cross-border enforcement of driving disqualifications was proposed in the Convention on driving disqualifications of 1998 (Council Act of 17 June 1998)[178], which did not enter into force due to a lack of ratifications by Member States (only seven Member States ratified it). For this reason, it was repealed in 2016.[179] Relevant rules have instead been adopted in the Driving Licence Directive (see Article 11) but they are incomplete and would benefit from further clarification. As a clear framework is absent, the mutual recognition of foreign disqualifications ends up being problematic, with Member States having different rules (e.g. some use demerit point systems, grounds for disqualification may differ, etc.).

As the legal analysis, conducted in Chapter 2, shows, the Driving Licence Directive is the most appropriate legal act to establish adequate rules at EU level. Chapter 2 also provides a framework on how the Driving Licence Directive should be revised.

Therefore, although problem driver j) hampers an effective functioning of the CBE Directive, the issue cannot be solved by a revision of this Directive, making this problem driver 'contextual'.

Expected development of the problem driver

As the problem driver specifically relates to incomplete rules at EU level, it seems that EU action is desired. It is our understanding that the Driving License Directive will be revised soon. Since it is currently unclear what elements in this Directive will be revised, it is uncertain how this problem driver will develop.

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178 Council Act of 17 June 1998 drawing up the Convention on Driving Disqualifications (98/C 216/01), OJ C 216, 10.7.1998, p. 1.

179 Regulation (EU) 2016/95 of the European Parliament and of the Council of 20 January 2016 repealing certain acts in the field of police cooperation and judicial cooperation in criminal matters, OJ L 26, 2.2.2016, p. 9.

4.4.2 Problem driver k. Non-harmonised criteria for disqualification (contextual)

The mutual recognition of imposed driving disqualifications by Member States is hardly observed in practice, due to the non-harmonisation of the criteria determining disqualifications, as is shown in Section 2.3 and in Annex 3. First of all, Member States do have different legal regimes on disqualifications and demerit points for residents. The operation of disqualifications can greatly differ across the EU, especially with regard to the issuing authority and related procedural guarantees, the grounds for receiving a disqualification, specific rules for new drivers/learner permit holders, duration, consequences such as the possibility to reinstate the right to drive (temporary or permanent disqualifications).

Usually, a disqualification is applied either by conviction or depending on demerit points, that is either:

- when a driver is convicted of a driving offence for which the penalty imposed entails a disqualification from driving; or
- When a driver gets too many penalty/demerit points (endorsements) or loses all his/her licence points on his/her licence within a set period of time. In several Member States, both a disqualification and demerit points can be used to impose a sanction, while in other Member States, it is only possible with either a disqualification or demerit points.

Moreover, differences exist between offences triggering a disqualification measure. A survey (for which the results are presented in Annex 3) confirms that in some Member States, resident offenders can be sanctioned with a disqualification and/or demerit points, while non-resident offenders cannot (for example in Cyprus).

On fewer occasions, the offender can receive demerit points, instead of being directly disqualified, depending on the severity of the offence or the recidivism (in 6 of the 13 Member States that provided an answer). When demerit points are applied, they can still ultimately lead to the disqualification of the domestic offender, for example, if they previously committed other offences and reach the threshold of penalty points foreseen by their country. Doubts remain instead about the effective possibility to use local demerit point schemes on foreigners/non-residents, given the diversity of schemes in place (sometimes adding points at any offence committed, sometimes removing them, in different numbers and with different thresholds).

Although the survey shows that some Member States use their demerit points also with foreign offenders, this can be explained by the fact that their laws do not provide for any distinction in treatment between domestic and foreign drivers in terms of imposition of demerit points. However, it is not clear how this is done in practice, lacking a dedicated framework allowing to ‘adapt’ or ‘convert’ national point schemes. Therefore, although the sanctions might be equal for both resident and non-resident drivers, it is our understanding that imposed driving disqualifications for non-resident offenders in practice has little value.

According to our information, there have not been any cases concerning the mutual recognition of driving disqualifications imposed on foreign road users on the basis of existing EU legislation. There are some cases in which the cross-border enforcement of driving disqualifications was successful, but this only occurs rarely and by using specific provisions in bilateral agreements. During the CBE Workshop of 26 June 2020, Spain mentioned that 13% of the total offences covered by the CBE Directive committed in 2018 and 2019 were committed by non-resident offenders (about 44,627 offences including the withdrawal of points). However, due to the lack of mutual recognition, no driving disqualification has been imposed to any non-resident offender.

Just as for problem driver j, the non-harmonisation of criteria for driving disqualifications is something that should be addressed in another act.

Expected development of the problem driver

The legal analysis finds that action at EU level is desired in the harmonisation of criteria determining disqualification. It is our understanding that the Driving License Directive will be revised soon. Since it is currently unclear what elements in this Directive will be revised, it is uncertain how this problem driver will develop.

4.5 Problem 5 – Different levels of fundamental rights protection in Member States

Procedural safeguards, to ensure that the fundamental rights of EU citizens are respected, are provided at EU level. In the context of the CBE Directive, in particular three procedural safeguards are relevant:

- the protection of personal data in the exchange of information to respect the privacy of the presumed offender;
- the adopted language regime in communication between governments and consumers (road users), to ensure that the presumed offender is addressed in a language that he or she likely understands;
- the content of information letters (in terms of appeal procedures and applicable sanction schemes) and the authenticity of the letter, to ensure that the presumed offender has the right to a fair trial.

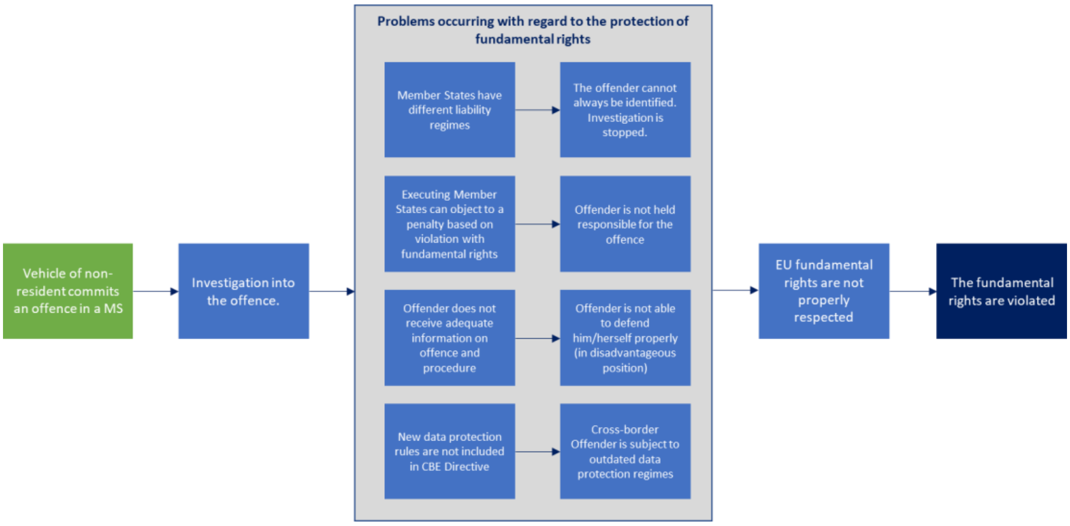
The following analysis reveals that information letters do not always provide the presumed offender with the required information. Moreover, the presumed offender is not always addressed in the appropriate language. The summarised finding is further described in the analysis that follows. A graphic presentation of Problem 5 is in Annex 2.

Causal pathway problem 5

It happens that the offender is identified, but, for several reasons, the follow-up of the offence can be hampered (see Figure 4.6). Sometimes, the offence cannot be followed up because fundamental rights have been violated. Examples are that the offender as a non-resident offender is treated in a discriminatory way compared to resident offenders[180]. Other examples are delayed submission of penalty notices and evidence as well as sending follow-up information in another language than in the language the offender understands. Furthermore, the CBE Directive is subject to an outdated data protection regime.

[180] Please refer to section 4.5.1, where this point is further elaborated.

Figure 4.6 Causal pathway for problem 5



4.5.1 *Problem driver I. Inadequate and/or unclear information provided to the presumed offender on the offence, on the procedures to be followed and on the imposed sanctions*

The investigation phase starts from the moment that an offence committed by a driver in a foreign-registered vehicle is detected with automatic checking and ends with the submission of a penalty notice to the presumed offender who lives abroad. The CBE Directive contains specific provisions (Art. 5) referring to the content of this information letter for the purpose of the cross-border exchange of information on the presumed CBE offences.

These include, among others:

- Provide information about the legal consequences, as applicable under national law;
- Send the information letter in the language of the registration document of the vehicle, if available, or in one of the official languages of the Member State of registration.

The Evaluation already found that Member States rarely use the template information letter as provided in the CBE Directive, but simply translate national penalty notices. The legal analysis finds that the (translated) information letters used for resident offenders offer insufficient information for non-resident offenders.

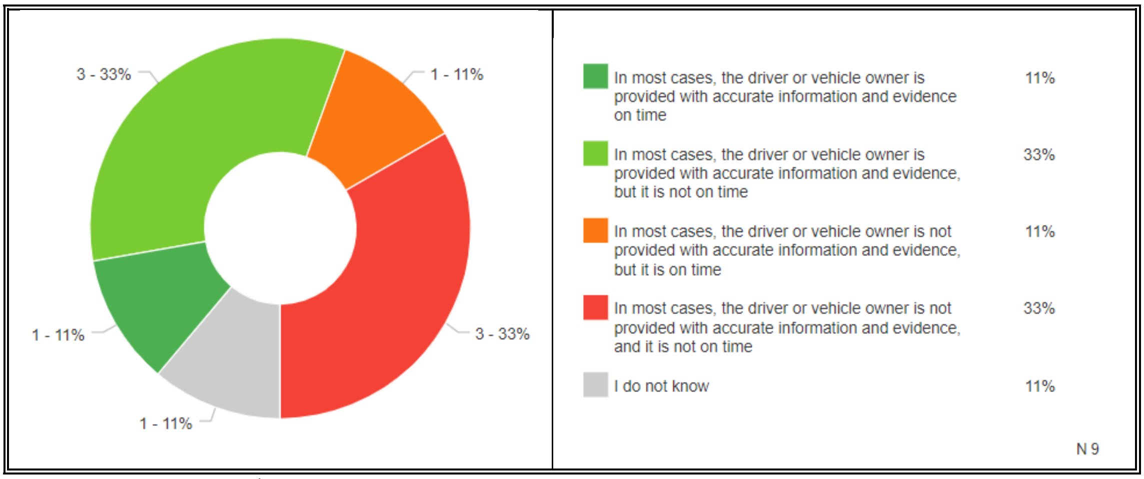
The reasoning is as follows:

- Non-residents are not familiar with the procedures under administrative / criminal proceedings of other Member States, and they need more information than resident offenders;
- The authenticity of the document is often missing. For non-resident offenders, who might not be aware of what organisations in the issuing Member State can issue and service penalty notices, an authenticity mark/check of the information letter is desired. A specific issue is that there is no definition of the information letter in the CBE Directive;
- Although the information letter itself is usually translated, additional information requested by the presumed offender, related to the follow-up procedure (e.g. on how to settle the penalty, and/or execute rights for appeal) are often not translated;

- Information related to the follow-up procedures and legal frameworks in different Member States is not widely available in one central register. Although the Going Abroad webpage (established under Art. 8 of the CBE Directive) contains information on road traffic rules, information on applicable sanctions for violations and follow-up procedures are not centralised and available in all EU languages;
- Some Member States apply different deadlines for the submission of penalty notices to non-residents and residents, with longer deadlines for non-residents. Although this seems reasonable from a practical point of view (identifying a foreign offender may take longer than identifying a domestic offender, especially when information that is not included in the VRD is required for the investigation), applying different deadlines could possibly be perceived as a direct or indirect difference in treatment of EU citizens on grounds of nationality;
- Even when the same deadlines apply, non-residents usually receive the information letter later than residents (due to postal services, translation requirements for foreign non-resident offenders, necessity to cooperate with the foreign country to locate the address of the non-resident offender, etc.) and, therefore, cannot apply for lower penalties/discounts;
- Finally, as has been noted before, the exchange of personal data requires the data to be accurate (GDPR). When data is not accurate, for example because VRDs are outdated or erroneous, the exchange of personal data does not comply with GDPR.

In the targeted survey stakeholders, in particular road users, were asked whether the driver or owner/holder of the vehicle is provided with accurate information and evidence and whether this is done in a timely manner. Figure 4.7 presents the results. Three stakeholders out of nine respondents indicated that the information and evidence was indeed accurate and on time. Three other stakeholders out of nine respondents stated were of the opposite opinion that neither the information nor evidence was accurate or timely.

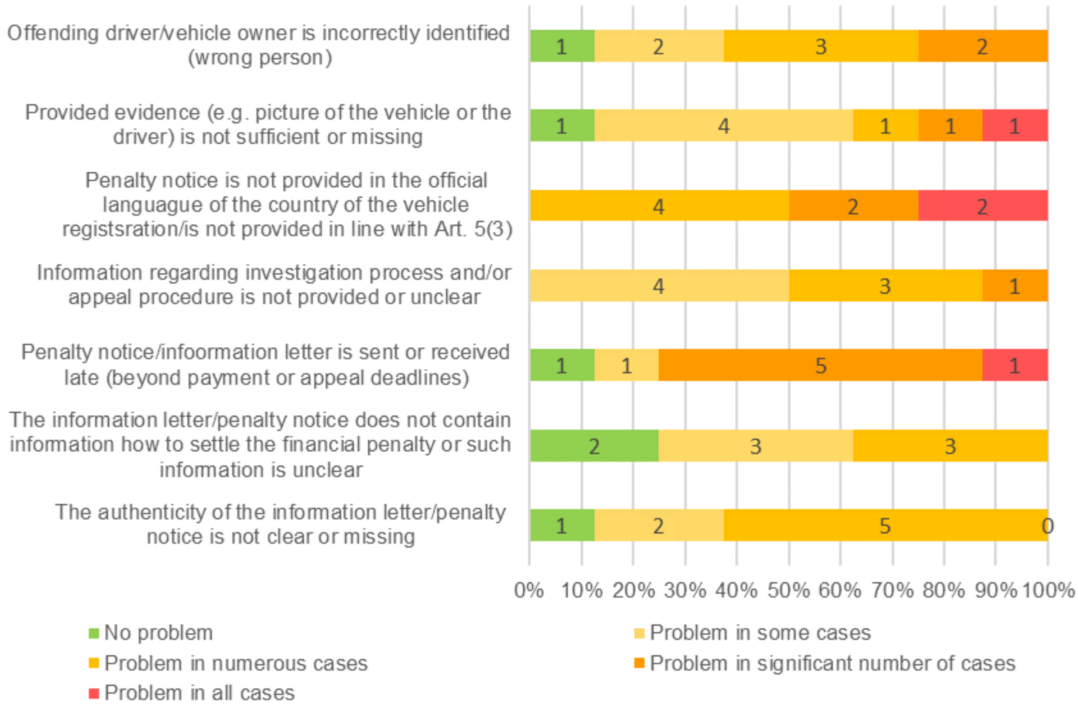
Figure 4.7 Overview of results on the question "is the offending driver/owner of the foreign vehicle in typical cases informed on allegedly committed road traffic offence 1) in time, 2) in an accurate information letter/penalty notice, 3) and containing comprehensive evidence of the offence and any other relevant or related information?"



Source: Results from 1st survey directed at Road users and driver's organisations.

When asked to expand on their answer to Figure 4.7, three respondents out of a total of 9 respondents refer to the language being in the original language of the country in which the offence was made and not in that of the offender, and 2 respondents stated that it takes a long time before the penalty notices arrive. Also consider Figure 4.8 below.

Figure 4.8 Overview of results survey to road users and drivers' organisations on the question "If the information in the penalty notice is incorrect, which of the following reasons are the cause and how often do they appear" (N=8)



Source: Results from 1st survey directed at Road users and driver's organisation

Further information was received during an interview with ADAC. ADAC indicates that, in 2019, it provided 200,000 legal consultations for ADAC members in relation to penalty notices for road traffic offences. These refer to cases in which the offence was committed in Germany, and cases from other Member States.

Based on a review conducted by ADAC on the documents that were obtained during these legal consultations, ADAC has made an estimation of the number of penalty notices in which one or multiple of the above identified issues are observed. The information obtained from ADAC reveals that in 2019, some 4,500 cases related to these issues are found[181].

Under Problem 1, it was estimated that about 15% of all (automatically) detected offences concern offences where the vehicle is registered abroad. Considering this

[181] In 2019, 1,500 legal consultations were provided concerning penalty notices from Italy that were not sufficiently translated and/or did not contain sufficient information. In an additional 300 cases, the penalty notices did not contain sufficient information on how to appeal. Appeal procedures need to be launched in Italian. Moreover, ADAC indicates that its legal department has provided 1,000 legal consultations on penalty notices from the Netherlands (issued by CJIB). These consultations mainly referred to not translating the specific offence that was committed. For France, ADAC provided consultation for around 700 cases concerning penalty notices sent to its members. Although the initial penalty notice is usually translated, subsequent communication is generally not translated, and appeal procedures should be launched in French. In 2019, some 500 legal consultations were provided on penalty notices sent from Spain. These penalty notices were often not translated in German. The same applies for penalty notices sent from Czechia, for which 400 cases were recorded by ADAC. Penalty notices sent from Hungary are increasingly translated in German. For other Member States, no main issues (among ADAC members) are observed and/or the number of cases is very low.

estimate, we assume that in total 30,000 legal consultations (out of the 200,000 that ADAC has conducted), concerned penalty notices that were sent from abroad. In other words, lacking better information, we assume that offences committed domestically and offences committed abroad cause legal issues to a similar extent. By relating the number of 'erratic' information letters with the assumed number of legal consultations, it can be estimated that (at least) 15% of penalty notices sent from abroad result in legal consultations with ADAC in Germany.

The actual share is expected to be higher. This has three reasons. First, ADAC indicates that it does not always receive documents during legal consultations and that therefore their review is likely an underestimation. Second, ADAC only records cases in which legal consultations are conducted. It can be expected that a non-negligible share of presumed offenders does not engage in legal consultations when obtaining an inadequate information letter[182]. Third, the survey results in Figure 4.7 and Figure 4.8 also seem to indicate that the actual share could be significantly higher.

In the assessment of the problem, we (conservatively) assume that 15% of all penalty notices sent from abroad do not contain adequate information or have the incorrect language regime.

Expected development of the problem driver

The current size of this problem driver is considered to be substantial, especially since it might affect the fundamental rights of EU citizens (such as the right to a fair trial). The quality of the information provided, the provision of authenticity marks/checks and the language regime differs substantially between Member States. It is expected that the size of some elements in this problem driver will decrease as Member States are nowadays providing automatically translated penalty notices (such as France and Belgium). However, other elements of the problem driver will likely persist (such as a lack of translation in the follow-up procedures). Moreover, although it might be possible that Member States will improve the provision of information and the appropriate language regimes in the future, there is a risk that all Member States will do this in isolation so that a sprawl of different authenticity marks and information letters will result (as is currently the case).

Therefore, we conclude that, although the problem driver will likely decrease in size, issues will likely persist in absence of a revision of the CBE Directive.

4.5.2 Problem driver m. New EU data protection rules entered into force since the adoption of the CBE Directive

Article 7 of the CBE Directive includes a specific provision on data protection, which cross-refers to Directive 95/46/EC. Besides Article 7, other references to data protection are contained in a number of Recitals (15 and from 20 to 25).

Today, the requirements of data protection and security under Directive 95/46/EC and under Decision 2008/977/JHA are superseded by the GDPR, and by the Law Enforcement Directive (LED)[183], respectively. The latter specifically protects personal data when being used by police and criminal justice authorities.

182 For example, they are able to understand the most vital elements of the information letter and choose to make a payment (for example when they are aware that an offence was committed), or do not pay the penalty notice.

183 Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution

The existing references to data protection legislation need to be updated/adapted accordingly and a possible decoupling of the CBE Directive from the Prüm Decision[184] should be considered. In Chapter 2 (legal analysis) of this report, more information is provided on this. A valid and easier alternative would be to refer to the Prüm II proposal (COM(2021) 784 final), thus taking stock and benefit from all new amendments included in it.

Expected development of the problem driver

Currently, there is a risk that the exchange of personal data under the CBE Directive is not compliant with GDPR and LED. Without revising the CBE Directive, it can be concluded that these issues are likely to persist.

4.6 Problem 6 – Insufficient information for the evaluation of the effects of the CBE Directive

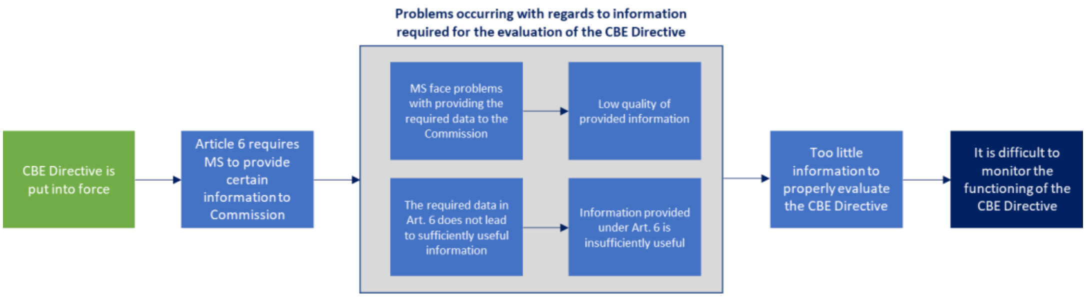
In order to obtain a better understanding on how the CBE Directive is implemented in Member States, to identify room for improvements and to monitor whether the CBE Directive is contributing to road safety, DG MOVE requires information from Member States. The information requirement is laid down in Article 6. Under the current CBE Directive, Member States should, every two years, send a report indicating the number of searches carried out (through EUCARIS) per offence and the number of failed requests. The report should also include a description of the situation at national level in relation to the follow-up given to the offences in the scope, based on the proportion of such offences which have been followed up by information letters.

It turns out that some Member States are not able to provide the requested information and that this information is not sufficient to address the extent to which the CBE Directive is reaching its objectives. A graphic presentation of Problem 6 is in Annex 2.

Causal pathway problem 6

The CBE Directive, like any other EU legislative act, is to be evaluated after a specific time period. In order to monitor its functioning, Art. 6 of the CBE Directive specifies the information that Member States will need to provide to the Commission. However, it turns out that Member States sometimes face issues with providing this information. Furthermore, it is found that the required information in Art. 6 offers too little information to properly monitor and evaluate the CBE Directive. As a result, it is difficult to monitor the functioning of the CBE Directive (Figure 4.9).

Figure 4.9 Causal pathway for problem 6



of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

184 Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime OJ L 210, 6.8.2008, p. 1–11.

4.6.1 Problem driver n. Legal and administrative obstacles exist in Member States to collect the required information (contextual)

Information provided by DG MOVE revealed that also a significant number of Member State did not provide accurate information in 2018. For example, Ireland and Poland have not been able to provide a comprehensive report in 2018, and some other Member States needed to request this information via EUCARIS since they had no mechanism in place for registering such data/information. Some Member States (such as Denmark) did not use the Directive in 2018. Ultimately, all Member States were able to provide the report.

The majority of Member States (13 out of the 14 that responded to the survey and did not answer 'I do not know') indicate that they do not encounter difficulties in fulling the obligations laid down in Article 6 of the CBE Directive. The specific content of the reports is not determined by the CBE Directive, i.e. Member States do not have a formal report template nor data requirements to include. These are determined by Expert group meetings. The first comprehensive report as requested by the Commission, due by 6 May 2016, was sent by a total of eight Member States as of 1 June 2016. Although Member States claim to not encounter difficulties in fulfilling their obligations of Article 6, the European Commission received only partial or no data that can provide information towards Article 11 (Revision of the Directive). Only Germany indicated that legal difficulties were encountered in fulfilling the obligations. This is caused by the fact that the data collection needs to be done at the level of the Federal States (Bundesländer). As data are not collected at a central level the procedure is more time consuming and difficult. Croatia expressed to encounter technical difficulties as the country does not have the technical means to collect the requested data. Seven Member States indicated that they do not know of problems encountered in the collection of the relevant data.

Furthermore, Spain and the Netherlands mentioned that this data can be devolved from the information available in the EUCARIS platform. Germany stated, during the workshop, that it provided more data in 2020 on the investigation of road traffic offences.

Besides reflecting on potential difficulties encountered while collecting the data, Member States were also asked whether the necessary effort needed to collect the data is seen as problematic or an unacceptable burden. Out of the 22 responses received, ten Member States indicated that the effort required is not problematic. Four stated the effort required is somewhat problematic, but overall acceptable. Only one country (Spain) indicated that the effort required resulted in an unacceptable administrative burden.

Based on the survey results and inputs collected during the CBE Workshop of 26 June 2020, it can be concluded that the number of Member States encountering difficulties in collecting the data needed and providing them to the Commission is rather limited. However, not all Member States responded to the question and several were not able to provide an answer, so in practice the problem might be larger than presented based on the data collected. In addition, most Member States highlighted that the data requirements are not seen as a problem and unacceptable burden. Again, several Member States did not provide input, and some were not able to answer the question.

It should be noted that the requested information can largely be obtained via the EUCARIS platform, through which the requests are made. Indeed, the EUCARIS Overview of 2019 provides a thorough overview of the number of requests per offence issued by Member States and received by Member States, and the number of failed requests. It is not possible, however, to extract from EUCARIS the number of information letters.

Expected development of the problem driver

Not all Member States were able to provide information in 2016. In 2018, some Member States faced issues with providing the information, although the issues experienced were resolved. All Member States provided a report, and the quality of reports in 2018 was significantly higher than in 2016. Since it took Member States some time to implement the Directive and becoming familiar with the reporting requirements and the collection of information, it is our understanding that this problem driver is likely to decrease in size in the future. Moreover, it should be noted that the majority of information that is required under Article 6 is already (automatically) gathered by the EUCARIS platform that is used to exchange VRD information. Therefore, a lot of information does not necessarily need to be gathered by the Member States but can be obtained via EUCARIS. Therefore, the current size of the problem driver is likely to be small, and it is expected that the problem driver will decrease in size (in absence of a revision of the CBE Directive).

4.6.2 Problem driver o. The required information turns out to be insufficient to evaluate the CBE Directive

The requirements under Article 6 seem incomplete if related to the provision contained in Article 11 of the CBE Directive which regulates the duties of the Commission. It follows that additional monitoring data should be required for future evaluations, particularly on the number of detected (registered) offences committed by residents and non-residents and on the number of successfully enforced sanctions in cross-border cases. The idea behind this is that with more additional monitoring data, a future evaluation of the Directive could be improved, allowing for better detection of remaining problems and issues that lower the rate of successful enforcement.

In order to analyse whether the CBE Directive is successful in reaching its core objective (enhancing road safety), it is needed to obtain an understanding of the sense of impunity that road users experience when driving abroad. Information on the number of requests and penalty notices sent out would be useful in this respect.

When relating the information requirement (information on the number of (failed) requests and penalty notices sent) to the problem analysis conducted in Section 4.1 – 4.4, the information currently required only provides some minor evidence for the assessment on issues related to the investigation of road traffic offences (Problem 2). However, detailed information on installed checking equipment, their method of use and the number of detected offences (Problem 1) is lacking. Therefore, additional information is required (such as the number of installed checking equipment, and the number of detected offences without an identification of the driver on the spot).

Moreover, although the enforcement of sanctions (Problem 3 and Problem 4) is not included in the scope of the CBE Directive, information on the number of enforced sanctions is desired to get an understanding on the extent to which road users are punished for violating road-safety related traffic rules. Therefore, it seems necessary to investigate how this additional information can be required.

Of course, the additional information requirement comes with a higher administrative burden for Member States (or other organisations) that would need to gather this information. On the one hand, digitalisation and the possibility of online storing of information in one database signifies a smaller administrative burden to gather the necessary information for Member States and to report it to the Commission. Digital data storage, especially if done in a centralised manner, would ensure the gathering of the necessary information as provided by Article 6 of the CBE Directive and additional information. Furthermore, one might explore longer reporting periods (so that the administrative activities need to take place less regularly) for Member States. Finally, it should be assessed whether other organisations (such as EUCARIS and possibly the CARE database of the Commission) could play a role in actively gathering this information.

From the responses gathered from the first CBE Workshop (26 June 2020), no Member State finds the collection of statistics/data on committed offences a disproportionate administrative burden.

Expected development of the problem driver

The problem driver is quite atypical, since it is unlikely that Member States or other entities will start gathering additional evidence to facilitate the Commission's monitoring of the effectiveness of the CBE Directive. Although ongoing digitalisation at the European and Member State level might reduce the administrative burden of collecting the information, it would be naïve to assume that Member States will proactively gather this information. Hence, it is our understanding that this additional information will not be collected (and regularly reported to the Commission) in absence of a revision of the CBE Directive.

4.7 Summary of baseline developments per problem identified

The following paragraphs bring together the baseline development in terms of detected offences, launched investigations and associated costs, number of 'voluntarily' paid penalty notices and share of enforced sanctions (through Framework Decision 2005/214/JHA).

Problem 1 concerned the detection of offences. The projected number of detected offences, and their baseline development, is described under Chapter 8.2. In this chapter, it is estimated that the number of automatically detected offences, in which the offence was committed by a driver in a foreign-registered vehicle, would be 13.9 million in 2030, 13.8 million in 2040, and 14.7 million in 2050. Finally, the problem analysis revealed that there were no severe issues with available resources at the Member State level that limited the detection effort (e.g. the ability to detect the offence by automatic means). The method of use for checking equipment (in terms of making a photo from the front or the back of the vehicle) is considered to continue to lead to issues in the investigation phase (Problem 2).

Under problem 2, it was found that about 20% of investigations of these offences fail (meaning that a penalty notice was not issued to the presumed offender). Altogether, 10% of investigations are expected to fail due to technical issues, and 10% of investigations are expected to fail due to legal issues (requiring information that is not in VRD, such as a photo of the owner/holder of the vehicle). Moreover, it was found that these issues will likely not be resolved in absence of a revision of the CBE Directive, and that therefore their share would remain constant. This is mainly because legal liability regimes in Member States (owner/holder liability versus driver liability) are not expected to converge under the baseline scenario, with the consequence that the information exchange foreseen under the current CBE Directive is insufficient to successfully investigate offences in Member States that adopt a (strict) driver liability regime.

Under problem 3, the 'voluntary payment rate' for offences was estimated at 70%. Although the problem analysis revealed that this share has been increasing since 2015, a further increase is not expected. Member States indicate that the increase in 'voluntary payments' was likely the result of improved penalty notices (in terms of content and language regime) and the fact that the current CBE Directive offers an EU-wide tool for the enforcement of sanctions, and that a further increase is not expected. Therefore, we assume this share to remain constant over the assessment period (2025 – 2050).

Furthermore, under problem 3 it was found that Framework Decision 2005/214/JHA has not been very effective in the enforcement of financial penalties for road traffic offences (in case a payment is not made voluntarily), especially when categorised as administrative. However, it should be noted that Member States can also make use of bilateral agreements for enforcement. A particularly interesting case is the mutual recognition procedure that is established under the CBE Agreement of the Salzburg Forum (SF). These mutual recognition procedures are considered to be 'automatic', and the enforcement rate is close to 100% according to interviews. Four Member States (AT, HU, HR and BG) have signed up to the CBE Agreement[185]. These Member States account for more than 7 million committed CBE-traffic offences in total, indicating that about 1.1 million committed traffic offences detected are committed by foreign registered vehicles in these Member State. This corresponds to approximately 10% of all CBE-offences, committed with foreign-registered vehicles. Since the countries that entered this multilateral agreement are mostly neighbouring countries, it can be expected that most foreign-registered vehicles driving in a SF-country are registered in another SF-country. We assume that in 50% of the detected offences in these Member States, in which the vehicle is registered abroad, the vehicle is registered in another SF-country. Moreover, we assume that the enforcement rate for the procedure under the Salzburg Forum is equal to 90%. The EU-wide enforcement rate of CBE-traffic offences is calculated at some 5%[186]. This consists of the enforcement procedure under the Framework Decision, for which the enforcement rate for road traffic offences is estimated at 1%, and to a smaller degree on the enforcement procedure under the Salzburg Forum, for which the enforcement rate is estimated at 90%. We assume that, in absence of a revision of the CBE Directive, the share of enforced sanctions remains constant (at about 5%). No Member State has indicated that it is currently investigating new bilateral agreements (also consider Annex 5). Hence, under Problem 3, we conclude that the enforcement rate for offences committed by non-residents is low when compared to the enforcement rate for offences committed by residents.

For problem 4, it was found that issues concerning the mutual recognition of driving disqualifications cannot directly be addressed by a revision of the CBE Directive.

For problem 5, it was estimated that the share of information letters (or follow-up communication) that contain inadequate information or have the incorrect language regime is 15%. Although road user associations indicate that the translation of information letters has improved, they still indicate that many Member States only poorly translate the document. Furthermore, the content and authenticity of penalty notices/information letters differs significantly per Member State (and even within Member States between local governments). Therefore, we conclude that, in absence of a revision, issues concerning the protection of fundamental rights of presumed offenders are likely to persist in the baseline scenario. In our analysis, we assume it to remain constant.

For problem 6, it was found that Member States are nowadays able to provide the Commission with the information required under Article 6. Furthermore, Member States indicate that the administrative costs associated with this are acceptable. Nevertheless, it is found that the information required under Article 6 is insufficient to properly monitor and evaluate the functioning of the Directive.

185 http://www.salzburgforum.org/files/CBE%20Agreement.pdf.

186 5% of traffic offences have an enforcement rate of 90% (Salzburg Forum), and 95% of traffic offences have an enforcement rate of 1% (Framework Decision). Together, this represents an overall enforcement rate of 5% (= 0,05 × 0,9 + 0,95 × 0,01).

5 REASON FOR EU INTERVENTION

This chapter presents our analysis of the reason for the EU proceeding with amending the CBE Directive.

5.1 Legal basis

According to Article 91(1.c) of the TFEU, the Union has shared competence in the field of transport to lay down measures to improve transport safety. This is consistent with the current focus of the CBE Directive. Assuming that the scope of the Directive, in terms of covering road safety-related offences, is unchanged, the legal basis should remain the same. As explained in the legal analysis of the possible extension of the scope, the determining factor would be if and which offences would be included in the preferred policy option. Offences with a clear link to road safety would not necessitate a change (e.g. dangerous parking). The inclusion of other offences (such as non-payment of tolls, entry in Urban Vehicle Access Restriction areas, or any other road traffic offence that is automatically detected), may lead to the purpose of the initiative shifting to the police (and justice) cooperation area, and thus under Article 87(2) of the TFEU. The same reasoning applies to the adoption of enforcement procedures within the Directive’s scope.

Depending on the preferred option, these two legal bases could therefore be relevant for this initiative.

5.2 Subsidiarity

In order to answer the question whether the EU has the right to act, it is first important to establish if there is a need to act. In other words, the necessity test needs to be conducted. It needs to be stated here, that the EU is already acting in this area (through the existing CBE Directive).

According to Article 1 of the CBE Directive, the aim of the Directive is to improve road safety, through the facilitation of exchange of information between Member States, and the enforcement of sanctions. It was thus considered that the EU was best placed to ensure the collaboration between the Member States, a position that was not contradicted by (stakeholders in) the 2016 Evaluation of the CBE Directive.

The problem analysis supports this approach as it finds that challenges in the type, content and exchange of information still remain, as do challenges in the enforcement of sanctions. This is supported by the views of the stakeholders. The majority of them confirm that the problems discussed in Chapter 4 exist. At the same time, the analysis identified the existence of bilateral or multilateral agreements (such as the Salzburg Forum) as well as functionalities in the EUCARIS system that go beyond the CBE Directive application. This brings the question to what extent the Directive is still needed, or to what extent the Directive will still be relevant in the future if Member States apply these parallel data exchange structures. It should be noted that most Member States indicate that they wish to extend the scope of the Directive, indicating that there is a need for further EU intervention.

Furthermore, the bilateral or multilateral agreements seem to be limited to neighbouring countries and they differ in their functioning. As such, it is unlikely that they would lead to a coherent approach across the EU. An overview of bi- and multilateral agreements currently in place is provided in Annex 5.

A noteworthy exception is the Salzburg Forum, in which 9 Member States cooperate on cross-border matters. In addition to the CBE Directive, the Salzburg Forum Member States Austria, Bulgaria, Croatia and Hungary signed the Salzburg Forum CBE Agreement on 11 October 2012, in order to facilitate cooperation for cross-border enforcement of road-safety related traffic offences. All European Member States can, in principle, participate in the Salzburg Forum.

The Salzburg Forum agreed on a streamlined approach to mutually recognise and enforce decisions of financial penalties for cross-border road safety related traffic offences[187]. It has a broader scope than the CBE Directive with regard to cross-border investigation and enforcement.

To be more specific, the Salzburg Forum:

- Requires all members to cooperate in the cross-border enforcement of traffic offences, regardless of whether the country classifies the committed offence as a criminal or an administrative offence (Art.1 of the Salzburg CBE Agreement). The CBE Directive only specifies information to be exchanged by granting other Member States access to VRDs;
- Requires the state of registration/residence to question the owner/holder of the vehicle in which a traffic offence was committed, and (if it adopts a driver liability regime) to identify the driver. The obtained information should be communicated with the State in which the offence was committed (Art.4 of the Salzburg CBE Agreement). The CBE Directive or the Framework Decision does not seem to provide such a strict provision;
- Requires the certificate to enforce a financial penalty abroad (adopting the procedures of the Framework Decision) to be submitted via electronic means (Art 6.2); and
- Applies also to mutual assistance in the case of non-cooperation of the owner/holder with the investigation of a traffic offence (unless this is forbidden by national law). It is highly questionable whether such provisions could be applied under the EU level (in terms of self-incrimination and equal treatment of EU residents).

Although multilateral agreements (such as the Salzburg Forum) are specifically tailored to enforce cross-border penalties for road-safety-related traffic offences, there might be doubts as to what extent this existing regional agreement can inspire EU law, applicable to all MS. However, the Salzburg Forum could serve as a starting point for further shaping the CBE Directive to make it more useful.

It is our understanding that EU action is justified and in line with the subsidiarity principle.

187 http://www.salzburgforum.org/files/CBE%20Agreement.pdf.

6 POLICY OBJECTIVES

This Chapter presents the policy objectives, responding to the problem definition, as presented in Chapter 4. The general objective, as presented in Section 6.1, and the specific objectives, as presented in Section 6.2, provide the basis for defining policy measures and options, as presented in Chapter 7.

6.1 General objective

The ToR defines the general objective, as presented in the box below:

> The general objective of the revision of the CBE Directive is to improve road safety by better cross-border enforcement of road traffic rules, i.e. primarily to decrease socio-economic costs linked to road fatalities, injuries and material damage by better compliance of non-residents with road traffic rules through the deterrent effect of sanctions.'

We consider that the general objective as stated is accurately defined, so long as the scope of the revision does not include offences, which will necessitate the change of the legal basis.

6.2 Specific objectives

The specific objectives of the revision are:

A. Streamline mutual assistance and recognition procedures between Member States in the investigation of road traffic offences;
B. Streamline procedures for mutual recognition of administrative or judicial decisions on financial penalties;
C. Ensure the protection of non-residents' fundamental rights in legal proceedings related to the cross-border enforcement of road traffic rules;
D. Establish an adequate scope of the revision and take into account the new EU rules on personal data protection;

It should be noted that problem 4 ("Inadequate cross-border enforcement of driving disqualifications") is considered to be contextual. Thereby, the establishment of a system for mutual recognition of driving disqualifications is not considered in this revision and thereby not a specific objective of the revision. Problem 6 ("Insufficient information for the evaluation of the effects of the CBE Directive") is not a problem related to the functioning of the CBE Directive but relevant for its monitoring. As a result, observed issues are addressed through monitoring measures (also consider Chapter 12). The specific objectives are described and commented on below:

A. Streamline mutual assistance and recognition procedures between Member States in the investigation of road traffic offences.

Based on our problem and legal analysis, this objective is linked to problem 1 and problem 2. The need to streamline the procedures was also identified in the Evaluation of the CBE Directive. Regarding the streamlining measures, this should be placed on the scope of offences covered under the Directive, and the exchange of information and cooperation in the investigation phase (and not for example in increasing the number of automatic checking equipment).

In order to achieve measures such as improving the exchange of information, digital solutions should be pursued as much as possible. Digital solutions will allow for faster, less expensive and more reliable information exchange and provide new opportunities for such an exchange. As presented earlier in the study, the Commission is currently in the process of digitising procedures concerning the cross-border exchange of documents.

B. Streamline procedures for the mutual recognition of administrative or judicial decisions on financial penalties.

Based on our problem and legal analysis, this specific objective corresponds to problem 3. In the framework of the proposed revision, some Member States are asking for improved provisions to streamline the service of decisions and ensure the protection of fundamental rights (right of the person to be heard and to appeal the decision) including the translation of the decision and relevant documentation. The follow-up procedures for mutual recognition currently follow Framework Decision 2005/214/JHA (also consider Section 4.3). The legal analysis revealed that the mutual recognition of financial penalties could in principle be arranged under the CBE Directive ('Lex Specialis').

C. Ensure the protection of non-residents' fundamental rights in legal proceedings related to the cross-border enforcement of road traffic rules

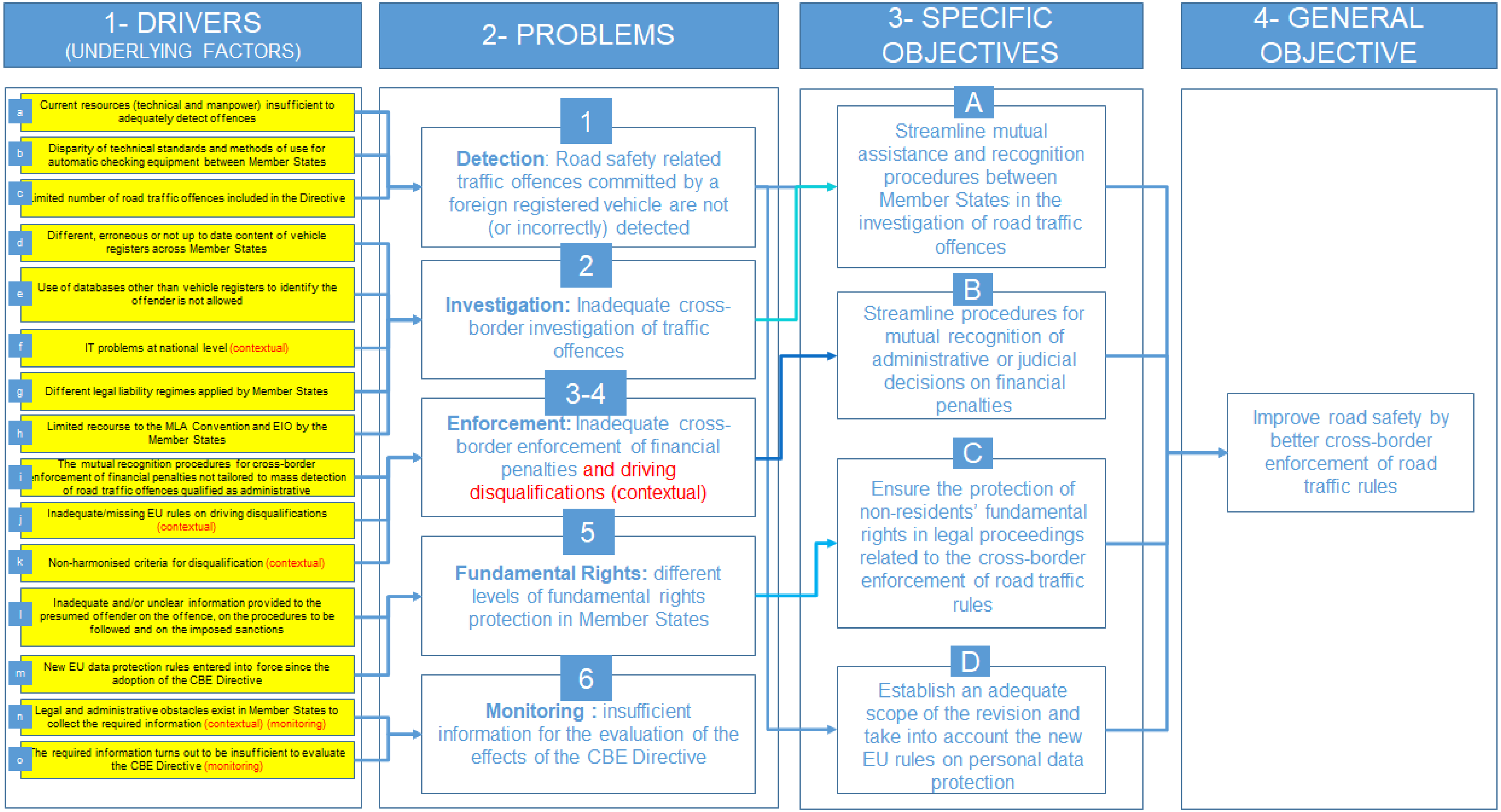
This specific objective corresponds to problem 5 and relates to situations in which (presumed) offenders are not provided with accurate information in a timely manner. It is our view that this objective could be part of the proposed revision and be indirectly linked to objectives A, B and D since the streamlining of mechanisms to exchange information and improve the cooperation among Member States in the investigation and enforcement phase must be complemented by effective measures guaranteeing the protection of fundamental rights of citizens.

D. Establish an adequate scope of the revision and refer to the new EU rules on personal data protection.

This objective is linked to Problem 1 (where it concerns the scope of offences to be covered by the Directive) and to Problem 5 (where it concerns the protection of personal data). With regard to extending the scope of the offences to be included (problem driver c), we consider that the focus on road safety should remain, as a further extension to offences with no clear link to road safety could cause legal complications that could limit the effectiveness and efficiency of the revision. Of course, this does not prevent the inclusion of other road-safety-related traffic offences that can be detected without the driver being identified on the spot, such as driving overloaded vehicles. Concerning the adaptation to EU rules on personal data protection, this is highly relevant as it ensures the necessary coherence.

An overview of objectives and problems, and how specific objectives relate to specific problems identified, is provided in Figure 6.1.

Figure 6.1 Link between problem drivers (underlying factors), identified problems and established objectives



7 POLICY MEASURES AND OPTIONS

This chapter presents the policy measures and options, building on the findings from previous chapters.

An initial list of draft policy measures was reviewed, based on comments obtained during the expert workshop in June 2020 from Member States and road safety organisations, and on consultations with DG MOVE and DG JUST. This resulted in additional policy measures, as well as a further refinement of the previously identified measures, which were then assessed for their legal, technical and political feasibility in line with Better Regulation Tool #16. The list of final policy measures was discussed in an expert workshop in January 2021 and presented in the second interim report. During the workshop, some stakeholders provided detailed comments on the identified policy measures. Furthermore, additional comments from DG JUST were obtained. Based on the external feedback obtained during the workshop of January, and the internal feedback obtained by DG JUST, the policy measures were refined and some policy measures were added.

In the following sections, the retained policy measures are presented per problem which they are meant to address. Please note that the policy measures presented are only briefly described. An elaborate description of the policy measures, also providing insights in the rationale and detailed interests from Member States is offered in Annex 10. Discarded policy measures, and the justification for discarding them, are presented in Annex 11. Annex 11 also provides a justification for retained measures.

In the following sections (Section 7.1-7.6), all identified policy measures are presented per problem which they are meant to address. Finally, the chapter concludes with an overview of policy options for which the impacts will be assessed (Section 7.7).

7.1 Retained measures to address Problem 1

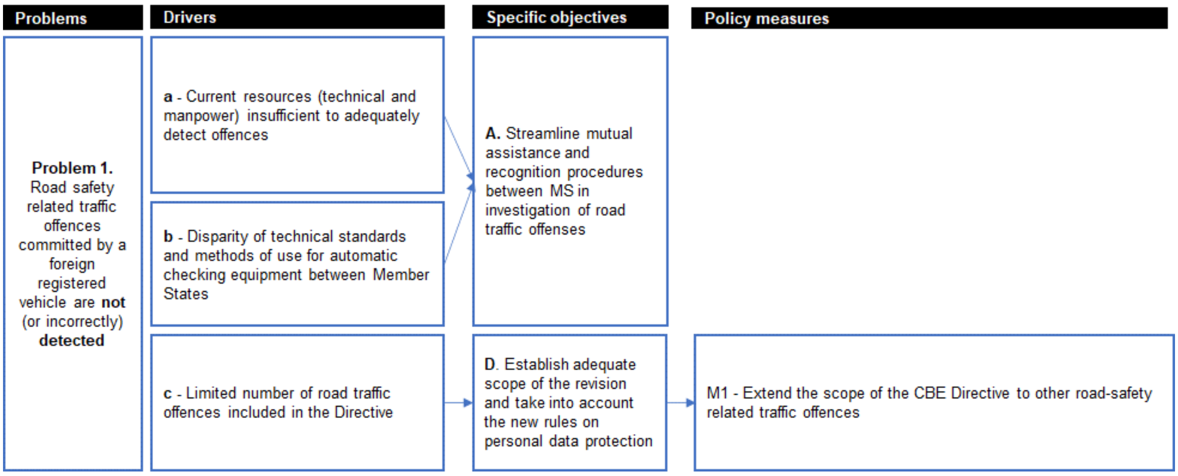
This section presents the policy measures that are retained to address the problem drivers that originate with the detection of road traffic offences committed with a foreign registered vehicle.

As discussed in the problem analysis, three problem drivers were identified:

a. current resources (technical and manpower) insufficient to adequately detect offences;
b. disparity of technical standards for automatic checking equipment between Member States; and
c. limited number of road traffic offences included in the Directive.

The retained policy measure to address these problem drivers is presented in Figure 7.1.

Figure 7.1 Visualisation of retained measures to address Problem 1



In total, one measure has been retained that addresses problem driver c under Problem 1. The size of problem driver a and problem driver b was found to be small and therefore no measures are proposed.

Table 7.1 provides an elaborate description of the retained measure that has been identified. An elaborate justification for retaining/discarding identified measures is presented in Annex 12.

Table 7.1 Overview of all retained measures to address Problem 1

#	Title	Description
1	**Extend the scope of the CBE Directive to other road-safety related traffic offences**	This measure extends the scope of the CBE Directive to cover in addition the following road-safety-related traffic offences: not keeping sufficient distance from the vehicle in front, dangerous overtaking, dangerous parking, crossing white line(s), driving in wrong way or emergency lane[188] and driving an overloaded vehicle.

7.2 Retained measures to address Problem 2

This section presents the policy measures that are retained to address the problem drivers that originate with the investigation of road traffic offences committed by foreign registered vehicle.

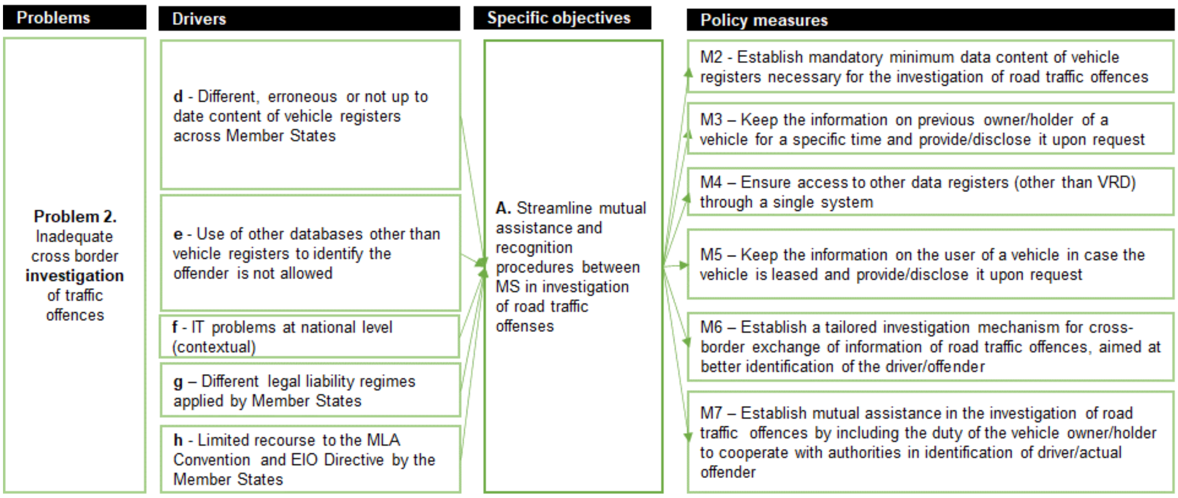
As was discussed in the problem analysis, five problem drivers were identified:

d. Different, erroneous or not up to date content of vehicle registers across Member States;
e. Use of databases other than vehicle registers to identify the offender is not allowed;
f. IT problems at national level (contextual);
g. Different legal liability regimes applied by Member States;
h. Limited recourse to the MLA Convention and EIO Directive by the Member States.

[188] Driving in emergency lane is already covered by the CBE Directive, however ROADPOL asked to establish harmonised EU rules concerning the creation (e.g. zipper merge) and use of emergency lanes.

The retained policy measures to address these problem drivers are presented in Figure 7.2.

Figure 7.2 Visualisation on retained measures to address Problem 2



In total, six measures have been retained that address the problem drivers under Problem 2. Besides problem driver f, all problem drivers are addressed by policy measures. Problem driver f, concerning IT problems at the national level, cannot be addressed in the revision of the CBE Directive ('contextual'). Table 7.2 provides an elaborate description of retained measures that have been identified. An elaborate justification for retaining/discarding identified measures is presented in Annex 12.

Table 7.2 Overview of all retained measures to address Problem 2

#	Title	Description
2	**Establish mandatory minimum data content of vehicle registers necessary for the investigation of road traffic offences**	This measure extends the data content as laid down in Annex I to the CBE Directive (e.g. to cover vehicle categories) and specifies minimum mandatory data to be exchanged which is necessary for a successful investigation of road traffic offences.
3	**Keep the information on previous owner/holder of a vehicle for a specific time and provide/disclose it upon request**	This measure improves the quality of the investigation of the offences, by harmonizing the time limit for retention/storage (and review) of the personal data on the previous vehicle owner/holder in national vehicle registers. This limit also depends on harmonised deadlines for the submission/service of information letters/penalty notices to non-residents (see Measure 10b).
4	**Ensure access to other data registers (other than VRD) through a single system**	This measure increases the access to available information to investigate detected road traffic offences included in the scope of the revised CBE Directive. This measure ensures that if other databases (e.g. driving licence or driver registers) are interconnected, they should be accessible via one system (EUCARIS). It should be noted that EUCARIS already provides access to these databases (e.g. via RESPER), but the information cannot be requested according to the existing CBE Directive.
5	**Keep the information on the user of a vehicle in case the vehicle is leased and**	This measure allows the exchange of information on the final user/keeper of the vehicle, but only if this information is available in VRD by default (normally it covers long-term leasing of vehicles). Currently, rental companies often receive

#	Title	Description
	provide/disclose it upon request	the information letter and are requested to identify the final user/keeper at the time that the offence was committed. Rental and (long-term) leasing companies will benefit from this measure, since administrative activities (identifying the holder/keeper of the vehicle at the time that the offence was committed) can be partly overcome. The measure does not aim to mandate Member States to include this information in the national VRD. Only the exchange of this information, in case it is available in VRDs, under the CBE Directive is made possible. Currently, sharing this type of information is not possible under the CBE Directive.
6	**Establish a tailored investigation mechanism for cross-border exchange of information of road traffic offences, aimed at better identification of the driver/offender**	This measure ('Lex Specialis') proposes: • specific digitised follow-up procedure to find actual address of presumed offender, if the address or other information in the vehicle register is not correct; and • in case of executing countries with a strict-driver liability system, a specific digitised follow-up procedure needed to exchange additional evidence (e.g. pictures of the vehicle owner/holder retrieved from passport or ID registers) to facilitate the identification of the offender/driver. An IT platform, including a portal, is developed to facilitate both procedures. It is intended to support 'police-to-police' cooperation as much as possible, while using functionalities under the legal framework of the revised Prüm Decisions (Prüm II).
7	**Establish mutual assistance in the investigation of road traffic offences by including the duty of the vehicle owner/holder to cooperate with authorities in identification of driver/actual offender**	This measure establishes a duty to cooperate at EU level, for road traffic offences committed by drivers in foreign vehicles. There will be a regime in which the vehicle owner/holder of the vehicle can in principle be held liable for the offence committed with their vehicle. A "soft" driver liability regime or "indirect" vehicle owner/holder legal liability regime should be applied where the offence of "non-cooperation with enforcement authorities in identification of offender/driver" is introduced.

7.3 Retained measures to address Problem 3

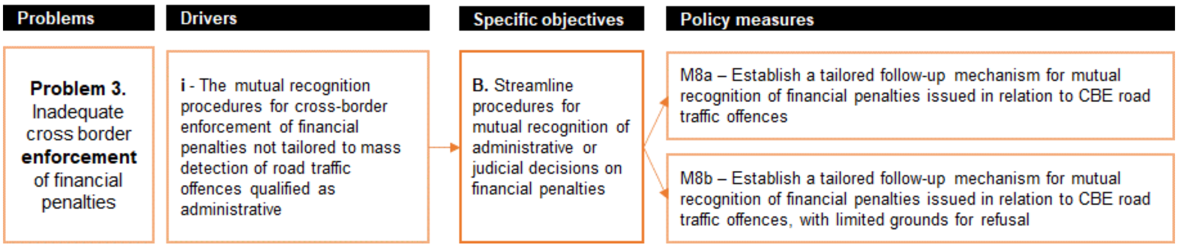
This section presents the policy measures that are retained to address the problem drivers that originate with the enforcement of financial penalties abroad.

As was discussed in the problem analysis, one problem driver was identified:

i. the mutual recognition procedures for the cross-border enforcement of financial penalties are not tailored to the mass detection of road traffic offences which are qualified as administrative.

The retained policy measure to address this problem driver is presented in Figure 7.3.

Figure 7.3 Visualisation on retained measures to address Problem 3



In total, one measure has been retained that addresses the problem driver under Problem 3. Table 7.3 provides an elaborate description. An elaborate justification for retaining/discarding identified measures is presented in Annex 12.

Table 7.3 Overview of all retained measures to address Problem 3

#	Title	Description
8a	**Establish a tailored follow-up mechanism for mutual recognition of financial penalties issued in relation to CBE road traffic offences**	This measure proposes digitised follow-up procedures related to the cross-border enforcement of sanctions for offences covered by the CBE Directive (Lex Specialis to Council Framework Decision 2005/214/JHA). The Lex Specialis may identify areas of derogation from existing FD 2005/214 rules and contain new elements or modifications, e.g.: • Introducing clarifications for the 'minimum' procedural guarantees which all authorities, including administrative authorities, have to comply with. Where a decision requiring payment of a financial penalty has been notified in accordance with the national legislation of the issuing Member State, also indicating the right to contest the case and the time limit for such a legal remedy, the authority of executing Member State may not refuse to recognise and execute that decision provided that the person concerned has had sufficient time to contest that decision. This would ensure higher procedural protection, also for administrative offences; • Establishing a fair accrual of monies from financial penalties between the issuing and the executing Member State (specific distribution keys could be established according to the incurred costs or just fifty-fifty accrual could be applied). This would ensure that the issuing Member State is motivated to start the procedure, as currently all resources from a cross-border execution of financial sanctions are (in general) kept by the executing Member State; • Applying FD 2005/214 to administrative road traffic offences, that allows the competent authority of the executing Member State to give the offender/driver the opportunity to pay the financial penalty to the issuing Member State before continuing with the proceedings;

#	Title	Description
		• Introducing standardised digital forms - translated into all official EU languages - would simplify their exchange (see Article 16 of and the Annex to FD 2005/214). This modification ensures a more cost-effective process, which is especially relevant for road traffic offences that result in a small pecuniary sanction.
8b	**Establish a tailored follow-up mechanism for the mutual recognition of financial penalties issued in relation to CBE road traffic offences, with limited grounds for refusal**	This measure builds further on M18a, and also limits the grounds for non-recognition and non-execution that are included in Article 7 of the Framework Decision. Based on a legal analysis, only the following grounds for non-recognition will be retained in the specifically designed follow-up mechanism: • Incomplete or incorrect certificate (Article 7(1) of FD); • Decision against the sentenced person in respect of the same acts has been delivered in the executing State or delivered and executed in any other State (Art. 7(2)(a) of FD); • Statute barred decision according to the law of the executing State (Art. 7(2)(c) of FD); • The person concerned (i) in case of a written procedure was not, in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law, of his right to contest the case and of time limits of such a legal remedy (unless the certificate states: that the person was informed personally, or via a representative, competent according to national law, of the proceedings in accordance with the law of the issuing State) (Art. 7(2)(g) of Framework Decision 2005/214/JHA). This provision has been amended by Framework Decision 2009/299/JHA which reads as follows: the person did not appear in person, unless the certificate states that the person, having been expressly informed about the proceedings and the possibility to appear in person in a trial, expressly waived his or her right to an oral hearing and has expressly indicated that he or she does not contest the case (Art. 7(2)(j) of Framework Decision 2009/299/JHA). Effectively, this follow-up mechanism would therefore be made similar to the enforcement procedure that is adopted under the CBE Agreement in the Salzburg Forum.

7.4 Retained measures to address Problem 5

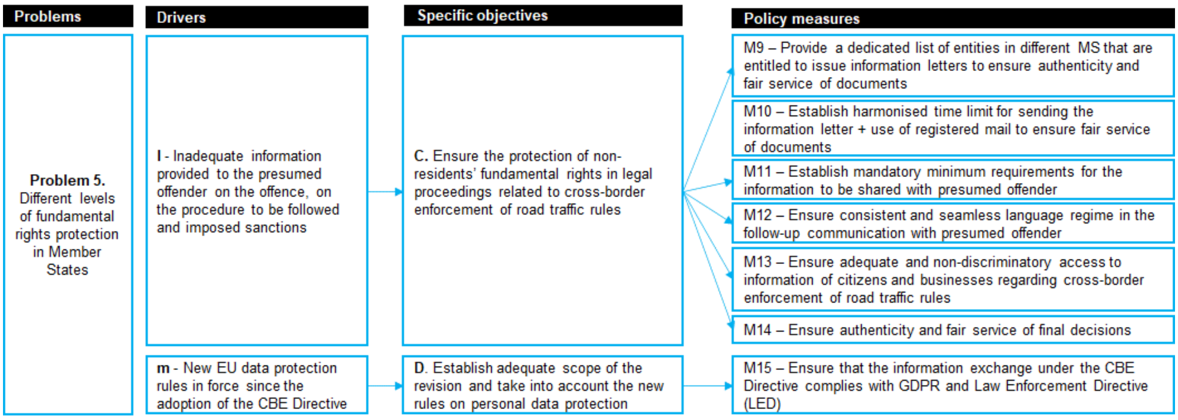
This section presents the policy measures that are retained to address the problem drivers that originate with the different levels of the protection of fundamental rights of presumed offenders.

As was discussed in the problem analysis, two problem drivers were identified:

l. inadequate information provided to the presumed offender on the offence, on the procedure to be followed and on the imposed sanctions;
m. new EU data protection rules in force since the adoption of the CBE Directive.

The retained policy measures to address these problem drivers are presented in Figure 7.4.

Figure 7.4 Visualisation on retained measures to address Problem 5



In total, seven measures have been retained that address the problem drivers under Problem 5.

Table 7.4 provides an elaborate description of the retained measures that have been identified. An elaborate justification for retaining/discarding identified measures is presented in Annex 12.

Table 7.4 Overview of all retained measures to address Problem 5

#	Title	Description
9	**Provide a dedicated list of entities in different Member States that are entitled to issue information letters to ensure the authenticity of documents**	This measure ensures that for each Member State, a national contact point (NCP) would be established through which the authenticity of information letters would be verified. Member States may provide a list of authorities/entities entitled to issue the information letters (according to the CBE Directive) and other letters/notices serviced to a presumed offender, until the stage of appeal before a court, and samples of these notifications on a dedicated cross-border enforcement/CBE portal (G2G). This allows Member States authorities to share the information for verification purposes in a secure way (if the information was made public, the letters could be more easily subject to fraud). The portal would also contain the list of national contact points (NCPs) responsible for police-to-police or legal cooperation (such as NCPs established under the existing CBE Directive), and in future other relevant information facilitating Member States authorities' cooperation in investigation (see Measure 16).

#	Title	Description
10	**Establish harmonised time limit for sending the information letter + use of registered mail to ensure fair service of documents**	This measure sets out an EU-wide harmonised time limit for sending out the information letter (after registration of the offence). The limit should not be longer than the time limits for the retention/storage time of the personal data on the previous vehicle owner/holder in national vehicle registers and for the re-registration of the vehicle in another Member State. This measure also includes the harmonisation of the means of delivery of the information letter (e.g. obligatory use of registered mail) to ensure that the presumed offender is informed.
11	**Establish mandatory minimum requirements for the information to be shared with the presumed offender**	This measure provides an obligatory structure of the information letter for non-residents/foreigners with the obligatory content as already laid down in Article 5 of the Directive and complemented by new elements, as follows: 1. Provision of information on deducted demerit/penalty points and driving disqualifications that may be applied on the territory of the Member State in which the offence was committed; 2. Provision of information on appeal procedures i.e. where and how to lodge an appeal, details of 'in absentia procedures' - particularly whether these procedures are applicable or not, if yes, how they are applicable and especially whether there is an obligation to have a representative/counsel; 3. The presumed non-resident/foreign offender must be given sufficient time after the receipt of the information letter to appeal (time limit/rules to be specified); 4. Provision of additional evidence on the committed road traffic offence upon the request of the presumed offender; 5. Provision of IBAN account number and the name and address of the authority where the financial penalty can be settled. Another obligatory element may be added from the non-mandatory template of the information letter presented in Annex II to the Directive (only very few Member States use this template in practice).
12	**Ensure consistent and seamless language regime in the follow-up communication with the presumed offender**	This measure clarifies the use of languages in the communication with the presumed offender (before and after receipt of the information letter) until the stage of appeal before a court when Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings applies. It has to be ensured that the language regime is clearly defined, not only in the case where a national authority communicates with the presumed offender, but also in the case where the presumed offender communicates with a national authority. A good example can be found in Regulation (EU) 2020/1784[189] on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. Preferably, the consequences when Member States' authorities do not respect the language regime, are clarified/set up (e.g. closure of the case).
13	**Ensure adequate and non-discriminatory access to information of**	Under this measure, a dedicated portal (G2B, G2C) is created, replacing the Going Abroad website. The portal should be compatible with the interface established under the Single Digital Gateway Regulation (EU) 2018/1724[190], thus

[189] OJ L 405, 2.12.2020, p. 40–78
[190] OJ L 295, 21.11.2018, p. 1–38

#	Title	Description
	citizens and businesses regarding the cross-border enforcement of road traffic rules	strengthening citizens' rights to free movement and non-discriminatory access to information that is particularly important for road users to understand what their rights and obligations are and what road traffic rules apply to them in relation to their cross-border activities. Through the portal and specific IT platforms (e.g. using the functionality of eDelivery network solutions if it concerns the exchange of sensitive information between authorities and citizens/businesses), Member States authorities can share or exchange information securely with citizens and businesses. Possible links can be established with other portals, especially the European e-Justice portal[191]. There are various websites and apps in Member States allowing the payment of fines and monitoring procedural stages. This measure supports the use of eIDAS (or other trusted services), as access to these websites and apps often requires registration via national ID cards, excluding non-residents/foreigners from the use of these digitised solutions.
14	**Ensure authenticity and fair service of final decisions**	This measure safeguards the protection of fundamental rights of presumed non-resident offenders, in case of non-payment of a financial penalty, including appeal, by specifying the requirements (e.g. on authenticity, language regime) regarding the service of a final decision on the imposed financial penalty of a court of the issuing Member State to the presumed offender. Debt collection/recovery agencies or other private entities involved in the enforcement of financial penalties cannot claim the penalties unless the final decision is mutually recognised by the relevant Member States.
15	**Ensure that the information exchange under the CBE Directive complies with GDPR and Law Enforcement Directive (LED)**	This measure specifies how the regime of personal data protection under GDPR and LED will be applied in the context of the CBE Directive. The references to the PRÜM Decision will be replaced by correct references to LED. The Directive is aligned with LED on the following points: • an explicit reference to the applicability of the LED is introduced where road-safety-related traffic offences are qualified as criminal; • the obligation to send an information letter to the owner/holder of the vehicle, or otherwise identified person suspected of committing the road-safety-related traffic offence, on initiating the investigation or prosecution and granting him/her access to specific information is without prejudice to the right to information under Article 13 of the LED.

7.5 From policy measures to policy options

The measures that are presented above, are packaged into policy options. The problem analysis revealed that the CBE Directive plays an important role in the enforcement of road traffic offences that are committed by foreign registered vehicles, but that its effectiveness in doing so also depends on other (European) instruments. The conceptual

[191] https://e-justice.europa.eu/

framework, in which different legal acts jointly result in the cross-border enforcement of road traffic offences, was presented in Figure 4.1.

The problem analysis revealed a number of issues experienced directly concerning the CBE Directive (e.g. the 'green boxes' in Figure 4.1). These issues are mainly related to Problem 1 (detection), Problem 5 (fundamental rights) and Problem 6 (insufficient information). Partly, issues concerning the investigation of offences (Problem 2) are also issues that occur within the CBE Directive, for example concerning the VRD that can be exchanged under the CBE Directive (laid down in Annex I of the CBE Directive).

Issues concerning the need to exchange more information on the presumed offender or information related to the offence (beyond VRD exchange) fall currently outside the CBE Directive ('orange box'), and other European instruments should be used. These issues relate to the investigation of the offence (Problem 2), notably problem driver h.

Finally, issues concerning the enforcement of sanctions fall outside the scope of the CBE Directive. Concerning the enforcement of financial penalties ('yellow box'), Member States need to make use of Framework Decision 2005/214/JHA or have to rely on bi- or multilateral agreements. Issues concerning the enforcement of driving disqualifications also fall outside of the scope of the CBE Directive, and there are currently no instruments in the EU to enforce these abroad.

Considering the above, with observed issues falling within or outside the current CBE Directive, three policy options are proposed. These policy options build on each other, indicating that measures included under policy option 1 are also included under the other policy options.

The **first policy option** only focuses on issues that are currently within the CBE Directive ('the green boxes' in Figure 4.1). The first policy option therefore include measures that have the potential to address Problem 1 and Problem 5 and part of Problem 2. As a result, this policy option addresses specific objective C and D. It also partly addresses specific objective A, where it concerns the investigation based on VRD.

The **second policy option** builds upon the first policy option, and therefore also addresses Problem 1 and 5. However, this policy option also focuses on issues in the investigation that are currently outside the CBE Directive ('the orange box' in Figure 4.1). In this policy option, a streamlined investigation process that is used to exchange additional evidence (beyond VRD) is set up. The second policy option, therefore, includes all measures from the first policy option, but goes a step further considering the investigation of offences. Policy option 1 only partly addressed specific objective A (by only focusing on VRD exchange), the second policy option fully addresses specific objective A (by also providing a streamlined approach for the exchange of additional evidence under the CBE Directive).

The **third policy option** builds upon the second policy option, and therefore also addresses Problems 1, 2 and 5. The third policy option therefore includes all measures from the first policy option, but goes a step further concerning issues in the enforcement of financial penalties (Problem 3, specific objective B). It therefore also addresses issues that occur within the 'yellow box' in Figure 4.1. In this policy option, a streamlined enforcement process for financial penalties to road traffic offences covered by the CBE Directive is established. This policy option, therefore, has the potential to address Problems 1, 2, 3 and 5, and it considers specific objectives A, B, C and D.

Within these policy options, some variants are defined, for example concerning the characteristics of the tailored enforcement procedure. Depicted in a table, the policy option design is presented in Table 7.5.

Table 7.5 An overview policy measures (PM), specific objectives (SO) and policy options (PO)

Policy Measures	SO	Policy options				
		PO1	PO2	PO2A	PO3	PO3A
Detection of the offence						
PM1: Extend the scope of the CBE Directive to other road-safety related traffic offences	SO D	√	√	√	√	√
Investigation of the offence						
PM2: Establish mandatory minimum data content of vehicle registers necessary for the investigation of traffic offences	SO A	√	√	√	√	√
PM3: Keep the information on previous owner/holder of a vehicle for a specific time and provide/disclose it upon request	SO A	√	√	√	√	√
PM4: Ensure access to other data registers (other than VRD) through a single system	SO A	√	√	√	√	√
PM5: Keep the information on the user of a vehicle in case the vehicle is leased and provide/disclose it upon request	SO A	√	√	√	√	√
PM6: Establish a tailored investigation mechanism for cross-border exchange of information of road traffic offences, aimed at better identification of the driver/offender	SO A		√	√	√	√
PM7: Establish mutual assistance in the investigation of road traffic offences by including the duty of the vehicle owner/holder to cooperate with authorities in identification of driver/actual offender	SO A			√	√	√
Enforcement of the financial penalty						
PM8a: Establish mutual assistance in the investigation of road traffic offences by including the duty of the vehicle owner/holder to cooperate with authorities in identification of driver/actual offender	SO B				√	
PM8b: Establish mutual assistance in the investigation of road traffic offences by including the duty of the vehicle owner/holder to cooperate with authorities in identification of driver/actual offender, with limited grounds for refusal	SO B					√
Information available to road users in a transparent way						
PM9: Provide a dedicated list of entities in different Member States that are entitled to issue information letters to ensure authenticity of documents	SO C	√	√	√	√	√
PM10: Establish harmonised time limit for sending the information letter + use of registered mail to ensure fair service of documents	SO C	√	√	√	√	√
PM11: Establish mandatory minimum requirements for the information to be shared with presumed offender	SO C	√	√	√	√	√
PM12: Ensure consistent and seamless language regime in the follow-up communication with presumed offender	SO C	√	√	√	√	√
PM13: Ensure adequate and non-discriminatory access to information of citizens and business regarding cross-border enforcement of road traffic rules	SO C	√	√	√	√	√
PM14: Ensure authenticity and fair service of final decisions	SO C				√	√
Data protection						

Policy Measures	SO	Policy options				
		PO1	PO2	PO2A	PO3	PO3A
PM15: Ensure that the information exchange under the CBE Directive complies with GDPR and Law Enforcement Directive (LED)	SO D	√	√	√	√	√

All policy options, and their variants, are discussed in the following sections.

7.5.1 PO1: Improved detection of offences and improved existing cross-border investigation

As was mentioned above, this policy option only includes possible solutions for the issues observed within the current CBE Directive ('green boxes' in Figure 4.1).

Detection (Problem 1)

In this policy option, the scope of the Directive, in terms of road traffic offences to be covered, will be extended to other road-safety-related traffic offences (PM1).

Investigation – vehicle registers (Problem 2)

Because problem driver d found that some information to investigate offences is still not (mandatorily) included in the VRD of Member States (such as the vehicle category and emission standards), Annex I of the CBE Directive describing the vehicle data that should be present in the VRD of Member States is amended (PM2). Moreover, the policy option features provisions on how long data (on the previous owner/holder of the vehicle) should be stored (PM3).

Investigation – allowing the exchange of additional information (Problem 2)

It is found that many databases containing information that might help the investigation of the offences are already established in Member States (e.g. driving licence or driver registers). Currently, the use of these databases is not allowed under the CBE Directive. Therefore, this policy option includes a measure aimed at providing access to other databases (PM4). It also provides that information on the actual owner/holder of the vehicle at the time an offence was committed (especially in the case of leasing companies), could be exchanged under the CBE Directive (PM5).

Fundamental rights protection – penalty notices and information letters (Problem 5)

In order to ensure that information letters or penalty notices (Art. 5 of the CBE Directive) contain the right information, are authentic and serviced under an appropriate language regime, this policy option provides the following:

- Establishment of a National Contact Point (NCP) through which the authenticity of information letters would be verified. (PM9).
- Voluntary establishment of a list of organisations (at the Member State level) which are allowed to issue penalty notices/information letters to presumed offenders and ensuring that letters coming from these organisations are properly authenticated (PM9, PM10);
- Establishment of mandatory minimum requirements of the content of the penalty notice/information letter. The current template (Annex II) could be either abolished or updated and become obligatory (PM11);
- The policy option specifies the language regime to be adopted in the follow-up communication with the presumed offender, after the penalty notice/information letter is sent out (PM12);

- Finally, the term "information letter/penalty notice" is defined.

Fundamental rights protection – personal data protection (Problem 5)

The provisions in the current CBE Directive concerning the exchange of personal data are outdated and should be updated to reflect new legal acts on personal data protection (notably GDPR and LED). The retention/storage, review and processing of these data is specified, including the use of clouds. (PM15)

Fundamental rights protection – access to information (Problem 5)

In order to ensure that road users not only have access to information on road traffic rules in other Member States, by making use of portals such as the Going Abroad website of the Commission, but also can inform themselves on applicable sanction schemes and appeal procedures in other Member States, a dedicated portal is created to share this information (PM13).

7.5.2 PO2: Streamlined follow-up cross-border investigation of road-safety-related traffic offences

As was mentioned above, this policy option includes possible solutions for the issues observed within the current CBE Directive ('green boxes' in Figure 4.1), and therefore includes all measures under PO1. However, policy option 2 also includes measures aimed at facilitating the investigation of offences in cases where more information is needed (beyond VRD exchange). As a result, it also addresses issues in the 'yellow box' of Figure 4.1.

In particular, it establishes a streamlined investigation process that is used to exchange only additional evidence/information for the investigation of road traffic offences covered by the CBE Directive*.* Hence, this streamlined investigation process to be established under the CBE Directive replaces the MLA Convention and the European Investigation Order ('Lex Specialis'). This policy option therefore addresses all identified problem drivers for Problem 1, Problem 2, Problem 5[192].

However, Member States would still need to use Framework Decision 2005/214/JHA to enforce financial penalties imposed in other Member States (also consider Problem 3).

Investigation – increasing efficiency and effectiveness of the follow-up procedures (Problem 2)

Under this policy option, the investigation procedure, especially related to those activities that are not currently foreseen under the CBE Directive, is tailored to the investigation of road traffic offences. This would make the investigation process more effective and efficient.

Firstly, this policy option includes a specific and tailored investigation process that would replace the MLA Convention and EIO, which are rarely used by Member States. By digitising the procedure, and ensuring that the procedure is based on police-to-police cooperation, the investigation process can be made more efficient (as procedures will be less time-consuming) (PM6).

[192] Where it considers observed fundamental rights issues in the investigation phase. Procedural safeguards in relation to final decisions would still fall outside the current CBE Directive, as they follow the mutual recognition procedures as laid down in Framework Decision 2005/214/JHA.

7.5.3 PO2A: PO2 with a duty to cooperate for road traffic offences committed with a foreign registered vehicle

As a variant to policy option 2, this policy option also includes a duty to cooperate for road traffic offences committed with foreign registered vehicles.

This would make the CBE Directive also useful and more effective for countries that are currently adopting a strict driver liability regime and would make it easier for these countries to recognise sanctions from other Member States (Member States that are adopting a soft driver liability regime or indirect owner/holder regime) (PM7).

7.5.4 PO3: Streamlined follow-up cross-border investigation of road safety related traffic offences and cross-border enforcement of sanctions for these offences

This policy option is based on PO2A and contains in addition a streamlined procedure for the cross-border enforcement of financial penalties. It includes possible solutions for the issues observed within the current CBE Directive ('green boxes' in Figure 4.1), as well as all other identified issues related to the investigation and enforcement of road traffic offences under the CBE Directive ('yellow box' in Figure 4.1). This full-fledged option therefore contains measures of options 1 and 2, which are complemented by specific follow-up procedures on mutual recognition of financial penalties.

This policy option therefore addresses all identified problem drivers for Problem 1, Problem 2, Problem 3, Problem 5.

Enforcement – mutual recognition of financial penalties (Problem 3)

This policy option proposes digitised follow-up procedures (Lex Specialis) related to the cross-border enforcement of sanctions imposed for the offences covered by the CBE Directive. By streamlining existing procedures (simplification and digitisation) and adapting them to road traffic offences, the effectiveness of the cross-border enforcement of road traffic rules can be increased (PM8a). It should be noted that derogating from the Framework Decision for the mutual recognition of financial penalties for road traffic offences is likely to be highly sensitive from a political point of view.

Fundamental rights – ensure authenticity and service of final decisions (Problem 5)

If the cross-border enforcement of financial penalties will be foreseen under the CBE Directive, the CBE Directive should also specify procedures on how final decisions are communicated with offenders. This would also ensure that debt collection/recovery agencies are provided with strict procedural guarantees that need to be met in order to recover financial payments abroad (PM14).

7.5.5 PO3A: PO3 and streamlined procedure for cross-border enforcement of financial penalties, with limited grounds for refusal

As a variant to policy option 3, this policy option proposes digitised follow-up procedures (Lex Specialis) related to the cross-border enforcement of sanctions for the offences covered by the CBE Directive. However, besides tailoring the mutual recognition procedure for financial penalties (for example by ensuring that the procedure can effectively be used for administrative offences), this policy option also reduces the grounds for non-recognition. Only the most important grounds will be retained (please consider Section 7.3 for an overview of grounds for non-recognition that are retained). This policy option variant is similar to PO3, but instead of PM8a the measure includes PM8b. It should be noted that derogating from the Framework Decision for the mutual recognition of financial penalties for road traffic offences is considered controversial.

8 BASELINE DEVELOPMENT

This chapter briefly touches upon projected trends and developments that are foreseen in absence of a revision of the CBE Directive. The first part contains relevant projections to assess the development of relevant indicators in the baseline scenario. These indicators relate to road safety, the number of traffic offences that are committed and detected in the EU and the development of investigations (to address economic costs in Chapter 9). As the impacts of a revision of the CBE Directive are assessed for the period 2025 – 2050, the baseline development of trends and indicators is also identified for this period.

8.1 Baseline development of road safety

The baseline projections draw on the EU Reference Scenario 2020 but also reflect the impacts of the 'Fit-for-55' package on the expected development of fatalities, serious injuries and slight injuries[193]. Furthermore, the baseline scenario reflects the impacts of the COVID-19 pandemic. The baseline scenario assumes no further EU-level intervention beyond the current CBE Directive.

In the baseline scenario, the number of fatalities is projected to decrease by 23% by 2030 relative to 2015 and by 30% by 2050 relative to 2015[194]. The number of serious and slight injuries is projected to decrease at a lower rate (by 18% between 2015 and 2030 and by 25% for 2015-2050). This is despite the increase in traffic over time. Relative to 2020, which reflects the impact of the COVID-19 pandemic, the number of fatalities and slight injuries is projected to decrease by 3% by 2030 while the number of serious injuries is projected to remain relatively stable. By 2050, the number of fatalities would be 13% lower relative to 2020 while the number of serious injuries would be 10% lower and that of slight injuries 11% lower.

The relatively low decrease in the number of fatalities, serious and slight injuries relative to 2020 is explained by the impact of the COVID-19 pandemic. Transport activity in 2020 was severely impacted by lockdown measures in response to the COVID-19 pandemic, with positive impacts on the number of accidents. The post-COVID recovery reflected in the baseline scenario is however projected to lead to an increase in traffic and thus to a lower decrease in the number of accidents relative to 2020.

Although the projected development of road fatalities shows a decreasing trend, the road safety targets of the Commission (to half the number of road fatalities between 2020 and 2030, and zero road fatalities in 2050) will not be met in the baseline scenario.

8.2 Baseline development of detected offences

In order to assess the impact of revising the CBE Directive, one should first obtain an understanding on how the number of detected offences is expected to change in the coming period. In this assessment, we distinguish between offences that are already detected on a large scale (without identification of the driver) by Member States, such

193 https://ec.europa.eu/energy/data-analysis/energy-modelling/policy-scenarios-delivering-european-green-deal_en.

194 Please note that these projections refer to injuries in which a passenger vehicle, a light commercial vehicle, a bus or a truck is involved (P2W are not included in the projections).

as speeding and failure to stop at a red light, and offences for which this is currently not the case (such as drink-driving or the use of a mobile phone whilst driving).

Considering the input obtained from Member States during surveys and interviews, it seems that speeding and failure to stop at a red light are detected on a large scale by Member States. The development of the number of detected offences in our analysis depends on four factors:

- The number of kilometres driven. If road traffic intensity increases, it is assumed that (proportionally) more offences are detected;
- Technological innovations within vehicles (such as Intelligent Speed Assist). If in-car technology is able to reduce (unintentional) speeding, the number of detected offences is expected to decrease;
- Awareness of local traffic rules. The more familiar drivers are with local traffic rules, the more likely it is that they will not commit an offence (unintentionally);
- Number of automatic checking equipment. The more checking equipment is installed, the larger the number of detected offences is expected to be (and the higher the deterrence effect is).

The projected number of kilometres driven draws on the EU Reference Scenario 2020 but also reflects the impact of the 'Fit-for-55' package. The number of kilometres driven in EU is projected to increase by 0.6% per year on average between 2015 and 2050. We assume that, all else equal, the number of detected speeding and red-light offences will increase by 0.6% per annum.

Concerning technological innovations, it should be noted that Regulation (EU) 2019/2144 (also referred to as the 'General Safety Regulation' or 'GSR'), concerning type-approval requirements for motor vehicles and their trailers, and systems, components and separate technical units intended for such vehicles, as regards their general safety and the protection of vehicle occupants and vulnerable road users, is requiring all new vehicle types to be equipped with Intelligent Speed Assist (ISA) as of 6 July 2022 and all new vehicles as of 7 July 2024. Intelligent Speed Assist will likely reduce 'unintentional speeding' as it provides the driver with a warning if a speed limit is exceeded, although the system can be overridden if a driver chooses to driver faster. Although it is hard to estimate what the impact of ISA is on the number of speed violations, SWOV (2015)[195] estimates the mean speed on roads to decrease by 2 to 7 km/h. If we link these to general speed levels observed in Member States (ranging from 50 km/h to 130 km/h), it implies that the mean speed decreases by 2% to 15%. In this analysis, we assume that a decrease in the mean speed by 2% to 15% is associated with a similar decrease in the number of speeding offences committed. We take a conservative approach, assuming the upper boundary of this estimate of 15% reduction in speeding offences. This is a conservative approach, as this leads to the steepest decline in the number of speeding offences detected, indicating that the added value of revising the Directive (in terms of enhancing road safety) is lower than if the lower bound of the bandwidth would be used. That is, by assuming that ISA is very effective in lowering the number of speeding offences, the potential benefit of improved enforcement for the remaining number of speeding offences is lower (and thereby conservatively estimated).

The aggregated effect, with full penetration of ISA-systems in the EU fleet, is thereby estimated at a 15% reduction in speeding offences. However, the penetration rate of

[195] SWOV (2015). Fact sheet on Intelligent Speed Assist. Retrieved via https://www.swov.nl/en/file/13345/download?token=N8_Y5Ncf#:~:text=The%20general%20conclusion%20is%20that,violations%20(see%20Table%202).

ISA in the EU vehicle fleet only gradually increases, as a result of the implementation of Regulation (EU) 2019/2144. Per year, we estimate the effect of ISA on the number of speeding offences to be a reduction of 1%. This assumes that, within fifteen years from the first introduction, the EU fleet has been renewed and all vehicles are fitted with ISA-systems. This assumption is consistent with the assumption made in the Impact Assessment[196] that was conducted prior to the implementation of Regulation (EU) 2019/2144. Hence, it is assumed that, all else equal, the implementation of ISA will decrease the number of committed offences by 1% per annum, up till 2037 (after which ISA is fully implemented); after 2037, it remains constant. It should be noted that in-car technology is expected to mainly affect speeding offences, since it is not used to prevent (for example) an offence of failure to stop at a red light.

Considering the awareness of local traffic rules, one might adopt the assumption that local drivers are more aware of the applicable traffic rules (in terms of, for example, the local speed limit) than foreign drivers. However, with the implementation of ISA-systems (in which vehicles are able to 'read' the traffic signs) and the increased usage of navigation software that include local speed limits (such as hardware devices from TomTom or mobile apps such as Google Maps and Waze), this difference is likely to be negligible in the current situation, and converging to zero in the baseline development (following the implementation of ISA-systems). Therefore, it is expected that the number of detected offences is not affected by a change in awareness of local traffic rules. Even if the implementation of ISA affects the awareness of local traffic rules, the effect of ISA on the number of speeding offences is already captured under the 'in-car technology' factor.

The last factor that is considered concerns the number of checking equipment installed. Although Member States do indicate that they expect the number of checking equipment to increase and that also other factors point to such a trend (also consider the analysis conducted under problem driver a. 'current resources (technical and manpower) insufficient to adequately detect offences'), it is unclear to what extent the number of cameras will increase in the baseline scenario. Therefore, we adopt a conservative assumption that the number of cameras (in absence of a revision of the CBE Directive) remains constant. This assumption is considered to be conservative, as an increase in the number of checking equipment would imply an increase in the number of detected offences, and thereby an increased need to solve the issues observed in the problem analysis (Chapter 4) that occur with their cross-border investigation and enforcement. Adopting a less conservative assumption (i.e. the installation of more speed cameras in the baseline) would mean that the added value of revising the Directive would likely increase, with the risk of the benefit being overstated.

Considering the above, we expect the number of speeding offences to decrease by 0.4% per annum (increase in vehicle kilometres is offset by an increased penetration of ISA-systems in the vehicle fleet). For other offences, we assume that these increase by 0.6% per annum, as result of an increase in vehicle kilometres.

It was estimated that the number of detected CBE-offences in 2019, committed by foreign-registered vehicles without driver identification on the spot, was 14.2 million, among which some 13.8 million speeding offences. Furthermore, we estimate that some 300,000 offences which are currently not included under the CBE Directive are detected without the driver being identified on the spot. Considering the projected trends discussed above, the number of detected offences is estimated to be 13.9 million in 2030. In 2040, the projected number of detected offences is 13.8 million. Finally, in 2050, the number of detected CBE-offences is estimated to be 14.7 million.

[196] SWD(2018) 190 final

8.3 Baseline development of investigation costs for public authorities

When Member States investigate offences, administrative activities are involved. For example, Member State authorities need to process the detected offences and investigate these further by making requests in the EUCARIS database. Moreover, also mailing costs are incurred, as Member States need to send penalty notices to presumed offenders that live in another country.

8.3.1 Costs of conducting the investigation

Member States were asked to provide an assessment on the 'investigation time' that is incurred when an automatically detected offence is to be investigated. The results are provided in Table 8.1.

Table 8.1 Investigation time (in minutes) for automatically detected offences

Member State	Investigation time (in minutes) for automatically detected offences committed by foreign registered vehicles
AT	3
CZ	20
FI	60
DE	20
LT	20*
PL	6**
PT	1
SK	5
SI	1
Unweighted average	**15**

Source: results survey 1.
* range of 10-30, ** range of 4-8.

Table 8.1 shows that the investigation time differs significantly per Member State, likely depending on the legal liability regime adopted and the degree to which the process is automated. It is found that, currently, the investigation time per foreign registered offence is some 15 minutes. Based on information from Eurostat (2021)[197], it is estimated that the annual labour costs for administrative and support services is equal to about EUR 20 per hour in 2019. Therefore, we estimate investigation costs on the EU level to be EUR 5 per detected offence in 2019.

The time spent on investigation depends to a large extent on whether the process is automated or not. As a result of ongoing digitalisation in the period 2020 to 2050, we expect the investigation time to fall. Member States that adopt an automated system, and adopt an owner/holder liability regime, generally have an investigation time between 1 and 3 minutes. In the baseline assessment, we assume a decrease in the investigation time of 5% per year. The investigation time is thereby estimated at 15 minutes in 2019, 8.5 minutes in 2030, 5.1 minutes in 2040 and 3.1 minutes in 2050. Implicitly, this assumes that all Member States would have some form of automated process to investigate traffic offences (e.g. read the license plate, make a request in EUCARIS and submit the penalty notice) in 2050. Based on digitalisation strategies implemented throughout Europe, this seems like a reasonable assumption.

Besides the investigation time, the costs consist of the remuneration for persons that conduct the administrative activities. To estimate how the wage level will change,

[197] https://ec.europa.eu/eurostat/databrowser/view/LC_LCI_LEV__custom_1125792/default/table?lang=en.

macro-economic projections from the EU Reference Scenario are used. We assume that the wage level changes in line with the projected change in GDP (i.e. 1.3% per annum in the period 2015 – 2050). The wage level costs are assumed thereby to increase from EUR 20 per hour, to EUR 23.2 per hour in 2030, EUR 25.8 per hour in 2040 and EUR 30.2 in 2050.

Jointly, the investigation time and the wage costs result in the investigation costs. The investigation costs were estimated to be EUR 5 per offence in 2019. Given the projected developments, we expect the investigation costs per detected offence to decrease to EUR 3.98 in 2025, EUR 3.29 in 2030, EUR 2.25 in 2040 and EUR 1.54 in 2050.

8.3.2 Mailing costs

The postal charges for sending regular mail within Europe are estimated to be between EUR 1 and EUR 2, and the postal charges for registered mail can be estimated at EUR 4 to EUR 5 [198] [199] [200] [201] [202]. Based on desk research, it is found that Germany[203], the Netherlands[204], Belgium[205] and France[206] generally use 'standard' mail for sending penalty notices, and that Italy[207] and Spain[208] require the information letter to be sent via registered mail[209]. In our assessment, we assume that 50% of letters are sent via registered mail, and that 50% of letters via standard mail. We therefore assume that the mailing costs for penalty notices within Europe are equal to EUR 3 when they are sent abroad.

Concerning the translation of documents, our analysis (based on interviews with Member States) indicates that many public authorities have templates for sending information letters abroad (which are translated in EU languages). We therefore consider that there are no additional costs to translating the information letters, as the translated templates are available (the public authority simply selects a template for sending the letter abroad, instead of adopting the template used for domestic offenders).

Considering the baseline development of mailing costs, we expect that penalty notices still need to be submitted via postal mail in the baseline development. There are some Member States that experiment with sending penalty notices in a digital format (such as Spain[210]), but the extent to which the digital submission of penalty notices is implemented at EU level is very limited. Moreover, a digitised procedure also requires Member States to ensure that non-residents can access the database, and that these non-residents are informed on this practice. Since there is currently no development in such a direction, we assume that penalty notices still need to be provided to presumed offenders in the form of hardcopy mail. We assume that mailing costs remain constant over time.

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198 https://www.deutschepost.de/de/p/portoberater.html#/Brief/International/Rechteckig/bis_235_x_125_mm/bis_20_g/Guenstig.
199 https://www.postnl.nl/versturen/brief-of-kaart-versturen/brief-of-kaart-buitenland/.
200 https://www.bpost.be/nl/tarieven.
201 https://www.poste.it/gamma/lettera.html.
202 https://cennik-poczta--polska-pl.translate.goog/usluga,zagraniczny_przesylka_listowa.html?_x_tr_sl=pl&_x_tr_tl=en&_x_tr_hl=nl&_x_tr_pto=ajax,se,elem.
203 https://www.bussgeldkatalog.org/bussgeldbescheid/per-einschreiben/.
204 https://wetten.overheid.nl/BWBR0004581/2021-01-01.
205 https://www.verkeerszaken.be/artikel/a/97/Wat-u-moet-weten-over-www-verkeersboeten-be.
206 https://www.comparateur-stagespermis.com/infractions-et-amendes.
207 https://quifinanza.it/info-utili/notifica-multa-quando-avviene/316997/.
208 https://motor.elpais.com/conducir/no-sabes-si-te-han-puesto-una-multa-aqui-puedes-enterarte/.
209 It should be noted that some Member States, such as Belgium and France, do sent letters via registered mail if no payment is made after the first letter has been sent via ordinary mail.
210 https://sedeclave.dgt.gob.es/IWPS5/help/sincertificado_en.html

8.4 Baseline development of private sector costs

Under Problem 2, it was found that the content of VRDs are different between Member States. Some Member States include information on the final vehicle user/keeper of a (long-term) rental or leasing. Under the current CBE Directive, it is not allowed to directly exchange this information through EUCARIS. Currently, rental and leasing companies (registered as owner/holder of vehicles) receive the penalty notices, which they then forward to the final vehicle user/keeper. This is associated with administrative costs for the private sector. The costs that are involved for rental/leasing companies are estimated through an administrative fee. Based on desk research, it is found that rental/leasing companies often charge an administrative fee of EUR 5 to EUR 25[211] if an offence is committed in their vehicle (besides the financial payment related to the penalty that needs to be made by the presumed offender). Hence, although the direct administrative activities are born by private companies (which need to transfer the information to the public authority), the associated costs are passed on to the users of the vehicles (the person or association that leased or rented the vehicle).

This number is validated by Leaseurope. In our assessment, we take the average, and thereby estimate the administrative costs for the private sector to be EUR 15 per offence.

Leaseurope estimates that some 60 million offences are committed in rental/leasing vehicles a year. These also include offences that are not included in the scope of the CBE Directive (such as parking offences).

The total administrative costs for the private sector of forwarding penalty notices to final user/keepers of vehicles are estimated at EUR 900 million in 2019. This also concerns administrative costs for offences not included under the CBE Directive as well as offences committed in the Member State in which the license plate is registered (e.g. situations that fall outside the CBE Directive).

To assess the baseline development of the administrative fee, we have jointly considered the projected economic growth (likely increasing the administrative costs in the baseline scenario) and ongoing technological innovations (likely reducing the workload for rental and leasing companies in forwarding the penalty notice). Jointly, we expect the admin costs to decrease by 2.5% per annum (also consider Section 8.3). We thereby estimate the administrative costs per offence at EUR 12.89 in 2025 EUR 11.35 in 2030, EUR 8.81 in 2040 and EUR 6.84 in 2050. Based on the expected evolution of committed offences (Section 8.2), we estimate the number of road traffic offences (in which a rental/leasing vehicle is involved) committed to be 58.6 million in 2025, 57.4 million in 2030, 56.8 million in 2040 and 60.3 million in 2050. The resulting administrative costs for the private sector, under the baseline scenario, are presented in Table 8.2.

Table 8.2 Development of private sector costs under the baseline scenario

Private sector costs	2019	2025	2030	2040	2050
Number of offences in rental/leasing vehicles (millions)	60	58.6	57.4	56.8	60.3
Administrative costs for forwarding a penalty notice	€ 15.00	€ 12.89	€ 11.35	€ 8.81	€ 6.84
Costs for the sector (in millions)	€ 900.00	€ 754.79	€ 651.85	€ 500.96	€ 412.88

211 Depending on characteristics of the Member State (e.g. the amount of effort and time needed to 'pass on' the penalty notice to the final holder/keeper).

Again, please note that private sector organisations initially experience the burden associated with this, but that the private sector costs are in general passed on to the presumed offender in the form of an administrative fee.

No assessment has been derived as to what share of offences are related to the CBE Directive (e.g. are included under its scope and committed in a Member State other than the one in which the vehicle is registered). Attention to this is given in the assessment of impacts (Chapter 9), where a conservative estimate is derived.

8.5 Conclusion on baseline development

This section brings together the baseline developments on Member State costs and impunity, by considering the expected development of relevant indicators.

8.5.1 Impunity under the baseline scenario

It is estimated that in 2019, 14.5 million detected traffic offences could be investigated via the CBE Directive. This includes offences that currently do not fall under its scope. Our analysis suggests that approximately 20% of these investigations fail due to technical or legal issues, and a penalty notice is not provided to the presumed offenders. This suggests that, in 2019, 3.0 million offences go unpunished because the investigation fails. From the remaining 11.5 million investigations that are successful (a penalty notice is sent to the presumed offender), approximately 70% of the penalty notices result in a voluntary payment. This suggests that about 30% of the penalty notices, approximately 3.4 million, need to be enforced. The analysis suggests that about 5% of these 3.4 million penalty notices are enforced using procedures under Framework Decision 2005/214/JHA or via bi- or multilateral agreements. This indicates that approximately 3.3 million cases (for which the investigation is successful) cannot be enforced.

Overall, it is found that a non-negligible share of detected offences was not enforced (e.g. no financial payment is made by the presumed offender) in 2019, either because the investigation failed (and the presumed offender never received a penalty notice) or because the enforcement failed. It is found that this occurred in 6.3 million cases (3.0 million due to failed investigations, and 3.3 million due to unsuccessful enforcement). Relating this finding to the number of detected offences (14.5 million), it appears that more than 40% of offences are committed with impunity (meaning that the offender is not held accountable for the offence). The projected numbers for 2025, 2030, 2040 and 2050 are presented in Table 8.3.

Table 8.3 Development of impunity under the baseline scenario (numbers in millions)

Numbers in millions	2019	2025	2030	2040	2050
Number of detected offences	14.5	14.2	13.9	13.8	14.7
Number of successfully investigated offences	11.5	11.2	11.0	10.9	11.6
Number of failed investigations	3.0	2.9	2.9	2.9	3.1
Number of voluntary payments	8.0	7.9	7.7	7.7	8.1
Number of sanctions that need enforcement (no voluntary payment)	3.4	3.4	3.3	3.3	3.5
Number of successfully enforced sanctions	0.2	0.2	0.2	0.2	0.2
Number of unsuccessfully enforced sanctions	3.3	3.2	3.1	3.1	3.3
Total number of payments made	8.2	8.0	7.9	7.8	8.3
Total number of offences where offender is not held accountable	6.3	6.1	6.0	6.0	6.4
Share of offences committed with impunity	43.3%	43.3%	43.4%	43.5%	43.5%

From Table 8.3, it can be concluded that the number of offences where the offender is not held accountable is expected to slightly increase, from 6.3 million in 2019 to 6.4 million in 2050 (an increase of 1.6% in 2050 relative to 2019), after having decreased in the period 2025-2040. The reason for this development is that two opposite forces are affecting the number of detected offences, i.e., (i) an annual increase in vehicle-km (estimated at 0.6%), leading to an increase of detected offenses in the period 2039-2050 and (ii) the development of in-car technology[212], resulting in an annual decrease of the number of detected offences by 1.0%.in the period 2023-2038. The net effect of these two forces is that up to 2038, the number of detected offences will decrease by 0.4% annually and in the period 2039-2050 will increase by 0.6%.This indicates that, from an equal treatment point of view (Recital 7 of the CBE Directive), current problems associated with the CBE Directive will persist in the future, as the probability that an offence committed by a foreign registered vehicle is sanctioned (impunity is removed) does not decrease under the baseline scenario.

8.5.2 Costs for public administrations under the baseline scenario

Administrative costs for public administrations originating from the implementation of the CBE Directive relate to the time needed to investigate offences (and the associated costs), and the mailing costs involved when a penalty notice is sent. Under Section 8.3, it was found that the current costs associated with the investigation are estimated at EUR 5 and that mailing costs are estimated at EUR 3[213]. We assume that each detected offence (Table 8.3) is investigated. The investigation costs in 2019 are thereby estimated at EUR 70.9 million for the EU27. We assume that each successfully investigated offence (Table 8.3) results in mailing costs for sending the notification (information letter/penalty notice). The mailing costs in 2019 are thereby estimated at EUR 34.5 million for the EU27. Thereby, we estimate the administrative costs under the baseline scenario to be EUR 105.4 million as a result of investigating offences and mailing costs. The projected numbers for other years are presented in Table 8.4.

Table 8.4 Development of administrative costs under the baseline scenario

Numbers in millions	2019	2025	2030	2040	2050
Number of det. offences / number of inv. launched	14.2	13.9	13.6	13.5	14.4
Investigation cost per detected offence (in €)	€5.00	€3.98	€3.29	€2.25	€1.54
Total investigations costs	€70.93	€55.24	€44.85	€30.45	€22.11
Number of successful investigations (letter sent)	11.5	11.2	11.0	10.9	11.6
Mailing costs per successfully investigated offence (in €)	€3.00	€3.00	€3.00	€3.00	€3.00
Total mailing costs	€34.47	€33.71	€32.98	€32.85	€34.87
Administrative costs	€105.40	€88.95	€77.83	€63.29	€56.98

From Table 8.4, it can be concluded that administrative costs are expected to decrease under the baseline scenario, from EUR 105.4 million in 2019 to EUR 56.98 million in 2050 (a decrease of 45.9% in 2050 relative to 2019). This decrease is a result of a projected decrease in the number of offences that are committed, and of an expected decrease in the costs per investigation.

[212] The deployment of Intelligent Speed Assist (ISA) technology implemented in the period 2023-2038 will reduce the number of detected offences by 1.0%.

[213] This assumes that public authorities use translated templates for the information letter/penalty notice, which are readily available. This assumption is validated through interviews with Member States, but it should be noted that we have obtained examples of information letters/penalty notices that adopted an incorrect language regime via the European Commission and via a road user association (ADAC).

9 ANALYSIS OF IMPACTS

Based on the policy objectives (Chapter 6), the legal and technical analyses (Chapter 2 and 3), and an extensive stakeholder consultation, policy measures and options have been defined (Chapter 7) to address the problems identified in Chapter 4. The baseline development has been identified under Chapter 8. In this Chapter, the impacts associated with the policy measures and options are identified and assessed.

The chapter starts with a description of the impact categories that are affected by the policy measures and options and the rationale (Section 9.1). Section 9.1 also covers the methodology, with some references to Annexes. Section 9.2 – Section 9.6 provides the assessment of impacts for individual measures and policy options per impact. The section first presents the impact on the level of policy measures, after which the impact per policy option is provided.

9.1 Identified impacts and high-level pathways

In this study, the following impacts have been identified (Table 9.1).

Table 9.1 Identified impacts

#	Type of impact	Impact	Stakeholder
1	Economic	Costs for MS (investigations and enforcement)	Public sector
2	Social	Road safety (as a result of reduced impunity)	Road users
3	Fundamental rights	Personal data, effective remedy and equal treatment	Road users, society
4	Economic	Hassle costs for road users (understanding penalty notices)	Road users
5	Economic	Administrative costs (identifying the final user of the vehicle)	Leasing/rental comp[214].

The (theoretical) high-level pathway, through which the impacts are expected to materialise, is as follows: The policy measures that are retained for the assessment of impacts are expected to increase the number of investigations and enforcement procedures. Finally, measures aimed at improving information letters/penalty notices and follow-up communication might result in (administrative) costs at the Member State level. Following the Standard Cost Model on the assessment of administrative costs, this is associated with a change in the number of activities that the Member States conduct. Hence, an impact on administrative costs arises (impact #1). As the analysis conducted under Section 9.2 will show, the costs that originate from this are both administrative costs and adjustment costs.

As more investigations are conducted and sanctions can be more effectively enforced, fewer road users will be able to commit a traffic offence without facing the consequences ('impunity'). As a result, it is expected that road users are changing their behaviour, thereby committing fewer offences and driving more safely. This in turn is associated with an expected reduction in road accidents, and thereby an improvement in road safety (impact #2).

Besides measures having an expected impact on the number of investigations (and enforcement procedures) conducted, measures aimed at addressing problem 5 improve

[214] The direct impact is experienced by private sector organisations. However, the costs associated to the activities are passed on to consumers in the form of an administrative fee.

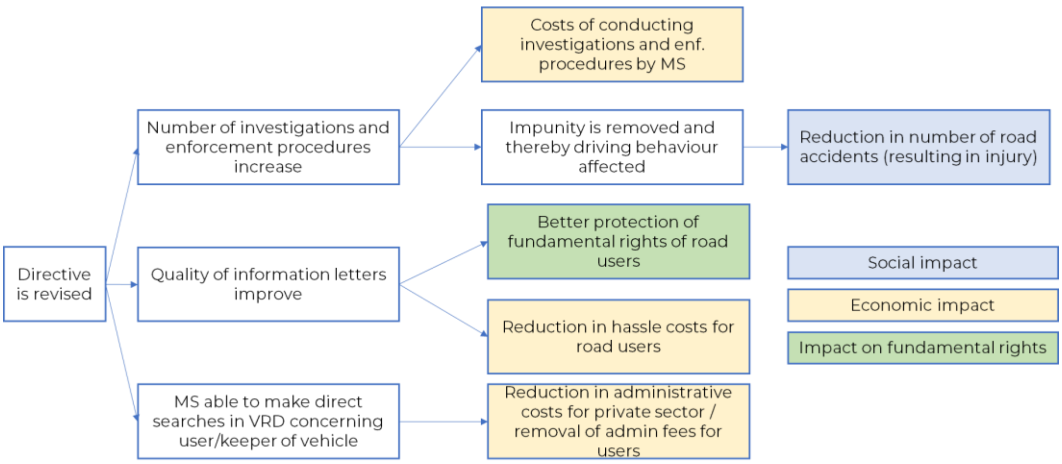
the information of presumed offenders. This results from clearly specifying the required language regime, providing more information on the offence and applicable appeal procedures, and also prescribing the required language regime in follow-up communication. As road users are presented with more information, this has a positive impact on the protection of fundamental rights (impact #3). This impact is further expected to arise as revising the CBE Directive results in an improved equal treatment of road users that commit a traffic offence, as both road users (in a domestic and a foreign-registered vehicle) are punished for committing a traffic offence.

Besides the fact that fundamental rights of road users are expected to be better protected as a result of a revision of the CBE Directive, road user costs are also affected. When information letters/penalty notices lack sufficient information or are in an incorrect language, the road user needs to invest his/her personal time in trying to understand the content (for example by translating the document), or needs to make use of external expertise[215]. If communication from governments to citizens is improved, this is associated with a decrease in road user costs (impact #4). Hence, an impact on road user costs arises.

Finally, an administrative impact that arises results from PM5. Under PM5, Member State authorities are allowed to directly exchange information from the VRD on the final vehicle user/keeper, in case the vehicle is registered by a rental company and information on the final user/keeper is included in the VRD. Following the Standard Cost Model on the assessment of administrative costs, this is associated with a change (decrease) in the number of activities that rental or leasing companies need to conduct, as these companies no longer need to provide information to Member States on the final user/keeper. Under PM5, Member States can access this information directly via the VRD, if this information is available. Hence, an impact on administrative costs arises (impact #5).

The rationale described above is illustrated in Figure 9.1.

Figure 9.1 High-level pathways of impacts originating from a revision of the CBE Directive



Methodology

In order to assess the impacts on costs for Member State authorities and road users (impact #1 and impact #2) a model has been developed that is elaborately described in Annex 6. The model starts from the findings under the baseline scenario. By

215 Consider for example the legal consultations that ADAC in Germany provides to its members, discussed in Section 4.5.

estimating the impact of policy measures on the number of successfully enforced sanctions (impunity is removed), and relating these to findings in academic literature on the impact of enforcement of road traffic rules on driver behaviour, an assessment is made to what extent policy measures (and options) affect the number of offences committed. This reduction in offences committed is then translated in an impact on road safety (serious injuries and fatalities) and an impact on investigation costs (e.g. number of offences that are (successfully) investigated).

The impact of a revision of the CBE Directive on the costs of conducting investigations and enforcement procedures can be both negative and positive. On the one hand, the Directive is expected to result in an increased number of investigations that are successfully conducted (initial impact). However, as it is expected that road users adapt their driving behaviour as a result of reduced impunity, it is expected that over the assessment period (2025 – 2050), the number of offences committed will decrease as a result of the revision (relative to the baseline). This implies that fewer offences might be investigated under a 'policy-on' scenario, as fewer offences are committed.

Considering the impact on fundamental rights (impact #3), the impact is assessed in qualitative terms. For each of the policy measures proposed an assessment was made whether the measures impact the fundamental rights and/or equal treatment of EU citizens. As the methodological approach to assess the impacts on fundamental rights and equal treatment is highly similar and the two types of impacts are closely related the impacts are assessed in one section. For the assessment, the team followed the steps laid down in Tool #29 from the Better Regulation Guidelines on fundamental rights.

The impact of the revision on road user costs (impact #4) is assessed mainly in a qualitative way and substantiated with some back-of-the-envelope calculations. There is not much evidence on the number of cases where the communication between Member State authorities and presumed offenders (road users) results in hassle costs. However, based on the findings obtained under Problem 5 (and their baseline development), some estimations can be derived on the size of hassle costs.

The impact of a revision on the administrative burden for car rental/leasing companies (impact #5) is estimated in a quantitative way. Information to support this quantification is derived from Leaseurope.

Finally, it should be noted that the impacts are assessed until 2050. We assume that a revised CBE Directive could be (fully) implemented starting in 2025. Hence, we adopt an assessment period of 2025 – 2050 for the assessment of impacts. To calculate the (net) present value of the impacts, a (social) discount factor of 3% is adopted (also consider Tool #64 of the Better Regulation Guidelines).

9.2 Costs for Member States and the European Commission

Based on a pre-selection, it was found that not all measures are expected to affect the costs for Member States. For the measures that are expected to have an impact on costs for Member States, their estimated size, relative to the baseline, is discussed below. An overview of relevant measures and justifications is provided in Annex 7.

In the assessment, some costs are considered to be one-off costs. These costs only occur once. As Member States have five years to implement the Directive, we have no information on the year in which the one-off costs will originate (possibly, these are spread over several years). Some Member States might fully implement the Directive in the first year of implementation and others might need more time to implement the

Directive. As a working assumption, we have assumed that all one-off costs originate in the first year of implementation (2025).

9.2.1 Impact of policy measures

PM1: Extend the scope of the CBE Directive to other road-safety related offences

These measures increase the number of offences that will be included in the scope of the Directive. By including other offences in the scope of the Directive, the number of detected offences is expected to increase by 2% in 2025 (relative to the baseline) and consequently over the entire assessment period. Considering the baseline development of investigation costs (under Section 8.5.2), the cost impact of the additional number of launched investigations is derived.

The impact on annual recurring administrative costs (for public administrations/Member States) against the baseline, following the model described in Annex 6, is estimated at EUR 724,000 in 2030 for PM1.The numbers for 2025, 2040, 2050 and the net present value over the assessment period are provided at the end of section 9.2.1.

PM2: Establish mandatory minimum data content of vehicle registers

This measure aims to extend the minimum data content of vehicle registers that is currently described in Annex I of the CBE Directive. For EUCARIS, for the provision of new data, several steps have to be taken, as depicted below:

- First, EUCARIS should verify whether the information is available in the registers of the Member States that have to provide it[216]. If the focus is on information that is available in the national registries, the data have to be included in the international message exchange provided by EUCARIS; for EUCARIS the development, testing and deployment of some additional optional fields would be a minor adaptation and is estimated to take around 100 man-hours, which would add up to EUR 10,000 at the EU level (adopting a cost per man-hour of EUR 100 for specialised support). Since the costs would be shared by 27 Member States, the costs per Member State would be EUR 370. EUCARIS only needs to make this adjustment once, and therefore the costs are considered to be one-off adjustment costs.
- Next to that EUCARIS would have to adapt the web client enabling enforcement authorities to make requests and to see the responses. EUCARIS estimates an additional EUR 370 per Member State, which corresponds to another EUR 10,000 at the EU level (an estimated effort of 100 man-hours and hourly costs per man-hour of EUR 100). EUCARIS only needs to make this adjustment once, and therefore the costs are considered to be one-off adjustment costs.
- The third element is that all Vehicle Registration authorities have to adapt their data services that make the data available to EUCARIS. The effort and costs depend on what local system is used, the development methods and the local tariff. EUCARIS estimates that as data services are not shared, costs amount to roughly EUR 10,000 per Member State in 2025. EUCARIS only needs to make this adjustment once, and therefore the costs are considered to be one-off adjustment costs.

[216] It should be noted that information on the vehicle type is already required per Council Directive 1999/37/EC on the registration documents for vehicles.

The total (one-off) costs for 2025 at EU level are estimated at EUR 290,000, on average EUR 10,740 per Member State, relative to the baseline.

Besides the one-off adjustment costs, the impact of PM2 is that more detected offences are successfully investigated and that therefore more penalty notices are issued. The impact on annually recurring administrative costs, following the model described in Annex 6, is estimated at EUR 284,000 in 2030, relative to the baseline. Please note that this is the joint impact of PM2, PM3 and PM4, as it was not possible to assess the impact of each individual measure. The numbers for 2025, 2040, 2050 and the net present value over the assessment period are provided at the end of section 9.2.1.

PM3: Keep the information on previous owner/holder of a vehicle for a specific time

PM3 aims to ensure that the information on the previous owner/holder of a vehicle is held for a longer time period in the national VRDs, to be able to provide/disclose these upon request.

Though the information of the previous owners/holders may have been exchanged through EUCARIS, as concerns the system, it does not store any exchanged information or data, from any period in time, rather, it acts only as a platform to exchange data between the Member States. Hence, Member States should (upon request) have this information available for investigation purposes.

The action associated to this policy measure concerns the increase of storage size of Member States' VRDs. From a technological perspective, the type of information to be held for a longer time period is in textual format, meaning that the size per entry would not exceed more than a couple of megabytes[217]. As concerns the harmonisation aspect throughout the EU, some Member States will have more data to store than others (depending on entries that Member States include in their VRD). However, even these countries are concerned by only small files per storage entry, which have a negligible cost from an IT perspective.

Hence, it is assessed that the costs concerning PM3 are negligible. However, the impact of PM3 is that more detected offences are successfully investigated and that therefore more penalty notices are issued.

The impact on annually recurring administrative costs, following the model described in Annex 6, is estimated at EUR 284,000 in 2030. Please note that this is the joint impact of PM2, PM3 and PM4, as it was not possible to assess the impact of each measure. The numbers for 2025, 2040, 2050 and the net present value over the assessment period are provided at the end of section 9.2.1.

PM4: Ensure access to other data registers (other than VRD) through a single system

There are two elements to this policy measure, which aims to ensure access to data registers other than the VRDs through the EUCARIS system:

- Providing access to Schengen Information System (SIS) to check for stolen vehicles could be done by EUCARIS, provided they would have a legal base and permission to retrieve that info; the check could also be carried out by the information providing Member State (in which the vehicle is registered) and be

[217] To illustrate, the storage of images and videos are much heavier in size, therefore may lead to a necessity to increase the storage space of the VRDs which is not the case for this policy measure.

included in the CBE message by the national data services which is much costlier;

- Access to RESPER could be made possible for the user group that has access to CBE EUCARIS; use cases are:

I. police officers checking the driving licence details, or looking up the actual address of a person who was stopped because of an observed offence; the search can be made by driving licence number or by name and date of birth;

II. debt collection/recovery companies that want to verify the address of the owner/holder of a vehicle, via a search by name and date of birth (through a national contact point); in some countries the driving licence registry might contain more up-to-date address data than the vehicle registry; however, this should be checked at the Member State level;

III. in the future, on-board equipment is likely to give access to the identity of the actual driver of a vehicle; in the end that even might solve the liability dispute;

IV. overall RESPER might be useful for enforcement purposes and already has a legal base in the Driving Licence Directive; in a technical sense the services already exist, both the search by driving licence number and the search by name; the effort and costs for EUCARIS and the info providing registration authorities would be very limited and mainly have to do with user authorization; an issue could be that in some countries the driving licence registry and vehicle registry are not at the same authority; therefore it could be wise not to integrate;

V. There is also a difference in the automated and manual identification of an offender, i.e. done by a camera or a police officer stop. A search via the name of the offender may bring up multiple hits on the address (i.e. owner/holder information or driving licence-affiliated information). At the moment, the driving licence address is not yet available within the CBE Directive, and the penalty notice is sent according to the information found in the national VRD.

The costs for interoperability are to be covered at both levels: EUCARIS and Member States. There are no fees for the exchange of information, only for the development of the software and a basic fee per connection, for overall IT tasks (e.g. monitoring of the system) and to support Member States in keeping the system up and running in the Member States.

The costs may also differ depending on how the national level is organised: if the driving licence information is at another authority and no connection exists, then the costs are driven up at national level. There is the possibility to create a new interface (the man-hours and software development may add up to ca. EUR 50,000).

It should be noted that, in the bigger picture, these costs are likely not substantial. In the assessment, we make a conservative assumption in which all Member States are faced with costs of EUR 50,000 in 2025, relative to the baseline, bringing the total (one-off) costs for the EU27 at 1.350 million.

As a result of PM4, more offences are successfully investigated. The impact on annually recurring administrative costs, following the model described in Annex 6, is estimated at EUR 284,000 in 2030, relative to the baseline. Please note that this is the joint impact of PM2, PM3 and PM4, as it was not possible to assess the impact of each individual measure. The numbers for 2025, 2040, 2050 and the net present value over the assessment period are provided at the end of section 9.2.1.

PM6: Establish a tailored investigation mechanism for cross-border exchange of information of road traffic offences, aimed at better identification of the driver/offender

This policy measure aims to establish a specifically designed investigation mechanism for the cross-border exchange of information aimed at the better identification of the offender/driver. There are two aspects that this measure proposes:

i) Follow-up procedure to find the actual address of the offender;
ii) Follow-up procedure to exchange additional evidence (particularly facial images).

As for point *i* it is recommended to make use of the existing system for the exchange of information for the purposes of the CBE Directive: EUCARIS. When a Member State enters the information of the offending vehicle in the EUCARIS system, it automatically searches the most recent data of the counterparty Member State's VRD. However, it may be possible that the address of the result is not correct. For this reason, as depicted under PM6, that all Member States keep information on previous vehicle owners/holders for a longer period of time, a follow-up question may be exchanged between the Member States at hand that aim to find an offender's address. This will require allowing the system to search the archives of the national VRDs. There are no additional administrative costs related to this policy measure, other than the generic fee to be paid to EUCARIS per connection (i.e., the EUCARIS CBE connection in this case), which is about EUR 35,000 per year as of 2021 (may be more or less depending on the extensions a country may use).

To facilitate the identification of the offender/driver, an additional follow-up procedure may be necessary to exchange additional evidence, e.g., pictures of the vehicle owner/holder retrieved from identification registers (point *ii*). Ideally, this is also addressed through EUCARIS. An additional service may need to be developed by EUCARIS, which involves a one-off development cost of circa EUR 2,000 – 4,000.

Alternatively, for point *ii*, the Member States could make use of eDelivery, which is a set of standards and protocols that enable secure and reliable communication between Member States. As described in Section 3.2, eDelivery provides a machine-to-machine communication interface without any human interaction, i.e., the Member States would have to agree to link their national VRDs and other registers/databases to the central portal via a network of eDelivery Access Points, to allow the instantaneous exchange of documents. From a technological point of view, an eDelivery Access Point would have to be set up by every party and connected to the national registers. The Access Point can package, encrypt and send documents and data to another Access Point (e.g. to the Access Point of another register or the portal) which then unpacks and decrypts the documents/data, as well as sends an acknowledgement to the sender party using the AS4 protocol. AS4 is a secure protocol, with strong encryption, and provides a secure connection. The one-off cost of an eDelivery Access Point is EUR 34,000[218]. In this scenario the European Commission could also rely on its existing corporate IT service based on eDelivery.

Hence, it can be concluded that the costs of implementing PM6 are likely negligible. However, the impact of PM6 is that more investigations are successful. The impact on annually recurring administrative costs, following the model described in Annex 6, is estimated at EUR 145,000 in 2030, relative to the baseline. The numbers for 2025,

[218] https://ec.europa.eu/cefdigital/wiki/display/CEFDIGITAL/2021/01/21/The+cost+of+setting+up+an+eDelivery+Access+Point?reload=true.

2040, 2050 and the net present value over the assessment period are provided at the end of section 9.2.1.

PM7: Establish mutual assistance in the investigation of road traffic offences by including the duty of the vehicle owner/holder to cooperate with authorities in identification of driver/actual offender

The measure itself does not lead to additional costs. However, as the number of successfully investigated offences increases, more mailing costs are incurred. The impact on annually recurring administrative costs, following the model described in Annex 6, is estimated at EUR 1.020 million in 2030, relative to the baseline. The numbers for 2025, 2040, 2050 and the net present value over the assessment period are provided at the end of section 9.2.1.

PM8a and PM8b: Establish a tailored follow-up mechanism for mutual recognition of financial penalties issued in relation to CBE road traffic offences (under PM8b, also limited grounds for refusal are included)

The cost impact of PM8a and PM8b cannot be observed. As the existing procedures under the Framework Decision are complicated to use, especially when the offence is registered as administrative (which is the case for most 'small' speed violations). The enforcement costs can therefore be expected to be simply too high to use the enforcement procedure. When a tailored solution will be developed, it is expected that enforcement procedures are more effective and efficient. The fact that more decisions are expected to be enforced, indicates that the costs of the enforcement procedure have decreased (significantly). However, as the initial costs are unobserved, the cost reduction cannot be estimated. Nevertheless, one can imagine that these measures result in a reduction in costs, indicated by an increase in the share of enforced cases, relative to the baseline.

PM9: Provide a dedicated list of entities in different Member States that are entitled to issue information letters to ensure authenticity of documents

This policy measure has a two-fold fold objective:

i) Provide a list of authorities/entities entitled to issue information letters/notices, also including the list of national contact points (NCP);
ii) Provide samples of these letters/notices to ensure authenticity.

These two points may be achieved via the CBE portal (see PM13).

As concerns the first point, a list of authorities can be created through stakeholder consultation: an open call by a contractor or the European Commission to carry out desk research and potential stakeholder consultations. The list would have to be validated by the Member States. The inventory should include the authorities'/entities' official name in the local language and general contact information (website, address, telephone, email). These activities are deemed to be a one-off cost, as the responsible authorities to send information letters/notices is not expected to change (unless there is a case of governmental overhaul). Were the research and potential consultation activity carried out by a consultancy, at an average of EUR 500 per person per working day, it is expected that the creation of such an inventory will cost, at the highest end including all iterations and time span for Member States' validations 20-person days, therefore EUR 10,000 per Member State in 2025, relative to the baseline.

Then, it is envisaged that this list of authorities/entities is made publicly available for consultation on a dedicated CBE portal (see PM13). It would require about one-person day to encode the list onto the portal, resulting in ca. EUR 500 as one-off cost, were it is a contractor that is outsourced to carry out this activity. To note, it is highly unlikely that the list of authorities/entities are to change as these are governmental bodies with legal entitlement, and as such, it is highly unlikely that regular updates are necessary on the portal, therefore this encoding is also considered as a one-off cost.

Nevertheless, this could turn out to be costly, if all municipal authorities would have to be listed, including the samples of their notification documents. Therefore, a more cost-effective solution could be to address national contact points with the request to check the authenticity of a notification.

As concerns providing samples of letters/notices, the second point, the exact samples should not be made public, thereby raising the risk of fraud. Nevertheless, it is possible to provide a code/security mark that citizens may check on the letters and postage they have received, to ensure their authenticity. This may also include points that will never be mentioned in an official letter. To take an example, the government of the United Kingdom (Revenue & Customs) has official websites where citizens can check whether a letter/email/phone call/text message is genuine.[219]

Specifically, for letters, the below information is publicly available that may help citizens ensure authenticity:

- Publication of known fraudulent addresses and genuine contact details (office addresses, telephone numbers);
- Explanation of payment methods, including contact details to discuss potential late payment or other problems;
- List of verified governmental bank accounts;
- How to report a suspected phishing attempt (email and phone number).

On the European Commission portal (see PM13) it would therefore be possible to also include links to the official governmental websites that may have such an explanation, and call upon the Member States that have not yet implemented a comparable good practice. The inclusion of these websites would therefore require the expansion of the inventory as explained above for point *i* of this policy measure. It is estimated that such a research and consultation exercise, combined with that above, would require, at the highest end, an additional ten-person days (at an average of EUR 500 per day) thereby bringing the total amount to achieve this full policy measure to EUR 15,000 per Member State.

The total non-recurring adjustment costs are estimated to be EUR 405,000.

No impact of this measure on administrative activities is assumed.

PM10: Establish harmonised time limit for sending the information letter + use of registered mail to ensure fair service of documents

This policy measure essentially has two elements. On the one hand, it prescribes a time limit for sending a penalty notice. This element does not lead to additional administrative costs. However, it also requires to send the penalty notice through registered mail.

Under the baseline scenario, it was assumed that about 50% of financial penalties will be sent via registered mail. The cost difference between registered mail and 'normal'

[219] https://www.gov.uk/government/collections/check-a-list-of-genuine-hmrc-contacts.

mail is estimated to be EUR 3 [220] [221] [222] [223] [224]. We adopt an estimate of an additional EUR 1.50 per penalty notice, as 50% of all penalty notices are affected (the other 50% is already sent via registered mail).

As a result of PM10, the mailing costs per investigation increase. The impact on annually recurring administrative costs for public authorities, following the model described in Annex 6, is estimated at EUR 8.275 million in 2030, relative to the baseline. The numbers for 2025, 2040, 2050 and the net present value over the assessment period are provided at the end of section 9.2.1.

PM11: Establish mandatory minimum requirements for the information to be shared with presumed offender

This measure further specifies what information should be included in the information letter. It is expected that all Member States will need to adapt the content of their information letter (administrative costs) to some extent for this. All Member States that were interviewed or consulted on other occasions indicated that they would adopt information letters in a template that is translated into all official EU languages. When the information letter is adapted, the new template should be translated again.

Because the number and content of information letters greatly differs between Member States[225], it is not possible to make a detailed estimate of what information is missing per Member State and the time needed to reflect the changes. We therefore assume that each Member State needs to spend 40 hours on adapting the information letters/penalty notices for the different offences. Hence, a total of 1,080 hours is spent (assuming that this information letter/penalty notice can also be used by local or regional authorities). Based on information from Eurostat (2021)[226], it is estimated that the annual labour costs for administrative and support services is equal to about EUR 20 per hour in 2019.

After the new template is developed, translations need to be made. For the translation costs, we have obtained information from Belgium, Spain and Poland. The costs for translating penalty notices into one language are estimated to be between EUR 2,500 and EUR 7,500. Considering that there are 23 official languages, the translation costs of providing a standardised template for all penalty notices, with references to national legal acts, can be estimated at EUR 110,000 per Member State.

The total non-recurrent adjustment costs are estimated to be EUR 2.970 million relative to the baseline (in which the existing templates adopted at the national level are maintained).

PM12: Ensure consistent and seamless language regime in the follow-up communication with presumed offender

This measure aims to regulate the language regime in the follow-up communication with the offender (for example regarding a second notification or if the presumed offender

[220] https://www.deutschepost.de/de/p/portoberater.html#/Brief/International/Rechteckig/bis_235_x_125_mm/bis_20_g/Guenstig.
[221] https://www.postnl.nl/versturen/brief-of-kaart-versturen/brief-of-kaart-buitenland/.
[222] https://www.bpost.be/nl/tarieven.
[223] https://www.poste.it/gamma/lettera.html.
[224] https://cennik-poczta--polska-pl.translate.goog/usluga,zagraniczny_przesylka_listowa.html?_x_tr_sl=pl&_x_tr_tl=en&_x_tr_hl=nl&_x_tr_pto=ajax,se,elem.
[225] Sometimes even within Member States, as municipalities sometimes adopt different templates than on the national level.
[226] https://ec.europa.eu/eurostat/databrowser/view/LC_LCI_LEV__custom_1125792/default/table?lang=en.

requests additional information). It is our understanding that only in a negligible share of cases, specific communication with the presumed offender is required. Poland indicated that in rare cases, translation costs of about EUR 90 per offence are incurred for specific communication. Germany indicated that in these rare cases, translation costs of EUR 30 to EUR 40 are incurred. Germany indicated that these costs are incurred in approximately 17 cases per year.

Considering that we estimate that Germany detects some 2.25 million offences with foreign registered drivers a year (also consider section 4.1.1), and by estimation issues some 1.8 million penalty notices (80% of detected offences), this represents less than 0.001% of all cases[227]. If we would assume that at EU level, 0.001% of issued penalty notices result in requests for additional communication with the presumed offender (1 in 100,000), we estimate that there are some 115 cases in which follow-up communication (before court proceedings start) with the presumed offender is to be translated on an annual basis. No information is obtained on costs for translating documents that result from court proceedings. These costs are not often observed, as the number of cross-border enforcement cases (via Framework Decision 2005/214/JHA) is assessed to be negligible.

Hence, one can conclude that adjustment costs are negligible, and will likely remain below EUR 10,000 on a yearly basis for the EU, relative to the baseline. Since we consider these costs as negligible, no assessment of the costs is made.

PM13: Ensure adequate and non-discriminatory access to information of citizens and business regarding cross-border enforcement of road traffic rules

This policy measure ensures adequate and non-discriminatory access to information for citizens and businesses regarding the cross-border enforcement of traffic rules. In more detail, this policy measure aims to create a dedicated CBE portal, which has a two-fold use:

i) Information portal;
ii) Interactive portal.

As depicted in the Technical analysis: digitalisation of EU justice systems, the current Going Abroad[228] website (and mobile application) serves as an information portal. It was created to abide by the provision that requires the Commission to make available a summary of the rules in force covered by the CBE Directive in all Member States, and in all EU languages. This policy measure therefore proposes two options: a revamp of the Going Abroad website or a replacement of the website. In a revamp, all existing code of the website as well as back-end (server, application, database) may be reused and expanded upon. It is recommended that the same developers work on the reconstruction of the website as the ones that built it, to gain time, effort, and costs. In the replacement possibility, it is to be assumed that if new developers are hired, all previous structures will have to be rebuild in order to not waste time, effort and costs on understanding the existing back-end components.

According to the ICT Impact Assessment Guidelines[229], there are several categories of activities (and therefore costs) that should be analysed, the relevant ones for the making of a portal are: infrastructure, development, and maintenance and support.

[227] 17 cases in which ad-hoc translation of follow-up comminucation was necessary / 1,800,000 issued penalty notices = 0.00094% of all penalty notices issued.
[228] https://ec.europa.eu/transport/road_safety/going_abroad/index_en.htm.
[229] https://ec.europa.eu/isa2/sites/default/files/ict_impact_assessment_guidelines.pdf.

Infrastructure

The setting up of a website starts with its infrastructure, which remains an ongoing activity and cost throughout the lifetime of the website. The infrastructure comprises the hardware and the software that are required "to develop, support, operate and maintain the online collection system"[230].

In the case of the (revamped/replaced) CBE portal, the hosting of the website will be done on the europa.eu domain, as an official website of the European Union. An advantage of using the europa.eu domain is the Europa Web Guide[231], made available by the European Commission, which details the editorial, legal, technical, visual and contractual necessities, rules, and guidelines that websites under the domain should respect. The web content management system, which enables to easily make changes to the website in the future, may be developed using free and open-source software such as WordPress or Drupal. Though the system is free, the cost of a professional web designer may add up according to their rates.

Furthermore, the infrastructure phase of the website should also consider the HTML: what the website looks like which is supported by JavaScript: the server executing the code and the script (resulting in a more put-together and 'complex' webpage than HTML). The infrastructure therefore mainly concerns the back-end development of a website.

Assuming that the professional web designer's rates are at ca. EUR 500 per day, and that gathering the necessary information and conceptualising the website requires ca. 10 working days, the final cost is estimated at EUR 5,000 for the first step. Following the initial one-off payment, to further develop, support, operate and maintain the database ongoing costs are foreseen. This can be in the form of relying on human resources for ongoing input or relying on research outsourced to a contractor. The breakdown of this cost is calculated together with the maintenance and support category. To represent the ongoing cost of the infrastructure category, it is best calculated in FTE (full-time equivalent): it is estimated that it sums up to 0.5 FTE per year, i.e., EUR 50,000, relative to the baseline.

Development

The development of a website is a one-off cost, where the back-end mechanism is further refined and the front-end of the website is finalised for the users to access. Both options of revamp and replace must consider the below points.

At the moment, the Going Abroad website displays information received from a database. It must be decided whether this structure is to change to, for example, cloud or local server premises. In either case, it is not recommended to hard code the content of the website, as the information contained within may be updated by new legislation leading to new information that must be easy to update.

The development and further refining of the decisions about the general objective of the website must include, among others, determining the primary choices of the European Commission, stakeholder consultations, and deciding on an outcome. This phase is estimated at 20 working days. Then, the content definition should be further developed. This phase includes determining which content to duplicate and add on to the existing Going Abroad website. As stated in the Technical analysis: digitalisation of EU justice systems, the CBE portal may be revised in terms of user-friendliness, as well as expanded with supplementary information about compliance checks/enforcement controls, sanctions, appeal procedures, and payment schemes. Further parts of a website to take into consideration for an enhanced user experience are the possibility

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230 https://ec.europa.eu/isa2/sites/default/files/ict_impact_assessment_guidelines.pdf (p. 17).
231 https://wikis.ec.europa.eu/display/WEBGUIDE/Europa+Web+Guide.

to have an FAQ section, country knowledge with relevant links to national associations, links to European Commission documents and further resources, *ad hoc* newsletter sign-up (e.g., to promote updates of the website and call attention to changes in legislations), a blog section with user stories as well as comments for members of the page. The content definition may also require connecting the website with a membership. Users may be asked to create a member profile through EU Login. Given the granularity and importance of the content definition of the CBE portal, it is estimated that 60 working days will be required for this phase.

For the design phase, the Europa Web Guide can also be relied upon. It details the guidelines to apply for Commission-branded websites. In addition to those guidelines, the CBE portal should be designed in a user-centric manner: accessible, effective colour scheme, clean design. As a good practice, it is also important to repeat information and links on every page, given the short timespan spent per page by the average user. To exemplify, the recently developed reopen.europa.eu[232], based on a similarly functioning database as the Going Abroad website, its average visit lasts less than 2 minutes, with less than 3 clicks to pages included on the website[233]. To best understand the requirements by the European Commission and liaise with DG Communication, an estimated 20 working days will be necessary.

The content writing and assembly represents the construction of the website. The developers should consider the particularity of the CBE portal: the flexibility and easy modification to add and/or delete content as there may be updates in national legislations, policies, recommendations, etc. This step is in line with the coding of the website. To note again, hard-coded content is difficult to change as well as expensive, therefore it is recommended to not embed the information. This phase adds up to 30 working days.

Finally, the testing, review, and launch phase. This includes ensuring that once the website is uploaded to the server, all links are functioning to content on the portal as well as beyond (i.e. governmental or association's websites). Users may be called upon to test the website as well to give final feedback that may be implemented and fixed as soon as possible. The final phase amounts to 10 working days.

The development category of the cost assessment is estimated at 140 working days, which at an average of EUR 500 per day, is EUR 70,000, relative to the baseline.

Maintenance and support

The final step, maintenance and support, is an ongoing expenditure for a website, to keep it up to date with information as well as address bugs and requests. The effort for updating the website relies on the input received from the Member States/associations/citizens and outsourced to developers or the responsible IT team. This process may also require any patching to the back-end infrastructure which may be also outsourced. It is recommended that a full maintenance is done on a yearly basis, and any *ad-hoc* requests are addressed continuously.

The price of the ongoing maintenance and support, as calculated under the infrastructure category, is EUR 50,000 per year, relative to the baseline. (Note: the two categories were combined). We assume that the development costs increase in line with the projected increase in GDP (also consider Chapter 8).

The initial, non-recurrent, adjustment costs of this measure are estimated at EUR 70,000 (development costs) relative to the baseline.

[232] https://reopen.europa.eu/.
[233] https://www.similarweb.com/fr/website/reopen.europa.eu/#overview.

PM14: Ensure authenticity and fair service of final decision

This measure specifies the information that should be shared with the presumed offender on the final decision (resulting from a court case). The difference between penalty notices/information letters and notifications of the final decision is that no (standardised) templates can be developed for the latter.

Nevertheless, the communication to the offender on the final decision resulting from court cases is already covered by Directive 2010/64/EU. Under the legal analysis, it was established that, as a condition for the cross-border enforcement of financial penalties through the Framework Decision, imposed for criminal and administrative offences, these shall be grounded on decisions subject to a judicial review under a procedure similar to criminal proceedings[234].

If the CBE Directive would include a tailored mechanism for the enforcement of financial penalties, reference should be made that communication of the final decision to the offender would rely on the same procedures (e.g. by following Directive 2010/64/EU). Thereby, it is our understanding that this measure would not lead to additional costs, as communication towards the offender, in both PM14 and the baseline scenario, would follow the same legal procedures (only a specific reference is made to it in the Directive in this policy measure).

Summary of compliance costs resulting from policy measures

Table 9.2 presents an overview of the adjustment costs that result from the policy measures under consideration. These costs occur in the first five years after the revised Directive will have entered into force, assuming that it takes five years to implement the Directive. The non-recurrent adjustment costs occur throughout the implementation period 2025 – 2029. However, in the calculations, we have assumed that all costs materialise in 2025.

The costs are presented for the period 2025 – 2029, 2030, 2040 and 2050. Furthermore, the net present value over the assessment period is provided.

Table 9.2 Adjustment costs per measure (one-off, non-recurrent) relative to the baseline, in millions

PM	NPV (2025 – 2050) in millions	2025 – 2029 (over five years) in millions	2030 in millions	2040 in millions	2050 in millions
Costs for Member States/public authorities					
PM2	0.29	0.29	€0.00	€0.00	€0.00
PM4	1.35	1.35	€0.00	€0.00	€0.00
PM11	2.97	2.97	€0.00	€0.00	€0.00
Costs for the European Commission					
PM9	0.41	0.41	€0.00	€0.00	€0.00
PM13	0.07	0.07	€0.00	€0.00	€0.00

Table 9.3 presents an overview of the administrative costs that result from the policy measures under consideration. From this table, it can be derived that administrative costs mainly result from the required use of registered mail (PM10). Furthermore, it is worth noting that the administrative costs in 2025 are higher than the administrative costs resulting in 2030, 2040 and 2050. In interpreting this result, one should consider that the policy measures have an impact on road user behaviour and that, as a result, fewer traffic offences are committed as a result of measures. As we consider changes

[234] See ECJ, Judgement in Case C-60/12, Baláž.

to the baseline, the number of detected offences is lower in the case the policy measures are applied relative to the case where they are not (i.e. in the baseline). In our model, we have assumed this behavioural response of road users to have a one-year delay, indicating that road user behaviour is only affected by the revision from 2026 onwards. This implies that the number of detected offences in 2025 is equal to the number under the baseline scenario, but that the number of detected offences in the period 2026 – 2050 is lower than under the baseline scenario. Therefore, administrative costs after 2026 are assessed to be lower than the administrative costs in 2025.

Table 9.3 Administrative costs per measure (yearly recurring) relative to the baseline, in millions

PM	NPV (2025 – 2050) in millions	2025 in millions	2030 in millions	2040 in millions	2050 in millions
Costs for Member States/public authorities					
PM1	€ 14.00	€ 1.90	€ 0.72	€ 0.69	€ 0.62
PM2, 3 & 4	€ 5.72	€ 0.75	€ 0.28	€ 0.24	€ 0.28
PM6	€ 2.90	€ 0.38	€ 0.15	€ 0.14	€ 0.15
PM7	€ 20.82	€ 3.00	€ 1.02	€ 1.01	€ 1.08
PM10	€ 153.06	€ 8.43	€ 8.28	€ 8.21	€ 8.72
Costs for the EU					
PM13	€ 1.06	€ 0.05	€ 0.05	€ 0.06	€ 0.07

9.2.2 Impact of policy options

Below, we use the results of the policy measures, as described above, to establish aggregated impacts per policy option. Please note the impacts presented below are not the sum of individual policy measures. Jointly, policy measures have different impacts from when considering them in isolation. For example, PM1 increases the number of detected offences, and PM2 is aimed at improving the investigation of detected offences. Policy measures complement each other, so that the whole is greater than the sum of its parts. For example, if one simultaneously assesses the impact of measures increasing the number of detected offences and measures that improve the investigation of those offences, the total impact on the number of successfully investigated cases is more than if one considers these measures in isolation (as an improved investigation is possible for an additional number of offences).

These interlinkages can be derived by considering the administrative costs of all measures jointly, following the model described in Annex 6. For the adjustment, non-recurrent costs, the sum of all components is equal to the whole.

Adjustment costs resulting from policy options

The adjustment costs per PO, relative to the baseline, are presented in Table 9.4. These costs occur in the first five years after the revised Directive will have entered into force, assuming that it takes five years to implement the Directive. The adjustment costs are assumed to be spent in 2025. The net present value (NPV) over the assessment period (2025 – 2050) is also provided, adopting a discount rate of 3%. In Table 9.4, it can be observed that adjustment costs are equal in all policy options.

Table 9.4 Adjustment costs per option (one-off, non-recurrent) relative to the baseline, in millions

PM	NPV (2025 – 2050) in millions	2025 – 2029 (over five years) in millions	2030 in millions	2040 in millions	2050 in millions
Costs for Member States/public authorities					

PO1	€ 4.61	€ 4.61	€ 0.00	€ 0.00	€ 0.00
PO2	€ 4.61	€ 4.61	€ 0.00	€ 0.00	€ 0.00
PO2A	€ 4.61	€ 4.61	€ 0.00	€ 0.00	€ 0.00
PO3	€ 4.61	€ 4.61	€ 0.00	€ 0.00	€ 0.00
PO3A	€ 4.61	€ 4.61	€ 0.00	€ 0.00	€ 0.00
Costs for the EU					
PO1	€ 0.48	€ 0.48	€ 0.00	€ 0.00	€ 0.00
PO2	€ 0.48	€ 0.48	€ 0.00	€ 0.00	€ 0.00
PO2A	€ 0.48	€ 0.48	€ 0.00	€ 0.00	€ 0.00
PO3	€ 0.48	€ 0.48	€ 0.00	€ 0.00	€ 0.00
PO3A	€ 0.48	€ 0.48	€ 0.00	€ 0.00	€ 0.00

The following specific actions, and estimated adjustment costs, are presented in Table 9.5.

Table 9.5 Actions associated to the policy options, one-off costs in 2025 – 2029 (in millions)

Actions associated to the policy options	PO1	PO2	PO2A	PO3	PO3A
Connecting databases and technical solutions	€ 2.11	€ 2.11	€ 2.11	€ 2.11	€ 2.11
Developing harmonised notifications for communication with road users	€ 2.97	€ 2.97	€ 2.97	€ 2.97	€ 2.97

Administrative costs resulting from policy options

The administrative costs per PO are presented in Table 9.6. These costs are annually recurring and their value for 2025, 2030, 2040 and 2050 is presented. The administrative costs mainly result from an increased number of investigations, and to a small extent maintenance costs as a result of a creation of a portal under PM13. This policy measure is included in all policy options, and the net present value of the administrative costs resulting from PM13 is EUR 1.1 million (in all policy options).

Table 9.6 Administrative costs per option (yearly recurring), relative to the baseline, in millions

PM	NPV (2025 – 2050) in millions	2025 in millions	2030 in millions	2040 in millions	2050 in millions
Costs for Member States/public authorities					
PO1	€ 143.88	€ 11.83	€ 7.31	€ 7.68	€ 8.36
PO2	€ 142.93	€ 12.42	€ 7.16	€ 7.63	€ 8.38
PO2A	€ 132.22	€ 16.52	€ 5.87	€ 7.07	€ 8.31
PO3	€ 88.50	€ 16.52	€ 3.14	€ 4.74	€ 6.12
PO3A	€ 66.64	€ 16.52	€ 1.77	€ 3.57	€ 5.02
Costs for the EU					
PO1	€ 1.06	€ 0.05	€ 0.05	€ 0.06	€ 0.07
PO2	€ 1.06	€ 0.05	€ 0.05	€ 0.06	€ 0.07
PO2A	€ 1.06	€ 0.05	€ 0.05	€ 0.06	€ 0.07
PO3	€ 1.06	€ 0.05	€ 0.05	€ 0.06	€ 0.07
PO3A	€ 1.06	€ 0.05	€ 0.05	€ 0.06	€ 0.07

From Table 9.6 it can be concluded that administrative costs seem to decrease when the policy options get more intervening. This is because, the more actions are taken to enforce road traffic rules, the larger the impact is on impunity, and the larger the impact is on driver behaviour. The enforcement mechanism is strongest in PO3A, with its deterrent effect having the highest impact on road user behaviour (once bitten, road users are expected to be twice shy and will hence drive more safely and commit fewer offences). As the number of committed offences thereby decreases to a larger extent in PO3A than it does under other policy options, fewer investigations are launched and administrative costs decrease (relative to the other policy options).

9.3 Road safety

Based on a screening of the policy measures, it was found that not all measures are expected to affect road safety. For the measures that are expected to have an impact on road safety, their estimated size relative to the baseline, is discussed below. An overview of relevant measures and justifications is provided in Annex 7.

9.3.1 Impact of policy measures

Below, the impact of individual policy measures is described. The impacts are derived via the model that is discussed in Annex 6.

The impact of individual policy measures and options draws on stakeholder input. The input from stakeholders was gathered through an (online) survey. The input was triangulated with input obtained during interviews and complemented by desk research (for example by reviewing academic literature concerning behavioural responses and by analysing output from EUCARIS, in terms of failed searches and underlying causes for the failure).

PM1 enlarges the type of traffic offences that are included in the scope of the CBE. By including other offences in the scope of the Directive, the number of detected offences is expected to increase by 2%[235] in 2025 relative to the baseline (also consider the analysis conducted under section 4.1.3), and consequently over the entire assessment period.

As this measure only increases the number of detected offences, and does not provide solutions for issues related to the investigation and enforcement of offences, the inclusion of additional offences does not fully translate into reduced impunity (because the investigation of these offences might still fail). Based on the model described in Annex 6, it is estimated that the share of offences committed with impunity decreases from 43.3% in 2025 in the baseline scenario to 42.1% under PM1. This is associated with a decrease in impunity by -2.8% (or -1.2 percentage points) relative to the baseline.

By following the model in Annex 6, it is assessed to what extent the impunity level changed vis-à-vis the baseline scenario. It is estimated that the reduction in impunity is -2.9% in 2030, which is associated with a change in driving behaviour that results in a reduction of 2 fatalities, 20 serious injuries and 94 slight injuries in 2030 in PM1. The numbers for 2025, 2040, 2050 and the net present value of the monetised external costs of accidents (in terms of road safety) over the assessment period are provided at the end of section 9.3.1.

PM2, PM3 and PM4 are considered jointly, since they all relate to the information that is available for Member States to investigate detected offences. By making more information available to Member States, the number of successfully investigated offences increases. This specifically relates to certain vehicle characteristics and access

[235] Considering the findings from the survey and the numbers obtained for France, we assume that enhancing the scope to other road-safety-related offences would increase the number of detected offences by 2.01%

to the driving license database. It should be noted that the increased information is only relevant for a subset of offences (e.g. when there are doubts regarding the vehicle type and/or the license of the driver relevant for the investigation), and that the associated general improvement is therefore relatively small (from 90% of successful investigations as the result of EUCARIS exchange under the baseline scenario to 92% under this policy measure)[236].

By following the model in Annex 6, it is assessed to what extent the impunity level changed vis-à-vis the baseline scenario. It is estimated that the reduction in impunity is -2.9% in 2030, which is associated with a change in driving behaviour that results in a reduction of 2 fatalities, 20 serious injuries and 96 slight injuries in 2030 in PM2, PM3 and PM4 jointly. The numbers for 2025, 2040, 2050 and the net present value of the monetised external costs of accidents (in terms of road safety) over the assessment period are provided at the end of section 9.3.1.

PM6 relates to the required procedures that are to be followed if additional information is required by the issuing Member State. By adopting a streamlined procedure, information can be more effectively and efficiently exchanged. In most cases information from the VRD (exchanged under the current CBE Directive) is sufficient for the investigation. Therefore, the general impact of the measure is fairly small. In our analysis, we assume that PM6 results in a 1% increase in the number of successful investigations[237].

By following the model in Annex 6, it is assessed to what extent the impunity level changed vis-à-vis the baseline scenario. It is estimated that the reduction in impunity is -1.5% in 2030, which is associated with a change in driving behaviour that results in a reduction of 1 fatality, 10 serious injuries and 48 slight injuries in 2030 in PM6 at EU level relative to the baseline scenario. The numbers for 2025, 2040, 2050 and the net present value of the monetised external costs of accidents over the assessment period are provided at the end of section 9.3.1.

PM7 relates to the number of detected offences that can be investigated. By adopting a duty to cooperate for traffic offences committed in a foreign vehicle, a lot of issues concerning the identification of the driver are overcome. It is therefore our understanding that in practically all situations, offences can be successfully investigated with the information available in the national vehicle registers. Hence, the number of successfully investigated offences increases substantially, as there will be practically no offences for which additional information is necessary. Of course, investigations can still fail due to outdated VRD-data, license plate readability, etc. In our analysis, we assume that PM7 results in an 8 percentage points increase in the number of successful investigations (if the exchange of information under EUCARIS is successful[238]) from 90% in the baseline scenario to 98% under PM7.

By following the model in Annex 6, it is assessed to what extent the impunity level changed vis-à-vis the baseline scenario. It is estimated that the reduction in impunity is -11.6% in 2030, which is associated with a change in driving behaviour that results in a reduction of 8 fatalities, 80 serious injuries and 382 slight injuries in 2030 in PM7 at EU level relative to the baseline. The numbers for 2025, 2040, 2050 and the net

236 Under Problem 2, it was found that about 20% of investigations fail, of which 10% due to technical reasons and 10% due to other (legal) reasons. This suggests that in 90% of cases the information exchange is succesful and that in 90% of cases this information is sufficient for the investigation.

237 Under Problem 2, it was found that about 20% of investigations fail, of which 10% due to technical reasons and 10% due to other (legal) reasons. This suggests that in 90% of cases the information exchange is succesful and that in 90% of cases this information is sufficient for the investigation.

238 Idem.

present value of the monetised external costs of accidents over the assessment period are provided at the end of section 9.3.1.

PM8a and PM8b relate to the enforcement procedure of traffic offences committed abroad. By simplifying the procedures, and also making it more feasible to enforce decisions for administrative offences, the enforcement rate will likely increase.

Although it is assumed that the streamlined procedure is partly based on the adopted procedure in the Salzburg Forum, the associated impact is likely smaller. The impact will be smaller as the Member States that have signed the CBE Agreement in the Salzburg Forum already had similar regimes (that were compatible with another). When legal regimes in countries are comparable, it seems plausible that mutual recognition procedures are more likely to be successful than when the legal regimes in countries strongly differ[239].

Considering the above, it is our understanding that the policy measures have the potential to increase the number of enforced decisions, but to a limited extent. PM8b has the potential to increase the enforcement rate to a larger extent than PM8a, as some grounds for non-recognition will be removed. In our assessment, we assume that 15% of enforcement procedures are successful under PM8a, and that 20% of enforcement procedures are successful under PM8b (*vis-à-vis* the baseline scenario, in which 5% are successful). The enforcement procedure under the Salzburg Forum has an estimated effectiveness of 90% (also consider section 4.7).

By following the model in Annex 6, it is assessed to what extent the impunity level changed *vis-à-vis* the baseline scenario. It is estimated that, for PM8a, the reduction in impunity is -5.5% in 2030, which is associated with a change in driving behaviour that results in a reduction of 4 fatalities, 38 serious injuries and 180 slight injuries in 2030 at EU level relative to the baseline. In PM8b, the reduction in impunity is -8.2%, which is associated with a decrease of 6 fatalities in 2030, 57 serious injuries and 271 slight injuries at EU level relative to the baseline. The numbers for 2025, 2040, 2050 and the net present value of the monetised external costs of accidents over the assessment period are provided below.

PM9, PM10 and PM11 are also considered jointly and relate to the (content of the) information letter. Road user associations indicate that the content, language regime and timely submission of the penalty notice are important factors in the number of voluntarily paid offences. Belgium has been improving their penalty notice substantially over the past years, and indeed saw the number of voluntary payments increase. In our assessment, we assume that the number of voluntarily paid penalty notices increases from 70% in the baseline scenario to 72% due to these policy measures.

By following the model in Annex 6, it is assessed to what extent the impunity level changed vis-à-vis the baseline scenario. It is estimated that the reduction in impunity is -3.5% in 2030, which is associated with a change in driving behaviour that results in a reduction of 3 fatalities, 24 serious injuries and 114 slight injuries in 2030 in PM9, PM10 and PM11 jointly at EU level relative to the baseline scenario. The numbers for 2025, 2040, 2050 and the net present value of the monetised external costs of accidents over the assessment period are provided at the end of section 9.3.1.

An overview of the impact of policy measures on the number of fatalities, serious and slight injuries is presented in Table 9.7.

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[239] For example, concerning the legal liability regime for traffic offences and legal safeguards concerning self-incrimination of the presumed offender.

Table 9.7 Number of prevented injuries due to policy measures, relative to the baseline, by severity

PM	Prevented fatalities 2025	Prevented fatalities 2030	Prevented fatalities 2040	Prevented fatalities 2050	Prevented fatalities '25 – '50
PM1	0	2	2	2	**49**
PM2, 3, 4	0	2	2	2	**50**
PM6	0	1	1	1	**25**
PM7	0	8	8	8	**200**
PM8a	0	4	4	4	**94**
PM8b	0	6	5	5	**141**
PM9, 10, 11	0	3	2	2	**60**
PM	**Prevented serious injuries 2025**	**Prevented serious injuries 2030**	**Prevented serious injuries 2040**	**Prevented serious injuries 2050**	**Prevented serious injuries '25 – '50**
PM1	0	20	18	18	**468**
PM2, 3, 4	0	20	19	18	**477**
PM6	0	10	9	9	**238**
PM7	0	80	74	72	**1,907**
PM8a	0	38	35	34	**900**
PM8b	0	57	53	51	**1,350**
PM9, 10, 11	0	24	22	22	**570**
PM	**Prevented slight injuries 2025**	**Prevented slight injuries 2030**	**Prevented slight injuries 2040**	**Prevented slight injuries 2050**	**Prevented slight injuries '25 – '50**
PM1	0	94	89	86	**2,262**
PM2, 3, 4	0	96	90	88	**2,307**
PM6	0	48	45	44	**1,153**
PM7	0	382	362	351	**9,226**
PM8a	0	180	171	166	**4,355**
PM8b	0	271	256	249	**6,532**
PM9, 10, 11	0	114	108	105	**2,758**

The impact on the number of accidents is expressed in EUR, by considering the external costs of fatalities, serious injuries and slight injuries (as presented in Table A.4). The results are presented in Table 9.8.

Table 9.8 Reduction in external costs, relative to the baseline, by severity, in millions

PM	External costs fatalities 2025	External costs fatalities 2030	External costs fatalities 2040	External costs fatalities 2050	External costs fatalities '25 – '50
PM1	€ 0.00	€ 7.12	€ 6.56	€ 6.42	**€ 119.17**
PM2, 3, 4	€ 0.00	€ 7.27	€ 6.68	€ 6.54	**€ 121.51**
PM6	€ 0.00	€ 3.64	€ 3.34	€ 3.27	**€ 60.76**
PM7	€ 0.00	€ 29.08	€ 26.72	€ 26.17	**€ 486.05**
PM8a	€ 0.00	€ 13.73	€ 12.61	€ 12.36	**€ 229.43**
PM8b	€ 0.00	€ 20.59	€ 18.92	€ 18.53	**€ 344.14**
PM9, 10, 11	€ 0.00	€ 8.69	€ 7.99	€ 7.82	**€ 145.30**
PM	**External costs serious injuries 2025**	**External costs serious injuries 2030**	**External costs serious injuries 2040**	**External costs serious injuries 2050**	**External costs serious injuries '25 – '50**
PM1	€ 0.00	€ 10.32	€ 9.62	€ 9.31	**€ 173.08**
PM2, 3, 4	€ 0.00	€ 10.53	€ 9.80	€ 9.48	**€ 176.48**
PM6	€ 0.00	€ 5.27	€ 4.90	€ 4.74	**€ 88.24**
PM7	€ 0.00	€ 42.21	€ 39.19	€ 37.92	**€ 705.91**

PM8a	€ 0.00	€ 19.88	€ 18.50	€ 17.90	**€ 333.21**
PM8b	€ 0.00	€ 29.82	€ 27.75	€ 26.85	**€ 499.82**
PM9, 10, 11	€ 0.00	€ 12.59	€ 11.72	€ 11.34	**€ 211.03**
PM	**External costs slight injuries 2025**	**External costs slight injuries 2030**	**External costs slight injuries 2040**	**External costs slight injuries 2050**	**External costs slight injuries '25 – '50**
PM1	€ 0.00	€ 3.81	€ 3.61	€ 3.50	**€ 64.59**
PM2, 3, 4	€ 0.00	€ 3.89	€ 3.68	€ 3.57	**€ 65.86**
PM6	€ 0.00	€ 1.94	€ 1.84	€ 1.78	**€ 32.93**
PM7	€ 0.00	€ 15.54	€ 14.71	€ 14.27	**€ 263.44**
PM8a	€ 0.00	€ 7.34	€ 6.94	€ 6.74	**€ 124.35**
PM8b	€ 0.00	€ 11.00	€ 10.41	€ 10.10	**€ 186.53**
PM9, 10, 11	€ 0.00	€ 4.65	€ 4.40	€ 4.27	**€ 78.76**

From Table 9.7 and Table 9.8, it can be observed that PM7 (duty to cooperate) has the highest impact when considered in isolation. Furthermore, one might notice that the impact of policy measures on the number of prevented injuries is 0 in 2025. Although we expect that the revised Directive would come (fully) into force in 2025, the indirect impact of measures on road safety only follows in 2026. This is because we assume that road users only adapt their driving behaviour, after they have received a penalty notice under the revised Directive.

In our modelling, we have assumed that the behavioural response takes one year to materialise, indicating that road users only adapt behaviour in 2026 (which results in fewer accidents on EU roads from 2026 onwards, relative to the baseline scenario).

In the first years, the impact has not fully materialised as the adjustment costs related to the implementation of the Directive are assumed to be spread over a five-year period. Thereby, only in 2029, the Directive is fully implemented. The safety benefits are assumed to grow in line with the assimilation of adjustment costs. Furthermore, as it was assumed that fewer offences would be committed under the baseline scenario (due to increased penetration of ISA-technology in vehicles), the impact of the Directive on the number of prevented offences and thereby road safety decreases over time.

9.3.2 Impact of policy options

Below, we presented the aggregated impacts per policy option. Please note that the impacts presented below are not the sum of individual policy measures. Jointly, policy measures have different impacts as when considering them in isolation. For example, PM1 increases the number of detected offences, and PM2 is aimed at improving the investigation of detected offences. Policy measures complement each other, so that the whole is greater than the sum of its parts. For example, if one simultaneously assesses the impact of measures increasing the number of detected offences and measures that improve the investigation of those offences, the total impact on the number of successfully investigated cases (and thereby the impact on impunity and driving behaviour) is more than if one considers these measures in isolation. These interlinkages can be derived by considering the road safety impact of all measures jointly, following the model described in Annex 6.

In the first years, the impact has not fully materialised. Thereby, only in 2029, the Directive is fully implemented.

An overview of the impact of policy options on the (prevented) number of fatalities, serious and slight injuries, relative to the baseline, is presented in Table 9.9. From this table, it can be observed that PO3A has the highest impact on road safety. As this is the most intervening option, also including enforcement procedures under the CBE Directive, this option is most effective in reducing impunity and thereby affecting road user behaviour.

Table 9.9 Number of prevented injuries due to policy options, relative to the baseline, by severity

PO	Prevented fatalities 2025	Prevented fatalities 2030	Prevented fatalities 2040	Prevented fatalities 2050	Prevented fatalities '25 – '50
PO1	0	7	6	6	**165**
PO2	0	8	7	7	**192**
PO2A	0	16	15	15	**384**
PO3	0	20	19	18	**486**
PO3A	0	23	21	20	**538**
PO	**Prevented serious injuries 2025**	**Prevented serious injuries 2030**	**Prevented serious injuries 2040**	**Prevented serious injuries 2050**	**Prevented serious injuries '25 – '50**
PO1	0	66	62	60	**1,575**
PO2	0	77	72	69	**1,837**
PO2A	0	154	143	139	**3,667**
PO3	0	195	181	176	**4,644**
PO3A	0	215	200	194	**5,133**
PO	**Prevented slight injuries 2025**	**Prevented slight injuries 2030**	**Prevented slight injuries 2040**	**Prevented slight injuries 2050**	**Prevented slight injuries '25 – '50**
PO1	0	315	299	290	**7,620**
PO2	0	368	348	338	**8,884**
PO2A	0	734	696	675	**17,738**
PO3	0	930	881	855	**22,466**
PO3A	0	1,028	974	945	**24,830**

The impact on the external costs of accidents is monetised, by adopting the Value of Statistical Life (VOSL) from the 2019 Handbook of external costs of transport that is presented in Annex 6. The impacts for 2030, 2040 and 2050 and the net present value (NPV) over the entire assessment period (2025 – 2050), adopting a discount of 3%, are presented in Table 9.10.

Table 9.10 Reduction in external costs of accidents (fatalities, serious injuries and slight injuries), relative to the baseline, values in millions

PO	External costs fatalities 2025	External costs fatalities 2030	External costs fatalities 2040	External costs fatalities 2050	External costs fatalities '25 – '50
PO1	€ 0.00	€ 23.99	€ 22.08	€ 21.63	**€ 401.35**
PO2	€ 0.00	€ 27.98	€ 25.74	€ 25.22	**€ 467.97**
PO2A	€ 0.00	€ 55.86	€ 51.40	€ 50.35	**€ 934.31**
PO3	€ 0.00	€ 70.75	€ 65.10	€ 63.78	**€ 1,183.37**
PO3A	€ 0.00	€ 78.19	€ 71.95	€ 70.49	**€ 1,307.90**
PO	**External costs serious injuries 2025**	**External costs serious injuries 2030**	**External costs serious injuries 2040**	**External costs serious injuries 2050**	**External costs serious injuries '25 – '50**
PO1	€ 0.00	€ 34.76	€ 32.38	€ 31.34	**€ 582.90**
PO2	€ 0.00	€ 40.52	€ 37.76	€ 36.54	**€ 679.66**
PO2A	€ 0.00	€ 80.91	€ 75.39	€ 72.95	**€ 1,356.96**
PO3	€ 0.00	€ 102.47	€ 95.49	€ 92.40	**€ 1,718.68**
PO3A	€ 0.00	€ 113.26	€ 105.53	€ 102.12	**€ 1,899.53**
PO	**External costs slight injuries 2025**	**External costs slight injuries 2030**	**External costs slight injuries 2040**	**External costs slight injuries 2050**	**External costs slight injuries '25 – '50**
PO1	€ 0.00	€ 12.82	€ 12.15	€ 11.79	**€ 217.54**

PO2	€ 0.00	€ 14.95	€ 14.17	€ 13.75	**€ 253.65**
PO2A	€ 0.00	€ 29.85	€ 28.29	€ 27.45	**€ 506.41**
PO3	€ 0.00	€ 37.81	€ 35.83	€ 34.77	**€ 641.40**
PO3A	€ 0.00	€ 41.79	€ 39.60	€ 38.43	**€ 708.90**

9.4 Fundamental rights and equal treatment

For each of the policy measures proposed an assessment was made whether the measure has an impact on the fundamental rights and/or equal treatment of EU citizens. As the methodological approach to assess the impacts on fundamental rights and equal treatment is highly similar and the two types of impacts are closely related, the impacts are assessed in one section. For the assessment, the steps laid down in Tool #28 from the Better Regulation Guidelines on fundamental rights were followed.

The policy measures proposed do not impact all fundamental rights. Therefore, it is important to assess which fundamental rights should be included in the impact assessment (step 1). The starting point of the assessment of the fundamental rights is the Charter of Fundamental Rights of the European Union (2012/C 326/02), which presents all fundamental rights applicable in the European Union. For each of the 50 articles laying down the fundamental rights, an assessment was made whether or not the specific fundamental right might be influenced by changes in the CBE-Directive. This assessment identified four potentially relevant fundamental rights:

- Article 8 – Protection of personal data;
- Article 20 – Equality before the law;
- Article 47 - Right to an effective remedy and to a fair trial;
- Article 48 (2) – Right of defence.

In addition to these four fundamental rights, the measures are also assessed in light of equal treatment. Equal treatment goes beyond the fundamental right of non-discrimination (article 21 of the Charter). From a cross-border enforcement perspective, this means that non-resident offenders and resident offenders are treated in the same way. Their rights and obligations are the same. As a result, it does not matter whether an offence is committed by a resident or non-resident offender as the outcomes of detection, enforcement and follow-up should be the same.

In step 2 for each of the selected fundamental rights, an assessment is done whether it concerns an absolute fundamental right.[240] For this assessment, information is used from the legal analysis (section 2) as well as information from the Fundamental Rights Agency (FRA) were used. Based on the information collected it can be concluded that none of the selected fundamental rights does qualify as an absolute right.

9.4.1 Impact of policy measures

Per policy measure, the impact on the selected fundamental rights was assessed using information from desk research and stakeholder consultation (step 3). Table 9.11 presents the outcome of this exercise. Green means that the measure has a positive impact on the specific fundamental right, while grey means that the measure does not have an impact. For the boxes coloured green, an additional explanation is provided below the table.

[240] An absolute right is a right that cannot be limited or in-fringed under any circumstances, not even during a declared state of emergency. Examples are the ban on torture.

Table 9.11 Assessment of policy measure impact on fundamental rights and equal treatment relative to the baseline

PM	Article 8 Protection of personal data	Article 20 Equality before the law	Article 47 Effective remedy / fair trial	Article 48 (2) Right to defence	Equal treatment
PM1					
PM2	*				
PM3					
PM4	*				
PM5	*				
PM6					
PM7					
PM8a					
PM8b					
PM9					
PM10					
PM11					
PM12					
PM13					
PM14					
PM15					

Impact on article 8 – Protection of personal data

Article 8 introduced the right to have your personal data protected. It also states that personal data can be used for specific purposes as long as there is a proper legal basis for this. For example, when the law states that personal data can be shared for investigation purposes, the sharing of the data is allowed.

Article 8 – Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her;
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified;
3. Compliance with these rules shall be subject to control by an independent authority.

As already explained earlier in this report, the European legislation regarding the protection of personal data has been changed since the implementation of the CBE Directive. As a result, the CBE Directive no longer refers to the applicable law protecting one's personal data. PM15 aims to remedy this matter by changing the reference made in the CBE Directive. Changing the reference ensures that the CBE Directive refers to the latest legislation on the protection of personal data and thereby ensures full compliance with the Charter as well. The impact of PM15 on this particular fundamental right, therefore, is positive.

Besides the prominent impact of PM15 on this fundamental right, also PM10 has a slightly positive impact on the protection of personal data. PM10 aims to harmonise the time limits for storage and retention of data on the previous owner/holder. By setting clear time limits, it is known how long personal data can be kept in the registers throughout Europe. When this period has expired, data needs to be deleted. Having clear time limits in place creates clarity concerning how long personal data can be stored. This clarity is in line with how the new GDPR legislation is set up.[241] The legislation allows to collect personal data, but it should also be made clear why data are collected and how long they will be stored.[242]

In Table 9.11 PM2, 4 and 5 are marked with an Asterix (*). The measures all aim to improve the data availability and data sharing to identify the offender. In principle, these policy measures focus on the sharing of data between different enforcement authorities (i.e. policy forces in the different Member States). As long as there is a legal basis that allows for sharing these personal data to identify an offender, these measures do not impact this particular fundamental right. However, in the final revision of the CBE Directive, it is important to ensure that a proper legal basis is in place. Otherwise, the revisions might not be in line with the GDPR and LED and as a result with article 8 of the Charter.

The remaining policy measures do not impact the protection of personal data.

Impact on article 20 – Equality before the law

Article 20 introduces the fundamental right to be equal before the law. This means that the law does not make a difference between subjects. The law and public institutions do not, for instance, make a difference between people based on nationality, gender, sexuality and religion. The fundamental right aims to protect individual individuals from discrimination. It also requires that individuals are equally protected. This means that certain individuals or groups of individuals are not privileged over others by the law. The law should apply equally to all who are subject to it.[243]

> **Article 20 – Equality before the law**
> Everyone is equal before the law.

In the case of the CBE-Directive and the proposed policy measures no distinction is made between certain individuals and/or groups of individuals. The provisions do apply equally to all who fall within the scope of the Directive (i.e. the (presumed) offenders of road safety offences). A closer examination of the proposed policy measures shows that none of the measures included will affect this fundamental right, either positively or negatively. As a result, the boxes in Table 9.11 are marked grey.

Impact on Article 47 – Effective remedy / fair trial

Article 47 lays down the rights to an effective remedy and a fair trial. Particularly the part on the fair trial is of relevance for the CBE Directive as it ensures that all potential offenders have the same rights. The article can be interpreted in a broader sense than only being at trial. The investigation and follow-up part also fall within its scope. This means that becoming aware that you are investigated and prosecuted falls within the scope as well.

> **Article 47 – Right to an effective remedy and to a fair trial**
> Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
> Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of

[241] See recital 39 of Regulation (EU) 2016/679.
[242] Article 30(1)(a) and (1)(f) of Regulation 2016/679.
[243] For more information see: Fundamental Rights Agency.

being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Several of the policy measures formulated aim to improve the information provided to the presumed offender and thereby contribute slightly to improving the right to a fair trial. Policy measures that specifically contribute to this are *PM9, PM10, PM11, PM12 and PM14*. PM9 provides the presumed offender with the knowledge which national authorities throughout the EU are entitled to send information letters. As a result, the presumed offender can check whether a letter received is indeed from an authority that is allowed to do so. The presumed offender knows that the letter is genuine. PM10 harmonises the time limits in which the letter can be sent. This also positively contributes to having a fair trial, as the presumed offender will be informed within due time about the offence committed and the follow-up thereof. In addition, the set time limit provides legal certainty, as it is clear for the presumed offender what the time of follow-up is and when legal action can be expected. PM11 introduces a minimum content of the letter and thereby ensures that the presumed offender is aware of the details of the offence committed as well as the follow-up procedure. The presumed offender is sufficiently informed which gives him/her the possibility to properly defend himself/herself if necessary. PM12 ensures that the communication regarding the offence, via the information letter, is done in the proper language. As a result, the presumed offender is informed in a language he/she understands and again is better able to defend himself/herself if necessary. PM14 aims to ensure that final decisions are authentic and fair. By introducing requirements on this, the outcome of the investigation and follow-up is done in a recognisable way leading to an authentic and fair outcome for the offender.

The remaining policy measures do not impact the right to an effective remedy nor the right to a fair trial.

Impact on article 48(2) – Right to defence

Article 48(2) introduces the fundamental right that a person who stands trial has the opportunity to defend him/herself or is represented in this defence. It means, for example, that a person has the right to be heard and speak during a court case and that witnesses could be called in defence of the person standing trial.

Article 48(2) – Right of defence

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

When considering the measures proposed, none of them directly relates to potential court cases. They either focus on better detection of offences, better investigation and better follow-up procedure (with a focus on communicating with the offender). Changes to the latter are covered by article 47 as highlighted above. As a result, it can be concluded that the measures do not have a positive or negative impact on the right of defence.

Equal treatment

Equal treatment is not defined in the Charter of the Fundamental Rights of the European Union. Therefore, it is not possible to link it to a specific article in the Charter. As highlighted at the start of this section, equal treatment does entail more than non-discrimination. As said, non-discrimination consists in treating others on an equal footing, while equal treatment consists of treating others as yourself. In the assessment for each of the measures, it is assessed whether resident and non-resident offenders are treated in the same way (i.e. on an equal footing).

Several of the policy measures formulated do improve equal treatment of resident and non-resident offenders. First of all, PM1 has a positive impact on equal treatment. It can be argued that resident offenders are currently already investigated and prosecuted for a wider range of road-safety-related offences. In case the scope of the CBE Directive is extended, the consequence is that also non-resident offenders can be investigated and prosecuted for these offences. The fact that with a scope extension resident and non-resident offenders are treated in the same way leads to equal treatment, as both can be held accountable for offences committed.

Another policy measure impacting equal treatment positively is PM3. This measure aims to harmonise the time limits for keeping data on the previous owner/holder. As highlighted before the deadline currently differs per Member State. As a result, presumed offenders can be investigated and prosecuted in one Member State as their data are still available, while in another Member State this will not happen as data no longer exists. This leads to a difference in treatment, as residents of Member State A might be fined for an offence committed in Member State B, while residents in Member State C might not be fined for an offence committed in Member State B. As a result, the measure improves equal treatment of citizens throughout the European Union.

PM6 introduces an investigation mechanism for the cross-border exchange of information. As currently this can be done in different ways the outcome might be different. By introducing a harmonised approach (Lex Specialis) that applies to all presumed offenders, no differences in the exchange of information can be made. The legal position of the presumed offenders, irrespective of where they live in the European Union, is done in the same way. As a result, this measure positively impacts equal treatment.

Another measure which impacts equal treatment is PM8a and PM8b. This measure aims to establish a dedicated mechanism to follow up on financial penalties. As described, currently not all penalties issued to non-resident offenders are easy to follow up. However, when you, as a resident offender, commit an offence you need to pay and a wide range of follow-up actions is available. By adopting this new mechanism, also the opportunity for non-resident offenders not to pay will decrease. As a result, also non-resident offenders have to pay which creates an equal treatment and a fair system between resident and non-resident offenders.

Both PM11 and PM12 aim to improve the legal position of non-resident drivers once they are identified and sanctions are imposed. Policy measure 11 aims to lay down a minimum obligatory content of the information letter. Policy measure 12 ensures that communication is done in a language the presumed offender understands. Currently, resident offenders also receive communication in their own language and a minimum amount of information is included in the information letter. By ensuring that also non-resident offenders receive a similar or higher level of information and can read it in a language they understand, their legal position is improved. As a result, both measures positively impact equal treatment.

PM13 allows for transparent communication on road traffic rules, sanction schemes and appeal procedures to all EU road users. By doing so, road users can better inform themselves about applicable rules in other EU countries. As thereby information available for foreign road users is brought in line with information available for domestic road users, both are treated more equally.

The remaining policy measures have no impact on equal treatment.

9.4.2 Impact of policy options

All policy measures are included in all identified policy options, except for PM14, which is only included under PO3 and PO3A. Under other policy options, the enforcement of decisions on financial penalties (and provisions on the communication on financial decisions) is still conducted on the basis of procedures established under the Framework Decision.

Under the legal analysis, it was established that, as a condition for the cross-border enforcement of financial penalties, through the Framework Decision imposed for criminal and administrative offences, these shall be grounded on decisions subject to a judicial review under a procedure similar to criminal proceedings[244]. If the CBE Directive would include a tailored mechanism for the enforcement of financial penalties, reference should be made that communication of the final decision to the offender would rely on the same procedures (e.g. by following Directive 2010/64/EU).

We thereby conclude that all policy options have a similar impact on fundamental rights.

9.5 Road user costs (hassle costs)

For each of the policy measures proposed an assessment was made whether the measures impact road user costs. It should be noted that the road user is only involved in some stages of the enforcement chain. The road user is not involved in the detection stage (Problem 1) or in the investigation stage of an offence (prior to the submission of the penalty notice). Only after a penalty notice is issued, the road user experiences costs as it needs to read the penalty notice and study its content. Therefore, only a selection of policy measures affects road user costs.

These costs are related to:

- Authenticity of the penalty notice. Especially when the penalty notice is sent by a private party (such as a debt collection/recovery company), the road user/presumed offender might need to invest time to assure that the information letter indeed relates to a traffic offence that is committed and that it is sent by an official organisation that collects the fine;
- Duration between the offence and penalty notice. The longer the duration between the day on which the offence is committed and the day on which the information letter is provided to the presumed offender, the more likely it is that the presumed offender will not remember committing the offence. When the driver does not remember that he or she committed an offence, the presumed offender will more likely need additional information to assess whether or not he or she would like to appeal;
- Information available to road users. The more information that is already available to road users, or provided to the offender in the penalty notice, the less time the presumed offender needs to invest to obtain this information in an alternative way. The provided information has quite a wide range, and is, for example, related to characteristics of the offence (such as the place and day on which it was committed) but also related to appeal procedures or related to practical issues (size of the fine, discounts for early payment, the bank account to which the financial transfer needs to be made, etc.);
- Language regime in the information letter. The language regime relates to the language of the penalty notice. When a penalty notice is sent in a language that the presumed offender does not understand, the presumed offender needs to invest time (and possibly financial resources) to translate the penalty notice;
- Language regime in the follow-up communication. If the presumed offender requests more information, or starts an appeal procedure, the language regime of this follow-up communication might also result in road user costs when the

[244] See ECJ, Judgement in Case C-60/12, Baláž.

road user needs to translate this communication in a language that he or she understands.

It should be noted that it is not possible to quantify the impacts of policy measures on road user costs, due to two main reasons.

Firstly, there is insufficient information on what the different information letters/penalty notices submitted by Member States contain and which language regime is used. Although several templates have been provided to us by Member States, some Member States also indicate that there is not one single template. In Italy, for example, penalty notices are sent by the national government, but also to a large extent by the almost 8,000 municipalities. This indicates that the road user costs per information letter are highly diverging, as it largely depends in which jurisdiction the traffic offence was committed (and the information letter/penalty notice issued).

Secondly, besides a lack of Europe-wide information on the content of penalty notices, it is not possible to assess the impact of missing information on costs for road users. For example, if a road user knows that they have committed an offence abroad (for example when the driver was ‘flashed’), and is willing to pay the associated fine, it seems plausible to assume that only basic information is needed (such as size of the fine and the bank account number to which a financial transfer needs to be made), and that a lack of information on appeal procedures does not lead to road user costs (as the road user simply does not require this information). Road users do indicate that appealing a penalty notice sent from abroad can be a tedious process and that in some cases they require a lawyer, specialised in legal procedures in the country where the offence was committed. It seems that there are no significant costs involved when the offender simply wants to pay the penalty notice, and that these can be assumed to be negligible. The fact that there is (to our knowledge) no data available on the number of appeal procedures that are started for sanctions imposed for cross-border offences, further complicates estimating road user costs.

Considering the findings above, which were also discussed under Problem 5, only a gross estimate on the number of penalty notices sent from abroad, that do not contain adequate information or have the incorrect language regime, is obtained. Under Problem 5, it was (conservatively) assumed that 15% of all penalty notices sent from abroad do not contain adequate information or have the incorrect language regime and might therefore (possibly) lead to road user costs. However, as the costs associated have a wide range, and as evidence on this is very scarce, it is not possible to perform a full quantification of the effect of policy measures and options. Therefore, the impact of policy measures and options on road user costs is provided qualitatively. That is, if a policy measure improves the content of the information letter or specifies the language regime that should be adopted, this will likely result in an improvement (a decrease) in road user costs.

To provide an order of magnitude on the costs that are associated with this, an indicative, back-of-the-envelope calculation is performed as well.

9.5.1 Impact of policy measures

Per policy measure, the impact on road user cost categories (authenticity, duration, information provided and language regime) was assessed using information from desk research and stakeholder consultation. Table 9.12 presents the outcome of this exercise. Green means that the measure has a positive impact on the specific component of road user costs, while grey means that the measure does not have an impact. For the boxes coloured green, an additional explanation is provided below the table.

Table 9.12 Assessment of policy measure impact on road user costs relative to the baseline

PM	Authenticity of the penalty notice	Duration between the offence and the penalty notice	Information available to road users	Language regime information letter	Language regime follow-up communication
PM1					
PM2					
PM3					
PM4					
PM5					
PM6					
PM7					
PM8a					
PM8b					
PM9					
PM10					
PM11					
PM12					
PM13					
PM14					
PM15					

Based on the assessment in Table 9.12, one can conclude that only a limited set of policy measures affect road user costs.

PM9 has a positive impact (decrease) on road user costs, as it is easier to identify whether the organisation that issued the penalty notice is officially recognised. It should be noted that, as the platform foreseen under this policy measure is based on G2G communication, the road user does need to request a public body to validate the authenticity of the penalty.

PM10 has a positive impact (decrease) on road user costs, as a time limit is specified during which penalty notices can be submitted after the offence is registered. This ensures that the duration between the offence being detected and the offender receiving an information letter/penalty notice (on average) decreases.

PM11 has a positive impact (decrease) on road user costs, as it further specifies the content the information letter/penalty notice should (at least) include. Moreover, it further ensures that information letters/penalty notices should be sent in an official language of the Member State in which the presumed offender has normal residence.

PM12 has a positive impact on road user costs, as the language regime for follow-up communication with the presumed offender is further specified. This would ensure that, for the road user, the time involved in translating follow-up documents is overcome. It should be noted that this measure only decreases road user costs in situations where appeal procedures are initiated or when the road user requests additional information. In situations where the offender chooses to pay the fine without requiring additional information or initiating an appeal procedure, the policy measure has no effect.

PM13 has a positive effect on road user costs, as it discloses information on applicable traffic rules, sanction schemes and appeal procedures in all EU Member States in a uniform and transparent way. Moreover, this information will be translated into all official EU languages.

PM14 has a positive effect on road user costs, as it specifies that (and how) final decisions (resulting from court cases) are provided to the offender. This ensures that the road user obtains information on the final verdict, and does not need to investigate this themselves. It should be noted that this policy measure only has a positive impact on road user costs in cases where appeal procedures are launched.

In Chapter 4.5 (Problem 5), the number of penalty notices that contain inadequate information or have the incorrect language regime was (conservatively) estimated at 15% and expected to remain constant over the assessment period. The model developed in Annex 6 and findings from the baseline scenario suggest that, in 2030, about 10.8 million information letters will be sent to presumed offenders. Considering that 15% of these are affected by the measure, we indicatively find that about 1.6 million of them will have issues described under Problem 5 (in absence of a revision).

The road user costs associated with dealing with inadequate information is related to the time spent by the presumed offender to understand the vital elements, which is assumed to be (at least) 5 minutes. By adopting an hourly tariff of EUR 25.7, the lower bandwidth of the costs is estimated at EUR 2.14 of hassle costs per information letter per inadequate penalty notice.

The upper bandwidth of the costs occur in situation where legal consultations are conducted. In this back-of-the-envelope calculation, we assume that the upper boundary of the bandwidth is equal to the sum of the fine that the presumed offender is requested to pay. That is, if a road user needs to spend more resources on understanding the content of the penalty notice than the size of the penalty associated, there is no (economic) sense in making the effort to understand the notice (and therefore the upper boundary of the 'hassle costs' per penalty notice is estimated to be the size of the financial penalty). It is important to note that the size of the fine is not considered in the estimation, only the resources needed to understand its content. We assume that the average size of a penalty is EUR 100, which is adopted as the upper bandwidth of hassle costs per inadequate penalty notice. A minor speeding offence (of a few kilometres per hour) is in most Member States around EUR 50, serious speeding offences (of more than 20 kilometres per hour) are generally more than EUR 100.

By adopting these estimates, we quantify that under the baseline scenario, the annual road user costs ('hassle cost') are estimated to be EUR 3.4 million to EUR 162 million in 2030. The costs recur annually in absence of a revision. The impact of policy measures under consideration has the potential to substantially reduce road user costs ('hassle costs').

If we roughly assume that these measures have the potential to decrease 90% of the communications that are considered, we find that the associated impact is a decrease between EUR 3.1 and EUR 145.8 million in 2030 relative to the baseline. In 2040, the estimate is a decrease between EUR 3.0 and EUR 137.7 million. In 2050, the estimate is a reduction between EUR 2.8 and EUR 131.0 relative to the baseline. The net present value over the assessment period (2025 – 2050), adopting a discount rate of 3%, is calculated as a reduction between EUR 53 million and EUR 2.5 billion relative to the baseline. Please note that this estimate is highly uncertain, and only provided to inform the reader of the magnitude of hassle costs.

9.5.2 Impact of policy options

All policy measures are included in all policy options, except for PM14, that is only included under PO3 and PO3A. As only a rough estimate was derived under section 9.5.1, with a considerable bandwidth, we assume that the impact is similar for all policy options (the net present value for all policy options is estimated at a bandwidth of 53 million to 2.5 billion).

9.6 Administrative costs for the private sector, passed on to road users

This impact originates from one policy measure (PM5) that is included under all policy options. PM5 will likely result in a cost reduction for car leasing and rental companies, if the information on the final keeper/holder of the vehicle is included in the VRD. Currently, the car rental/leasing companies are often requested to identify the owner/holder of the vehicle, or are held accountable when an offence is committed in their vehicle (owner/holder liability) and then need to reimburse the penalty with the lessee/renter (also consider Section 8.4). Two separate interviews were held with Leaseurope to assess the impact.

9.6.1 Impact of the policy measure

The costs that are involved for car rental/leasing companies are estimated through an administrative fee. Based on desk research, it is found that rental/leasing companies often charge an administrative fee of EUR 5 to EUR 25[245] if an offence is committed in their vehicle (besides the financial payment that needs to be made by the presumed offender). This number is validated by Leaseurope. The fact that an administrative fee is charged, indicates that road users ultimately bear the costs of the administrative activities conducted by private sector organisations.

Based on the survey carried out by Leaseurope under their members, it is found that (at least) Portugal, Sweden and Luxembourg include information on the final holder/keeper of the vehicle in the VRD. This indicates that, for car rental/leasing companies established in these countries, this measure would result in a cost reduction.

Leaseurope estimates that some 60 million offences are committed with rented/leased vehicles a year. It is important to note that these also include offences that are not included in the scope of the CBE Directive (such as parking offences). It is hard to assess the share of offences committed abroad, as the final holder/keeper of the vehicle often has a different nationality than that of the Member State in which the license plate is registered. This indicates that it is hardly possible to provide the number of cases for which the measure has an impact. We conservatively assume that for some 40,000 offences in 2019 (which represents some 0.07% of all offences committed with rented/leased vehicles in Europe)[246], this measure would fully remove admin costs for the private sector.

For 2025, by considering the baseline development of offences committed with rented/leased vehicles and the associated administrative costs (Section 8.4), the impact (i.e. cost reduction) is calculated at EUR 0.50 million in 2025[247], at EUR 0.43 million in 2030, at EUR 0.33 million in 2040 and at EUR 0.28 million for 2050. The net present value over the period 2025 – 2050 is calculated at EUR 7.04 million.

In 2019, Leaseurope represented some 1,950 leasing/rental companies. Furthermore, Leaseurope estimates that it represents 90% of the market. If we adopt this estimate, we find that there are some 2,150 leasing/rental companies in the EU. In our assessment, we assume that the number of leasing/rental companies will remain constant over the assessment period. Consequently, the benefit per company is estimated at EUR 234 in 2025, EUR 202 in 2030, EUR 155 in 2040 and EUR 128 in 2050.

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[245] Depending on characteristics of the Member State (e.g. the amount of effort and time needed to 'pass on' the penalty notice to the final holder/keeper).

[246] This would be CBE-related offences, committed in rental vehicles registered in Portugal, Luxembourg and Sweden that are committed in other EU Member States.

[247] Which corresponds to 38,581 offences for which the admin fee of € 12.90 (in the baeline scenario) is completely removed.

The net present value over the assessment period, per company, is estimated at EUR 3.273. The findings are presented in Table 9.13.

Table 9.13 Assessment of policy measure impact on administrative costs for private companies

Policy measure 8	2025	2030	2040	2050	NPV Assessment period '25 – '50
Number of offences	39,050	38,275	37,890	40,226	
Administrative fee	€ 12.89	€ 11.35	€ 8.81	€ 6.84	
Cost reduction (in millions)	€ 0.503	€ 0.435	€ 0.334	€ 0.275	€ 7.037
Number of companies	2,150	2,150	2,150	2,150	2,150
Benefit per company	€ 234	€ 202	€ 155	€ 128	€ 3.273

9.6.2 Impact of policy options

PM5 is included in all policy options and therefore has an identical benefit in all policy options. The findings are presented in Table 9.14. As was indicated before, the administrative costs for the private sector are passed on to road users, which therefore ultimately experience the benefit. As administrative activities are conducted by private sector companies, and these actions drive the size of costs, the administrative costs are assessed for the private sector.

Table 9.14 Assessment of policy options impact on administrative costs for private companies

PO	2025	2030	2040	2050	NPV Assessment period '25 – '50
PO1	€ 0.50	€ 0.43	€ 0.33	€ 0.28	€ 7.04
PO2	€ 0.50	€ 0.43	€ 0.33	€ 0.28	€ 7.04
PO2A	€ 0.50	€ 0.43	€ 0.33	€ 0.28	€ 7.04
PO3	€ 0.50	€ 0.43	€ 0.33	€ 0.28	€ 7.04
PO3A	€ 0.50	€ 0.43	€ 0.33	€ 0.28	€ 7.04

10 COMPARISON OF POLICY OPTIONS

Based on the analysis of the impacts of the policy options, this section compares the options. Following the Better Regulation Guidelines, the policy options are compared in terms of effectiveness, efficiency, coherence, subsidiarity and proportionality. The comparison of options forms the basis for selecting a preferred policy option, which is presented in Chapter 11.

10.1 Effectiveness

In our assessment of effectiveness, we examine to which extent the general and specific objectives (SO) of the intervention, as described in Chapter 6, are met. The impacts of policy options are assessed over a 25-year period, starting from 2025 (the first year of implementation) and assessed until 2050. Before an overview of the assessed effectiveness is discussed, Table 10.1 first specifies the link between policy objectives and indicators.

Table 10.1 Link between objectives and indicators

General objective	Specific objective	Indicators
GO: Improve road safety by better cross-border enforcement of road traffic rules, i.e. primarily to decrease socio-economic costs linked to road fatalities, injuries and material damage by better compliance of non-residents with road traffic rules through the deterrent effect of sanctions.	SO A: streamline mutual assistance and recognition procedures between Member States in investigation of road traffic offences	• Increased share of successful cross-border investigations.
	SO B: streamline existing procedures for mutual recognition of administrative or judicial decisions on financial penalties	• Increased share of successfully enforced penalties.
	SO C: ensure the protection of non-residents' fundamental rights in legal proceedings related to cross-border enforcement of road traffic rules	• Reduced number of citizens’ complaints concerning penalty notices.
	SO D: establish an adequate scope of the revision and take into account the new EU rules on personal data protection	• Degree to which Directive is made consistent with LED and GDPR.

Table 10.2 summarises the assessed effectiveness of the policy options to reach the objectives as presented above. In this chapter, the effectiveness of the general objective is assessed by the extent to which policy options achieve an enhancement of road safety. This criterion is indicated by the estimated number of prevented injuries (broken down into severity). The specific objectives are assessed based on the indicators presented in Table 10.1.

Table 10.2 Effectiveness of the different policy options

	Policy option 1	Policy option 2	Policy option 2A	Policy option 3	Policy option 3A
Improve road safety by better cross-border enforcement of road traffic rules, i.e. primarily to decrease socio-economic costs linked to road fatalities, injuries and material damage by better compliance of non-residents with road traffic rules through the deterrent effect of sanctions (GO)					
Decrease the number of road fatalities and injuries (relative to the baseline)	**Small positive** effect is expected on the number of road injuries: it is estimated that PO1 prevents 7 fatalities, 66 serious injuries and 315 slight injuries in 2030. Over the assessment period (2025 – 2050), PO1 is estimated to prevent 165 fatalities, 1,575 serious injuries and 7,620 slight injuries.	**Small positive** effect expected on the number of road injuries: it is estimated that PO2 prevents 8 fatalities, 77 serious injuries and 368 slight injuries in 2030. Over the assessment period (2025 – 2050), PO2 is estimated to prevent 192 fatalities, 1,837 serious injuries and 8,884 slight injuries.	**Large positive** effect is expected on the number of road injuries: it is estimated that PO2A prevents 16 fatalities, 154 serious injuries and 734 slight injuries in 2030. Over the assessment period (2025 – 2050), PO2A is estimated to prevent 384 fatalities, 3,667 serious injuries and 17,738 slight injuries.	**Very large positive** effect is expected on the number of road injuries: it is estimated that PO3 prevents 20 fatalities, 195 serious injuries and 930 slight injuries in 2030. Over the assessment period (2025 – 2050), PO3 is estimated to prevent 486 fatalities, 4,644 serious injuries and 22,466 slight injuries	**Very large positive** effect is expected on the number of road injuries: it is estimated that PO3A prevents 23 fatalities, 215 serious injuries and 1,028 slight injuries in 2030. Over the assessment period (2025 – 2050), PO3A is estimated to prevent 538 fatalities, 5,133 serious injuries and 24,830 slight injuries.
Streamline mutual assistance and recognition procedures between Member States in investigation of road traffic offences (SO A)					
Increase number (or share) of successful cross-border investigations relative to the baseline	**Small positive** effect on the share of successful investigations: increase of 1.8 percentage points in 2029 and all subsequent years, (from 81.0% to 82.8%).	**Small positive** effect on the share of successful investigations: increase of 2.7 percentage points in 2029 and all subsequent years, (from 81.0% to 83.7%).	**Large positive** effect on the share of successful investigations: increase of 9.2 percentage points in 2029 and all subsequent years, (from 81.0% to 90.2%).	**Large positive** effect on the share of successful investigations: increase of 9.2 percentage points in 2029 and all subsequent years, (from 81.0% to 90.2%).	**Large positive** effect on the share of successful investigations: increase of 9.2 percentage points in 2029 and all subsequent years, (from 81.0% to 90.2%).
Streamline existing procedures for mutual recognition of administrative or judicial decisions on financial penalties (SO B)					
Increase number (or share) of successfully enforced cases relative to the baseline	Not covered.	Not covered.	Not covered.	**Large positive** effect on the share of successfully enforced cases: increase of 10.0 percentage points in 2029 and all subsequent years	**Large positive** effect on the share of successfully enforced cases: increase of 15.0 percentage points in 2029 and all subsequent years

	Policy option 1	Policy option 2	Policy option 2A	Policy option 3	Policy option 3A
				(from 5.0% to 15.0%).	(from 5.0% to 20.0%).
Ensure the protection of non-residents' fundamental rights in legal proceedings related to cross-border enforcement of road traffic rules (SO C)					
Reduced number of citizens' complaints concerning penalty notices.	**Moderate positive** effect on quality of penalty notices. Thereby, fewer citizens' complaints are expected.	**Moderate positive** effect on quality of penalty notices. Thereby, fewer citizens' complaints are expected.	**Moderate positive** effect on quality of penalty notices. Thereby, fewer citizens' complaints are expected.	**Moderate positive** effect on quality of penalty notices. Thereby, fewer citizens' complaints are expected.	**Moderate positive** effect on quality of penalty notices. Thereby, fewer citizens' complaints are expected.
Establish adequate scope of the revision and take into account the new EU rules on personal data protection (SO D)					
Degree to which Directive is made consistent with LED and GDPR	**Large positive** effect: by making the Directive consistent with LED and GDPR, a positive impact is expected.	**Large positive** effect: by making the Directive consistent with LED and GDPR, a positive impact is expected.	**Large positive** effect: by making the Directive consistent with LED and GDPR, a positive impact is expected.	**Large positive** effect: by making the Directive consistent with LED and GDPR, a positive impact is expected.	**Large positive** effect: by making the Directive consistent with LED and GDPR, a positive impact is expected.

The following sections elaborate on the findings that are summarised in Table 10.2.

10.1.1 General Objective

The general objective of the initiative is to improve road safety by better cross-border enforcement of road traffic rules. This is indicated by the decrease in the number of road fatalities and injuries (relative to the baseline) in Table 10.2.

PO1, which specifies 'no-regret' actions for the revision, reduces the number of fatally injured persons by 165 over the assessment period.

PO2 builds on PO1 and adds a tailored investigation mechanism to identify the presumed offender and their address, in cases where VRD exchange is not sufficient to finish the investigation. This policy option reduces the number of fatally injured persons by 192 fatalities over the assessment period. PO2A builds on PO2 and also introduces the duty to cooperate for offences under the scope of the CBE Directive. This policy option reduces the number of fatally injured persons by 384 fatalities over the assessment period.

PO3 builds on PO2A and adds a tailored enforcement mechanism for the cross-border enforcement of financial penalties, including all grounds for recognition that are also included under Framework Decision 2005/214/JHA. This policy option reduces the number of fatally injured persons by 486 fatalities over the assessment period. PO3A builds on PO2A and adds a tailored enforcement mechanism for the cross-border enforcement of financial penalties, but removes some grounds for recognition that are currently foreseen under Framework Decision 2005/214/JHA. This policy option reduces the number of fatally injured persons by 538 fatalities over the assessment period.

The analyses conducted find that the more intervening the policy options are, the more they contribute to reaching the general objective. PO3A is found to have the highest impact on reaching the general objective.

It should be noted that triangulated data to substantiate the road safety impacts could hardly be obtained. The assumptions made, for example on the number of detected offences and observed issues with investigation and enforcement, are largely based on input from Member States, which made triangulation hardly possible. In order to somewhat overcome the lack of availability of triangulated data, conservative assumptions were used to derive the impacts. Therefore, we expect that the impact is likely to be underestimated and the benefits to be higher.

10.1.2 SO A: To streamline mutual assistance and recognition procedures between Member States in the investigation of road traffic offences

The revision of the CBE Directive in terms of improving cross-border investigation of offences can be considered along two lines:

- Improved detection of offences and improved existing cross-border investigation procedures. This can be achieved by improving cross-border investigation of offences under the existing CBE Directive. This is the scope of PO1.
- Streamlined follow-up cross-border investigation of road safety related traffic offences. This can be achieved by cross-border investigation of offences as a follow-up to the CBE Directive. This is the scope of PO2. A special variant to this policy option (variant PO2A) also features the establishment of duty to cooperate for road traffic offences committed abroad (Lex Specialis).

PO1 includes policy measures aimed at improving vehicle registers' content and existing exchange of information (PM2, 3, 4 and 5). Hence, these measures increase the investigation of offences within the CBE Directive, but do not offer solutions for non-standard cases (e.g. when information is required that cannot be exchanged under the CBE Directive). Their impact on the share of successfully investigated cases is estimated at an increase of 1.8 percentage points in 2029 and all subsequent years (relative to the baseline).

PO2 includes tailored investigation procedures on the electronic exchange of additional information to better identify a presumed offender (address, facial images) under PM6. This policy option therefore also establishes a streamlined procedure for non-standard cases, when additional information needs to be exchanged. The impact on the share of successfully investigated cases is estimated at an increase of 2.7 percentage points in 2029 and all subsequent years (relative to the baseline).

PO2A would introduce the duty to cooperate in EU Member States for offences committed by drivers in foreign-registered vehicles. This options especially ensures that many issues concerning the investigation of offences are overcome, since the identification of the driver by Member State authorities is not required anymore. The impact on the share of successfully investigated cases is estimated at an increase of 9.2 percentage points in 2029 and all subsequent years (relative to the baseline).

PO3 and PO3A contain all measures under PO2A. The additional measures included in PO3 and PO3A are not aimed at an improved investigation, and thereby have the same impact on the share of successfully investigated cases as PO2A (an increase of 9.2 percentage points in 2029 and all subsequent years).

10.1.3 SO B: To streamline existing procedures for mutual recognition of administrative or judicial decisions on financial penalties

The CBE Directive is structured on three pillars; detection, investigation and enforcement. This specific objective especially relates to issues that are observed in the enforcement phase.

The improvement of sanction enforcement through the CBE Directive is only possible by derogating from the procedures laid down in Framework Decision 2005/214/JHA. This situation is only addressed in PO3 and PO3A. PO3 is built on the principles of the Framework Decision, but tailors the approach to the nature of most traffic offences (usually minor offences with relatively small financial penalties). PO3A goes one step further and also limits the grounds for non-recognition of the decision by the executing Member State.

As PO1, PO2 and PO2A do not affect the enforcement of financial penalties, their characteristics have no clear relation with SO B. Therefore, they are rated to have a 'neutral' contribution on the specific objective.

PO3 has a clear relationship with enforcement, and its implementation will improve the situation. The share of successfully cross-border enforced financial penalties is estimated to increase by 10.0 percentage points in 2029 and all subsequent years (relative to the baseline). PO3A improves the situation further, and therefore contributes to reaching this specific objective to a larger extent. The share of financial penalties that have been successfully enforced across borders is estimated to increase by 15.0 percentage points in 2029 and all subsequent years (relative to the baseline).

10.1.4 SO C: To ensure the protection of non-residents' fundamental rights in legal proceedings related to cross-border enforcement of road traffic rules

Several policy measures are defined to ensure the protection of non-residents' fundamental rights in legal proceedings related to the cross-border enforcement of road traffic rules.

Some policy measures, reflected in Section 7.4, are explicitly defined to improve the rights of the presumed offender. The measures especially relate to the content of information letters, the language regime in the information letter and in the follow-up communication and personal data protection. As these measures are included in all policy options, the policy options are not mutually exclusive in this respect. Thereby, we find that PO1, PO2 and PO2A have an equal impact on reaching the third specific objective. PM14, aimed at ensuring authenticity and fair service of final decisions, is only included in PO3 and PO3A. However, it is our understanding that in other policy options, where the enforcement of financial penalties (and information to the offender) follows procedures laid down in Framework Decision 2005/214/JHA, the protection of fundamental rights is sufficiently safeguarded through Directive 2010/64/EU. Thereby, we find that all policy options contribute to an equal extent in reaching this objective.

10.1.5 SO D: To establish an adequate scope of the revision and take into account the new EU rules on personal data protection

All policy options contribute to a better protection of personal data, by aligning the Directive with EU legislation that came into force in the past years. Notably, policy measure 15 specifies that the Directive will be made compliant with the General Data Protection Regulation (GDPR[248]) and de Law Enforcement Directive (LED[249]).

PM15 is included under all policy options. We thereby find that all policy options contribute equally to reaching this specific objective.

10.2 Efficiency

Monetisation of costs was possible for most costs that are borne by Member States, as described in Section 9.2. However, certain cost elements could not be quantified due to a lack of information (only a qualitative assessment was provided). Nevertheless, it is our understanding that the most important cost elements that would result from a revision have been quantified. Concerning a reduction in hassle costs borne by road users, only an indicative estimate is provided.

Administrative and adjustment costs for Member States

The adjustment and administrative costs for Member States consist of

- Costs of investigating traffic offences (administrative costs, recurrent);
- Costs for connecting databases and technical solutions (adjustment costs, one-off);
- Costs for developing templates for information letters (adjustment costs, one-off);

[248] Regulation (EU) 2016/679.
[249] Directive (EU) 2016/680.

The administrative and adjustment costs per PO are presented in Table 10.3.

Table 10.3 Additional costs for Member States per option, relative to the baseline, in millions

PM	NPV (2025 – 2050) in millions	2025 in millions	2030 in millions	2040 in millions	2050 in millions
Additional administrative costs, relative to the baseline					
PO1	€ 143.88	€ 11.83	€ 7.31	€ 7.68	€ 8.36
PO2	€ 142.93	€ 12.42	€ 7.16	€ 7.63	€ 8.38
PO2A	€ 132.22	€ 16.52	€ 5.87	€ 7.07	€ 8.31
PO3	€ 88.50	€ 16.52	€ 3.14	€ 4.74	€ 6.12
PO3A	€ 66.64	€ 16.52	€ 1.77	€ 3.57	€ 5.02
Additional adjustment costs, relative to the baseline					
PO1	€ 4.61	€ 4.61	€ 0.00	€ 0.00	€ 0.00
PO2	€ 4.61	€ 4.61	€ 0.00	€ 0.00	€ 0.00
PO2A	€ 4.61	€ 4.61	€ 0.00	€ 0.00	€ 0.00
PO3	€ 4.61	€ 4.61	€ 0.00	€ 0.00	€ 0.00
PO3A	€ 4.61	€ 4.61	€ 0.00	€ 0.00	€ 0.00
Total additional costs, relative to the baseline (adjustment costs + administrative costs)					
PO1	€ 148.49	€ 16.44	€ 7.31	€ 7.68	€ 8.36
PO2	€ 147.54	€ 17.03	€ 7.16	€ 7.63	€ 8.38
PO2A	€ 136.83	€ 21.13	€ 5.87	€ 7.07	€ 8.31
PO3	€ 93.11	€ 21.13	€ 3.14	€ 4.74	€ 6.12
PO3A	€ 71.25	€ 21.13	€ 1.77	€ 3.57	€ 5.02

It was not possible to quantify all the costs. For example, costs related to a streamlined enforcement procedure (PO3 and PO3A) could not be quantified, as the baseline development for enforcement costs is not observed. As the measures related to a streamlined enforcement increase the number of enforced penalties, and are therefore likely associated with a reduction in (average) enforcement costs, it is our understanding that the administrative costs for PO3 and PO3A presented in Table 10.3 might be (somewhat) overestimated.

Administrative and adjustment costs for the European Commission

The adjustment and administrative costs for the European Commission consist of

- Costs of providing grants (administrative costs, recurrent);
- Costs of developing a portal for G2C-communication (adjustment costs, one-off); and
- Costs of maintaining a portal for G2C-communication (administrative costs, recurrent).

The administrative and adjustment costs per PO are presented in Table 10.4.

Table 10.4 Additional costs for European Commission per option, relative to the baseline, in millions

PM	NPV (2025 – 2050) in millions	2025 in millions	2030 in millions	2040 in millions	2050 in millions
Additional administrative costs, relative to the baseline					
PO1	€ 1.06	€ 0.05	€ 0.05	€ 0.06	€ 0.07
PO2	€ 1.06	€ 0.05	€ 0.05	€ 0.06	€ 0.07
PO2A	€ 1.06	€ 0.05	€ 0.05	€ 0.06	€ 0.07
PO3	€ 1.06	€ 0.05	€ 0.05	€ 0.06	€ 0.07
PO3A	€ 1.06	€ 0.05	€ 0.05	€ 0.06	€ 0.07
Additional adjustment costs, relative to the baseline					
PO1	€ 0.48	€ 0.48	€ 0.00	€ 0.00	€ 0.00
PO2	€ 0.48	€ 0.48	€ 0.00	€ 0.00	€ 0.00
PO2A	€ 0.48	€ 0.48	€ 0.00	€ 0.00	€ 0.00
PO3	€ 0.48	€ 0.48	€ 0.00	€ 0.00	€ 0.00
PO3A	€ 0.48	€ 0.48	€ 0.00	€ 0.00	€ 0.00
Total additional costs, relative to the baseline (adjustment costs + administrative costs)					
PO1	€ 1.53	€ 0.53	€ 0.05	€ 0.06	€ 0.07
PO2	€ 1.53	€ 0.53	€ 0.05	€ 0.06	€ 0.07
PO2A	€ 1.53	€ 0.53	€ 0.05	€ 0.06	€ 0.07
PO3	€ 1.53	€ 0.53	€ 0.05	€ 0.06	€ 0.07
PO3A	€ 1.53	€ 0.53	€ 0.05	€ 0.06	€ 0.07

Administrative cost savings for the private sector

One particular policy measure (PM5) is expected to reduce administrative costs for rental and leasing companies, as this policy measure allows Member State authorities to make direct searches in VRD concerning the final holder/keeper of the vehicle, in case this information is already included in the VRD of Member States. This policy measure is included under all policy options. The estimated cost reduction is presented under Section 9.5, and presented in Table 10.5.

Table 10.5 Cost savings for rental/leasing companies, relative to the baseline, in millions

PM	NPV (2025 – 2050) in millions	2025 in millions	2030 in millions	2040 in millions	2050 in millions
PO1	€ 7.04	€ 0.50	€ 0.43	€ 0.33	€ 0.28
PO2	€ 7.04	€ 0.50	€ 0.43	€ 0.33	€ 0.28
PO2A	€ 7.04	€ 0.50	€ 0.43	€ 0.33	€ 0.28
PO3	€ 7.04	€ 0.50	€ 0.43	€ 0.33	€ 0.28
PO3A	€ 7.04	€ 0.50	€ 0.43	€ 0.33	€ 0.28

Reduction in hassle costs for road users

As measures are taken to improve the content of penalty notices and follow-up communication, hassle costs are reduced for road users (that receive penalty notices). These hassle costs, included under the baseline scenario, are reduced as penalty notices are improved in the policy options. No robust data could be gathered to estimate these costs (only very high-level calculations are provided in Section 9.5). All policy options contribute to a reduction in hassle costs to an equal extent.

Cost-benefit assessment

In Section 10.1, the assessed impact of the policy options on the number of prevented fatalities, serious and slight injuries relative to the baseline was presented. The reduction in accidents involving injuries can be expressed in monetary terms, by considering the Value of a Statistical Life (also consider Annex 6). As a result, it becomes possible to compare the monetary costs of the revision with the monetary benefits of the revision. The overview is presented in Table 10.6.

Table 10.6 Net present value of costs and benefits relative to the baseline, monetary values (€) in millions, reduction in fatalities, serious injuries and slight injuries in absolute values

NPV '25 – '50	PO1	PO2	PO2A	PO3	PO3A
Costs					
Additional costs for MS and EU	€ 150.02	€ 149.07	€ 138.36	€ 94.64	€ 72.78
- admin costs	€ 143.88	€ 142.93	€ 132.22	€ 88.50	€ 66.64
- adjustment costs	€ 6.14	€ 6.14	€ 6.14	€ 6.14	€ 6.14
Benefits					
Reduction in extern. costs accidents	€ 1,201.79	€ 1,401.28	€ 2,797.68	€ 3,543.45	€ 3,916.33
Red. in private sector costs[250]	€ 7.04	€ 7.04	€ 7.04	€ 7.04	€ 7.04
Red. in road user costs (hassle costs)	✓	✓	✓	✓	✓
Benefit-to-cost-ratio	**8,1**	**9,4**	**20,3**	**37,5**	**53,9**

In Table 10.6, the last row presents a comparison of costs and benefits, expressed in a benefit-to-cost ratio. The results show that all policy options have a benefit-to-cost ratio higher than 1. Although not all costs for Member States could be quantified (for example related PM8a and PM8b). Thereby, the costs of PO3 and PO3A might be underestimated. However, considering that the benefit-to-cost ratios for PO3 and PO3A are significantly higher than 1, it is our understanding that the underestimation of costs does not affect conclusions on efficiency. Stated differently, even if a cost estimate could be derived for the policy measures above, we expect that all policy options would still have a benefit-to-cost ratio that exceeds 1.

10.3 Coherence

In comparing the options based on coherence, one should assess how well the policy options work together with other policies and legislation. Coherence is broken down into two components:

- Internal coherence assesses how the various components of the revised CBE Directive operate together to achieve its objectives and how policy options of the CBE Directive are in line (or contrast) with other EU policies;
- External coherence assesses how the revised CBE Directive is compliant with national policies or international agreements/declarations.

[250] Please note that these costs are passed on to consumers, but the activities are experienced by private sector companies.

10.3.1Internal coherence

The CBE Directive is a complex legal instrument, with strong linkages to other EU legislation. The procedure concerning cross-border investigation of road traffic offences, laid down in Article 4 and 5 of the CBE Directive, are built upon the following instruments:

- PRÜM Decisions: Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA;
- 2000 EU Mutual Legal Assistance Convention (MLA 2000): Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000/C 197/01);
- European Investigation Order (EIO): Directive 2014/41/EU regarding the European Investigation Order in Criminal Matters.

The CBE Directive works jointly with these instruments and aims to enhance road safety by removing impunity for road users that commit traffic offences abroad. By ensuring that these road users are held accountable for reckless driving behaviour, in terms of enforcing imposed sanctions for committed road traffic offences, it incentivises road users to drive more safely. The legal basis of the current Directive is thereby found in Article 91(1)(c) TFEU, concerning measures to improve transport safety.

When considering the policy options in this respect, it is found that PO1 is not expected to result in issues concerning internal coherence. The procedure concerning the cross-border investigation of road traffic offences is still built on the above-mentioned legal acts. Particularly interesting in this respect is Prüm II, which establishes rules on the exchange of other categories of data stored in national databases (beyond data on VRD) such as the exchange of facial images (based on police-to-police cooperation). When adopted, the CBE Directive could expand the scope of information being exchanged across borders, without being decoupled from the Prüm Decision. Furthermore, measure PM1 extends the scope of the CBE Directive to other road-safety related offences. Hence, the legal basis of the CBE Directive remains Article 91(1)(c) TFEU.

PO2 and PO2A could possibly result in issues concerning internal coherence. Particularly, the streamlined procedure for the cross-border exchange of additional information might result in internal coherence issues with the EU Mutual Legal Assistance Convention (MLA 2000) and Directive 2014/41/EU regarding the European Investigation Order in Criminal Matters (EIO). Also here, Prüm II is important to consider. As long as the exchanged information under the CBE Directive is based on Prüm II, internal coherence issues are not expected. It is our understanding that all proposed measures aimed at the exchange of additional information are coherent with Prüm. However, if additional information is exchanged in this policy option that is not foreseen by Prüm, the CBE Directive might become internally incoherent with MLA 2000 and Directive 2014/41/EU (as procedures under PO2 and PO2A might be based on police-to-police cooperation, and not under justice cooperation as is the case in MLA 2000 and the EIO).

PO3 and PO3A are expected to result in issues concerning internal coherence. The streamlined enforcement procedure for road traffic offences would derogate from enforcement procedures of financial penalties from Framework Decision (FD) 2005/214/JHA, if the financial penalty is related to a (road-safety related) road traffic offence. Not only would this lead to a complex situation, in which certain financial penalties are enforced through one instrument and other financial penalties through a different instrument (even the different qualification of the same offence in Member States may cause certain problems), but PO3 and PO3A also raise questions concerning the appropriate legal basis for the CBE Directive. When a streamlined enforcement procedure would be adopted under the CBE Directive, one might wonder whether the main objective of the CBE Directive is still to enhance road safety. When PO3 or PO3A would be considered, there is a risk that the emphasis in the CBE Directive would, in fact, become police and justice cooperation, and that therefore the appropriate legal basis should be found in (for example) Article 82(2) TFEU or Article 87(2) TFEU, and not in Article 91(1)(c) TFEU.

10.3.2 External coherence

The external coherence concentrates on the compliance of the CBE Directive with national policies and international legislation. As was noted before, the CBE Directive is built on data exchanged through police-to-police cooperation (laid down in the PRÜM Decisions). The CBE Directive describes a procedure for the investigation of road traffic offences that meets the national criteria for the majority of Member States, but is insufficient for other Member States. The CBE Directive, in its current form, is especially considered ineffective for Member States that adopt a strict driver legal liability regime.

As the CBE Directive describes a procedure on how road traffic offences are investigated, it has characteristics of a one-size-fits-all approach. To improve the functioning of the Directive, the CBE Directive should therefore either allow for tailored procedures to prevent investigations from failing (possibly resulting in internal coherence issues, also consider section 9.3.1) or the current procedures in the CBE Directive could be made effective by requiring changes in the procedures followed at the Member State level.

When considering the policy options in this respect, it is found that PO1 is not expected to result in issues concerning external coherence. Member States will be allowed to investigate more offences, have more instruments to investigate (following PRÜM Decisions) and certain requirements concerning penalty notices are made stricter (further elaborating on provisions already specified in Article 5 of the Directive). Hence, Member States are given more tools to investigate traffic offences, but the procedures that are adopted at Member State level are unaffected.

PO2 is also not expected to result in issues concerning external coherence. When additional evidence is exchanged, that cannot be exchanged under the CBE Directive, Member States need to make use of MLA 2000 or the EIO. By derogating from these instruments for road traffic offences, Member States simply need to use another tool for exchanging information (leaving the underlying national procedure intact). It should be noted that PO2 might lead to issues concerning internal coherence.

PO2A might lead to an issue concerning external coherence. In PO2A, a duty to cooperate is proposed for road traffic offences committed by a foreign registered vehicle. It should be noted that this is highly sensitive from a political point of view. One might argue that such an intervention is proportionate (considering the objective of improving safety on EU roads) and that the EU has a right to act (also since the intervention only considers the duty to cooperate for offences committed with foreign registered vehicles), but the intervention might be incoherent with national legislation (for example regarding self-incrimination).

PO3 and PO3A are expected to lead to an issue concerning external coherence. By developing a streamlined enforcement mechanism, the procedural requirements for mutual recognition will be simplified. It should be noted that some Member States have very strict procedures for enforcing financial penalties. As this policy option affects (and loosens) the procedural requirements that have to be met in order to ensure the mutual recognition of financial penalties, some Member States might be required to recognise decisions from abroad, even if the domestic procedural requirements have not been followed strictly. Member States are differing in their opinion on the suitability of the enforcement procedure. Some Member States indicate that enforcement procedures should be very strict, in order to ensure that the rights of the presumed offender are well-respected. Other Member States are of the opinion that procedural requirements could be made less strict, especially when considering minor (administrative) road traffic offences.

10.4 Proportionality and subsidiarity, including stakeholder views

This section presents the assessed proportionality and subsidiarity of the options under consideration, by following Better Regulation Tool #12.

At first sight, the problems that are described in the problem analysis seem to have a narrow scope. In essence, the (current) CBE Directive is a tool that allows police authorities to make searches in the vehicle registration data (VRD) of other Member States to identify a presumed offender, when only the foreign license plate of the vehicle is registered. The Evaluation of the Directive in 2016 found that the Directive is efficient, effective and proportionate, although areas for improvement should be considered. The problem analysis, conducted during the Evaluation and in this study, revealed that the main factors that hamper the effectiveness of the CBE Directive, concern areas that are covered by other instruments, for example when it concerns the exchange of additional evidence (beyond VRD exchange) or where it concerns the mutual recognition of sanctions.

In this report, it is found that these legal instruments are not sufficiently suitable for minor traffic offences, especially when the offence is qualified as administrative in a Member State. This impact assessment support study explores the possibility of adopting tailored instruments under the CBE Directive to increase its effectiveness in the investigation of offences and the enforcement of sanctions. Adopting tailored (and simplified) procedures for the investigation and enforcement of road traffic offences under the CBE Directive is considered as controversial. In practice, the adoption of a simplified investigation and enforcement procedure under the CBE Directive might lead to the existence of two parallel systems adopted in the EU. One simplified system that only concerns investigation and enforcement for a limited set of road-safety-related traffic offences (Art. 2 of the CBE Directive), and one system for the exchange of information for all other offences (making use of existing instruments).

As the purpose of the CBE Directive is to improve the cross-border enforcement of road traffic rules, it is our understanding that all policy options meet subsidiarity criteria. Without interventions at the EU level, an improvement in cross-border enforcement of road traffic rules would likely not be achievable, as Member States have no power to ensure that a national decision or investigation is recognised by other Member States. Member States could engage in bi- or multilateral agreements to ensure mutual recognition, but this would likely not result in a harmonised approach for cross-border enforcement at the EU level. A lack of a harmonised approach could potentially result in issues concerning (un)equal treatment of road users, as the effectiveness of enforcement of road traffic rules by a given Member State would depend on (bilateral) agreements with the Member State in which the licence plate of the vehicle is registered.

It is our understanding that actions taken under PO1 are considered proportional, as these policy options mainly include measures, for which there is wide support among stakeholders (Member States, road user organisations, road safety organisations). No tailored investigation or enforcement procedure is proposed under this PO.

Under PO2, the situation becomes more complex, as a tailored investigation mechanism is set up for the exchange of information for a limited set of road traffic offences (Art. 2 of the CBE Directive). Member States indicate that the existing procedures for the investigation of offences are not often applied for (minor) road traffic offences, due to their complex nature, and seem to be largely in favour of adopting a streamlined procedure under the CBE Directive for investigation purposes. Hence, PO2 is considered to be proportionate.

PO2A builds on PO2, but also specifies a duty to cooperate for automatically detected offences, where the vehicle is registered abroad. It is expected that this option will specifically affect Member States that currently adopt a strict driver liability regime. However, by only focussing on cases where the vehicle is registered abroad, it is our understanding that the EU has a right to act. Furthermore, this option is assessed to be more effective when compared to the effectiveness of PO2 (also consider Section 10.1). There does not seem to be political resistance to adopt this option. It is thereby our understanding that PO2A can be considered proportionate.

During the consultation, most discussions concerning policy options revolved around PO3 and PO3A, concerning the establishment of a simplified enforcement mechanism within the CBE Directive (with limited grounds for refusal under PO3A). It should be noted that the views of Member States regarding the proportionality of this measure differ greatly between Member States, with some Member States being in favour of the establishment of a simplified enforcement procedure and some Member States being against. As we are uncertain whether the views of Member States will not converge on this issue, there are some doubts whether PO3 and PO3A are considered proportionate.

During consultations, also road safety organisations and road user organisations were asked to provide their feedback on the identified policy options. Road safety organisations were generally in favour of the most effective mechanism to enhance road safety, and thereby in favour of the most intervening options (PO3 and PO3A). Road user organisations indicated that the content of information letters was the most important factor to consider in the revision. As the content of information letters would be improved under all policy options, they did not indicate a clear preference for a policy option.

Conclusion on proportionality and subsidiarity

All policy options are considered to meet subsidiarity criteria.

It is our understanding that PO1, PO2 and PO2A are generally supported by stakeholders, and that these will likely not lead to issues concerning proportionality. Nevertheless, it should be noted that PO2A especially affects the investigation practice of Member States adopting a strict driver liability regime. PO3 and PO3A are considered to be proportionate by most Member States, but some Member States wonder whether relaxing procedural rights for offenders (to improve the enforcement of road traffic rules) would be proportionate. Thereby, there are some doubts as to the proportionality of PO3 and PO3A.

10.5 Summary of comparison of options

The analysis presented under Section 10.1 indicates that all options are effective in achieving the objective, but that more intervening options are more successful in doing so than options that are less intervening. Effectiveness is largest when the CBE Directive also specifies a simplified investigation for offences (PO2, PO2A) and an enforcement procedure for applicable sanctions (PO3, PO3A).

Furthermore, Section 10.2 revealed that, in all policy options, the benefits of a revision seem to outweigh the increase in costs, relative to the baseline. Thereby, all policy options are assessed to be efficient.

On coherence, it should be noted that interventions related to a simplified investigation mechanism may result in internal coherence issues (PO2). Furthermore, interventions related to the duty to cooperate may result in external coherence issues (PO2A). Finally, interventions related to the establishment of a simplified enforcement procedure are expected to result in internal and external coherence issues (PO3 and PO3A). For PO1, no issues with coherence are expected.

All policy options are considered to meet subsidiarity criteria. With regards to proportionality, it is our understanding that some political resistance is expected when adopting PO3 and PO3A. These policy options are thereby considered to possibly result in issues with proportionality.

Views of stakeholders

Some Member States that participated in the stakeholder consultation (CZ, ES, FR) have indicated that they would be in favour of increasing the effectiveness of the CBE Directive to the largest extent. They have indicated a strong preference for more intervening options, and would therefore welcome PO3 or PO3A.

Other Member States (DE, NL) that participated in the stakeholder consultation have strongly indicated to have reservations as to the inclusion of the enforcement procedure under the CBE Directive (rather than relying on procedures laid down in Framework Decision 2005/214/JHA). However, they have indicated to be in favour of further streamlining the investigation procedure for road traffic offences, which is the core of PO2 and PO2A.

ETSC has indicated that it would like to see the enforcement instrument to be as effective as possible, and thereby favours more intervening options over less intervening ones. ADAC and FIA indicate that the content of penalty notices is the most important issue for them. As the content of letters will be improved under all policy options, these organisations have not indicated a clear preference for a policy option.

11 SELECTION OF THE PREFERRED POLICY OPTION

This chapter presents the preferred policy option, based on the comparison of policy options, as presented in Chapter 10.

11.1 The preferred policy option

The selection of the preferred option is based on the criteria presented in Chapter 10. Efficiency, based on the costs, is, to a large extent, not found to be a determining factor. All policy options considered to be equally efficient.

Considering the effectiveness, it should be noted that the more intervening a policy option is, the higher its contribution to reaching the general and specific objectives of the revision. Hence, from an effectiveness point of view, PO3A would be preferred.

However, it should be noted that PO3 or PO3A would be hard to implement, considering expected issues related to the internal and external coherence. Finally, there might be issues concerning the legal basis of the CBE Directive. We believe the procedures for the mutual recognition of financial penalties through a "Lex Specialis" would create tension with national policies and consequently would be complicated to implement. This would likely also result in issues with proportionality. We consider that implementing PO3 and PO3A, despite their high effectiveness and efficiency, would be overly ambitious. Therefore, PO3 and PO3A are not preferred.

The preferred option, based on combined scores for effectiveness, coherence and proportionality, would be either PO2A or PO2. PO2A is substantially more effective than PO2, but the duty to cooperate might result in political tensions with Member States and possibly issues concerning the external coherence. However, in our view, EU intervention on the duty to cooperate for road traffic offences is deemed proportionate, since the requirement is only applied to road traffic offences committed with a vehicle that is registered in a different EU Member State than the Member State in which the offence is detected.

Based on the comparison of policy options, as presented in Chapter 10, our preferred policy option is policy option 2A. Policy option 2A, builds on policy option 1 and adds a streamlined follow-up cross-border investigation procedure of road safety related traffic offences, with a duty to cooperate for road traffic offences committed with a foreign registered vehicle.

No stakeholder explicitly mentioned to be against the implementation of PO2A, although some stakeholders would favour a more intervening option (also including the enforcement procedure under the CBE Directive).

An overview of benefits that are associated with the preferred option is presented in Table 11.1.

Table 11.1 Overview of benefits associated with the preferred option

I. Overview of Benefits – Preferred Option PO2A		
Description	***Amount***	***Comments***
Direct benefits		
Economic impact – reduction in administrative cost By allowing the exchange of additional information from VRDs, (long-term) car rental and leasing companies do not have to provide information on final user/keeper of a vehicle in which an offence was committed. Benefit is experienced by the private sector (rental/leasing companies).	**€ 7,037,000** (net present value over the 2025-2050, in 2020 prices)	Administrative costs for these activities are generally offset by an administrative fee that is charged to the final user/keeper of the vehicle. In practice, this benefit might therefore be experienced by presumed offenders/road users.
Indirect benefits		
Social impact – road safety By reducing impunity, fewer traffic offences are expected to be committed by drivers in foreign registered vehicles. As a result, fewer traffic accidents (and associated injuries) will occur, which has a positive impact on road users.	**€ 2,797,684,000** (net present value over the 2025-2050, in 2020 prices)	Expressed in prevented injuries, the indirect benefit is estimated to be a reduction of 384 fatal injuries, 3,667 serious injuries and 17,738 slight injuries over the assessment period 2025 – 2050.
Impact on fundamental rights and equal treatment As stricter rules are developed for the content of penalty notices, the protection of fundamental rights of presumed offenders is improved (Art. 47 and Art. 48(2) Charter of Fundamental Rights). Furthermore, by making the Directive compliant with GDPR[251] and LED[252], personal data is better protected (Art. 8 Charter of Fundamental Rights). This benefit is experienced by presumed offenders/road users. Finally, by removing impunity, the policy option contributes to an improved equal treatment of road users (Recital 7 of the CBE Directive). This benefit is experienced by **all** road users.	**+**	Qualitative assessment, policy option positively affects this impact.
Economic impact - hassle costs As the content of penalty notices is improved, presumed offenders are presented with better information. As a result, presumed offenders need to invest fewer resources to understand the content of penalty notices. The benefit is experienced by presumed offenders/road users.	**+**	Qualitative assessment due to limited evidence. Via an indicative case study, it was roughly estimated that the impact might add up to € 53 million to € 2.5 billion over the assessment period 2025 – 2050.

An overview of costs that are associated with the preferred option is presented in Table 11.2.

[251] Regulation (EU) 2016/679.
[252] Directive (EU) 2016/680.

Table 11.2 Overview of costs associated with the preferred option

II. Overview of costs – Preferred option PO2A									
		Citizens/Consumers		**Businesses**		**MS Administrations**		**European Commission**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
		€	€	€	€	€	€	€	€
Action (a) Number of investigations is increased	Direct costs (admin costs)						**€ 132,221,000** (NPV 2025 – 2050)		
	Indirect costs								
Action (b) Connecting databases and technical solutions	Direct costs (adjustment costs)					**€ 1,640,000** (value for ’25 – ‘29)		**€ 475,000** (value for ’25 – ‘29)	
	Direct maintenance costs (admin costs)								**€ 1,056,000** (NPV 2025 – 2050)
	Indirect costs								
Action (c) Developing templates for information letters	Direct costs (adjustment costs)					**€ 2,970,000** (value for ’25 – ‘29)			
	Indirect costs								

11.2 REFIT (simplifications and improved efficiency)

In 2012, the Commission launched the Regulatory Fitness and Performance Programme (REFIT) to step up efforts on simplification and burden reduction. The concept has evolved over time. REFIT now requires all evaluations and revisions of existing legislation to systematically consider simplification and burden reduction.

In this Impact Assessment Support Study, it is found that the cost burden resulting from the Directive mainly originates through an increased number of launched investigations conducted by Member States. These investigations come at a cost, which consists of the investigation time (identifying the address of the presumed offender from a detected license plate that is registered in another Member State) and mailing costs to provide the presumed offender with a penalty notice. Through a revision of the CBE Directive, an increase in the number of investigations (and associated costs) is expected. Moreover, some specific interventions result in adjustment costs for Member States.

In considering the potential for a reduction of the administrative burden, the analysis is broken down into these three individual cost aspects associated with the (revised) CBE Directive (investigation time, mailing costs and adjustments).

Investigation time

In the report, it was found that the investigation time differs significantly per Member State. Some Member States face a low investigation time, mainly because the process is automated or because software is used to automatically recognise license plates (such as the use of cameras with ANPR[253]). If an increased number of Member States would make use of digital solutions to investigate road traffic offences, the investigation time (and associated costs) would likely decrease. Of course, the adoption of digital solutions to increase the efficiency of the investigation process comes at a cost (as cameras with ANPR are more expensive than cameras that do not have this feature), which might not be offset by the increased efficiency in the investigation process. This especially holds for Member States that are not detecting many offences without driver identification (for example because the number of checking equipment is low). These Member States would have a lower benefit of investing in technological solutions.

It should be noted that it is expected that the investigation time cannot completely be reduced to zero as a result of technological salutation, as Member States with a high degree of digitalisation in their processes still need to conduct some activities in the investigation of offences.

Penalty notices

In the current situation, penalty notices are usually sent by conventional mail, for which mailing costs occur. The reason for sending the mail in hard-copy is twofold. First, a digital solution to exchange penalty notices from governments to citizens (G2C), in cross-border cases, does not currently exist at the EU level. At the national level, there are some developments pointing in this direction (for example in Spain), but access to non-residents is often not facilitated in such systems. To create such a system at EU scale would require road users to be aware of the existence of this system and to be able to receive some form of notification when a penalty notice is issued to them. The creation of a digital system to facilitate the enforcement of sanctions is not foreseen under the Directive in this impact assessment, as this was considered to be overly ambitious. However, with digital communication strategies being developed on the EU

[253] Automatic Number Plate Recognition.

level, it could well be that such a solution would be more feasible in the future. The creation of such a system has the potential to (completely) remove mailing costs.

A second reason why it is hard to digitise the issuance of penalty notices, is that the required delivery information is not included in VRD. Nowadays, VRD only includes the physical address of the owner/holder of the vehicle. Although this information is sufficient to send information via hard-copy mail (postal services), other information (such as, for example, the email address of the owner/holder) would be needed to ensure that the person in question can also be notified by digital means. Therefore, allowing for digital communication between G2C under the CBE Directive would also require a modification of the content of VRD.

It should be noted that mailing costs account for a substantial share of investigation costs. If the digital exchange of penalty notices would be facilitated under the CBE Directive, this might significantly reduce the administrative burden of Member States. Furthermore, such a system might also increase the overall efficiency of the investigation process of all automatically detected road traffic offences, as Member States might decide to also use the system for the enforcement of domestic cases (for offences that are committed by domestically registered vehicles).

Adjustment costs

The adjustment costs that are brought along by the current Directive are mainly related to the development and maintenance of EUCARIS functionalities. It is found that these costs are fairly small and are not experienced to be burdensome. It is our understanding that these adjustment costs cannot be reduced further, as necessary actions need to be taken to ensure that the system is operating (the current costs associated to the maintenance of the system should be maintained).

12 HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

Article 6 of the CBE Directive already lays down requirements for Member States to provide the Commission with information, to monitor and evaluate the functioning of the Directive.

The first criterion that will be used to evaluate the specific impacts of the proposed revision of the Directive, concerns the share of successfully investigated offences (included under Art. 1 of the CBE Directive). Well-established monitoring instruments (under Art. 6 of the Directive) will be used to follow the share of successfully investigated offences over time. It should be noted that, under the existing Directive, Art. 6 requires Member States to update the Commission every two years. In the revision of the Directive, it is considered that this period should be extended to five years, so that the information obtained can be used for future evaluations. Hence, information to assess this indicator will be gathered in a structured way every five years. Should the Directive be extended to include enforcement procedures for financial penalties, information could be gathered by further augmenting Art. 6 and adopting similar indicators (also consider Table 12.1).

A second criterion relates to the number of information letters that contain adequate information and adopt the appropriate language regime. Currently, information on the number of information letters that are not considered adequate (in terms of providing all necessary information or the appropriate language regime) is hard, if not impossible, to obtain. This is mainly due to the large number of public authorities at the national and local level (and sometimes private companies) that are issuing information letters based on the CBE Directive. There is no centralised system through which information letters are issued. Therefore, this specific impact would be hard to monitor. In our impact assessment, we have relied on information obtained from a road user association (ADAC). ADAC holds information on the number of cases where legal consultations are provided to road users that have received information letters from other Member States. However, this information is only applicable to the experiences of road users in Germany. Moreover, ADAC indicates that it does not have a full picture of the number, as ADAC is not always contacted by road users that have received an erratic information letter. More complete information which offers a representative view for the impact on the EU27 is needed.

Finally, a third criterion might be added to establish the impact on the general objective of the CBE Directive. The direct impact could be indicated by the share of automatically detected road traffic offences (included under Art. 1 of the Directive) that are committed in foreign registered vehicles. This information would be obtained through Member States (by augmenting the information required in Art. 6 of the Directive). The indirect impact could be indicated by the number of accidents for which a foreign-registered vehicle was responsible. Information to monitor this second indicator could be obtained via the CARE Database. The Commission might want to explore the extent to which this information can be regularly obtained via CARE, and which reporting period should be considered for this.

The list of proposed operational objectives, indicators and data sources is presented in Table 12.1.

Table 12.1 Proposed monitoring and evaluation framework

General objective	Specific objective	Operational objective	Indicators	Data sources
GO: Improve road safety by better cross-	SO A: streamline mutual assistance and	• Establish a short- and long run target	• Increased share of successful	• Reporting by Member

General objective	Specific objective	Operational objective	Indicators	Data sources
border enforcement of road traffic rules, i.e. primarily to decrease socio-economic costs linked to road fatalities, injuries and material damage by better compliance of non-residents with road traffic rules through the deterrent effect of sanctions.	recognition procedures between Member States in investigation of road traffic offences	on the share of investigations that are successful	cross-border investigations	States (Art. 6 CBE)
	SO B: streamline existing procedures for mutual recognition of administrative or judicial decisions on financial penalties	• Establish a short- and long run target on the share of enforcement procedures for financial penalties that are successful	• Increased share of successfully enforced cases	• Reporting by Member States (Art. 6 CBE)
	SO C: ensure the protection of non-residents' fundamental rights in legal proceedings related to cross-border enforcement of road traffic rules	• Establish a short- and long run target for the number (or share) of information letters that contain adequate information and adopt the appropriate language regime	• Increased number (or share) of penalty notices with appropriate language regime • Increased number (or share) of penalty notices with adequate information • Reduced number of citizens’ complaints concerning penalty notices	• Assessments of road user associations (such as FIA/ADAC) • Number of obtained citizen complaints by the Commission.
	SO D: establish an adequate scope of the revision and take into account the new EU rules on personal data protection	• Assess the extent to which the CBE Directive is aligned with GDPR and LED	• No monitoring needed	

Finally, it should be noted that Problem 6 revealed that there are issues with the monitoring of the CBE Directive. It seems that some Member States struggle to provide the information required under Art. 6 of the Directive (problem driver n) and that the required information turns out to be insufficient to sufficiently monitor the functioning of the Directive (problem driver o). To address this issue, it is foreseen that Member States will provide additional information to the Commission.

In particular, Member States will be required to provide information on:

- the total number of registered offences committed by residents and non-residents

- the number and type (e.g. speed cameras) of automatic checking equipment in operation
- the share of offences (by type of offence) committed with vehicles registered in another Member State
- the number of voluntarily paid financial penalties issued to resident and non-resident offenders
- the number of enforced financial penalties for the registered offences committed by non-residents.

To alleviate the (additional) burden that results from reporting, the foreseen reporting period will be extended. Currently, Art. 6 requires information to be provided to the Commission every two years. This reporting period is extended to five years and aligned with the Commission's evaluation calendar. The Commission will present the results of the monitoring in regular summary reports, following the reporting of the Member States. As mentioned above, IT platform(s), such as EUCARIS or the CARE Database, might be used to obtain the data, thereby further alleviating the reporting burden for national authorities.

ANNEX 1 DOCUMENTS IDENTIFIED AND REVIEWED

Document	Type	Rele-vance
Evaluation study on the application of Directive 2011/82/EU facilitating the cross-border exchange of information on road safety related traffic offences, Final report, Grimaldi Studio Legale, 2016. https://op.europa.eu/en/publication-detail/-/publication/77b97427-3c33-11e6-a825-01aa75ed71a1/language-en	Report	High
Directive 2011/82/EU of the European Parliament and of the Council of 25 October 2011 facilitating the cross-border exchange of information on road safety related traffic offences (OJ L 288, 5.11.2011, p. 1).	EU legislation	High
Commission Staff Working Document on the interim evaluation of the EU road safety policy framework 2011–2020 (SWD(2015) 116 final). https://data.consilium.europa.eu/doc/document/ST-9791-2015-INIT/en/pdf	Report	High
Interim evaluation of the Policy orientations on road safety 2011 – 2020, Jeanne Breen Consulting, February 2015. https://road-safety.transport.ec.europa.eu/system/files/2021-09/study_final_report_february_2015_final.pdf	Report	High
Commission Staff Working Document on the evaluation of cross-border exchange of information on road traffic offences (SWD(2016) 355 final). https://transport.ec.europa.eu/system/files/2016-11/swd20160355.pdf	SWD	High
Report from the Commission to the European Parliament and the Council on the application of Directive (EU) 2015/413 facilitating cross-border exchange of information on road-safety-related traffic offences (COM(2016) 744 final + Annex). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016DC0744	Report	High
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 (MATRIX Insight, September 2011).	Report	High
Proposal for a Directive facilitating cross-border enforcement in the field of road safety (COM(2008) 151 final). https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0151:FIN:EN:PDF	COM	Medium
Consultation Paper, Respecting the rules, Better Road Safety Enforcement in the European Union, 6 November 2006.	Consultation paper	Medium
Comments to Consultation Paper, Respecting the rules, Better Road Safety Enforcement in the European Union, 6 November 2006.	Position paper	Medium
Impact assessment on road safety enforcement and cross-border cooperation, Ecorys Nederland BV, Rotterdam, 16 March 2007.	Report	Medium
Analytical documents of the Commission on mutual recognition of driving disqualifications submitted to the High-Level Group on Road Safety on 5 October 2017 and 8 February 2018.	Report	High
Study on the Feasibility of Improving Information Exchange under the Prüm Decisions (Deloitte Consulting & Advisory CVBA, May 2020). https://op.europa.eu/en/publication-detail/-/publication/503f1551-9efc-11ea-9d2d-01aa75ed71a1/language-en	Report	High
BestPoint (Criteria for BEST Practice Demerit POINT Systems), Deliverable 3: The BestPoint Handbook: Getting the best out of a Demerit Point System, SWOW et al. (2012). https://archive.etsc.eu/documents/BPHandBook.pdf	Handbook	Medium
Fundamental Rights Review of EU Data Collection Instruments and Programmes. Final Report (Fondazione Giacomo Brodolini, 2018). https://www.fondazionebrodolini.it/sites/default/files/final_report_0.pdf	Report	High
Handbook on the External Costs of Transport (CE Delft et al, 2019) https://op.europa.eu/en/publication-detail/-/publication/9781f65f-8448-11ea-bf12-01aa75ed71a1	Handbook	High

Document	Type	Rele-vance
Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).	EU legislation	High
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).	EU legislation	High
EUROPE ON THE MOVE – Sustainable Mobility for Europe: safe, connected and clean (COM(2018) 293 final). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018DC0293	Report	Medium
Cross-border Integration of Traffic Management: The PROMET Project (Gostisa, P. & Pirc, J., 2009). https://trid.trb.org/View/911815	Academic paper	Low
ETSC (2011): Traffic Law Enforcement across the EU: Tackling the Three Main Killers on Europe's Roads https://etsc.eu/wp-content/uploads/Traffic_Law_Enforcement_in_the_EU.pdf	Report	Medium
(Gutiérrez Zarza Á., (ed.), 2015): Exchange of Information and Data Protection in Cross-border Criminal Proceedings in Europe; in particular: Chapter 10 Processing and Protection of Personal Data in the Framework of Police and Judicial Cooperation in Criminal Matters, pp. 157-163. https://link.springer.com/book/10.1007/978-3-642-40291-3	Academic paper	Low
CARE database.	Data source	High
SafetyCube – The European Road Safety Decision Support System https://www.roadsafety-dss.eu/#/	Data Source	High
Hasselt University, NTUA, KfV & ETSC (2017): The implementation of Directive 2006/126/EC on driving licences. Final report. https://op.europa.eu/en/publication-detail/-/publication/bbd8141d-e603-11e7-9749-01aa75ed71a1	Report	Medium
White paper on European transport policy for 2010: time to decide. (COM(2001) 370 final). https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:52001DC0370	White paper	Low
EU Citizenship Report 2010, Dismantling the obstacles to EU citizens' rights (COM(2010) 603 final). https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:52010DC0603	Report	Low
Commission Staff Working Document, Better Regulation Guidelines, (SWD(2021) 305 final). https://commission.europa.eu/system/files/2021-11/swd2021_305_en.pdf	Report	High
Impact assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/96/EC on road infrastructure safety management, (SWD(2018) 175 final) https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=SWD%3A2018%3A175%3AFIN	Report	High
Agreement on the Mutual Recognition of Driving Disqualifications between the United Kingdom of Great Britain and Northern Ireland and Ireland (done at Dublin on 30 October 2015; entered into force on 1 August 2017). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/680101/TS_24.2017_CM_9544_WEB_UK_Ireland_Driving_Disqual.pdf	Treaty	Medium
Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1)	EU legislation	Medium
Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89)	EU legislation	Medium
Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1)	EU legislation	Medium

Document	Type	Rele-vance
Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on the European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12.7.2000, p. 1)	EU legislation	High
Directive 2010/64/EU of 20 October 2010 of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1)	EU legislation	High
SCDB.info – statistics (Speed Camera Database) https://www.scdb.info/en/	Data source	High
European Parliament (2023): Single Market: Simplifying the transfer of motor vehicles registered in another Member State https://www.europarl.europa.eu/legislative-train/carriage/simplifying-the-transfer-of-motor-vehicles-registered-in-another-member-state/report?sid=6701	European Parliament document	Medium
Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crimes (OJ L 210, 6.8.2008, p. 1)	EU Legislation	High
Decision on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crimes (OJ L 210, 6.8.2008, p. 12).	EU Legislation	High
Inception Impact Assessment CBE Directive https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2131-Cross-border-enforcement-of-road-traffic-rules_en	EC document	High
ETSC (2022): How traffic law enforcement can contribute to safer roads: PIN flash report 42 https://etsc.eu/wp-content/uploads/ETSC_PINFLASH42_v2TH_JC_FINAL_corrected-060522.pdf	Research paper	High
Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ L 403, 30.12.2006, p. 18).	EU legislation	High
Council Act of 17 June 1998 drawing up the Convention on Driving Disqualifications (OJ C 216, 10.7.98, p. 1).	EU legislation	High
Case C-43/12 *(European Commission v European Parliament and Council)* (ECLI:EU:C:2014:298)	Court case	High
DG for Mobility and Transport; Summary Minutes "Meeting of the Expert Group established to support the enforcement of road safety related traffic offences held on 21 November 2016 in Brussels	EU background document	High
Lally, P. (2009): How are habits formed: Modelling habit formation in the real world. European Journal of Social Psychology, 40(6), pp. 998-1009. https://repositorio.ispa.pt/bitstream/10400.12/3364/1/IJSP_998-1009.pdf	Research paper	Low
ETSC (2019) Reducing speeding in Europe: PIN flash report 36 https://etsc.eu/wp-content/uploads/PIN-flash-report-36-Final.pdf	Research paper	High
DG for Mobility and Transport: Statistical pocketbook 2019 – EU transport in Figures https://ec.europa.eu/transport/facts-fundings/statistics/pocketbook-2019_en	Data source	High
Case C-338/20 (Preliminary ruling in the proceedings *D.P. v. Prokuratura Rejonowa Łódź-Bałuty*) (ECLI:EU:C:2021:805)	Court case	High
European Commission (2020): Regulatory Reporting Principles https://joinup.ec.europa.eu/sites/default/files/inline-files/SC370_D04.02.01_Issue_Paper_vFINAL_0.pdf	EU document	High
Council conclusions on the charter of fundamental rights In the context of artificial intelligence and digital change (doc. 11481/20) https://www.consilium.europa.eu/media/46496/st11481-en20.pdf	EU document	High
Council conclusions 'Access to justice – seizing the opportunities of digitalisation' (OJ C 342I, 14.10.2020, p. 1) Digitalisation of justice in the European Union. A toolbox of opportunities (COM(2020) 710 final) https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2020:710:FIN	EU documents	High

Document	Type	Rele-vance
Commission Staff Working Document accompanying COM(2020) 710 final (SWD(2020) 540 final https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=SWD:2020:540:FIN Regulation (EU) 2022/850 of the European Parliament and of the Council of 30 May 2022 on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system), and amending Regulation (EU) 2018/1726 (OJ L 150, 1.6.2022, p. 1)		

The following list of online sources were also used:
https://themanifest.com/app-development/popularity-google-maps-trends-navigation-apps-2018
https://ec.europa.eu/growth/content/guidelines-exemption-procedure-eu-approval-automated-vehicles_en
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018PC0286
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0293
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0283
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2018:284:FIN
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018PC0279
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018PC0277
https://www.eu2017.mt/en/Documents/Valletta_Declaration_on_Improving_Road_Safety.pdf
https://ec.europa.eu/transport/road_safety/sites/roadsafety/files/pdf/com_20072010_en.pdf
https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-17_en_0.pdf
http://ec.europa.eu/transport/road_safety/take-part/public-consultations/cbe_eval_en.htm.
https://www.gazzettaufficiale.it/eli/id/1990/01/22/090G0022/sg
https://www.bundesjustizamt.de/DE/Themen/Ordnungs_Bussgeld_Vollstreckung/EUGeld/Fragen/5.html?nn=10144734

ANNEX 2 PROBLEM TREES

This Annex presents the problem trees of the six identified problems. The problem tree serve as a graphical presentation of the problems and associated Problem drivers.

Problems	Problem drivers
1. Road safety related traffic offences committed by a foreign registered vehicle are **not** (or incorrectly) **detected**	a - Current resources (technical and manpower) insufficient to adequately detect offences (contextual)
	b - Disparity of technical standards for automatic checking equipment between Member States
	c - Limited number of road traffic offences included in the Directive
2. Inadequate cross border **investigation** of traffic offences	d - Different, erroneous or not up to date content of vehicle registers across Member States
	e - Use of other databases other than vehicle registers to identify the offender is not allowed
	f - IT problems at national level (contextual)
	g - Different legal liability regimes applied by Member States
	h - Limited recourse to the MLA Convention and EIO Directive by the Member States
3. Inadequate cross-border **enforcement** of financial penalties	i - The mutual recognition procedures for cross-border enforcement of financial penalties not tailored to mass detection of road traffic offences qualified as administrative
4. Inadequate cross-border **enforcement** of driving disqualifications (contextual)	j - Inadequate/missing EU rules on driving disqualifications (contextual) (contextual)
	k - Non-harmonised criteria for disqualification (contextual)
5. Different levels of **fundamental rights** protection in Member States	l - Inadequate and/or unclear information provided to the presumed offender on the offence, procedures to be followed and imposed sanctions
	m - New EU data protection rules entered into force since the adoption of the CBE Directive
6. Insufficient **information for the evaluation** of the effects of the CBE Directive	n - Legal and administrative obstacles exist in MS to collect the required information (contextual)
	o - The required information turns out to be insufficient to evaluate the CBE Directive

ANNEX 3 LEGAL ANALYSIS ON DRIVING DISQUALIFICATIONS

This Annex is composed of two sections, namely SECTION A, presenting a background analysis ***on the current state of play***, including (i) the existing national Member States' driving disqualification and point schemes (ii) the relevant legal framework and the reading provided by the EU Court of Justice; (iii) the state of play of cross-border enforcement of driving disqualifications in the EU also in light of relevant case-law, and SECTION B, on the analysis of ***future cross-border execution of driving disqualifications imposed on non-residents***.

Section A State of play

Operation of driving disqualification orders

Driving disqualifications are measures related to the commission of a road traffic offence which results in the withdrawal, suspension, or cancellation of the right to drive. Their operation can greatly differ across countries, especially with regard to the issuing authority and related procedural guarantees, the grounds for receiving a disqualification, specific rules for new drivers/ learner permit holders.

The measure may constitute either a primary, secondary or supplementary penalty or a safety measure and may be taken either by a judicial authority or by an administrative authority. Usually, a disqualification is applied either (i) when a driver is convicted of a driving offence for which the penalty imposed entails a disqualification from driving or, when demerit point schemes are in place, (ii) when a driver gets too many penalty points (endorsements) or loses all their licence points on their licence within a set period of time.

Disqualification through conviction – Issuing authorities and appeal

In principle, a disqualification order might be either automatic or imposed by a judge or administrative authority. In most cases there is a mixed system (e.g. DE, BE, FR, ES, UK, IT), with disqualifications based on either administrative or judicial decisions (usually, if it stems from serious offences, it is decided by a court, while in case of non-sanctioning driving disqualifications foreseen e.g. in case of mental/physical disease it is decided are by an administrative authority). For example, in FR the administrative authority can proceed to the suspension of the driving licence; police officials can temporarily withdraw it in certain cases; while the cancellation or annulment is made, as a rule, upon court decision, except in case of repeated offences. In IE the driver may receive a fixed charge notice setting out the fine payable and the option of paying the fixed charge and accepting the associated period of disqualification or allowing the matter to proceed to court. In MT the disqualification is always decided by a judge. There is not always a possibility to challenge the decision, as e.g. the BG law does not allow any appeal against lower administrative penalties (below BGN 50 – EUR 25), even where they are accompanied by the automatic deduction of points, which happens to lead to disqualification. Conversely, in the majority of Member States there is a possibility to file an appeal in court (e.g. IE, DE, IT). Usually, also the withdrawal of points can be contested through an appeal to an administrative court.

Disqualification through conviction – Road traffic offences resulting in disqualification

Disqualification measures usually arise as a matter of course when the driver is convicted of an offence for which the law mandates automatic disqualification. Road traffic offences that can trigger a disqualification vary amongst countries, but are usually the most serious ones and road safety related (as those covered by the CBE Directive), such as speeding beyond certain (varying) limit, drink-driving, driving under the influence of drugs, dangerous driving. In many countries (e.g. IT, FR), they are applied in case of reiterated traffic offences. In IE, along with the so-called 'consequential disqualification', resulting by law from the commission of some given traffic offences, it also exists the 'ancillary disqualification', applied with any offence at the discretion of the court, who also decides how long the disqualification lasts based on the severity of the offence and the perceived likelihood of the perpetrator re-offending. In IT, automatic suspension is ordered by the police officers when minor irregularities (such as the validity of the licence has expired) are found.

Disqualification through conviction – Duration

Only in BE and UK can a licence be definitively cancelled (in BE an order of disqualification can last from 8 days to perpetuity). Otherwise, disqualifications can be issued for undetermined or determined periods but the driver usually retains the right to pass a new examination and obtain a new permit on certain conditions. In FR, the driver may not apply for a new permit before the expiration of a period of time set by the court. This period is a maximum of three years, but may be extended to five years in the case of injury or manslaughter. In MT after two months from the date the driving licence is returned the right to drive is restored, without the need to sit for a new driving test. The driving disqualification duration may either depend on the seriousness of the offence, or be fixed (or both, as e.g. in IT). For instance, in UK there is a fixed term of one year or three years in case of reiterate offence, while disqualification due to penalty points goes from six months to two years. In ES, the duration of the disqualification is established by the judge and can range from three months to five years.

Disqualification through penalty points – Issuing authorities and appeal

Another way to have a disqualification applied is linked to the loss or attainment of a given number of virtual points associated with the driving licence. In fact, many countries in the EU have adopted penalty point systems under which a person is disqualified from driving (i.e. their driving licence is cancelled or suspended) based on the number of points accumulated or lost over a period of time because of traffic offences committed.

The demerit point schemes of each jurisdiction greatly differ. In fact, they can sometimes work oppositely, with some countries (such as IT, FR, BG, ES) where disqualification follows the loss of all points, and others (such as IE, DE, NL, UK, NO) where the penalty point system works in reverse and disqualification follows from reaching a number of penalty points that sum up.

Even where the point schemes are alike, there can be operational discrepancies: for instance, the number of points removed or supplied (i.e. endorsed on the driving licence) each time depends on the type of offence committed. There can be some particular rules, for instance in ES usually no more than eight points in a day can be lost, except for very serious offences which trigger the loss of all points at the same time. In some countries, such as in FR and in ES, it is possible to retrieve the points lost by attending some specifically designed safe driving courses. Differences also pertain to the maximum number of points associated with the driving licence: systems based on the deduction of points in case of infringements range from a maximum of only 3 points in DK, to 12 points in FR, 19 in ES, 20 points in IT, but a bonus of 2 points for every 2 years of correct behaviour is foreseen, with a maximum of 30 points, up to 39 points in BG.

Likewise, countries having demerit points endorsed in case of infringements also have different thresholds and timeframes. For instance, in IE with 12 penalty points in 3 year period, the driver is automatically disqualified from driving for 6 months, while in NL, a driver reaching 2 points in 5 years will lose the driving licence and has to pass a driving test again in order to reobtain the licence. In DE, an 8-point system operates for committed traffic offences, where obtaining 8 or more points will result in a revocation of the driving licence. As to the duration, the points endorsed usually remain on the licence until they expire: depending on the type and severity of offence committed, this can range e.g. from four to eleven years in UK, or from 2.5 to 10 years in DE.

Furthermore, different rules apply to new driver, or 'learner permit drivers', (with usually different, and varying across Member States, thresholds or the application of stricter sanctions such as the charging/removal of twice the number of points) and also to their qualification: stricter rules apply to driving licence holders for the first 2 years after passing a driving test in IE, the first 3 years in IT and FR, and for the first 5 or 7 years (depending the age when the driver has obtained his licence) in NL.

EU legislative framework: from the Convention on driving disqualifications to the Driving Licence Directive

As noted in the previous chapter, driving disqualifications are inflicted for particularly serious or reiterated road traffic offences, which may vary depending on the Member States and are usually road safety related. Driving disqualifications are out of the current scope of the CBE Directive and are not specifically regulated by any EU act. However, disqualifications are partially covered by Directive 2006/126/EC ('Driving Licence Directive').[254]

The current framework resulted from a number of transformations both at legislative and at case law level.

The 1998 Convention on Driving Disqualifications

As far as the legislative evolution is concerned, the most significant cut with the past is the repeal, in 2016[255], of Council Act of 17 June 1998, drawing up the Convention on Driving Disqualifications ('1998 Convention')[256]. The Convention was enacted on the legal basis of Title VI of the Treaty on European Union (Cooperation in the fields of justice and home affairs), which is different from the current legal basis of the CBE Directive (i.e. Transport safety). The reason for the repeal was the lack of ratification by the Member States at the time (the Convention was only ever ratified by 7 countries, namely BG, CY, IE, RO, SK, ES, and UK), i.e. only by three of the 15 EU Member States in 1998[257]consequently it never entered into force. However, a Member State could declare that with respect to itself, the Convention should apply to its relations with other Member States that have made the same declaration.

The Convention was based on the mutual recognition of the cross-border execution of driving disqualifications (i.e. disqualifications are executed by the Member State which issued the driving licence of the offender or in which the offender has normal residence). It acknowledged the need for the Member State of residence of the licence holder to apply and to give effect to driving disqualifications imposed by another Member State, in respect of offences considered particularly serious and under certain conditions (III and V Recitals). It therefore set: (i) an obligation on the State of the offence to notify, without delay, the State of residence of any driving disqualification imposed for an offence arising from specific conducts (referred to in the Annex to the Convention); and (ii) an obligation on the State of residence – except in some specific cases – to give effect, without delay, to the decision imposing disqualification from driving taken in the State of the offence. To this end the State of residence could choose to (a) directly execute the foreign disqualification decision; (b) execute the foreign disqualification

[254] Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (Recast), OJ L 403, 30.12.2006, p. 18–60.

[255] Regulation (EU) 2016/95 of the European Parliament and of the Council of 20 January 2016 repealing certain acts in the field of police cooperation and judicial cooperation in criminal matters, OJ L 26, 2.2.2016, p. 9.

[256] Act: OJ C 216, 10.7.1998, p. 1.

[257] However, it had been initially signed by BE, DK, DE, GR, ES, FR, IE, IT, LU, NL, AT, PT, FI, SE, UK.

decision via a judicial or administrative decision; (c) convert the foreign disqualification decision into a judicial or administrative decision of its own.

A series of guarantees was envisaged in order to respect the *ne bis in idem* principle (e.g. the need for taking into account any part of the period of disqualification already served in the first State), and to adapt the disqualification imposed by the State of the offence to the disqualification system in force in the State of residence (e.g. possibility of reducing the duration of the disqualification in line with national law applicable for the same case, or to take additional road safety measures). Although it remained, regardless of the decision taken by the State of residence, the right of the State of the offence to execute in its territory the full period of disqualification, the mechanism of cooperation and notification envisaged by the Convention allowed the disqualification to have effect throughout all the EU territory, once it was converted into a decision of the State of residence (i.e. the State that has the power to issue the driving licence).

Bilateral Agreements in place

The same system of the 1998 Convention is foreseen by the bilateral agreement on Mutual Recognition of Driving Disqualifications between UK and Ireland[258], signed on the 30th October 2015 (and came into effect on 1 August 2017) to replace the 1998 EU Convention which the UK opted out of as part of the block opt-out from the Treaty of Lisbon on 1 December 2014[259]. In fact, the bilateral agreement reproduces almost verbatim the EU Convention. Under both the 1998 Convention and the UK-IE bilateral agreement, the driving disqualifications imposed for an offence arising out of one of the conducts listed in the annex to these agreements, are mutually recognised, even where the offence committed is not foreseen in the other Member State. Disqualifications that have arisen from the accumulation of penalty points – 'totting up' – are not subject to the arrangements.

Further bilateral agreements among EU countries have not been identified.

Directive 91/439/EEC and Directive 2006/126/EC

As observed, currently the legislative void left by the abolition of the 1998 Convention has been partially filled by the adoption of the Driving Licence Directive, which deals with the mutual recognition, without any formality, of driving licences issued by EU countries, and recasts Directive 91/439/EEC[260]. Both Directive 91/439 (Article 8.2) and now Directive 2006/126 (Article 11.2) allow Member States in certain circumstances and in particular for reasons of road traffic safety, to apply their national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive. However, unlike the 1998 Convention, the Driving Licence Directive does not set straightforward rules on mutual recognition of driving disqualifications, which is demonstrated by the numerous national courts' requests for preliminary rulings of the European Court of Justice ('ECJ'), which have been called on repeatedly to provide guidance on the application of Articles 8 and 11.

Current state of play of cross-border enforcement of driving disqualifications

Responsibility to impose a driving disqualification - Disqualification on resident driver

Pursuant to Article 11.2 of the Driving Licence Directive (corresponding to Article 8.2 of Directive 91/439), the Member State of normal residence, in certain circumstances and in particular for reasons of road traffic safety, may refuse to recognise the right to drive to a holder of a licence issued by another Member State. To that purpose, if necessary,

[258] https://www.gov.uk/government/publications/ts-no242017-ukireland-agreement-on-the-mutual-recognition-of-driving-disqualifications
[259] https://www.legislation.gov.uk/ukdsi/2017/9780111155547/pdfs/ukdsiem_9780111155547_en.pdf
[260] Council Directive 91/439/EEC of 29 July 1991 on driving licences, OJ L 237, 24.8.1991, p. 1–24.

it can also exchange the licence, returning the old licence to the authorities of the Member State which issued it (Article 11.3).

Responsibility to impose a driving disqualification - Disqualification on non-resident driver

In addition, under the Directive (second subparagraph of Article 11.4), any Member State, and not only the Member State of normal residence, is permitted to apply a disqualification measure in accordance with its national criminal and police laws, thus affecting, in its territory, the validity of a driving licence issued by another Member State. This is an innovation compared to Directive 91/439, which conferred only to the Member State of normal residence the power to apply its national provisions on disqualification[261].

In fact, pursuant to the Directive 2006/126/EC and settled case law, the Member State in whose territory an offence is committed ('Member State of offence') "has sole competence to punish that offence by ordering, as necessary, withdrawal of the driving licence or of the right to drive" (see, e.g., Weber C-1/07, para. 38, and Case C 260/13, para. 62). Therefore, any Member State where a non-resident is staying temporarily is allowed to apply a driving disqualification on account of unlawful conduct committed within its territory[262]. This is an application of the principle of territoriality of criminal and police law, implying that criminal jurisdiction depends upon the place of perpetration (that is, the nation in whose borders the crime was committed has jurisdiction of the offence).

Admittedly, the fact that any Member State, upon offence committed in their territory, can withdraw an authorisation to drive issued abroad constitutes an exception to the general principle of mutual recognition of driving licences. However, this limitation, that allows the risk of traffic accidents to be reduced, reinforces road safety.

Responsibility to impose a driving disqualification - 'Double disqualification'

When a driver who has been already subject to a withdrawal decision in one Member State, commits another traffic offence in his Member State of normal residence, the latter is de facto unable to withdraw the licence again. Thereby, in this case the State can order that a new driving licence may not be issued for a given period of time and this measure must be regarded as a measure of disqualification for the purposes of the second subparagraph of Article 11.4. As a consequence, such order will preclude the recognition of any licence subsequently issued before the expiry of that period. [263]

Territorial effects of driving disqualifications of non-residents

Given their exceptional character, the provisions allowing a Member State to apply a driving disqualification on a foreign licence holder are to be interpreted strictly[264]. In particular, the territorial effect of such a measure seems limited. This is because, in the ECJ reading[265]:

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[261] See e.g. case C-260/13; Judgement of 23 April 2015, Aykul, ECLI:EU:C:2015:257.

[262] Aykul, C-260/13, para 74. During the preceding, the Commission argued that the second subparagraph of Article 11(4) of Directive 2006/126 should be interpreted as reproducing the content of the previous Directive, meaning that **the possibility of refusing to recognise the validity of a driving licence should be reserved only to the Member State in which the holder of that licence has his normal residence**. **The ECJ did not endorsed this interpretation** and found that new Article 11(4) is not limited to decisions taken by the Member State of normal residence.

[263] Judgement of 21 May 2015, Wittmann, C-339/14; ECLI:EU:C:2015:333.

[264] See, in particular, Judgement of 20 November 2008, Weber, Case C-1/07, ECLI:EU:C:2008:640, para 29; Judgement of 2 December 2010, Scheffler, Case 334-09, ECLI:EU:C:2010:731, para. 63; Judgement of 26 April 2012, Hofmann, C-419/10, ECLI:EU:C:2012:240, para. 71.

[265] Aykul, C-260/13, para. 60 and 61.

- on the one hand, the Member State of normal residence of the holder of a driving licence issued by another Member State is entitled to exchange the licence, if necessary, and take its own measures restricting, suspending, withdrawing or cancelling the foreign driving licence that take effect in all other Member States
- on the other hand, "the second subparagraph of Article 11(4) of the Driving Licence Directive, which does not provide for the possibility of exchanging a driving licence, merely allows a Member State that is not the Member State of normal residence to take measures, in accordance with its national legislation, as a result of unlawful conduct in its territory by the holder of a driving licence previously obtained in another Member State, the scope of those measures being limited to that territory and the effect limited to the refusal to recognise the validity of that licence within that territory". This State will hence be able to challenge the fitness to drive of a foreign licence holder, but the penalty imposed will take effect only within its borders.

Example of wider interpretation:

Even lacking a specific EU framework in this regard, it is not excluded that the State issuing the licence applies a disqualification measure on the basis of the fact that its citizen has been charged of a similar measure in another country. This happened in Denmark, where a Danish citizen (and resident) was charged with a claim of suspension of his licence, after having his licence suspended in Germany. In this instance the Driving Licence Directive has been read as not prohibiting that a Union citizen who has been suspended driving rights in a Member State of offence subsequently is suspended driving rights in the Member State of residence. However, this matter resulted in litigation and was referred to the Supreme Court of Denmark (Case no. 108/2017), as the victim of a disqualification contended the violation of the *ne bis in idem* principle. In its judgment, delivered in August 2018, the Danish Supreme Court found that there was no double punishment within the meaning of Article 50 of the Charter of Fundamental Rights, as the second disqualification is a mere follow-up to the first verdict, with a view to achieving a coherent legal response which also takes into account the consideration to road safety in the country. In particular, the second judgment only concerns a geographic extension of the first suspension, with a different protection interest (i.e. protection of road users of the different Member State). It can therefore not be considered as a new criminal case.

Competence to reinstate the right to drive after disqualification

The most controversial case law pertains to the reinstatement of the right to drive (i.e. to use a foreign driving licence) after the disqualification of the non-resident: taking into account the obligation of recognition the ECJ tried to clarify when this lies with the Member State which imposed the preventive measure and when with the issuing State.

Competence to reinstate the right to drive after disqualification - Faculties of the Member State of offence (applying the disqualification to a non-resident)

After the disqualification, it is for the authorities of the Member State where the offence had been committed to determine whether the holder of a driving licence issued by another Member State is once again fit to drive in its territory[266]. Accordingly, the Member State of offence has the competence to reinstate the right to use a foreign driving licence in its borders, laying down the conditions to be complied with, subject to its national law. Indeed, in so far as the refusal to recognise the validity of a foreign driving licence is based on national rules, which may not necessarily exist in the

[266] Aykul, C-260/13.

legislation of the issuing Member State, it seems unlikely that the latter would itself lay down suitable rules to retrieve the right to drive in the territory of another State[267].

In applying its own rules, the Member State cannot refuse indefinitely to recognise a driving licence issued by another country, but it must abide with the principle of proportionality and not exceed the limits of what is appropriate and necessary to attain the objective of road safety. It remains unclear what happens in the case of Belgium, where the disqualification (of residents) can be everlasting, possibly resulting in a difference of treatment between residents and non-residents [268].

Given the limited territorial effect of a driving disqualification imposed in a Member State where the driver is not resident, the disqualified driver holder of a foreign permit will be able to drive in all other Member States, although in principle they will have to apply for authorisation to drive again in the same Member State that revoked their licence, in order to be able to drive again in that territory. This principle is not absolute. The following paragraph presents, indeed, some options available to the disqualified non-resident, to recover their right to drive everywhere, without the need to be examined in the State that previously disqualified them.

Competence to reinstate the right to drive after disqualification - Faculties of Member State of residence: Issuance of a new driving licence to an applicant whose licence is validly cancelled in another Member State and obligation to recognise it.

The disqualified driver might also be able to obtain a new licence elsewhere, by applying for it in their country of normal residence (where necessary, if the disqualification was applied by the very country of residence, by moving the residence elsewhere, as only the Member State of nationality and of residence can issue a driving licence). This new licence, at certain conditions, will also be valid in the territory of the State that had the driver previously disqualified.

Arguably, allowing Member States to issue a driving licence to an applicant whose licence is validly cancelled in another Member State, and requiring all other Member States (including the country issuing the disqualification) to recognise the validity of the new licence, would have the effect of encouraging offenders alike to travel without delay to another country in order to evade the administrative or criminal consequences of their traffic offences, thus fuelling driving licence tourism, and ultimately destroying the confidence on which the system of mutual recognition of driving licences rests.

Yet, a review of consistent case law suggests that under previous Directive 91/439, the ECJ has consistently held the possibility of the driver to apply for a new driving licence in a different Member State, except when an express, and temporary, prohibition on applying for a new driving licence is made (see case-las in detail below). This reading was based on the consideration that the provisions of a directive which derogate from a general principle established therein must be strictly interpreted. Accordingly, in the ECJ view, when the disqualified driver obtains a new driving licence elsewhere (as long as the residence criteria is fulfilled), the disqualifying Member State would be obliged to recognise it, despite the licence-holder has not satisfied, in the disqualifying Member State, the necessary conditions for the issue of a new licence, including the examination

[267] It has been contended that solely the Member State of issuance has competence to investigate whether the minimum conditions imposed by EU law relating to (residence and) fitness to drive have been satisfied, pursuant to the principle of mutual recognition, without any formality, of driving licences: the possession of a EU licence has to be regarded as constituting proof that its holder satisfied those conditions. Nonetheless, in the case at hand, the State of offence is entitled to challenge and assess again the fitness to drive of the non-resident on the grounds that a new fact (e.g. use of narcotic substances while driving) has aroused after the driving licence had been issued. This does not result in calling into question the assessment of the issuing Member State, because the new fact could not have been taken into account on the day the issuing State made its own evaluation of the fitness to drive.

[268] Rules on driving disqualification in Belgium available at: https://mobilit.belgium.be/sites/default/files/chapitre_26_decheances.pdf.

of fitness to drive certifying that the grounds justifying the withdrawal are no longer in existence. In fact, the possibility of a Member State to withdraw or cancel a previous licence to person who has committed an offence in its territory could not be used as a basis for refusing indefinitely to recognise the validity of any licence that may subsequently be issued to him by another Member State.

Despite the legislative amendments specifically aimed at fighting driving licence tourism and ensure mutual recognition of sanctions and disqualifications imposed on dangerous drivers, the understanding of the ECJ has not changed and the possibility to apply for a new driving licence in a different Member State still endures.

It seems to remain, however, a grey area, regarding cases where the disqualification measure is not accompanied by an express prohibition on applying for a new driving licence. Uncertainties also stem from inconsistencies in the new formulation of the Driving Licence Directive's Article 11.

A) Under Directive 91/439

Box 1 provides an overview of the Court's position under the former Directive.

ECJ interpretation under Directive 91/439:

a) When a person has been subject, abroad, to a measure withdrawing his driving licence but not including a period in which it is expressly prohibited to apply for a new licence (or where such period is expired):

Member States are prohibited to refuse to recognise, in their territories, the right to drive stemming from a driving licence subsequently issued by another Member State and, therefore, the validity of that licence. The previously disqualified driver can hence apply for a new driving licence in a different Member State – of normal residence – and this will be valid also in the country that had formerly disqualified him (inter alia, Kapper C-476/01; Wiedemann and Funk C-329/06 and C-343/06).

b) When a person has been subject to a measure withdrawing his driving licence and prohibiting any application for a new licence for a given period,

Member States can refuse to recognise a new licence issued by another Member State during the period of that prohibition.

B) Under the Driving Licence Directive

As noted, a step towards mutual recognition of driving disqualification seems to have been achieved during the recast of the Driving Licence Directive, where the relevant provisions were partially amended. However, the wording of new provision is not entirely clear and gives room to doubts.

The new wording of Article 11.4 (former 8.4) replaces the verb 'may' with 'shall' and reads: "a Member State shall refuse to recognise the validity of any driving licence issued by another Member State to a person whose driving licence is restricted, suspended or withdrawn in the former State's territory" and "to issue a driving licence to an applicant whose driving licence is restricted, suspended or withdrawn in another Member State". Yet, the last paragraph of the same provisions maintains the original wording, stating "A Member State may also refuse to issue a driving licence to an applicant whose licence is cancelled in another Member State."

The preparatory works leading to recast of Directive 91/439 supports the idea of the existence of an obligation not to issue and not to recognise a new driving licence obtained by changing the State of residence. In fact, the EU legislature sought to enhance road safety by fighting driving licence tourism, going beyond what was thus far provided by Directive 91/439 and transforming the option not to recognise a driving licence issued by another Member State into an obligation, in order to ensure mutual recognition of restriction, suspension or withdrawal measures imposed on dangerous drivers. The Commission's legislative proposal sought to address the issue of a coherent, pan-European application of the withdrawal of driving licences, by underpinning the principle of the uniqueness of driving licences (one holder – one licence). It noted that "too many citizens establish themselves in a different Member State in order to apply for a new driving licence when their Member State of normal residence has withdrawn their driving licence because of a serious traffic offence. This situation is highly unsatisfactory for road safety and amounts de facto to an infringement of Directive 91/439/EEC." Therefore it "explicitly states that Member States may not issue a new driving licence to a person whose driving licence has been withdrawn and who thus indirectly is still the holder of another driving licence" [269]. Also the Parliament, during the legislative works, specifically condemned the fact that, under the 1991 Directive, drivers subject to disqualification in one EU country could easily procure a false residence in another country and obtain a driving licence there, thus circumventing the conditions for the issue of a new driving licence. The change to the wording of Article 11.4, followed from an amendment proposed by the Transport and Tourism Committee of the Parliament, seems to confirm this intention of reacting to previous judgments and providing a legislative response to that.

In light of the new formulation and having specific regard to the difference in wording between Article 8.4 of Directive 91/439 and the corresponding provision of the Driving Licence Directive, the ECJ was asked to confirm whether the two provisions should be interpreted in a different way. Despite the intention of the legislator, the Court confirmed its previous rulings, still considering the mutual recognition of disqualifications as an exception, rather than a corollary, to the mutual recognition of driving licences.

Box 2 summarises the Court's position in ruling Hofmann C-419/10[270], which is the first under the recast Directive.

ECJ interpretation under Recast Driving Licence Directive of 2006:

The ECJ confirmed that the wording of the new provisions transforms into an obligation what was previously merely an option of non-recognition, no longer leaving a full discretion to the Member States on refusing to issue or to recognise a driving licence. However, it argued that this obligation only exists when certain conditions identified by previous case law (i.e. when there is an express temporary prohibition from applying for a new licence) are met. Apart from that the recast has not undergone substantial modification. Specifically, the difference in wording is not of such a kind as to change the conditions under which a Member State is authorised or, in relation to the new directive, is required, not to recognise a driving licence issued by another Member State.

Hence, in line with earlier rulings, the ECJ held that:

a) When the disqualification measure is accompanied by a temporary prohibition from applying for a new licence, a person can still obtain a driving licence in the new Member State of residence, after the expiry of such period. The Member State that disqualified the foreign driver, withdrawing his previous licence, shall recognise the validity of his new driving licence obtained in another Member State;

[269] Proposal for a Directive of the European Parliament and the Council on driving licences (recast), of 21 October 2003, COM(2003) 621 final, presented by the Commission.

[270] Judgement of 26 April 2012, Hofmann, C-419/10, ECLI:EU:C:2012:240.

b) When a person has been subject to a measure withdrawing his driving licence and prohibiting any application for a new licence for a given period, Member States shall refuse to recognise a new licence issued by another Member State during the period of that prohibition.

The reasoning of the ECJ was based on the following grounds:
i) Exceptional nature of the option provided for by Article 11(4), which, just as the previous provision, constitutes derogation from the general principle of mutual recognition of driving licences, and must therefore be interpreted strictly;
ii) Respect to the right to move and reside freely in the territory of the Member States (Article 21 TFEU) ensured by excluding a permanent prohibition, not limited in time, on the issuing of a new driving licence by a Member State to a person whose driving licence has been subject, in the past, to a restriction, suspension or withdrawal in another Member State.

New licence obtained while pending decision on disqualification

National proceedings concerning a withdrawal measure might require some time, especially when the disqualification becomes final only upon Court's decision which is no longer subject to appeal. In some Member States, before the decision on withdrawal becomes final the right to drive is usually suspended. However, the driver might decide to apply for a new licence in a second Member State right while the judgement is pending.

In this case, when the second driving licence is obtained (or a licence is exchanged) before the delivery of the final judgment, but the grounds justifying the measure already existed at the date of issue of the licence, Member States can refuse to recognise the right to drive stemming from the new licence. (Weber C-1/07 – concerning the case where German authorities had correctly refused to recognise a Czech driving licence obtained by a person after a German administrative decision to suspend his German driving licence, but before that decision became final, and before the later decision withdrawing his licence. Also, Apelt, C-224/10; Wittmann, C 339/14; and, recently Marvin, C 112/19). [271]

Remaining ambiguities in the Driving Licence Directive

It remains unclear the reason for the establishment of a distinction in Article 11.4, between restriction, suspension and withdrawal on the one hand, and annulment (i.e. cancellation) on the other. It comes from a literal reading that Member States cannot issue and recognise a new driving licence to an applicant whose licence is restricted, suspended or withdrawn in another Member State, while in the more serious event[272] where an applicant has his licence cancelled in another Member State, they could still issue him a new driving licence.

As admitted by the Court, reserving a 'special regime' for the annulment of a driving licence, would result in a paradoxical situation that cannot be accepted as "in the case of restriction, suspension or withdrawal of a driving licence, it is no longer possible to obtain a licence in another Member State, whereas such a possibility still exists in the event of annulment of a licence" [273].

[271] Judgement of 20 November 2008, Weber, Case C-1/07, ECLI:EU:C:2008:640; Judgement of 13 October 2011, Apelt, Case C-224/10, ECLI:EU:C:2011:655; Judgement of 21 May 2015, Wittmann, C-339/14; ECLI:EU:C:2015:333; and Judgement of 28 October 2020, Marvin, C-112/19, ECLI:EU:C:2020:864.
[272] In certain Member States, annulment of a driving licence may constitute a measure relating to the capacity to drive, more severe than a withdrawal or a suspension, capable of penalising in particular driving under the influence of alcohol.
[273] Ibid., para. 88.

To avoid this, the Court (overturning the opinion of the AG) basically disregarded the different formulation of the subparagraphs, providing for a corrective interpretation which ended up bypassing the legislative amendments introduced by the recast Directive. In the ECJ view, just as under the previous Directive, Member States can never refuse to recognise the validity of a driving licence subsequently issued to the same person by another Member State, outside a period during which no application may be made for the issue of a new driving licence. This applies whatever the measure of disqualification is.

Arguably, as also contended by the German Government, there is no sign in the Directive, nor in the legislative debate, of a desire to make the obligation of refusing the new licence issued to the disqualified driver (as per second subparagraph of Article 11.4) depending on an infringement of the condition of non-expiry of the period of prohibition from obtaining a new licence. Rather, the intention that emerges from the recast of the Driving Licence Directive is the will to intensify the fight against 'driving licence tourism' and thus reinforce road safety, as opposed to the principle of mutual recognition, underpinned by the concept of freedom of movement, which had so far prevailed in the case law of the ECJ.

A possible explanation of the use of different verbs is found in diverging language versions of the Directive: as an example, the German version of Article 11.4 last paragraph is formulated in such a way as to suggest that the option to refuse the licence issuance remains only when the foreign disqualification has exhausted its effects (meaning, where the right to drive in its territory has been restored by the same country who applied the disqualification), while when it is still in force there is now an obligation to refuse it, regardless of whether there is or not a period of temporary prohibition from obtaining a new licence. Anyway, a large number of other language versions, such as the French and the English do not express such a difference. Since the different language translations of EU acts are to be interpreted uniformly, it is not possible to apply the German interpretation to other versions.

In light of the inconsistencies among different language versions of the same act, the paradox outcome of a literal interpretation based on the most common translations, the incoherence between the Court's interpretation and the legislator's intention stemming from the preparatory works, and the repeal of the 1998 Convention on the mutual recognition of withdrawal of driving licences (which was instead, as emerges from the Commission proposal, to complement the recast Directive) it seems that a clearer obligation should be drawn up, ensuring clarity and consistency in the wording of the act and not leaving room for ambiguities. This issue could be addressed in a newly revised Driving Licence Directive.

Obligation of cooperation and information exchange under the Driving Licence Directive

Under the current prevailing interpretation, the existence of a period of prohibition from applying for a new licence is the condition upon which the obligation/possibility to derogate from the mutual recognition principle (i.e. not issuing or recognising a new licence) depends. Whether such a period exist and is pending has to be ascertained through mutual cooperation among Member States and assistance in the exchange of information. According to the Court[274], this is already implied in the Driving Licence Directive (Article 11.4, first subparagraph, and Article 15[275]). Cooperation and exchange

[274] Hofmann, C-419/10.

[275] Pursuant to Article 15, "Member States shall assist one another in the implementation of this Directive and shall exchange information on the licences they have issued, exchanged, replaced, renewed or revoked. They shall use the EU driving licence network set up for these purposes, once this network is operational."

of information also serve to check if the applicant is already the holder of a licence issued in another country, in case of reasonable grounds for suspecting it.

However, provided that EU countries are not entitled to rely on national provisions in order to refuse indefinitely to recognise a licence issued abroad, the obligation of cooperation and exchange of information to verify if the applicant is subject, in another country, to a period of prohibition from applying for a new licence, is not absolute. Specifically, in the view of the ECJ[276], it is not a condition for the issuance of a licence by the Member State of residence of the applicant that the competent authorities consult each other and verify systematically that the reasons leading to the previous withdrawal have disappeared.

This ruling (of 2010) was based on the perceived difficulties to verify the disappearance of the reasons for past withdrawals, especially where they are applied for minor infringements or date back in the years, in the absence of "a complex system, not expressly provided for by Directive 2006/126, for determining whether the applicant for a driving licence has not, even a long time previously, been subject to withdrawal of a driving licence in any Member State". According to the Court, "even if the driving licence network of the EU is of such a nature as to facilitate the establishment of such a system, that network is, however, not yet operational and cannot constitute a useful instrument in that regard concerning possible withdrawal measures which may have been adopted in other Member States in a distant past" [277].

It remains to be verified if, today, a reliable system for exchanging this information exists, capable of justifying an obligation on Member States to enquire about previous withdrawals before issuing a new permit. Otherwise, albeit in 2013[278] the Court has recognised the right of the disqualifying Member State to reinstate the right to drive in its territory, in practice, when the Member State of residence is not aware of (or able to verify) pending disqualifications and persisting reasons for unfitness to drive in other countries, that right will remain meaningless, as it can be always overcome by a decision by the Member State of residence to issue a new licence.

Conclusions on current state of play for cross-border enforcement

Under the current framework, EU wide effect of driving disqualifications is only guaranteed when it is the Member State of residence applying the measure (and amidst a ban for application of new licence). Otherwise, when the disqualification targets a non-resident, the latter is always allowed to keep driving through all the EU, except for the territory of the country where he was convicted.

All the more, outside of an express ban to this effect (or when other Member States are not duly informed of a pending ban) the non-resident driver will be able to apply for a new licence in his country of residence, to recover the right to drive everywhere, as the new permit is to be recognised, in principle, even in the country of offence. The same might be done by a driver disqualified in his own country, by changing his residence before applying for a new permit.

Section B Cross border execution of driving disqualifications

Cross-border execution of driving disqualifications imposed on non-residents implies:

[276] Hofmann, C-419/10.
[277] Ibid., para. 82.
[278] Aykul, C-260/13.

- Mutual recognition of driving disqualifications by the Member State of residence/domicile of the offender, to obtain EU-wide territorial effect of driving disqualifications;
- The adoption (or amendment) of a regulatory act providing for new supplementary provisions on the practical application of the principle of mutual recognition and cross-border enforcement, regulating:
    - A cross-border exchange of information between the State of offence and the State of residence/issuance to notify that a disqualification has been imposed;
    - Cooperation among Member State of offence and Member State of residence/domicile to identify the offender;
    - Grounds for non-recognition of the penalty based on breach of fundamental rights;
    - The practical (direct or indirect) execution of the foreign sanction abroad.
- A platform accessible from all Member States, to verify systematically whether the applicant for a new driving licence has been previously subject to withdrawal in a different Member State and, if so, whether the reasons leading to the previous withdrawal have disappeared or still endure.

Operation of driving disqualification orders

This principle, concretely, would stem from a formal obligation to recognise a driving disqualification imposed by a different Member State, parallel to the obligation to recognise the right to drive granted by a different Member State. Such an obligation is already stated in the Driving Licence Directive[279] but should be clarified- unreasonable difference is made between the case the driving licence is cancelled and other cases of disqualifications (such as annulment, withdrawal or restriction) - and made effective by envisaging an information exchange mechanism (see ECJ case law and, diffusely, the Annex hereto).

Besides, since the Driving Licence Directive states the principle of mutual recognition of the right to drive across Member States, it seems logical that it also hosts the exception to the same principle that is the mutual recognition of bans to the right to drive across Member States, where this ban is grounded on commendable legal justifications. The principle of mutual recognition applied to disqualifications should result in a ban to drive to be recognised in all Member States, for a set time span, because the offender should be forbidden to drive across all the EU territory.

Nonetheless, setting up a system of mutual recognition of a (temporary) prohibition to drive, i.e. disqualification, appears much more challenging than setting up a system of mutual recognition of the right to drive, which also applies simultaneously in all the EU. Unlike the conditions for issuance of a disqualification, the conditions for granting the right to drive are currently very similar across Member States; therefore, the presumption of existence of these conditions, when ascertained by one Member State (of residence), is unlikely to be disputed. Conversely, without a prior harmonisation, it remains the likelihood that the recognition of the disqualification is blocked due to the existence of several grounds for non-recognition. These can depend on the fact that, for example, the driver is disqualified for acts that would not constitute an offence under the law of the executing State; or it is impossible to execute the decision on

[279] Indeed, Article 11(4) of the Directive demands Member States to "refuse to issue a driving licence to an applicant whose driving licence is restricted, suspended or withdrawn in another Member State". Additionally, it requires to refuse to recognise the validity of any driving licence issued by another Member State to a person whose driving licence is restricted, suspended or withdrawn by the same State (i.e. by the State of issuance or residence), and allows them to do the same in case the driving licence is restricted, suspended or withdrawn by any other Member State.

disqualification as, according to the law of the executing State, the decision is statute-barred, there is immunity, the offender cannot be criminally liable; or the issuing State does not allow the offender to exercise his defence rights (including information, translation, appeal) [280].

A survey targeted at Member State authorities indeed reveals that different procedures for imposing driving disqualifications or demerit points are established on the national level. The results can be found in Table A.1. From this table, it can be deducted that some countries might impose a driving disqualification / demerit points for non-use of seat belt (Cyprus, Denmark, France, Lithuania and Portugal), but that other countries do not impose driving disqualifications for these type of offences (such as Austria, Croatia and Estonia). Furthermore, Member States seem to differ in whether a driving disqualification can also be imposed on foreign offenders, with Austria indicating that demerit points (for example for failing to stop at a red light) can be imposed on resident drivers, but not on non-resident drivers.

Table A.1: Overview of answers to questions on driving disqualifications and demerit points[281]

	Domestic offenders		For foreign offenders		
	Disqualifications	Demerit points	Disqualifications	Demerit points	
Austria	1, 2, 6	1,2, 4	Yes	No	
Belgium					*No response*
Bulgaria					*No response*
Croatia	1, 2, 4, 6	1, 2, 4, 6	Yes	Yes	
Cyprus	1, 2, 3, 4, 5, 6, 7, 8	1, 2, 3, 4, 5, 6, 7, 8	No	No	
Czechia					*No response*
Denmark	1, 2, 3, 6, 8	1, 4, 5, 7, 8	Yes	Yes	
Estonia	1, 2, 6		Yes		
Finland	1, 2, 4, 6, 8		Yes		
France	1, 2, 3, 4, 5, 6, 7, 8	1, 2, 3, 4, 5, 6, 7, 8	No	No	
Greece	6	1, 4, 5	Yes	No	
Hungary					*No response*
Ireland	1, 2, 6	1, 2, 3, 4, 7, 8	Yes	Yes	
Italy					*No response*
Latvia					*No response*
Lithuania	1, 2, 3, 4, 6, 7, 8	2, 6	Yes	No	
Luxembourg					*No response*

280 Interestingly, a request for preliminary ruling made in 2010 (Case C-27/11, concerning BG) highlights the potential issue arising from different procedural guarantees currently in place: some countries could refuse to recognise a disqualification imposed as an automatic legal consequence of road offences which cannot be challenged. In other words, where the Member State does not recognise a right of appeal against decisions entailing the deduction of points from driving licences or the imposition of a disqualification (as it happens, for example, in BG), the principle of mutual recognition could not apply. (In Case C-27/11 the Court did not rule on the merit, due to lack of jurisdiction, as the principle of mutual recognition was not relevant to the outcome of the driving penalty dispute).

281 Coding used i as followed: 1 = speeding, 2 = drink driving, 3 = non-use of seat belt, 4 = failing to stop at red traffic light, 5 = use of forbidden lane, 6 = driving under the influence of drugs, 7 = Failing to wear a safety helmet, 8 = Illegally using a mobile phone or other communication device.

	Domestic offenders		For foreign offenders		
	Disqualifications	Demerit points	Disqualifications	Demerit points	
Malta					*No response*
Netherland	1, 2, 6		Yes	Yes	
Poland					*No response*
Portugal	1, 2, 3, 4, 6, 7, 8	1, 2, 3, 4, 6, 7, 8	Yes	Yes	
Romania	1, 2, 4, 6, 8	1, 2, 3, 4, 5, 6, 7, 8	Yes	Yes	
Slovakia	1, 2, 4, 6		Yes	No	
Slovenia					*No response*
Spain	1, 2, 6	1, 2, 3, 4, 5, 6, 7, 8	Yes	No	
Sweden	1, 2, 4, 6		Yes		
Iceland					*No response*
Norway					*No response*
Liechtenstein					*No response*
Total			**14 yes 2 no**	**6 yes 7 no**	

Source: Results from 1st survey to Transport Authorities, Transport Ministries, Ministries of Interior and Police authorities.

Mutual recognition of demerit/penalty point systems

On the contrary, in our view, the mutual recognition of points systems would be extremely challenging. As noted in this Annex there are currently too many diverse systems in place, sometimes based on opposing principles and in some countries, there are no point systems at all. As a matter of fact, mutual recognition would require 'adapting' the varying points mechanisms to reconcile the different thresholds, number of points applied/removed per offence, types of interested offences, procedural guarantees. Also, to avoid discrimination based on nationality, specific rules should be designed to cover the case where the executing Member State that should recognise the non-pecuniary sanction does not have any such a scheme in place.

To allow the recognition and transfer of licence points across Member States, it rather seems that the creation of harmonised rules at EU level would be needed, allowing to apply uniform sanctions on the entire EU territory, regardless the Member State where the offence took place.

Alternatively, the creation of virtual driving licences for foreign drivers (already existing in some countries) may also be envisaged at EU level, to be set in all Member States. This would allow, at least, to apply local point schemes also to non-residents and keeping track of them.

Cross-border enforcement/execution of driving disqualifications

Cross-border enforcement of financial penalties vs enforcement of driving disqualifications

Currently the CBE Directive covers access to information necessary for identifying (and eventually pursuing) a foreign offender, when not identified on the spot, thereby "facilitating the enforcement of sanctions for selected road safety offences" [282]. Sanctions to be enforced include financial penalties since the CBE Directive makes express reference to the Framework Decision[283] (on the application of the principle of mutual recognition to financial penalties hereinafter the 'FD'). In theory, however, CBE offences could also include other non-financial sanctions, such as disqualification measures which in general apply to more serious road traffic safety related offences in the Member States and are not covered by the FD.

Financial penalties applying to cross-border offences, under the current mechanism in place, are imposed by the State of offence and communicated to the offender (unless the offence is detected manually, in particular in the case of driving under the effect of alcohol or drugs) through cross-border data exchange under the CBE for voluntary payment. If the offender does not pay voluntarily, recourse to the FD is needed to ensure the enforcement of sanction: final decisions by judicial/administrative courts are transmitted to and executed in the Member State where the offender is resident/domiciled, unless recognition of the decision is rejected on specific grounds, mainly aimed at ensuring the protection of fundamental rights. The law governing the enforcement of the decision is the law of the executing State (State of residence) [284] and monies obtained from it in principle accrue to the same State. However, the sanction executed is the one foreseen in the national law of the State where the offence is committed (i.e. the fine is paid in the amount set by the State of offence). For the purpose of our analysis, we refer in this case to '**direct execution**' of the sanction. In any case, the enforcement of the financial penalty ends in the same moment as it is executed.

Conversely, in relation to driving disqualifications, in case of cross-border infringements, **the picture is more complex**. A key difference between a traditional financial penalty and a driving disqualification, in fact, lies in the lasting nature of the second, whereas the first ends in the moment it is imposed, eventually enforced, and executed (paid). The execution of a driving disqualification, once imposed and enforced, entails effects which last for a given amount of time and give rise to obligations (e.g. not to drive, have some medical tests or fitness to drive examinations done) and rights (e.g. to restore the right to drive after a period) which can differ across jurisdictions and mostly imply the necessity to ensure the physical presence of the offender in the Member State where the sanction is executed. This may cause problems if the execution happens pursuant to the law of or in a Member State which is different from the Member State where the offender is resident/domiciled.

Problems related to direct execution

When the disqualification is enforced in a different Member State, several issues appear if the disqualification is executed by applying the law of the Member State of offence:

- From a **practical** standpoint, there could be an issue of uncertainty how to apply of the foreign rules. Unlike a pecuniary sanction, which is simply an amount to be paid – even if different to the amount foreseen under the State of residence for the same offence – the disqualification may result in a number of requirements (number and dates of physical tests to undertaken; place and personnel in charge to perform the medical tests and/or to verify the fitness to drive; length of the disqualification; possibility and ways to restore the right to drive; etc) that may be difficult to execute following the State of offence's law, if the same requirements are not foreseen also in the State where the disqualification is enforced. Also, the requirements set by the State of offence,

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282 Article 1 of the CBE Directive.

283 Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

284 Article 9 FD.

where the offender only stayed temporarily, are likely not to be known by them, except for the information received with the information letter.

- Form a **legal theory** perspective, there could be an issue of sovereignty: although it cannot be avoided that the State of offence withdraws, within its own borders and according its own law, a right to drive issued by another State - as, in accordance with the principle of territoriality of criminal and police law, it has sole jurisdiction to punish offences committed in its territory - the EU Court[285] has repeatedly remarked the exceptional nature of this faculty, to be interpreted strictly. A system of mutual recognition based on direct execution would confer to this exceptional faculty of the country of offence a widespread effect throughout all the EU, allowing a State to revoke, even outside its borders, a right (to drive) granted by another Member State. It would hence amount to further derogation from the general principle of mutual recognition of driving licences, which is underpinned by the concept of freedom of movement. This additional limitation requires to be justified on solid grounds, considering the Court's legacy of strict interpretation. This is why it is paramount to always concede to the Member State of residence/issuance the faculty to refuse giving effect to the foreign disqualification if under its own legislation the latter (a) is not a measure available for the conduct committed, or (b) the conduct is not an offence; despite the fragmentation this may cause.

Alternative option: indirect execution

In designing a specific procedure for EU enforcement and execution of driving disqualifications abroad, an alternative option is available, which can be called 'indirect execution'. This implies executing the foreign disqualification under the law of the Member State of normal residence of the offender, which enforces the sanction, although the offence is committed in a different Member State. This may require not only to recognise the foreign decision but also to convert it in a local one.

It is emphasised that, both in the case of direct and indirect execution, the law applied to the disqualification in the first place, in accordance with the **principle of territoriality of criminal and administrative law**, is the *ius soli*, i.e., the law of the State where the offence is committed. The disqualification initially applied is hence the one foreseen as a sanction in the traffic code or other relevant law of the State where the offence is committed. The same is for the procedures for appeal and procedural guarantees.

The difference pertains instead to the law applicable to the execution of the disqualification, when it is **enforced by a Member State different from the one imposing it**: in case of *indirect* execution, after the issuance of a final decision on the disqualification by the Member State of offence pursuant to its law, both the enforcement and execution phases are passed on to another Member State, which recognises and, possibly, converts the foreign decision, and then applies, from that moment on, its own law, including provisions on the determination of the disqualification's duration, faculty to reinstate the right to drive or early termination of the disqualification. In case of *direct* execution, instead, the sanction executed abroad is the sanction as foreseen in the State of offence.

The choice between direct or indirect execution becomes key when the decision is applied on the entire EU territory, as the EU-wide valid disqualification will follow the

[285] Inter alia, Weber, Case C-1/07; Scheffler, Case 334-09; Hofmann, C-419/10 (see also footnote 9).

regime of the chosen jurisdiction, entailing a number of legal and practical consequences.

New system for cross-border enforcement of driving disqualifications

To ensure that driving disqualifications imposed on non-residents have effect in all the EU, it is necessary to **(i)** create a system where the procedure for exchange of cross-border information, cooperation in the investigation and enforcement of driving disqualifications imposed on non-residents is clearly set out, including provisions concerning the protection of fundamental rights; **(ii)** regulate the (indirect) execution of the disqualification in the Member State of residence that enforces the decision.

Based on the principle of Mutual Recognition of driving disqualifications, already set in the Driving Licence Directive, once the disqualification is enforced and executed in the State of residence, then Art. 11(4) applies[286], mandating all Member States to recognise within their borders the effects of the disqualification endorsed and executed by the State of residence[287].

Alternatively, the same could be achieved through the creation of a uniform provisions on driving disqualification schemes and demerit / penalty points at EU level.

Cross-border exchange of information on disqualifications

It seems that exchange mechanism between (a) the State of offence and the Member State of residence/issuance to notify that a disqualification has been imposed and (b) between all Member States to verify systematically whether the applicant for a new driving licence is subject to withdrawal in a different Member State, is not in place yet. However, already **available technology** could be used to these ends.

Notably, the exchange of information between the State of offence and the State of residence/issuance of the offender to notify that a disqualification has been imposed is key to enable cross-border enforcement of disqualifications; whilst the exchange of information between all Member States is needed to avoid the driving licence tourism, i.e. the offender moving residence from one State to another, to obtain a new licence, after having had their licence revoked in the first State.

In both cases, this exchange is required also to give effect to already existing provisions of the Driving Licence Directive. The legal basis for an EU-wide exchange of information on disqualifications is indeed already enshrined in the Driving Licence Directive[288], which expressly requires that Member States assist one another in the implementation of its measures and exchange information on the licences they have issued, exchanged, replaced, renewed or revoked, by using the EU driving licence network set up for these purposes (i.e. RESPER). The CBE Directive could also serve this purpose by foreseen the **obligation to inform about any disqualification that accompany the offence allegedly committed**. This could be included in the **Information Letter**'s content.

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286 " A Member State shall refuse to issue a driving licence to an applicant whose driving licence is restricted, suspended or withdrawn in another Member State. A Member State shall refuse to recognise the validity of any driving licence issued by another Member State to a person whose driving licence is restricted, suspended, cancelled or withdrawn in the former State's territory."

287 For this reason, it seems reasonable to maintain the distinction between the obligation of mutual recognition in the case the disqualification is imposed (or endorsed by) the Member State of residence/issuance, opposed to a faculty of mutual recognition in case of disqualification imposed by a different Member State and not endorsed in the State of residence, line with the current formulation of the Directive.

288 Article 15, Article 7.5 (and, according to case-law, also Article 11.4) of the Directive.

Cooperation on investigation

RESPER has proven to be an effective tool for exchange of information between national authorities. On the one hand, advantages of RESPER include: fast exchange of driving licence information; access to relevant information on validity of driving licences; possibility to prevent driving licence fraud and accelerate the procedures related to exchange and renewal of driving licences; facilitation of the implementation of the principle of mutual recognition of driving licences.

On the other hand, so far RESPER is not being utilised for the exchange of driving information for enforcement purposes, such as exchange of information on demerit points, exchange of information on national codes and normal residence.

It is necessary to identify the act (existing or new) where rules on the exchange of information through RESPER should be laid down. Notably, practical rules on the cross-border enforcement of disqualifications should cover evidence and information exchange, notification mechanisms, competent bodies, transmission of seized licences, etc.

Execution of driving disqualifications in the enforcing Member State

Once information is duly exchanged between Member States and the cooperation mechanism enables the foreign offender to be identified and the sanction to be enforced in the Member State of residence, it remains to be decided which disqualification is applied.

Since the direct execution seems to entail a number of issues (above), the indirect execution seems preferable. The mechanism based on indirect execution should be clearly regulated in a **specific act**, similar to the 1998 Convention on Driving Disqualifications.

As noted, once recognised and executed by the State of residence, the foreign disqualification attains an EU effect, by virtue of Article 11(4) of the Driving Licence Directive.

By contrast, if the Member State of residence opposes some grounds for non-recognition, the effect of the driving ban on the non-resident will remain solely in the State of offence. The impact of the lack of harmonisation in this case would be less critical (compared to the direct execution mechanism) since the grounds for non-recognition could be only opposed by one Member State.

Nonetheless, this was the approach chosen by the '98 Convention that was not ratified. It could be argued that a new act based on the same premises could fail for the same (policy) reasons. Although the same approach is used also by IE and UK in their bilateral mutual recognition agreement, it is likely that the similarity of frameworks of these countries contribute to the smooth functioning of the agreement, while the reproduction of such a system between all Member States might be more challenging. However, a new act governing indirect cross-border execution of disqualifications might better fit the current policy and legal context, given the significant changes that have occurred in more than 20 years. A separate and tailored study would be needed to explore the exact content, legal form, and wording of a new EU legislations such, which should not be a verbatim reproduction of the past one.

Introduction of a mechanism of mutual recognition of driving disqualifications in the CBE Directive:

One of the policy options considered in the context of the revision of the CBE Directive would aim to introduce in the directive a simplified mechanism for mutual recognition of final decisions on pecuniary sanctions that stem from CBE-selected road-safety-related offences. It is argued that the same mechanism could also encompass final decisions on disqualifications. Indeed, in most Member States disqualification measures are frequently triggered by CBE offences. However, in our view, this might lead to complications, due to the limited scope of the directive, causing driving disqualifications to follow different enforcement rules depending on the offence they accompany. While this can also happen with financial sanctions, the risk here is considerably higher.

In fact, in the case of pecuniary sanctions, sanctions following from CBE offences will fall under the new proposed mechanism, which draws from the FD with a view to simplifying the procedure and making it less burdensome. On the other hand, pecuniary sanctions not following from CBE offences will remain covered by the FD, which provides rules overall akin to the new mechanism of the revised CBE Directive. By contrast, in the case of driving disqualifications, disqualifications not following from CBE offences (that also include disqualifications imposed on health grounds that are not related to any traffic offence) will only remain partially covered by the Driving Licence Directive, absent any other specific rule in place, with all related uncertainties. This would result in two coexisting but very different regimes depending on the pursued offence / reason for the driving ban. Ultimately, and also in light of the different nature of offenses at issue, a separate and sectoral approach is needed, therefore a separate act is preferable.

Protection of fundamental rights

It remains, however, that **when the driver is stopped on the spot** e.g. for alleged drug-driving or drunk-driving, they usually have their licence directly seized by national police, and the sanction of driving disqualification (for a few hours, up to weeks or months) directly applied, **without the possibility to oppose rights on the moment**. In fact, despite the right to file an opposition and challenge the measure, this possibility concretely appears only later, when the driver has already suffered fully or partially the disqualification and its consequences (impossibility to leave the country immediately after the ban to drive, impossibility to work, if the job requires driving). **This is a major difference with road traffic financial penalties** – which may be paid non-voluntarily after the person concerned has had an opportunity to have the case tried by a court (although, in practice, the offender driving a car with a foreign plate, if detected on the spot, is often obliged to pay the sanction immediately) – and might result in impairment of the right to defence. Moreover, albeit affecting both residents and non-residents, this might particularly impact non-residents, due to practical hurdles in leaving the foreign country, understanding the language and the legal remedies, communicating to the authorities, etc.

To avoid a similar issue, in theory, the execution of a disqualification should be always suspended and delayed till the expiry of the appeal period. However, this cannot be always endorsed as, especially in cases where the driver is stopped and tested and results to be driving under the influence of alcohol or drugs, **a delay of the measure would negatively affect road safety.** It is therefore paramount that, at least, legal guarantees are provided, ensuring the respect of the **rights to information**, translation, legal recourse and remedy. This role is fulfilled by local authorities, if stopping the vehicle on the spot, and by the Information Letter, which should be complemented with all necessary information on all sanctions imposable.

Harmonisation

Alternatively, the creation of a uniform provisions on driving disqualification schemes and demerit / penalty points at EU level would allow easier recognition of the sanctions, both imposed on residents and non-residents, on the entire EU territory. Such solution seems legally feasible even considering that there are already a number of offences that uniformly lead, in most Member States, to disqualification measures (e.g. speeding; driving under the influence of alcohol/drugs). The harmonisation might be partial or all-inclusive, ranging from uniform EU rules for whatsoever disqualification, to rules limited to disqualifications imposed only on non-residents or only stemming from selected road traffic offences. In the latter case, EU countries will keep applying their national point systems / disqualifications to resident citizens or for the remaining offences. Harmonisation seems the most effective way to curb the steadily increasing number of road casualties, eliminating the grounds for non-recognition of disqualifications imposed by other Member States.

Harmonisation of penalty point systems would instead require centralising the recording of road traffic offences and employing a unique points system in order to identify drivers guilty of repeated traffic offences. The procedure should guarantee account being taken of the circumstances of the case, and the driver's rights of defence.

Execution of driving disqualifications in the enforcing Member State

In light of the analysis above, the following recommendations are proposed:

- **To regulate the information exchange and notification system between Member States** – by relying on enhanced potentiality of existing digital systems (RESPER) – as this is a first crucial step not only to allow a cross-border execution and enforcement of the disqualifications, but also to give effect to already existing provisions of the Driving Licence Directive.

- **To ensure that fundamental right of defence is respected in all Member States**, especially when the disqualification is enforced on the spot and possibly even ends its effects before it is opposed to, by filing an appeal. This can be done by guaranteeing that all necessary information on the offence allegedly committed and the surrounding rights of opposition, as well as possible legal remedies – such as compensation in case the appeal is won, but the measure was already enforced – are correctly provided by competent authorities and understood by the offender (**be it national or foreigner**). In case of a foreign offender, ensuring the right of defence also entails the translation of the measure and information to be provided. Concretely, in terms of information to be provided to foreign offenders, this also imply the involvement of the CBE Directive, as the Information Letters content should be enriched with clear information on any disqualification that accompany the financial sanction.

- To amend Article 11 of the Driving Licence Directive, in the part it stipulates the obligation of mutual recognition of driving disqualifications, on the grounds that the current wording has given rise to uncertain readings and ECJ rulings, not always consistent with the spirit of the recast directive, manifested in the legislative documents (see Annex). Specifically, the distinction from Article 11(4) para. 1 and Article 11(4) para. 3 should be removed, requiring instead that Member States shall "refuse to issue a driving licence to an applicant whose driving licence is restricted, suspended, withdrawn, [or cancelled] in another Member State". In parallel, current para. 2 should be amended by foreseen that "A Member State shall refuse to recognise the validity of any driving licence issued by another Member State to a person whose driving licence is restricted, suspended or withdrawn [or cancelled] in the former State's territory."

- To draft a new act that completes the framework, parallel to the Framework Decision and similar to the past 1998 Convention, laying down rules for the practical recognition and indirect execution of final decisions of disqualifications that last for a certain period of time (with rules on evidence and information exchange, notification mechanisms, competent bodies, transmission of seized licences, conversion of the foreign decision into internal act of the state of residence/issuance, grounds for non-recognitions to be opposed by state of residence/issuance, effect on the state of residence/issuance non-recognition, etc.). This act should cover **all driving disqualifications regardless of the road offence from which they stem, for this reason the CBE Directive is deemed not fit for this purpose**. A separate and tailored analysis would be needed to explore the exact content, legal form, and wording of a new act as such, which should not be a verbatim reproduction of the past Convention.

- To possibly complement the system with the recourse to virtual driving licences for non-residents, to be set in each Member State, to allow applying the local point schemes also to non-resident offenders.

- As an alternative to the two options above, to harmonise at EU level driving disqualifications and point schemes. This would address the problem of the existence of grounds for non-recognitions based on differences in laws and of mutual recognition of different point schemes, enhancing legal certainty and predictability.

ANNEX 4 LEGAL ANALYSIS ON UVARS

Executive summary

The analysis on the enlargement of the scope of the CBE Directive by adding infringements of urban vehicle access regulations (UVARs) has taken into account four main problematic issues which arise, concerning: the definition of UVARs and UVAR-related offences; the impact of UVARs' offences on the legal basis of the directive; the exchange of data between Member States needed to allow the cross-border enforcement of UVAR' offences; data protection and protection of fundamental rights (especially non-discrimination in connection with the enforcement of UVAR offences.

In light of the outcome of the analysis, in our opinion including UVAR offences in the scope of the CBE Directive is not advisable at this stage, as this would pose several challenges that need to be preliminarily addressed in legal instruments other than the CBE Directive. As such, a similar revision would negatively affect the CBE Directive's effectiveness, efficiency and coherence.

Main hurdles to the inclusion of UVAR offences in the CBE Directive case relate to:

- Uncertain link with road safety and resulting impact on the legal basis of the CBE Directive: the proposed extension of the scope is likely to entail the need for a revision of the legal basis as there are grounds to deem Article 87(2) TFEU as the correct legal basis;
- Heterogeneity of UVAR schemes and need for harmonisation, which anyhow, would result in:
  - Complex and uncertain selection and collection of UVAR relevant data - there are many different UVAR schemes and the choice is usually up to the local competent authorities, data standards often relies on national legislations, there are risks concerning the reliability of some of the information collected by local authorities;
  - Likelihood of non-compliance with the subsidiarity principle.
- Member States' cooperation for cross-border investigation and enforcement of UVARs related offences would require both the exchange of data needed to disclose the person behind the vehicle's registration and data on the foreign vehicle (e.g. emission class, year, weight, a special permit which justifies exemption, etc.) needed to check if an offence has been committed in the first place, defining whether a vehicle is compliant or not with the UVAR (i.e. if it is entitled to enter or not). This entails that recourse to the CBE enforcement mechanism for UVAR offences is hampered by: a) the lack of a regulatory base allowing for the exchange of information between Member States for the purpose of detecting the offence; b) the lack of useful data in the national registries to allow detection of the offences. This would result in:
  - Possible amendment of relevant EU legislation on national vehicle registers (minimum VRD content);
  - Definition of proper legal base for processing of UVAR data.
- Uncertainties arising from possible overlaps with similar EU instruments (i.e. the EETS Directive) and risk that this results in creating multiple grounds for investigation of the same offence;
- Need to design a clear framework to provide certainty in relation to the definition of UVAR' offence, in order to ensure the enforcement efficiency and avoid failure of the mechanism due to the breach of fundamental rights of non-residents to information, non-discrimination, foreseeability of the law, equal treatment. Ultimately, this would have an impact on the CBE Directive effectiveness;
- Possible lack of compliance of some UVARs with fundamental rights.

Introduction

This Memo summarises the outcomes of the assessment carried out by Grimaldi Studio Legale about enlargement of the scope of the CBE Directive by adding among the road-safety-related traffic offences, infringements of urban vehicle access regulations (UVARs), i.e. offences related to the access to Urban Vehicle Restricted Areas ('UVAR'), such as low emission zones or limited traffic zones.

The assessment has been carried out taking into account the impact that the proposal of UVAR offences in the CBE Directive could have on the following issues:

- the legal basis;
- the exchange of VRD information;
- the follow up' enforcement activities.

Definition and scope of UVARs and UVARs offences

UVAR can be broadly defined[289] as "a measure to regulate vehicular access to urban infrastructure". As such, several techniques and typologies have been adopted across urban areas in Member States resulting in different legal frameworks at national, and even local, level, also depending on the purpose they were implemented for.

The current state of national legal frameworks for UVARs schemes is extremely varied, ranging from Member States where there are no specific legal provisions to deal with, to others where *ad hoc* pieces of legislation offer an explicit legal base, or where national legislation only includes generic provisions. Where regulated, UVARs fall in some cases under traffic law (in most Member States road codes integrate the legal basis for UVARs) while in others under environmental law or tax law Also, rules on exemptions play a fundamental role in the definition and implementation of UVARs, as every scheme is likely to entail exemptions under specific circumstances (e.g., emergency vehicles, vehicles driven by or for persons with reduced mobility etc.). Definition of exempted vehicles might largely differ across Member States and urban areas.

However, despite differences in the schemes, UVARs may be commonly defined as "a geographically limited area, road, place, etc., where selected typologies of vehicles are restricted, deterred or discouraged from access"[290]. While the primary objective of UVARs is to regulate the access of certain vehicles to specific areas, this objective can be driven by different interests, which stand out in isolation or in combination. UVARs could for instance pursue the objective of meeting air quality targets (or other environmental aims, such as in Low Emissions Zones ('LEZ'), but also of **preserving cultural or historic sites and city infrastructure, foster urban accessibility and the development of alternative transport modes, or raising revenues** (as in the Norwegian case with the urban road tolling system).

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[289] See the Study on Urban Vehicle Access Regulations, April 2017 (hereinafter the "UVAR Study"). According to the UVAR Study, main typologies of UVARs include: UVARs scheme implemented only on **temporary basis** (e.g. road maintenance, construction, etc.); **Cordon-based**: vehicles are not allowed to cross a cordon, which may vary by time of day, direction of travel, vehicle type and location. There can be a number of cordons with different rules/fees; **Area licence-based pricing**: a fee is charged for driving within an area during specific hours. The rules may vary by time of day and vehicle type; **Toll rings** are the application of highway tolling schemes, similar to the cordon but generally applied to regulate access to the entire city; **Point-based** e.g. vehicles are not permitted to cross a bridge or enter a specific section of the city; **Distance or time-based**: this is essentially a pricing scheme based on the distance or time a vehicle travels along a congested route or in a specified area, and may vary with time, vehicle type and location.

[290] Consider the "Fact-finding study on status and future needs regarding low- and zero-emission urban mobility" that is currently developed for the European Commission.

One may argue that in all such cases, the common indirect general effect of the UVAR regulations is that the primary aim tends to be other than road safety, such as reducing traffic congestion, limiting environmental impact of transport, improving the lives of local communities or protecting local heritage. Accordingly, UVAR-related offences could be considered as road safety offences in so far as road safety is enhanced as an effect of the reduced traffic (in particular, UVARs may allow safer circulation of mopeds, bicycles and other new means of transport which are wide spreading in the cities and, although more sustainable, are also more vulnerable to serious accidents) Yet, this link is only **indirect and arguable**.

Offenses falling under the scope of the CBE Directive

All road traffic offences covered by the CBE Directive are defined under Article 3, which refers to existing legal definitions at Member State level ("as defined in the law of the Member State of the offence") save for the case of 'non-use of a seat-belt' – where it is made reference also to an existing legal definition provided at EU level ("*non-use of a seat-belt means failing to comply with the requirement to wear a seat-belt or use a child restraint in accordance with Council Directive 91/671/EEC (…) and the law of the Member State of the offence*").

Concerning the road traffic offences currently covered, the Commission's original proposal of the CBE Directive stressed that "*the types of road traffic offences to be covered by the system should reflect their seriousness in terms of endangering road safety and should cover offences which are qualified as traffic offences in the laws of all Member States*". In addition, when the Council proposed and obtained a second reading to extend the scope by inserting four more infractions, the Parliament noted that, despite the fact that they were not equally recognised by all Member States (for example, using a cell phone while driving), they had by then acquired sufficient maturity as offences.[291]

In the case of UVAR, in order to assess whether the related offence may fall under the scope of the CBE Directive, following the same criteria, it would seem necessary to prove that such offense is endangering road safety and qualifies as a road traffic offence in Member States or has acquired sufficient maturity as offence.

Nature of an UVAR related offense and maturity in Member States' legislation

Consistent legal definition of UVARs and UVAR offences is currently missing, and UVAR-related offences, indeed, lack, in Member States legislation and jurisprudence, a consistent definition of the illicit behaviour based on traditions common to them (or a definition at all in some cases). This includes a clear framing of the legal grading and status in law. The lack of harmonisation is even more relevant considering the local nature of UVARs.

It appears that the feature of the offence of "illegal access to an UVAR" is independent of the type of access regulation scheme in force and that this makes UVAR offence similar to the offence of illegal use of a forbidden lane, as defined under Article 3(j) of the CBE Directive (i.e. "*illegally using part of a road section, such as an emergency lane, public transport lane or temporary closed lane for reasons of congestion or road works, as defined in the law of the Member State of the offence*"). A similar comprehensive definition, along the lines of art. 3(j), might, in principle, be provided for in the revised

[291] See Commission's proposal, COM (2008) 151 final, and Parliament's plenary sitting and committee's reports (https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-462.590+01+DOC+PDF+V0//EN&language=EN; https://www.europarl.europa.eu/doceo/document/A-8-2015-0001_EN.pdf).

CBE Directive, thus encompassing all different UVAR schemes for their investigation and enforcement.

Nevertheless, as we will see below, complexities arise, depending on the possible declinations of the meaning of "illegal access": i.e. the vehicle is not pre-registered; the vehicle cannot circulate because not compliant with environmental standards; the vehicle has not paid a toll due for access to the restricted area. These, in fact, entail, first of all, that the UVAR-related offences are not qualified as "road traffic offences" in all Member States.

Lack of homogeneity of UVAR offenses

Providing for a comprehensive and generic definition of UVAR-related offences might be feasible from a legal point of view and even in line with other traffic offences currently covered. This would arguably allow Member States authorities to pursue foreign UVAR offenders. However, where the Member State of the offence decides to initiate the "follow-up" proceeding provided in the CBE Directive, in relation to the UVAR offence, major difficulties arise due to the different scope of the covered offences and the different liability schemes in place in Member States. The lack of a common approach in the definition of UVAR frameworks, with uneven or non-existent national legislations, and the fragmentation of schemes throughout the EU at Municipal level (today there are more than 500 different UVARs schemes throughout Europe) - each with different criteria concerning legal basis, charging, enforcement approach, affected vehicle types and rules on exemptions - might act as a barrier to the effective functioning of the follow up mechanism, leading to a very patchy and inconsistent landscape of applications. This is likely to affect the enforcement mechanism under the CBE Directive. In fact, most Member States could be unwilling to cooperate for the enforcement of offences that they do not foresee in their national law.

A certain level of harmonisation, inter alia, on the definition of UVARs and UVARs-related offences as well as unambiguous exemption, vehicle identification, and enforcement rules, is deemed paramount to reduce fragmentation and provide clarity. This is considered as a precondition to the provision of a framework allowing for the exchange of VRD for the purpose of UVARs-related offences enforcement under the CBE Directive.

Impact of UVARs offences on the CBE Directive' legal basis

Applying the general criteria for the determination of the correct legal basis for EU action (the "centre of gravity test"), it is to be assessed whether the main purpose of the UVARs related offences falls in the area of transport, as per Article 91(1)(c) TFEU or in another area of EU competence, considering the legal options provided by the TFEU. In the interest of our analysis, two possible different legal bases competing with transport would be environment and police cooperation.

Legal basis under Environment (Article 192(1) TFEU)

The EU has broad legislative powers under Article 91 TFEU and is competent to take measures to improve road safety. At the same time, pursuant to Article 11 TFEU, environmental protection requirements must be integrated into the definition and implementation of all Union's policies and activities, in particular with a view to promoting sustainable development. As a result, since environmental protection forms part of the transport common policy, the addition of offences falling in this correlated area such as UVAR offences, should not determine, as such, a shift in the chosen legal basis. Even where a dual legal basis would be considered appropriate (adding Article 192(1) TFEU as a de facto second legal basis), Article 91 TFEU would still remain the main basis.

Legal basis under the area of Freedom, Security and Justice: Police cooperation (Article 87(2)

On the other hand, the extension of the scope including road traffic offences where the link with road safety is unclear or absent, might entail a need for shift of the legal basis in favour of Article 87(2) of the Treaty on police cooperation, that provides a competence to establish measures concerning the *collection, processing, analysis and exchange of relevant information*. This depends on the interpretation that is embraced in the application of the centre of gravity test. As there is no black-or-white rule to apply, this may result in legal basis disputes.

The uncertainty leading to the litigation is rooted in the difficulty to distinguish between different EU competences and pinpointing the correct legal basis for EU measures when they concern the enforcement of a Union policy. This has proven to be an arduous task[292] and results in an unavoidable potential for conflicts between competing legal bases. Some guidance is provided by European Court of Justice (hereinafter 'ECJ') case law, especially its findings in Case C- 43/12, which concerned the CBE Directive. It is noted, in fact, that the choice of legal basis for the CBE Directive has been already controversial.[293]

Previous judgments of the ECJ have consistently held that the correct legal basis for EU criminalisation measures (such as can the detection, prevention and enforcement of road traffic offences) will be determined primarily by reference to the content and aim of the proposed EU legislative act. In principle, only where the CBE Directive keeps concerning the organising an exchange of information concerning certain conducts bearing upon road safety, its purpose might still be understood as ultimately aiming to enhance road safety (under Article 91(1)(c): *measures to improve transport safety*) or to implement other objectives of the common transport policy (under Article 91(1)(d): *any other appropriate provisions*). By contrast, if the Directive ends up in pursuing principally the objective of establishing a system of exchange of information, and only indirectly objectives related to road transport,[294] the purpose of enforcement will prevail.

As the link of UVAR offences with road safety (and also with transport in some Member States) is only indirect and arguable, it is likely that the police cooperation aspect of the measure would end up representing the 'main aim' of the instrument, rather than be merely incidental to another substantive policy.

Otherwise, but for the sake of completeness of the analysis, we recall that a review of the ECJ case law suggests that the Court, when faced with complex legal basis litigation with regard to conflicts between legal bases in the area of Freedom, Security and Justice (AFSJ) and legal bases outside AFSJ, has tended to favour more integration-friendly competences, interpreting Transport and Environmental legal basis very

[292] This is because, on the one hand, there is a provision introduced in the Lisbon Treaty allowing for criminal law harmonization, namely art. 83(2) TFEU (general provision on criminal and police cooperation), that provide the necessary tools to enforce a particular policy; while, on the other hand, a legal basis might exist elsewhere in the Treaties covering that policy-field in a more general sense.

[293] During the legislative debate leading to the approval of the CBE, a number of MSs expressed doubts as to the appropriateness of the legal basis chosen by the Commission for its proposal. Those delegations questioned whether there actually existed any Union competence on the basis of which the proposed directive could be adopted. After two years of blocked discussions, the Council reached a political agreement at the Transport Council of 3rd December 2010. Council's text substituted the former transport legal basis with the new Article 87(2) TFEU. On 25 October 2011, the Parliament and the Council hence adopted the directive using Article 87(2) TFEU as the legal basis (despite the Parliament had backed the Commission's choice, taking the view from the outset that transport safety was the correct legal basis). After the Court's ruling in C- 43/12 there was a return to the transport legal basis.

[294] As contended by the Parliament in Case C-43/12, supported in that regard by the majority of the intervening Member States.

broadly.[295] Nevertheless, it must also be noted that such rulings have been widely debated.[296] For example, *contra* the findings of the Court in C-43/12, some commentators (along with the opinion of the Advocate General Bot) proposed critical readings questioning that the CBE Directive was predominantly concerned with the enhancement of road safety and reasoning that the contested directive was mainly concerned instead with the prosecution and fighting of crime. Even more so after the inclusion of UVAR offences, a close review of the directive could suggest that it is rather a measure aimed to enhance the criminal enforcement of road traffic measures.

In any case, as the analysis does not univocally point in one direction, it remains possible that any final choice is challenged in Court. Yet, it remains that the more uncertain is the CBE Directive's link with road safety, due to the addition of further offences in its scope, the more the scales are tipped in favour of police cooperation and enforcement legal basis, with all the consequences that this entails in terms of territorial scope of the proposal.[297]

The exchange of VRD information and the enforcement mechanisms under the CBE Directive

Due to the specific features of UVARs offences, unlike other traffic offences, two separate analysis are due, concerning the access to VRD data in the investigation phase. This is because cross-border exchange of information under the CBE Directive, in the case of UVARs, would pertain not only to the identification of the foreign person to whom the fine is to be notified, but also to the detection itself of the offence. The cross-border investigation of UVARs related offences concern, therefore, two intertwined but different aspects:

a) Member States cooperation for the exchange of data needed to identify and eventually pursue an alleged (non-resident) offender, that is the holder/owner of a foreign vehicle which allegedly entered a local limited traffic area, by allowing the person behind the vehicle's registration to be disclosed;
b) Member States cooperation for the exchange of vehicle data needed to check if an offence has been committed in the first place, that is, data on those foreign vehicle's characteristics (e.g. emission class, year, weight, special permit which justify exemption, etc.) which need to be matched with the criteria required to enter the limited traffic area, to check if the vehicle meets the access criteria.

In general, under the CBE Directive, in the phase of investigation, the Member State of the offence has already (automatically) detected a road traffic offence (for example detecting that the speed of the vehicle is above the limits) and uses the system to

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[295] See e.g. Ireland v Parliament and Council (C-301/06); Commission v Council, Environmental Crimes (C-176/03); Commission v Council, Ship Pollution (C-440/05); Commission v Council (C-137/12); Commission v Parliament and Council (C-43/12); UK v Council (C-656/11); UK v Council (C-81/13); Commission v Council (C- 377/12); UK v Council (C-81/13).

[296] For relevant literature see, e.g., **J.** A. E. Vervaele, Harmonised Union policies and the harmonisation of substantive criminal law in (ed.) Galli, F., et Weyembergh, A., Approximation of substantive criminal law in the EU. The way forward (2013) Editions de l'Université de Bruxelles; J. Öberg, The Legal Basis for EU Criminal Law Harmonisation: A Question of Federalism?, (2018) European Law Review, 366-393; E. Herlin-Karnell, The Constitutional Dimension of European Criminal Law, (2012) Hart Publishing, Oxford; K. Bradley, Powers and Procedures in the EU Constitution: Legal Bases and the Court (2011) in P. Craig and G. De Búrca, Evolution of EU Law, Oxford: Oxford University Press; H. Cullen and A. Charlesworth, Diplomacy by Other Means: The Use of Legal Basis Litigation as a Political Strategy by the European Parliament and Member States, (1999) 36 C.M.L. Rev. 1243; M. Klamert, Conflicts of Legal Basis: No Legality and No Basis but a Bright Future under the Lisbon Treaty? (2010) E.L. Rev. 497.

[297] Considering the particular nature of the AFSJ in the Treaty, and the fact that some legal basis allow for a differential integration in the form of opt-outs, the choice of the police cooperation legal basis would affect the geographical implementation of the directive, reducing the territorial scope of the proposal, with Denmark and Ireland being excluded in line with their prerogatives under the Treaties.

identify the alleged offender. This is how the CBE Directive usually works with all traffic offences currently covered.[298] Including UVAR offences for the purpose of investigation in the meaning sub a) (i.e. exchange of VRD for the purpose of enforcing UVAR offences that are detected in a Member State where the vehicle's holder or owner is not resident) would be aligned to the functioning of the CBE Directive with the other road traffic offences. Although a number of criticalities have already been raised as to the legal uncertainties of UVARs offences.

However, in the case of UVAR-related offences, the access to vehicle data is needed also, preliminarily, for the purpose of defining whether a vehicle is compliant or not with the UVAR, i.e. to assess if an offence has been committed or not. This scope of data exchange would be peculiar to UVAR offences, as for the other traffic offences there is no need for accessing specific vehicle data to verify compliance, and its effective implementation, at this stage meets a number of obstacles.

Detection of the UVAR offence

Vehicle detection for identification and enforcement of UVARs can be carried out using several options, including manual or sticker-based methods[299], or automatic vehicle detection. In principle, the option to stricter automatic enforcement, with the corresponding level of technology deployed in vehicle detection, has some implications in terms of flexibility, acceptability, costs, and data protection.

Automatic enforcement methods for UVAR-related offences, thus, in most cases (when air quality control is the main objective), should rely on national databases containing all the relevant information on the vehicles, such as emission standards or weight. This is needed to allow entrance to authorised vehicles and spot non-authorised vehicles to fine.

While in few cases (e.g. in Belgium and the Netherlands) this information is available in the national vehicle registries that contain vehicle registration data (VRD), this is not the case for other Member States. Consequently, as also confirmed by the UVAR Study[300], the treatment of foreign vehicles in the case of automatic enforcement may be problematic, due to the lack of relevant information in the national databases. In the absence of such information, should the offence be detected by default, the burden of proof that the offence has not been committed would fall on the vehicle owner/holder, with a significant negative impact on the efforts to improve the efficiency of the CBE enforcement mechanism.

Challenges identified in the data exchange

According to several stakeholders who advocate for the extension of the scope of the CBE Directive to cover UVARs, including LEZs, the detection of UVAR offences would improve if the exchange of vehicle data, to define whether a vehicle is compliant or not with the UVAR, is made possible through the exchange of data system provided by the CBE Directive.

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[298] In the directive's wording, the MS of the offence obtains data through "searches in the form of outgoing requests conducted by the national contact point" and "uses the data obtained in order to establish who is personally liable for road safety related traffic offences referred to in Articles 2 and 3".

[299] Particularly used in LEZs, which usually involve enforcement personnel visually checking vehicles travelling within or parked within the scheme area for permits, via stickers or other identification means. In such cases, CBE Directive is not much useful, as the foreign driver can be easily identified on the spot.

[300] Study on Urban Vehicle Access Regulations (April 2017), https://ec.europa.eu/transport/sites/transport/files/uvar_final_report_august_28.pdf.

However, this would result in adding the necessary dataset among the data that Member States are required to exchange (i.e. give access to) under the directive, and hence implies:

- Identifying which data is relevant for the different existing schemes of UVAR (e.g. year of first registration of the vehicle, emission class, particular fuel/technology combinations, retrofit technologies, vehicle type or size, existence of grounds for exemptions - such as diplomatic or emergency vehicles, vehicles driven by persons with disabilities - etc.);
- Including such data in specific national databases or in the national vehicle registers, along other VRD;
- Eventually providing a legal base for such processing of UVAR data, in conformity with the relevant data protection legislation.

The above activities require a number of challenges to be addressed and overcome: from the data protection issues (see below), to the selection of relevant data (whereas the choice between these options or a combination of them is a decision for the local competent authorities); to its collection (according to previous studies and projects[301] the collection of some of this data – e.g. on powered two wheelers, on retrofits certification relying on national legislations – is highly complex and presents risks concerning the reliability of the information collected); to its inclusion in national registries – whose content would need to be harmonised / or relevant already existing EU rules would need to be amended accordingly – to ensure that the relevant vehicle information are included and can be made available to other Member States' authorities).

Furthermore, already existing exchange software applications (like EUCARIS) might be efficiently used only once the legal base for processing of UVAR data is set, or once UVAR data are added in national registers as VRD.

In fact, the cross-border exchange of VRD for the investigation of offences is not grounded in the CBE Directive alone, but lays instead on other legal acts (i.e. Prüm Decisions). With regard to the exchange of VRD, the Prüm Decisions require Member States to grant one another access rights to such data for the prevention and investigation of criminal offences and other offences and mandate the use of EUCARIS to this purpose (see Articles 12 and 15 of Council Decision 2008/616/JHA). This obligation upon Member States is established on the basis of the police and judicial cooperation in criminal and customs matters (legal basis of Prüm II result from, among others, legal provisions included under Art. 87 TFEU). By contrast, a similar legal basis for UVAR data as such is currently missing.

Harmonisation of UVARs and respect for the subsidiarity principle

For the CBE Directive to be effective in relation to the enforcement of UVARs offences, a preliminary effort of harmonisation of UVARs across the EU would be needed. In fact, the CBE follow-up mechanism's efficiency has been already hampered so far by the different legal nature of the covered offences and the different liability schemes in place, despite the covered traffic offences are regulated and defined in a quite similar way across the Member States. A fortiori, the lack of a common approach in the definition of UVAR frameworks, with uneven or non-existent national legislations, and the fragmentation of schemes throughout the EU at city level (today there are more than 500 different UVARs schemes throughout Europe) - each with different criteria concerning legal basis, charging, enforcement approach, affected vehicle types and

[301] See the pilot project carried out by CIVITAS MIMOSA in the city of Bologna; data from the Municipality of Rome; the 2009 feasibility study conducted in Bologna, and the 2017 Study summarising them.

rules on exemptions - might act as a barrier to the effective functioning of the follow up mechanism, leading to a very patchy and inconsistent landscape of applications. This is likely to affect the enforcement efficiency. In fact, most Member States could be unwilling to cooperate for the enforcement of offences that they do not foresee in their national law.

However, the subsidiarity principle sets out clear boundaries to the competencies of the EU. As highlighted in the UVAR Study, when it comes to legislation at local level, the EU does not have a mandate to provide for common standards of UVARs initiatives. An initiative more in line with the subsidiarity and proportionality principles would rather be the issuance of guidelines or other soft law to allow greater harmonisation at national level.

In fact, before proceeding with harmonisation of UVARs at EU level, it would be necessary to duly demonstrate how the same objectives cannot be sufficiently achieved by the Member States at a national or a local level; how harmonisation is achieved without compromising the internal coherence of national penal or administrative systems; to identify a cross-border relevance of UVAR, possibly also gathering stakeholders' views. Non-compliance with this may be used as a reason to challenge the lawfulness of the act before the Union's courts.

Protection of fundamental rights

This chapter is focused on the possible infringement of fundamental rights as a consequence of restrictions imposed by the creation of UVARs.

Although the EU cannot harmonise UVARs initiatives, national legal frameworks must be in line with the basic principles of the Treaties and have to be proportional and non-discriminatory[302], especially if a cross-border enforcement mechanism is set at EU level, in order to enhance compliance to them. Insofar UVARs are in breach of EU principles enshrined in the Treaties, it is clear that they cannot be supported by an EU enforcement mechanism. Access regulation schemes need therefore to ensure, *inter alia*, the right to freedom of movement, as well as the right to provide services and conduct a business and abide with the principle of non-discrimination between national and foreign vehicles.

Discrimination might be due, for example, to cumbersome short-term charges to be paid by occasional road users or unduly complicated or restrictive criteria deterring or effectively prohibiting them from legitimate access, or be linked to the obligation on non-resident drivers to pre-register their vehicle before entering the LEZ, in order to confirm that it meets the access criteria (to allow the identification of foreign vehicles that are not in the national database).

The assessment on whether existing UVARs are compliant with EU fundamental rights and principles is needed prior to setting up a mechanism for their cross-border enforcement, as a cross-border enforcement of UVARs that are not compliant with EU Treaties would boost their negative impact on EU citizens.

Possible infringement of the principles of non-discrimination

Article 18(1) of the Treaty on the European Union (hereinafter "TFEU") prohibits discrimination on the grounds of nationality. If UVARs contains prohibitions to circulation that are addressed to or end up affecting only cars registered in a different Member State amount to direct or indirect discriminations on the grounds of nationality.

[302] Ibid.

For example, in Case C-591/17 (Judgment of the Court of 18 June 2019, *Austria v Germany),* the German vignette for the use by passenger vehicles of federal roads ('Autobahnvignette') has been declared contrary to EU law (Articles 18, 34, 56 and 92 TFEU). The charge was considered discriminatory since the economic burden of the charge was falling, *de facto*, solely on the owners and drivers of vehicles registered in other Member States. In that case, the discriminatory effect was not caused by the vignette itself, but by the fact it was coupled with a relief from motor vehicle tax for owners of vehicles registered in Germany, which ended up offsetting entirely the infrastructure use charge paid by those persons. Furthermore, in its reasoning the Court stresses that, with respect to owners of vehicles registered in Germany, the infrastructure use charge was payable annually without any opportunity to choose a vignette for a shorter period if that better corresponded to the frequency of use of those roads. In the Court's view, the combination of these factors amounted to a breach of the principle of non-discrimination and also negatively affected the free movement of goods and the freedom to provide services.

It may be argued that a similar discrimination (indirect) happens when Automatic Number Plate Recognition (ANPR) cameras are used, which automatically recognise (and therefore allow to enter or, conversely, fine) only domestic vehicles, or when the right to access to a restricted zone is only obtainable through a pre-registration (sometimes with separate registration in each city) absent any possibility to easily obtain a daily/hourly pass, as the UVAR will differently affect local and foreign drivers, especially if the latter are occasional tourists. While demanding pre-registration of foreign vehicles is not discriminatory per se, since local vehicles also need to pre-register to enter the restricted traffic zones (subject to certain conditions: e.g. residence in the area) it is important that foreigners are put in the same position as nationals, in a way they can understand and eventually fulfil the conditions required to circulate the restricted area. This implies the existence of short term (e.g. daily) passes and the possibility to pre-register easily and duly informed.

Direct discrimination based on nationality (Art. 18 of the TFEU) occurs when pre-registration is de facto impossible for foreigners or it is required only for foreign vehicles. The latter, for example, is the case of the city of Antwerp in Belgium, where vehicles with a foreign number plate need to be registered before entering in the low emission zone, while this is not necessary for vehicles with national number plates. Although such measure might be justifiable by other reasons, it should remain proportional. As demonstrated by the complaints against the Belgian LEZs, a non-harmonised approach within one Member State can be considered administratively burdensome, if a foreign registered vehicle desires to visit several Belgian cities, i.e. Brussels and Antwerp and thus have to pre-register more than once. The amount of the fine represents another issue, as it could be seen as disproportionately high, considering the risk of additional fines pending on foreign drivers in case they enter other Belgian cities LEZs without pre-registration. In order to resolve possible infringements of EU law by Member States swiftly and effectively and, where possible, without having recourse to formal infringement proceedings it is proposed to seek Cabinet agreement to launch a 27- EU Pilot based on own initiative and on the complaint based cases (CHAP). The possibility for any driver (whether National or foreigner) to register the vehicle 24 hours after entry[303], represents a mitigation to the discrimination suffered by foreigners, however, still, access to information on UVARs' rules, cannot be considered equal for them (see here below).

As recalled in Art. 21 of the Charter of Fundamental Rights of the European Union ("CFR"), the principle of non-discrimination also encompasses other grounds, different from nationality, such as birth or disabilities. For example, citizens with disabilities might have no alternative to using vehicles or vehicles of a certain type. For this reason, UVARs

303 See https://www.slimnaarantwerpen.be/en/LEZ/registration/overview.

often envisage a number of exclusions and exceptions. It would be therefore paramount that all local schemes enable the same exceptions to be applicable to foreign vehicles for certain typologies of passengers. To this end, specific pass should be made available for foreign vehicles and individuals that meet the local requirements to have an exception to the prohibition of access and transit granted.

Possible infringement of the freedom to move, provide services and conduct a business

UVARs could in some cases result in an infringement of the freedom to provide services:

- If the car forbidden to access a given area belongs to a professional who is travelling to exercise his activity (e.g., a doctor travelling to another Member State to attend to a patient);
- In the case where the ban applies to tourist coaches always only from another Member State.

In addition, the freedom to conduct a business in accordance with EU law and national laws and practices is recognised in Art. 16 of the Chart of Fundamental Rights.

It is settled case-law of the ECJ that, to be compatible with the Treaty, any non-discriminatory restriction of intra-Community trade shall be proportional. Thus, any UVARs scheme needs to respect this requirement. It is the responsibility of national governments to make sure that the national UVARs framework does not infringe on the Freedom of Movement, Member States may decide to notify the framework or individual schemes outside a framework to the EC and enter in a dialogue prior to the measures entering into force. It should be noted, however, that if driving restrictions are applied, e.g. only to residents, they are justified by numerous benefits, e.g. cleaner cities that are pleasant to live in and visit; less congestion, safer roads and better air quality.

Moreover, when introducing UVARs, is also necessary to implement public transport and active mobility modes in order to allow people to circulate in the city and ensure the freedom of movement.

Lack of access to information

It is observed that non-residents, especially tourists and other occasional users, often face difficulties in complying with UVARs regulations. For most of them the local language could be an issue, considering that UVARs road signs are not harmonised through Europe, and most could be not acquainted with the local access regulation policy. Hence, difficulties may depend on issues in accessing information on the local access regulation policy, lack of translation, but also non-easily recognisable boundary markers, use of unclear/unusual road signals (which are not harmonised) and warning about the regulated zones, use of different kinds of payable stickers with different colours and designs.

Some UVARs set up at local level may therefore not entail the actual possibility for foreign drivers (especially occasional tourists) to comply with them, on an equal level compared to resident drivers.

Inclusion of UVAR offences in the CBE Directive

The inclusion of the UVAR offense in the CBE Directive may entail, as a consequence, the failure of the enforcement mechanism any time the alleged offender opposes the breach of his fundamental rights (e.g., to correct information, non-discrimination, foreseeability of the law, equal treatment, etc.). This is already a major issue having an impact of the efficiency of the CBE Directive in relation to more common and simple categories of offenses.

It is again stressed the importance of a preliminary enhancement of the predictability and clarity of UVARs schemes, including the setting of minimum conditions, e.g., on the streamlining of the information provision at local level. This exercise comes logically ahead of the improvement of the enforcement mechanism and is likely to entail itself better compliance (in fact, as a general rule, compliance with a legal obligation is better guaranteed by a clear statement of the rule rather than by the provision of a deterrent punishment).

Besides, a system which enables Member States to cooperate for the punishment of a foreign driver without at the same time guaranteeing the possibility for the foreign driver to abide with the rules would be inherently unfair. Before allowing cooperation for cross-border enforcement of UVAR offences, it should be ensured that the Member State (or city) which issues the sanction has provided the individuals with the actual possibility to respect those rules.

Before considering including (safety related) UVARs within the scope of the new CBE Directive, it would be needed to undertake a minimum harmonisation through soft law, in order to enhance at least the predictability and clarity of UVARs schemes, including by setting minimum conditions, e.g., on the streamlining of the information provision for residents and non-residents at local level. Besides, this exercise would likely already result in increased compliance (in fact, as a general rule, compliance with a legal obligation is better guaranteed by a clear statement of the rule rather than by the provision of a deterrent punishment).

Alternative existing measures in place and possible overlaps

Finally, the inclusion of UVAR offences in the scope of the CBE Directive from a policy perspective casts some doubts in terms of external coherence due to possible overlaps with other existing EU rules. We note that:

- Under the CBE Directive, Member States are required to grant each other the right of access to some of their VRD with the power to conduct automated searches thereon, *"for the investigation of selected road-safety-related traffic offences"* covered by the directive. To this end, the provisions concerning the availability of automated data exchange set out in the Prüm Decisions are included in the CBE Directive (see Recital 10 and Art.4);
- Alike the CBE Directive, the recently revised Directive (EU) 2019/520 of 19 March 2019 on the interoperability of electronic road toll systems seeks to facilitate cross-border exchange of information on the failure to pay road fees ('EETS Directive') requires the Member States to grant access to VRD *"for the identification of the vehicle and the vehicle's owner/holder, for which a failure to pay a road fee of any kind in the Union has been established, with due regard for the principle of subsidiarity"* (Article 23 of EETS Directive). EETS Directive also cross-refers to the Prüm Decisions. The Directive hence already provides the possibility to exchange vehicle owner or holder information on the failure to pay for UVARs that charge road charging fees. Article 28(2)(c) states that the evaluation report shall be accompanied by a proposal to the European Parliament and the Council to extend the provisions to include cross-border enforcement of Low Emission Zones and other types of UVARs not already covered.

In addition, other existing measure that may have some relevance are:

- ITS Directive and of Delegated Regulation on real-time travel information service improve the data provision. Directive 2010/40 was adopted on July 2010 to improve the deployment of Intelligent Transport Systems across Europe. The goal of the Directive is to establish interoperable and seamless ITS among Member States and leave them the freedom to decide which is the most suitable system to invest in.

- Regulation 2018/1724 of October 2018 on Single Digital Gateway which improves the information provision and the online booking of stickers when implemented. Article 2, Article 4, Articles 7 to 12, Article 16, Article 17, Article 18(1) to (4), Article 19, Article 20, Article 24(1), (2) and (3), Article 25(1) to (4), Article 26 and Article 27 apply from 12 December 2020. Article 6, Article 13, Article 14(1) to (8) and (10) and Article 15 shall apply from 12 December 2023. Notwithstanding the date of application of Articles 2, 9, 10 and 11, municipal authorities shall make the information, explanations and instructions referred to in those Articles available by 12 December 2022 at the latest.

- Revised Directive 1999/37/EC (current consolidated version of 20 May 2018) on vehicle registration documents in the context of the forthcoming revision of the Roadworthiness Package will seek to improve the cross-border exchange and access to vehicle and vehicle owner data.

The exchange of data for the investigation of an UVAR offender, in some cases, may be considered as falling more conveniently within the scope of the EETS Directive, to the extent that some schemes of UVARs imply the payment of a road fee. The existence of similar instruments for data exchange used for overlapping purposes might lead to confusion and affect the efficiency of the EU rules where the boundaries and scopes of such measures are not clearly defined.

In the context of the revision of the EETS, attention should be given to ensure not creating overlaps with the revised and widened CBE Directive.

Conclusion

In light of all the above considerations, we deem that it is not advisable to include UVAR offences in the revised scope of the CBE Directive, as this would pose a number of legal challenges that should be preliminarily addressed. As such, a similar revision would negatively affect the Directive’s effectiveness, efficiency and coherence.

ANNEX 5 BI- AND MULTILATERAL AGREEMENTS

Table A.2 Bi- and multilateral agreements currently in force (September 2021)

MS	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE	IT	LV	LT	LU	MT	NL	PL	PT	RO	SE	SI	SK
AT																											
BE																											
BG																											
CY																											
CZ																											
DE																											
DK																											
EE																											
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MT																											
NL																											
PL																											
PT																											
RO																											
SE																											
SI																											
SK																											

Green = Salzburg Forum.
Yellow = bilateral agreement.
No Member State has indicated that it is currently negotiating a (new) bilateral agreement, or plan to access an existing one.

ANNEX 6 DESCRIPTION OF THE MODEL

The impact of policy measures on administrative costs for Member States and on road safety is identified through a framework that is specifically designed for the assessment of road safety within the context of the CBE Directive. The model is conceptually built on the rationale behind the CBE Directive.

The CBE Directive, in the context of road safety, is perceived as an instrument that aims to ensure that all European road users face the consequences of committing traffic offences, irrespective of the nationality of their vehicle. More specifically, when European road users commit a traffic offence, the Member State in which the offence is committed should have the possibility to sanction this offender, even if he or she lives in another EU Member States. So, the CBE Directive aims to enhance road safety by removing the impunity for foreign drivers that commit traffic offences. When offenders are sanctioned for traffic offences they have committed abroad, one can expect that these drivers are more likely to respect local traffic rules in the future ("once bitten, twice shy" principle). When local traffic rules are better respected, the number of traffic accidents are expected to decrease and road safety will improve.

The model consists of two stages. In the first stage, the extent to which measures remove impunity of non-national offenders is estimated in quantitative terms. In the second stage, the removed impunity is, via a change in driver behaviour, 'translated' into a reduction of accidents. It should be noted that this model is stylised and that the numbers adopted under it are clouded with uncertainty, as triangulation was hardly possible considering that most data was obtained via Member States.

Stage I of the model – impact of policy measures on impunity

In the first stage, the 'sense of impunity' for drivers in foreign-registered vehicles is estimated. The sense of impunity is indicated by the share/number of offences, committed by foreign drivers, in which drivers do not face the consequences for their actions. Foreign road users do not suffer the consequences of committing a road traffic offence in the following situations:

1. The offence is not automatically detected as it does not fall within the scope of the Directive

The offence is not detected, for example due to a lack of automatic checking equipment in a Member State or the inability to detect an offence automatically. Also consider problem driver a (current resources (technical and manpower) insufficient to adequately detect offences) and b (disparity of technical standards and methods of use for automatic checking equipment between Member States).

2. The automatically detected offence does not fall under the CBE Directive

In the current CBE Directive, numerous traffic offences are not included within its scope. When a driver commits an offence that does not fall under the CBE Directive, the offence cannot be investigated under the legal basis of the CBE Directive. Also, consider problem driver c (limited number of road traffic offences included in the Directive).

3. The automatically detected offence is investigated, but the presumed offender does not receive a penalty notice

The traffic offence is investigated, but the investigation fails or the penalty notice is not provided to the presumed offender. Also consider problem drivers d (different, erroneous or not up to date content of vehicle registers across Member States), e (use of databases other than vehicle registers to identify the offender is not allowed), f (IT problems at national level), g (different legal liability regimes applied by Member States) and h (limited recourse to the MLA Convention and EIO by the Member States).

4. The offender does not pay the penalty notice voluntarily

The presumed offender is confronted with a penalty notice, but no financial transfer is made. Also consider problem driver l (inadequate and/or unclear information provided to the presumed offender on the offence, procedures to be followed and imposed sanctions).

5. The (financial) penalty cannot be enforced

The financial penalty is not paid voluntarily (consider impunity factor 4) and the penalty notice is not enforced. Also consider problem driver i (the mutual recognition procedures for cross-border enforcement of financial penalties not tailored to mass detection of road traffic offences qualified as administrative).

It is important to note that the five situations described above should be considered sequentially. The process, between an offender committing an offence and the sanction being enforced, follows several steps (categorised as the detection, investigation and enforcement stage). The problem analysis conducted in Chapter 4 is also developed along these different steps and the five 'impunity situations' resulting from it follow the same sequential process. When the impunity situations are brought together in a model, the following indicators are included:

- **A.** The total number of traffic offences committed per type of offence (speeding, red light, …);
- **B.** The share of these offences that is committed by vehicles with a foreign license plate;
- **C.** The total number of offences, committed by vehicles with a foreign license plate;
- **D.** The number of detected offences committed by foreign registered vehicles within the scope;
- **E.** The number of detected offences committed by foreign registered vehicles outside the scope;
- **F.** The number of penalty notices provided to the presumed offender;
- **G.** The number of offences without a penalty notice being provided to the presumed offender;
- **H.** The number of voluntarily paid penalty notices;
- **I.** The number of penalty notices not paid voluntarily;
- **J.** The number of enforced sanctions (e.g. through court cases);
- **K.** The number of non-enforced sanctions.

These indicators are linked together through the following equations:

$C = A \times B$

$C = D + E$[304]

$D = F + G$

$F = H + I$

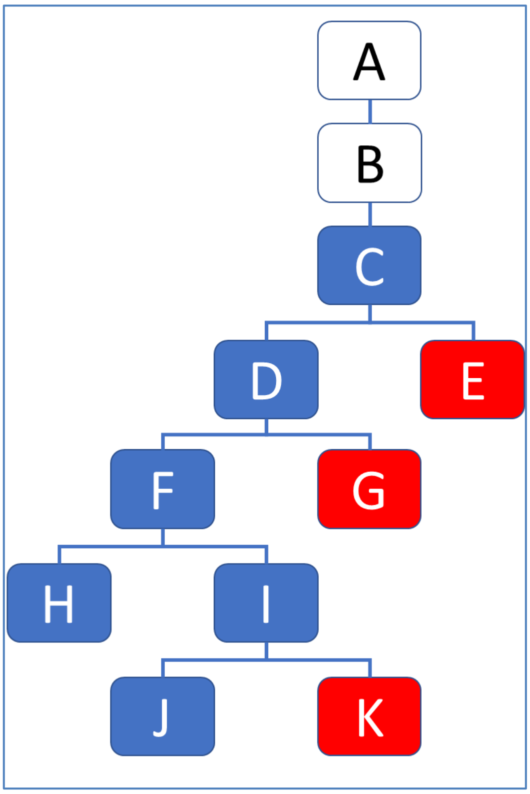
$I = J + K$

These indicators are brought together in the impunity model that follows a sequential process. Figure A. 1**Error! Reference source not found.** visualises the impunity model. The five impunity situations described above enter the model through indicators E, G and K. Offences that are not included under the CBE Directive, are included under

304 This should be interpreted as: the total number of automatically detected offences with foreign registered vehicles (C) consists of offences that are included within the scope of the current Directive (D) and offences that are not included in the scope of the Directive (E). Hence, C = D + E.

indicator E (impunity situation 2). When the offence is detected, but the penalty notice is not provided to the presumed offender, this is included in the model under indicator G (impunity situation 3). Finally, if the offender does not pay the financial penalty voluntarily and it cannot be enforced, the offender does not suffer the consequences for their action under indicator K (impunity situation 4 and impunity situation 5).

Figure A. 1 Visualisation of the 'impunity model'



Source: Ecorys (2021).

It should be noted that impunity situation 1, concerning the automatic detection of the offence, is not directly included in the model presented in Figure A. 1. If the number of automatic detection equipment increases, this would decrease impunity for drivers in foreign **and domestic registered** vehicles. This impunity situation can therefore be captured under indicator A, but also affects domestic drivers. Hence, this impunity situation is broader than the CBE Directive, that mainly facilitates the exchange of information for already detected offences and possibly enforcement. The CBE Directive itself therefore mainly aims to address indicators E, G and K.

The model, presented in Figure A. 1 shows the breakdown of some indicators into two separate indicators (such as C consisting of D and E). By expressing indicators D, E, F, G, H, I, J and K in percentages instead of absolute values, the following equations result:

$D = 1 - E$
$F = 1 - G$
$H = 1 - I$
$J = 1 - K$

The added value of these additional equations is that the impunity factors (E, G and K) can be derived from other indicators. For example, when there is information that 80% of detected offences result in a penalty notice (indicator F), one can conclude that 20% detected offences have not resulted in the presumed offender receiving a penalty notice (indicator G).

The chosen model has some appealing characteristics. Specific policy measures aim to address specific impunity factors. For example, a policy measure aimed a better identification of the offender is expected to have an impact on indicator F (the number of investigated offences, which will increase) and consequently also on G (the number of non-investigated offences, which will go down). However, it does not affect the number of voluntarily paid penalty notices (indicator H and I) or the number of detected offences (indicator D and E).

Stage II of the model – impact of reduced impunity on road safety

The results of Stage I of the model is an impact of individual policy measures (and policy options) on the number of drivers in foreign registered road users for which the impunity of committing a traffic offence is reduced.

In stage II of the model, an assessment is made as to what extent a reduction in impunity will affect road user behaviour. That is, the Stage II-model assesses the impact of a reduction in impunity on road safety.

Impact of speed enforcement on road safety

The first relationship that is established is the relationship between reduced impunity and driving behaviour. Academic literature[305] conducted in Spain in 2012 found that 60% of randomly selected road users indicated that they adapt their driving behaviour after being caught speeding, and 40% indicated that this did not have an impact on their driving behaviour. This figure is complemented by a meta-analysis from 2003 concerning studies in the UK, Singapore, Great-Britain, Australia, the Netherlands and Canada conducted from 1989 – 2001, where it was found that traffic light enforcement reduces the number of violations with some 50%[306]. Hence, if more offences are detected, investigated and enforced, this suggests that many drivers will adapt their driving behaviour, but also that a non-negligible share of drivers will not adapt their driving behaviour.

In the assessment of the impact on road safety, we assume that in year 1 after the Directive is (fully) implemented (2025), driving behaviour will remain unchanged. This results in a sharp increase in the number of detected offences. In year 2, 60% of drivers that committed an offence in year 1 will adapt their driving behaviour. After year 2, there are no additional drivers that adapt their behaviour, but the drivers that adapted their behaviour in year 2 will continue to drive more safely over the entire assessment period.

The second assumption that is established is the relationship between road traffic enforcement and road safety. Data has been obtained from the ETSC (2019)[307] on the historical number of issued speeding tickets[308] in the period 2010-2017. Data is available for 22 Member States (and in addition UK). Data on the number of road fatalities and injury accidents for the period 2010-2017 is retrieved from the Statistical Pocketbook (2019)[309].

305 Alonso, F., Esteban, C., Calatayud, C., & Sanmartín, J. (2013). Speed and road accidents: Behaviors, motives, and assessment of the effectiveness of penalties for speeding. American Journal of Applied Psychology, 1(3), 58–64. doi:10.12691/ajap-1-3-5.

306 Richard A. Retting, Susan A. Ferguson & A. Shalom Hakkert (2003). Effects of Red Light Cameras on Violations and Crashes: A Review of the International Literature, Traffic Injury Prevention, 4(1), 17-23

307 https://etsc.eu/reducing-speeding-in-europe-pin-flash-36/.

308 Although it is reckoned that the CBE Directive covers more traffic offences than speeding, speeding accounts for the majority of requests made through EUCARIS. In 2019, speeding accounted for 96% of a request made in EUCARIS.

309 https://ec.europa.eu/transport/facts-fundings/statistics/pocketbook-2019_en.

Over the period 2010-2017, the number of issued speeding tickets increased by 33% for the 23 countries jointly. Over the same period, these 23 countries experienced a decrease in the number of road fatalities by 22%. More than 80% of issued speeding tickets were linked to the offences detected with fixed automatic or 'time/distance' cameras in 2016. This share differs significantly between Member States, with France reaching 95% whereas in Poland only 20% of offences were detected with fixed automatic or time/distance cameras.

There appears to be an inverse relationship between issued speeding tickets and road fatalities. If the number of issued speeding tickets increases, it seems that the number of road fatalities decreases. The reason for the inverse relationship is that the total number of speeding offences cannot be observed. Instead, only detected (and sanctioned) speeding offences are observed. If the number of issued speeding tickets goes up, this could be because more offences are committed or that a larger share of committed offences are detected (or a combination of both). This inverse relationship is also found in Pin Flash Report 36 of ETSC (2019) and adopted as working assumption in the majority of academic studies[310].

The relationship is therefore expected to be non-linear. As countries increase the enforcement intensity (via roadside controls or using automatic checking equipment), detected (and sanctioned) road traffic offences are going up in the short run. In the medium to long-run, drivers adapt their behaviour, and the number of detected offences decreases. This approach is similar to the 'deterrence theory'; drivers are incentivised to follow local traffic rules in order to prevent negative consequences (e.g. penalties) from occurring. As changing behaviour is a development that takes time, there is some delay in the effect. As is mentioned above, in the assessment we assume that driving behaviour is only adapted after one year.

In this study, it is assumed that an increase in detected road traffic offences is the result of an increase in enforcement intensity (e.g. a larger share of offences is detected). When the number of detected traffic offences decreases, the assumption will be adopted that the number of committed offences is decreasing. Of course, this latter assumption only holds if the enforcement intensity remains (at least) constant. As has been noted before, this is suggested in many academic studies available to us.

The estimated impact of traffic rule enforcement is derived from Elvik et al. (2015)[311]. This study found that a 1% increase in the speed enforcement level is associated with a -0.6% to -0.7% decrease in the number of road accidents. The study by Elvik et al. (2015) was conducted in the framework of the RoadSafetyCube, and thereby found applicable to be used in the context of this study.

In this impact assessment support study, we make use of the effects estimated by Elvik et al. (2015) but scaled it down, for two reasons. On the one hand, the impact estimated by Elvik et al. (2015) considers a general increase in speed enforcement, that is applicable to all road users. It should be noted that the Stage I-model only provides an output on speed enforcement for road users in foreign registered vehicles. Hence, the output of the Stage I model only concerns a subset of road users for which speed enforcement is increased. The second adjustment concerns the type of roads, where it is expected that foreign registered vehicles in general drive on roads on which fewer accidents happen. Both reasons will be elaborately discussed below.

310 No study has been found in which this assumption is not adopted, but some studies do not clearly specify whether this assumption was adopted. Hence, there is no information available to us that suggests that this assumption is invalid.

311 Elvik, R. (2015). Methodological guidelines for developing accident modification functions. Accident Analysis & Prevention 80(3), 26-36. Doi: 10.1016/j.aap.2015.03.038.

The CARE Database includes information on the number of fatal (and injury) accidents throughout Europe by country and year. Moreover, for many countries, it also provides fatal accidents in which (at least) one vehicle had a foreign licence plate. It is important to note that this does not necessarily indicate that the driver of this vehicle was committing a traffic offence. Data on factors contributing to the accidents is not available in the CARE database.

The share of fatal accidents, in which at least one foreign registered vehicle was involved, is presented for 2016, 2017 and 2018 in Table A.3.

Table A.3 Percent of fatal accidents in which at least one foreign registered vehicle was involved, all roads

Member State	2016	2017	2018	Weighted average over 2016 - 2018
AT	17%	19%	14%	**17%**
BE	13%	14%	14%	**14%**
BG	7%	8%	10%	**8%**
CZ	10%	10%	10%	**10%**
DE	9%	9%	10%	**9%**
DK	11%	17%	21%	**16%**
EL	5%	3%	4%	**4%**
FR	5%	2%	3%	**3%**
HR	18%	13%	17%	**16%**
HU	11%	12%	12%	**12%**
LV	15%	10%	8%	**11%**
LU	17%	33%	32%	**27%**
MT	0%	0%	0%	**0%**
NL	7%	6%	9%	**7%**
RO	13%	11%	9%	**11%**
SE	0%	11%	6%	**6%**
SI	15%	15%	23%	**17%**
SK	12%	15%	13%	**13%**

Source: Own calculations based on data provided by CARE Database.

Based on Table A.3, it is assumed that foreign road users are, on average, engaged in 10% of all (fatal) road accidents. This means that the impact of speed enforcement for foreign road users only has the potential to affect 10% of all (fatal) accidents. Hence, the impact of speed enforcement from Elvik et al. (2015) is only applied to 10% of all road accidents, as these are road accidents in which (at least) one foreign driver is involved. This suggests that the impact of Elvik et al. (2015) is scaled down by 90% to be applicable to the target group that results from Stage I of the impunity model.

The second adjustment concerns the type of roads: most road users in foreign registered vehicles are expected to mainly drive on motorways, especially in transit countries. In most Member States, not many accidents occur on motorways. In 2018, in Europe, around 53% of road fatalities occurred on inter-urban/trunk roads, 38% occurred on urban roads and 'only' 9% on motorways.[312] In our assessment, we assume that foreign registered drivers are more likely to drive on safer roads and that therefore the observations in 2018 are representative for route choices in the baseline scenario.

Hence, the impact of speed enforcement on motorways is likely to have a smaller impact than speed enforcement on other road types.

[312] https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1004.

Concluding

The impact of impunity can be 'translated' in a reduction of road accidents. Elvik et al. (2015) estimates the impact of a 1% increase in speed enforcement to result in a -0.6% to a -0.7% reduction in road fatalities. This effect is scaled down in our assessment, because foreign road users only account for a subset of the total number of fatalities in EU Member States, and they usually tend to drive on safer roads (motorways). Therefore, the estimate of Elvik et al. (2015) is scaled down to an assumed -0.1% due to the route choice of foreign registered vehicles, and is only applied to 10% of all accidents that occur in the baseline that are assumed to involve a non-national driver.

Monetisation of prevented accidents resulting in injury

Stage II of the road safety model provides an assessment on the number of prevented fatally injured people, the prevented number of seriously injured people and the number of prevented slightly injured people.

Based on the updated Handbook on the External Costs of Transport (2019)[313], unit values can be derived for each prevented injury. The unit values are applied to the number of prevented injuries, taking account injury severity, are presented in Table A.4.

Table A.4 Monetisation of prevented casualties

Injury severity	External costs per casualty EU
Fatalities	€ 3,273,909
Serious injuries	€ 498,591
Slight injuries	€ 38,514

Source: Handbook on External Costs of Transport (2019).

The values in Table A.4 are expressed in 2016 prices. In the assessment of impacts, these values have been corrected for inflation to obtain the 2020 prices. As a result, the used values in this study are some 5.6% higher than presented in Table A.4

Data tables

The development of issued speeding tickets is presented in the table below.

Table A.5 Total number of issued speeding tickets per Member State

MS	2010	2011	2012	2013	2014	2015	2016	2017
AT	4,161,855	4,930,614	4,808,288	4,865,842	4,863,612	4,962,189	5,179,485	5,205,417
BE	2,805,437	3,252,378	3,010,797	3,183,072	3,364,047	3,330,638	3,297,228	3,398,975
CY	84,402	93,845	114,818	72,713	76,501	91,088	105,428	103,626
DK	274,349	297,729	264,362	353,937	249,705	465,928	561,133	557,287
EE	30,697	58,405	93,574	100,089	124,496	133,853	166,388	152,585
EL	263,382	238,033	186,675	178,816	156,892	173,476	176,592	214,132
ES	2,104,561	1,923,863	2,308,993	2,170,185	2,456,203	3,283,861	2,897,850	2,883,171
FI	533,816	525,092	432,372	447,932	414,216	507,728	608,906	613,402
FR	10,096,626	10,741,848	12,589,223	11,527,436	12,836,313	13,607,233	16,314,896	16,529,565
HR	206,060	224,883	218,478	218,552	264,237	279,813	323,564	296,666
HU	538,667	429,224	453,208	297,744	285,636	275,433	279,406	501,986
IE	158,123	262,799	225,041	207,920	226,130	217,931	171,717	147,875
IT	1,463,910	1,416,276	1,397,850	1,470,455	2,777,503	2,659,205	2,660,970	2,843,552
LV	90,609	97,592	411,016	129,640	107,131	148,065	228,108	363,047
LT	119,856	87,591	89,046	120,342	148,864	146,347	166,930	266,933
MT	33,565	27,684	23,770	15,478	62,170	74,241	73,380	78,481
NL	8,303,605	7,403,549	7,600,173	8,442,360	6,730,443	6,636,096	7,972,227	7,814,043

313 https://op.europa.eu/nl/publication-detail/-/publication/9781f65f-8448-11ea-bf12-01aa75ed71a1.

MS	2010	2011	2012	2013	2014	2015	2016	2017
PL	1,318,970	1,551,811	1,633,986	1,750,467	2,102,005	1,918,959	2,077,420	2,125,646
PT	191,492	230,828	262,763	244,939	262,424	178,338	94,251	417,620
RO	962,071	1,107,655	750,983	871,002	775,615	754,422	824,774	710,526
SE	220,876	211,119	214,025	203,159	186,756	168,207	144,502	139,455
SI	125,848	103,650	72,878	87,166	99,009	90,814	77,255	117,029
SK	242,613	266,894	302,087	323,708	339,894	298,248	257,397	243,358
Total	**34,331,390**	**35,483,362**	**37,464,406**	**37,282,954**	**38,909,802**	**40,402,112**	**44,659,807**	**45,724,377**

Source: PIN Flash Report 36 (ETSC, 2019).
Data is not available for BG, DE, LU and CZ.

The number of road fatalities per Member State is presented in the table below.

Table A.6 Total number of road fatalities per Member State

MS	2010	2011	2012	2013	2014	2015	2016	2017
AT	552	523	531	455	430	479	432	414
BE	840	862	770	723	727	732	637	615
CY	60	71	51	44	45	57	46	53
DK	255	220	167	191	182	178	211	175
EE	79	101	87	81	78	67	71	48
EL	1,258	1,141	988	879	795	793	824	731
ES	2,479	2,060	1,903	1,680	1,688	1,689	1,810	1,830
FI	272	292	255	258	229	266	258	238
FR	3,992	3,963	3,653	3,268	3,384	3,461	3,471	3,444
HR	426	418	390	368	308	348	307	331
HU	740	638	606	591	626	644	607	625
IE	212	186	162	188	193	162	185	156
IT	4,114	3,860	3,753	3,401	3,381	3,428	3,283	3,378
LV	218	179	177	179	212	188	158	136
LT	299	296	302	256	267	242	192	191
MT	13	16	9	17	10	11	23	19
NL	537	546	562	476	477	531	533	535
PL	3,908	4,189	3,571	3,357	3,202	2,938	3,026	2,831
PT	937	891	718	637	638	593	563	602
RO	2,377	2,018	2,042	1,861	1,818	1,893	1,915	1,951
SE	266	319	285	260	270	259	270	253
SI	138	141	130	125	108	120	130	104
SK	371	328	352	251	295	310	275	276
Total	**24,343**	**23,258**	**21,464**	**19,546**	**19,363**	**19,389**	**19,227**	**18,936**

Source: EU Statistical Pocketbook 2019, EU Transport in figures (2019)
Data is not presented for BG, DE, LU and CZ

The number of road accidents involving injuries per Member State is presented in the table below.

Table A.7 Total number of road injuries per Member State

MS	2010	2011	2012	2013	2014	2015	2016	2017
AT	35,348	35,129	40,831	38,502	37,957	37,960	38,466	37,402
BE	40,569	42,119	38,057	35,632	41,481	40,303	40,096	38,020
CY	1,198	1,058	919	774	758	660	650	607
DK	3,498	3,525	3,124	2,985	2,881	2,853	2,882	2,789
EE	1,347	1,508	1,383	1,382	1,436	1,391	1,468	1,405
EL	15,032	13,849	12,398	12,109	11,690	11,440	11,318	10,848
ES	85,503	83,027	83,115	89,519	91,570	97,756	102,362	102,233
FI	6,072	6,408	5,725	5,334	5,324	5,164	4,752	4,432
FR	67,288	65,024	60,437	56,812	58,191	56,600	57,515	58,609
HR	13,274	13,229	11,774	11,228	10,323	11,038	10,457	10,939
HU	16,308	15,827	15,174	15,691	15,847	16,333	16,627	16,489
IE	5,779	5,230	5,610	4,976	5,743	5,831	5,893	6,066

MS	2010	2011	2012	2013	2014	2015	2016	2017
IT	212,997	205,638	188,228	181,660	177,031	174,539	175,791	174,933
LV	3,193	3,386	3,358	3,489	3,728	3,692	3,792	3,875
LT	3,530	3,266	3,392	3,391	3,256	3,031	3,201	3,059
MT	577	1,140	1,270	1,208	1,449	1,367	1,437	1,497
NL	10,778	5,134	4,968	9,522	13,358	18,523	18,749	18,706
PL	38,832	40,069	37,046	35,847	34,970	32,967	33,664	32,760
PT	35,426	32,541	29,867	30,339	30,604	31,955	32,299	34,416
RO	25,995	26,647	26,928	24,827	25,355	28,944	30,751	31,106
SE	16,627	16,274	16,636	14,942	13,091	14,829	14,086	14,951
SI	7,659	7,257	6,857	6,568	6,345	6,578	6,495	6,185
SK	8,119	5,378	5,007	4,729	2,149	5,502	5,602	5,317
Total	**654,949**	**632,663**	**602,104**	**591,466**	**594,537**	**609,256**	**618,353**	**616,644**

Source: EU Statistical Pocketbook 2019, EU Transport in figures (2019).
Data is not presented for BG, DE, LU and CZ.

Table A.8 Share of fatal accidents in which a foreign vehicle is involved, all roads

MS	2016	2017	2018	Weighted average
AT	16.6%	19.0%	13.7%	**16.5%**
BE	12.6%	14.2%	13.9%	**13.6%**
BG	6.5%	7.7%	9.5%	**7.8%**
CZ	10.2%	9.6%	9.7%	**9.8%**
DE	8.5%	8.9%	10.0%	**9.1%**
DK	11.3%	17.0%	20.7%	**16.0%**
EL	5.4%	3.2%	3.7%	**4.2%**
FR	4.6%	1.8%	3.4%	**3.2%**
HR	17.9%	13.0%	16.8%	**15.9%**
HU	11.2%	12.0%	11.6%	**11.6%**
LV	15.3%	10.4%	7.6%	**11.2%**
LU	17.2%	33.3%	32.3%	**27.4%**
MT	0.0%	0.0%	0.0%	**0.0%**
NL	7.3%	6.1%	8.7%	**7.4%**
RO	12.9%	10.7%	8.7%	**10.8%**
SE	0.0%	10.7%	6.0%	**5.6%**
SI	15.2%	14.9%	23.0%	**17.3%**
SK	11.6%	15.1%	13.3%	**13.3%**

Source: CARE Database (2020), data available for 18 Member States.

Table A.9 Share of fatal accidents in which a foreign vehicle is involved, motorways

MS	2016	2017	2018	Weighted average
AT	47.1%	56.8%	42.3%	**49.5%**
BE	37.9%	39.8%	45.1%	**40.9%**
BG	13.2%	11.5%	32.6%	**18.8%**
CZ	35.1%	58.3%	48.5%	**45.7%**
DE	33.9%	41.3%	42.6%	**39.4%**
DK	19.0%	8.3%	35.0%	**22.6%**
EL	18.4%	14.9%	13.8%	**15.4%**
FR	21.8%	7.5%	12.7%	**13.8%**
HR	68.0%	55.6%	66.7%	**64.2%**
HU	60.0%	55.2%	56.4%	**57.1%**
LU	50.0%	66.7%	25.0%	**45.5%**
NL	14.1%	21.6%	23.5%	**19.7%**
RO	20.0%	28.1%	14.3%	**21.9%**
SE	0.0%	15.0%	19.0%	**12.3%**
SI	54.2%	50.0%	57.1%	**53.6%**

SK	27.3%	33.3%	58.3%	**38.6%**

Source: CARE Database (2020), data available for 16 Member States.

Table A.10 % of (non-fatal) injury accidents in which a foreign vehicle is involved, all roads

MS	2016	2017	2019	Weighted average	In traffic units[314] (e.g. # vehicles)
AT	9.5%	9.4%	9.2%	**9.3%**	**7.6%**
BE	7.0%	7.3%	7.1%	**7.0%**	**4.6%**
BG	3.6%	5.1%	5.8%	**4.5%**	**3.4%**
CZ	4.8%	4.7%	4.5%	**4.5%**	**3.8%**
DE	4.2%	4.4%	4.3%	**4.3%**	**3.1%**
DK	18.5%	19.8%	20.2%	**19.8%**	**14.8%**
EL	2.6%	2.2%	2.4%	**2.3%**	**1.6%**
FR	2.6%	1.8%	2.3%	**2.2%**	**1.7%**
HR	10.9%	10.4%	11.9%	**10.9%**	**8.4%**
HU	5.4%	5.5%	5.5%	**5.2%**	**4.5%**
LV	4.2%	5.0%	2.9%	**3.8%**	**3.3%**
LU	31.1%	29.0%	34.7%	**31.8%**	**24.7%**
MT	0.9%	1.0%	0.6%	**0.9%**	**0.5%**
NL	3.2%	3.3%	3.4%	**3.2%**	**2.7%**
RO	9.3%	8.0%	6.5%	**7.8%**	**6.5%**
SE	0.6%	5.9%	7.3%	**4.6%**	**3.2%**
SI	6.5%	7.0%	7.5%	**6.8%**	**5.9%**
SK	7.2%	8.0%	7.4%	**7.3%**	**6.2%**

Source: CARE Database (2020), data available for 18 Member States.

Table A.11 % of (non-fatal) injury accidents in which a foreign vehicle is involved, motorways

MS	2016	2017	2019	Weighted average
AT	38.8%	38.6%	38.0%	**38.5%**
BE	26.1%	29.1%	28.1%	**27.4%**
BG	15.6%	19.6%	22.8%	**19.5%**
CZ	29.4%	31.1%	30.9%	**29.6%**
DE	21.8%	22.2%	23.2%	**22.1%**
DK	19.8%	14.4%	20.5%	**18.0%**
EL	10.2%	8.0%	10.7%	**8.7%**
FR	8.5%	5.5%	7.4%	**6.8%**
HR	50.4%	49.7%	51.2%	**49.5%**
HU	42.0%	43.0%	45.5%	**42.5%**
LU	56.8%	56.6%	58.5%	**57.8%**
NL	11.6%	13.4%	13.2%	**12.3%**
RO	19.2%	19.9%	16.9%	**18.3%**
SE	1.4%	11.4%	14.1%	**9.0%**
SI	44.0%	38.1%	34.5%	**37.9%**
SK	25.0%	28.8%	23.3%	**24.3%**

Source: CARE Database (2020), data available for 16 Member States.

[314] Traffic units concern the number of vehicles/parties involved. For all countries, the share of non-domestic registered vehicles in traffic accidents is higher than the share of non-domestic registered vehicles in traffic units. This indicates that non-domestic registered vehicles are more likely to be involved in a one-sided accident.

ANNEX 7 RELEVANT MEASURES PER IMPACT

Costs for Member States

Table A.12 Measures that have an impact on costs for Member States

Policy measures	Cost category
PM1	Administrative, recurring & depending on number of activities
PM2	Investment costs, one-off & recurring costs depending on number of activities
PM3	Investment costs, one-off & recurring costs dep. on number of activities
PM4	Investment costs, one-off & recurring costs dep. on number of activities
PM6	Administrative, recurring & depending on number of activities
PM7	Administrative, recurring & depending on number of activities
PM8a & PM8b	Administrative, recurring & depending on number of activities
PM9	Investment costs, one-off & recurring maintenance costs
PM10	Administrative costs, recurring & depending on number of activities
PM11	Investment costs, one-off
PM12	Administrative, recurring & depending on number of activities
PM13	Investment costs, one-off & recurring maintenance costs
PM14	Investment costs, one-off

The table below provides an overview of the measures that do not have an impact on road safety. For each measure, a short justification is provided.

Table A.13 Measures that do not have an impact on (administrative) costs

PM	Justification
PM5	Specifically aimed at private sector, the impact is captured under Section 9.5
PM15	This measure brings the CBE Directive in line with GDPR and LED. Although it might be possible that this would lead to costs at the Member State level, it is our understanding that these costs (if any) should be attributed to GDRP and LED. If these legislative acts would not have entered into force, this measure would not have been required.

Road safety

Table A.14 Measures that have an impact on road safety

Policy measures	Enforcement process
PM1	Detection
PM2	Investigation
PM3	Investigation
PM4	Investigation
PM6	Investigation
PM7	Investigation
PM8a and PM8b	Enforcement
PM9	Enforcement / voluntary payments
PM10	Enforcement / voluntary payments
PM11	Enforcement / voluntary payments

The table below provides an overview of the measures that do not have an impact on road safety. For each measure, a short justification is provided.

Table A.15 Measures that do not have an impact on road safety

PM	Justification
PM5	The measure intends to keep rental companies outside the enforcement chain to reduce their administrative burden. However, it does not impact the investigation of the offence. Instead of the rental company forwarding the fine to the presumed offender, the presumed offender is immediately addressed by the issuing Member State.
PM12	This measure prescribes the language regime to be used in follow-up communication. In these situations, it is likely that the offender has not paid the penalty notice voluntarily (yet). As this measure does not affect the enforcement of said penalty notice, it does not enter the impunity model and therefore is not expected to have a (substantial) impact on road safety.
PM13	This measure aims to provide more information to road users, especially on appeal procedures and sanction schemes in Member States. Since information on road traffic rules is already included in the existing Going Abroad page, there seems no strong link between the measure and road safety.
PM14	This measure prescribes how enforced sanctions should be communicated with the offender. It is therefore 'post-enforcement' and does not enter the impunity model. There is no link with road safety.
PM15	This relates to the storage and exchange of personal information, and is therefore not associated with the impunity situations.

ANNEX 8 ANALYSIS OF SURVEY RESULTS

To gather evidence for the problem definition and the baseline, four surveys were launched during the period of 30 November 2020 to 8 January 2021. These four surveys were directed at different stakeholder groups, namely:

1. Ministries of Transport (MoT), Ministries of Interior (MoI), Transport Authorities (TA), Police authorities (PA);
2. Ministries of Justice (MoJ) and Justice Authorities;
3. Road safety organisation;
4. Road users (e.g. driver’s association, road users associations, business associations).

The surveys were aimed to fill remaining gaps in knowledge and evidence base. Questions were asked on legislation, especially on liability regimes, sanctions, and enforcement, data on road traffic offences, related procedures, including the follow-up of the investigation of road traffic offences and enforcement of sanctions for these offences. Respondents were also provided with the opportunity to upload and/or share evidence.

The results of the survey have been integrated in Chapter 2. The numbers provided in this chapter are presented and analysed at the level of Member States. Similar answers from representatives of the same Member States have been excluded. Diverging answers from the same Member State, have been retained in the analysis. Were applicable, responses of ‘I do not know’ have been excluded, for example, where a respondent from the same Member state did provide an answer.

In this annex, we provide an overview of the type, number and Member State of respondents to the different surveys.

Survey directed at Ministries of Transport, Ministries of Interior, Transport Authorities, Police authorities

A total of 69 respondents have filled in the table, of which 35 respondents (51%) reached the end. Of the respondents,10% were from transport authorities, 23% were from Transport Ministries, 28% were representatives for police authorities and 36% were representatives for Interior Ministries. The remaining 13% of respondents identified themselves as “Other” (e.g. Ministries of justice, registration authorities, or combined answers from the Ministry of Interior and Ministry of Transport). The following two graphs illustrate respondents per Member State, split by partial or full responses, as well as the type of authority/ministry.

Figure A. 2 Overview over the number of respondents per member state (indicating partial and full responses) to the survey directed at MoT, MoI, TA and PA

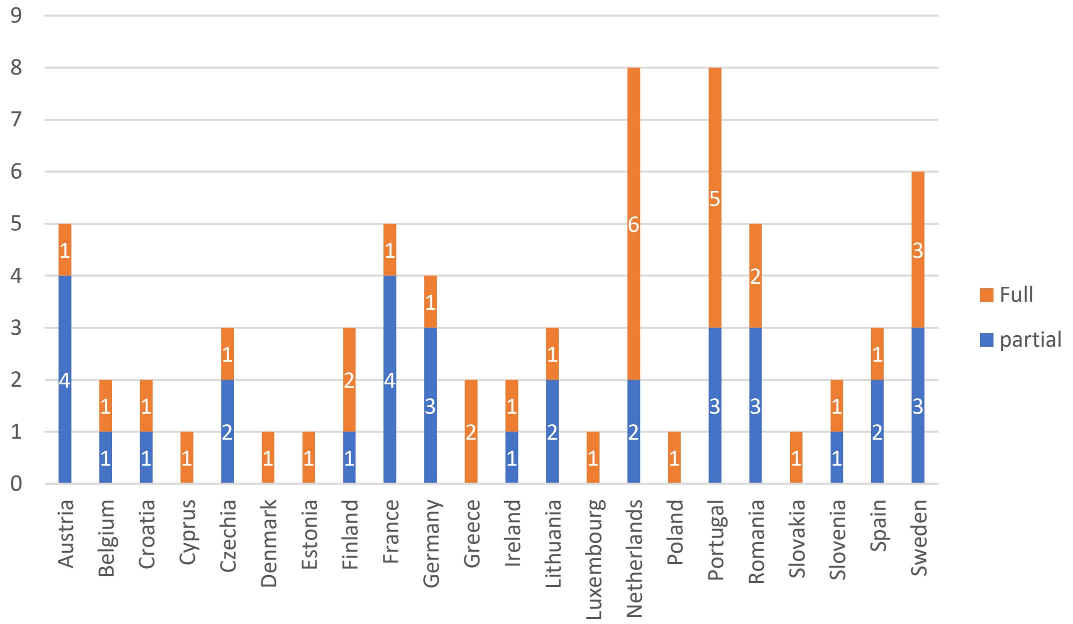
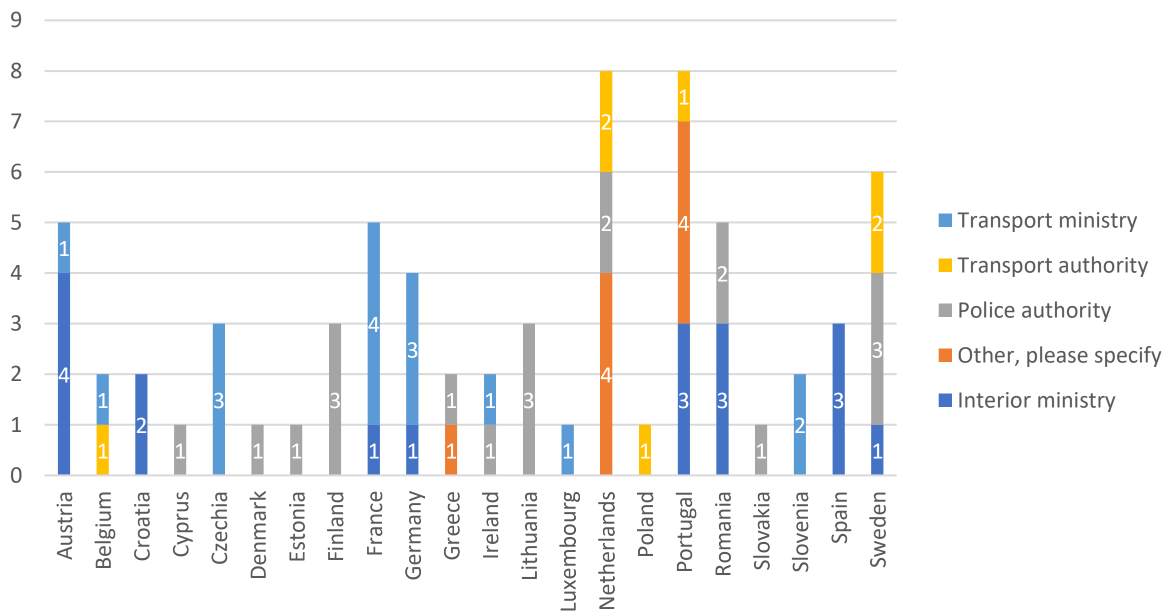


Figure A. 3 Overview of the number of respondents per member states, categorised by type of authority/ministry directed at MoT, MoI, TA and PA



Survey directed at ministries of Justice and Justice authorities (legal survey)

A total of 59 respondents from 18 Member States responded, of which 16 respondents (27%) reached the end of the survey.

From the respondents, the two graphs below illustrate the total of respondents per Member State, that provided partial or full responses and by type of authority/ministry.

Figure A. 4 Overview of the number of respondents per member states divided by partials and full responses to the survey directed at MoJ and JA

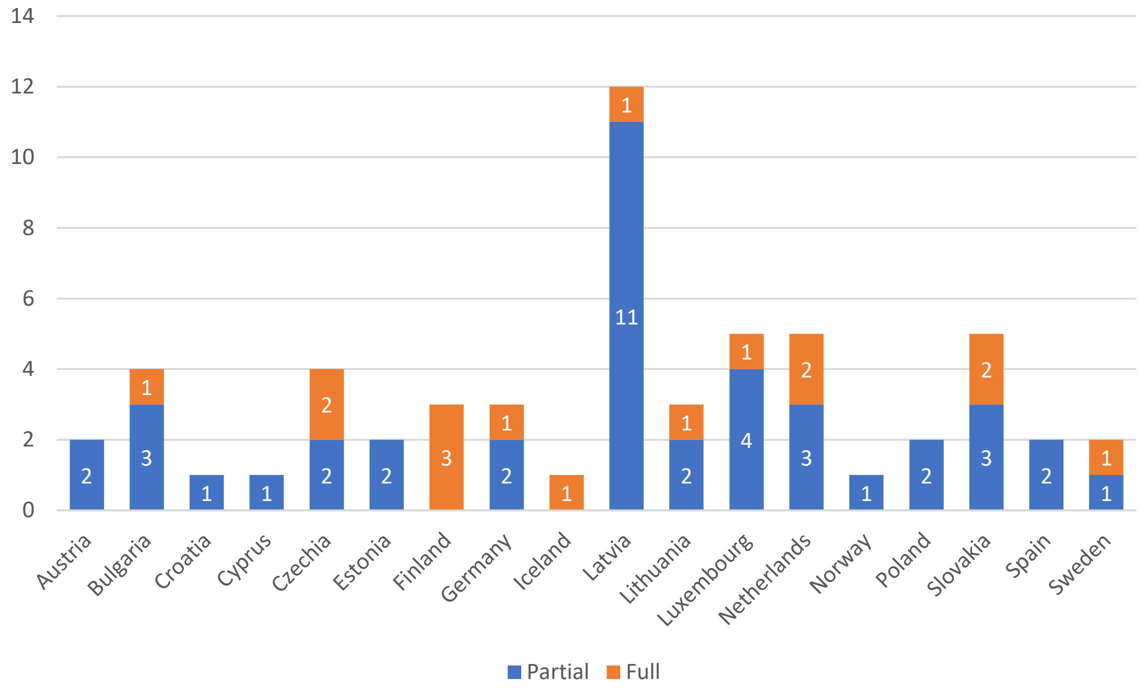
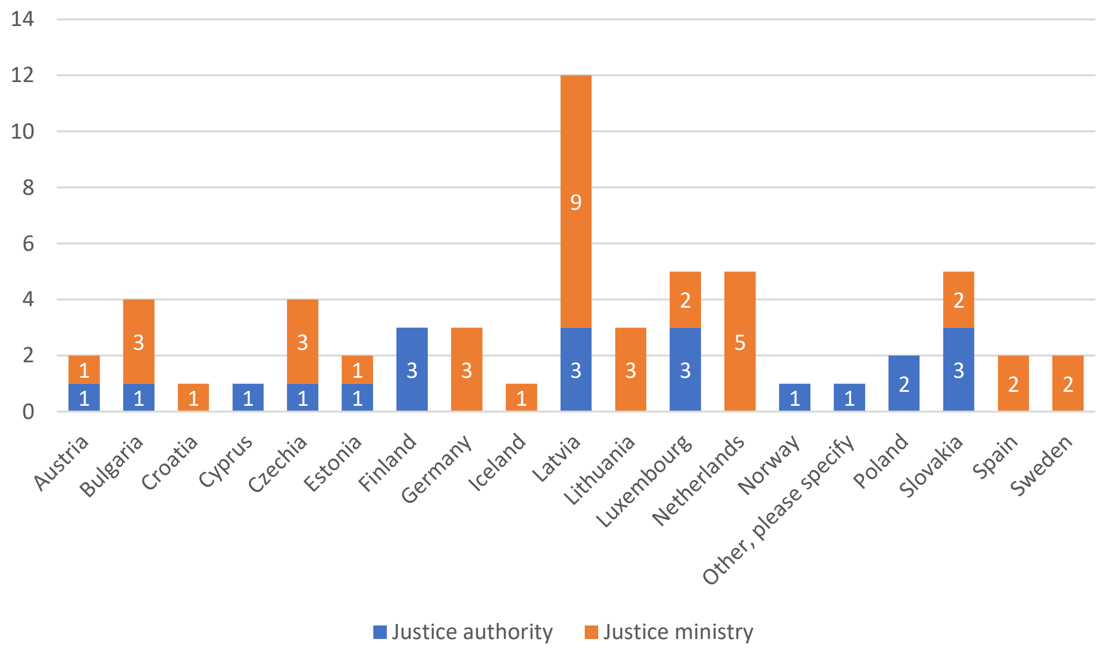


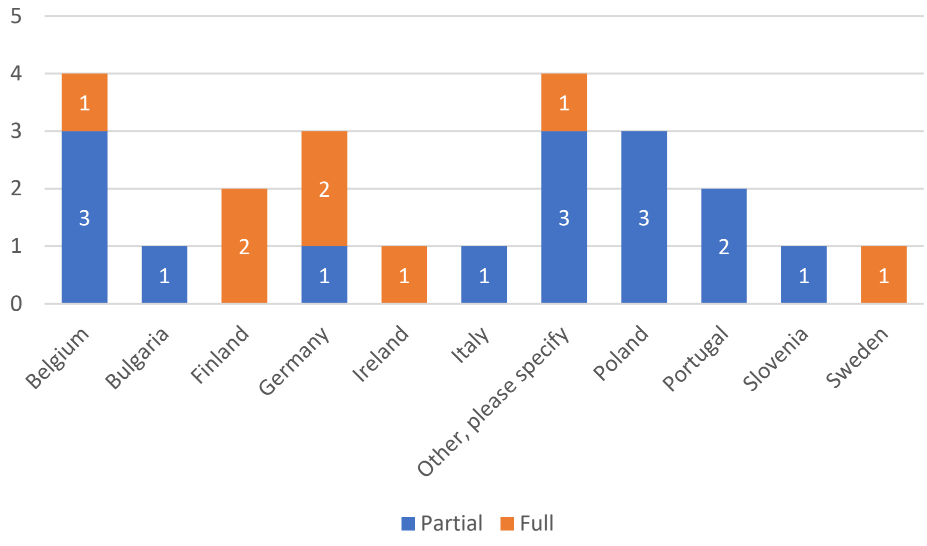
Figure A. 5 Overview of the number of respondents per member states, categorised by type of authority/ministry directed at MoJ and JA



Road safety organisation

Road safety organisations (on both national and international level) were contacted with the request to fill in the survey. Through the European Traffic Safety Council (ETSC), an additional request was launched for Members of the ETSC. A total number of 23 respondents answered the survey, of which (35%) finished the survey in full.

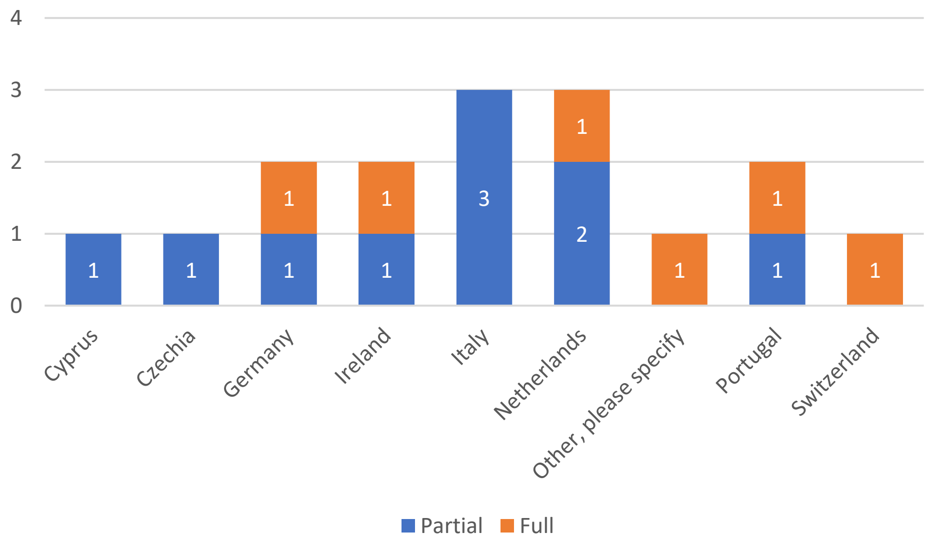
Figure A. 6 Overview of the number of respondents per member states divided by partials and full responses to the survey directed Road Safety organisations



Survey directed at road users

Representatives of driver's association, road users associations and business associations were contacted with the request to fill in the survey. A total number of 16 respondents answered the survey, of which 6 (38%) finished the survey in full.

Figure A. 7 Overview of the number of respondents per member state divided by partial and full responses to the survey directed at road users



ANNEX 9 EUCARIS STATISTICS OF 2019

The EUCARIS Statistics of the year 2019 can be found for download below.

CBE statistics 2019.pdf

ANNEX 10 EXTENDED INFORMATION AND STATISTICS ON THE PROBLEM DEFINITION

Problem 2 – Inadequate cross border investigation of traffic offences

Problem driver d – Different, erroneous or not up-to-date content of vehicle registers across Member States

Minimum mandatory content that is available as well as up-to-date information within the national VRDs is necessary to ensure the successful cross-border investigation of road-safety-related traffic offences. According to the CBE Workshop (26 June 2020), several Member States pointed out that data exchange amongst each other works 'very well'. Nevertheless, there remain some issues, as presented by specific case examples in the workshop. For example, there have been cases when an offender's licence has actually been withdrawn in his home country, but this information was not known to the Member State in which this offender continued driving, therefore causing a high-impact crime, as explained by the French representative. This particular case, however, is not directly regulated by the CBE Directive. Finland also expressed concerns as to the data exchanged through EUCARIS (for example, the address shown in EUCARIS did not contain sufficient details, therefore it did not allow the Finnish police to send out an information letter to the presumed offender).

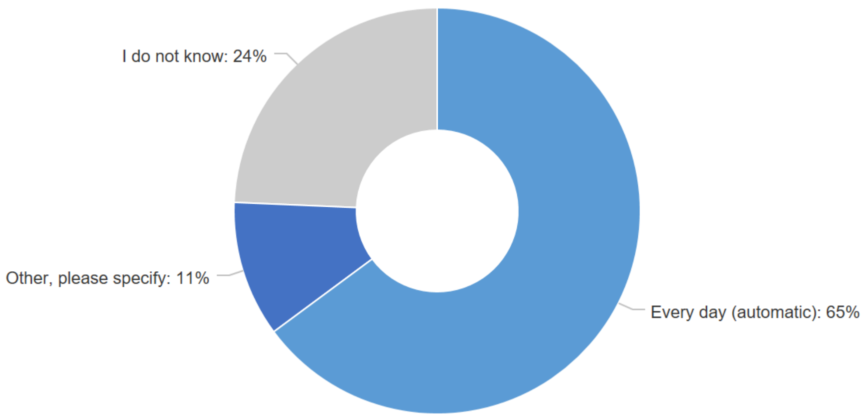
As hypothesised in the inception phases of the study that multiple national VRDs may lead to incorrect data stored, from the survey we learn that indeed only 65% of respondents state that the registries are updated on a day-to-day and automatic basis. Furthermore, the majority of databases are updated daily, including changes to the vehicle owner. However, it has to be noted that it could be possible that while the database might be updated daily, a new owner could have a specific period in which they can notify the registration authority about the change of ownership. This means that the registration can be delayed, even though the database is updated regularly.

Table A.16 Overview of data kept in the different Member States, in line with the data listed as mandatory in Annex I of the CBE Directive

	Chassis /VIN	MS	Reg. no	Make	Commercial type	EU cat code	Holder name	First name	Address	Date of birth	Legal entity	Company name	Gender	Place of birth	ID-no	#Yes (max. 15)
Austria	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	12
Belgium	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	14
Croatia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	I do not know	I do not know	I do not know	12
Cyprus	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	13
Czechia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	14
Estonia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	15
Finland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	I do not know	I do not know	I do not know	12
France	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	15
Germany	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	14
Greece	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	13
Ireland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	I do not know	I do not know	No	No	No	9
Lithuania	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	12
Luxembourg	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	No	No	10
Netherlands	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	15
Poland	Yes	Yes	Yes	Yes	Yes	Yes	I do not know	Yes	Yes	Yes	Yes	Yes	I do not know	I do not know	No	11
Portugal	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	No	11
Romania	Yes	I do not know	Yes	Yes	I do not know	Yes	Yes	Yes	Yes	Yes	Yes	I do not know	Yes	Yes	Yes	12
Slovakia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	13
Slovenia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	15
Spain	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	13
Sweden	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	13
#Yes Max. 21	**21**	**20**	**21**	**21**	**20**	**21**	**20**	**21**	**20**	**17**	**20**	**17**	**9**	**9**	**12**	

Source: Results from 1st survey to Transport Authorities, Transport Ministries, Ministries of Interior and Police authorities.

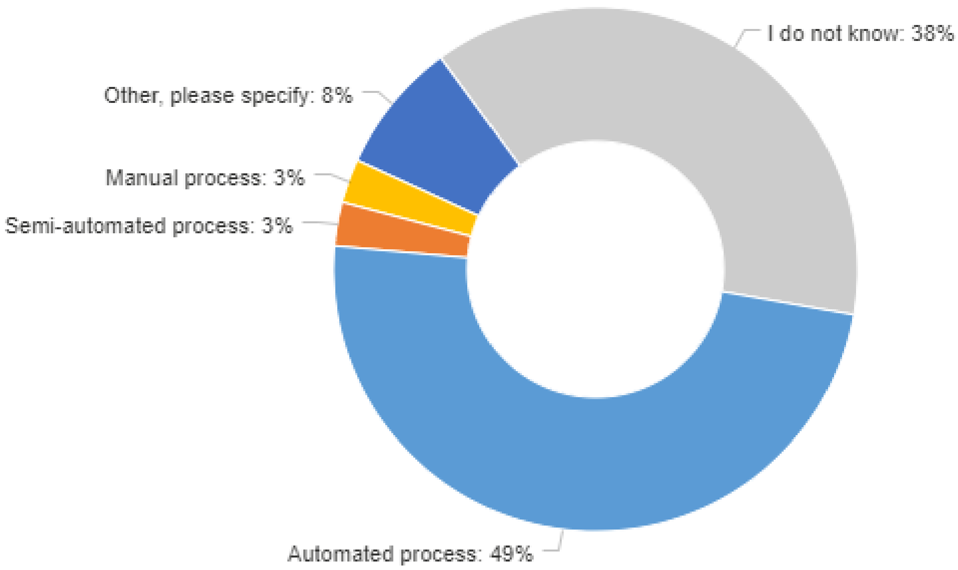
Figure A. 8 Overview of responses to the question "How often does the database get updated with import/export information of vehicles, as well as the vehicle owner changes?" (N=37)



Source: Results from 1st survey to Transport Authorities, Transport Ministries, Ministries of Interior and Police authorities.

Furthermore, almost 50% of the respondents state that the data from their VRD is fed by an automated process in EUCARIS. Only 3% (one respondent) states that it is done by a manual process and one that the process is semi-automated (respectively Germany,[315] which state that they have a manual process and Portugal, stating that they use a semi-automated process).

Figure A. 9 Overview of responses on how is the necessary data from your vehicle registration database fed into EUCARIS? (N=37)



Source: Results from 1st survey to Transport Authorities, Transport Ministries, Ministries of Interior and Police authorities.

[315] Please note that a second respondent from Germany stated that they have an automated process. Both respondents were from transport ministries of German federal countries.

ANNEX 11 ELABORATED DESCRIPTION OF POLICY MEASURES

Policy measure 1 Extend the scope of the CBE Directive to other road-safety-related traffic offences

This measure aims to extend the scope to other road-safety-related offences such as not keeping sufficient distance from the vehicle in front, dangerous overtaking, dangerous parking, crossing white line(s), driving the wrong way or in an emergency lane and driving an overloaded vehicle. Although these offences are increasingly detected with automatic equipment, a large impact is not expected.

Policy measure 2: Establish mandatory minimum data content of vehicle registers necessary for the investigation of traffic offences

The aim is that Annex I of the CBE Directive clearly specify, which VRD are available in all MS vehicle registers, and which VRD are essential for a successful investigation of road traffic offences (currently the provision of all VRD is de facto optional). VRD exchange has also to include e.g. precise vehicle categories (M1, N1, M2, N2, etc.) because trucks and buses are equipped with speed limitation devices (they cannot exceed certain speed limits regardless of the posted speed limit). The adoption of Prüm II should be taken into account when deciding whether other specific data/information should not be added in Annex I.

The harmonisation of the content of the national vehicle registers is a very long-term issue (non-feasibility of data retrofitting) and political will is missing. Moreover, the CBE Directive is not the right tool for such harmonisation. The problem of different or inadequate content of vehicle registers can be resolved by interconnecting various databases. Therefore, to mandate the inclusion of additional information in national vehicle registers, for example, the picture of the vehicle owner/holder, vehicle insurance information, the information on the owners' other vehicles does not seem to be feasible.

Policy measure 3: Keep the information on previous owner/holder of a vehicle for a specific time and provide/disclose it upon request

This measure aims to improve the quality of the investigation of the offences, by harmonising the time limit for retention/storage (and review) of the personal data on the previous owner/holder of a vehicle in national VRDs. Harmonising this limit also depends on harmonised deadlines for the submission/sending of information letters/penalty notices to non-residents (see Measure 10).

Policy measure 4: Ensure access to other data registers (other than VRD) through a single system

This measure aims to increase the available information to investigate the detected offence. Instead of requiring additional information to be available in vehicle registers, this measure ensures that other databases (such as RESPER, SIS, …) are accessible through interconnection of various registers via one system (EUCARIS). Amendment of Article 4 of the CBE Directive has to be considered to allow use of other databases (which is currently not authorised). Such an amendment would also help to apply Articles 11 and 15 of Directive 2006/126/EC on driving licences by, for example, allowing MS to search in virtual driving licences (demerit/penalty points inflicted on non-residents) or on the validity of driving licences. Specific issue is the verification of driving licence validity when taking ownership of a vehicle (vehicle registration).

Economic aspects and technical specifications of this system require further analysis, as technical and financial challenges may hamper full interconnection. In addition, it needs to be assessed from a legal point of view whether various systems can be linked (e.g. personal data protection). Although all Member States are very much satisfied with the EUCARIS CBE application, it appears that they do not agree with the idea to gain access to various systems and databases (e.g. RESPER, SIS, ID cards, passports etc.) via one application to facilitate the investigation of road traffic offences.

The Commission is obliged to control and monitor the implementation of EU law as well as its effective and efficient application. With EUCARIS as inter-governmental, decentralised tool where the Commission is not a contracting party, i.e. not involved, the execution of the Commission's control and monitoring powers is limited and not independent (having also a negative impact on its right of initiative). This is, of course, without prejudice to the right of Member States to enforce EU law by using inter-governmental tools such EUCARIS (and not the Commission/EU tools). It should be considered whether such a disadvantage would be offset by the availability and reliability of EUCARIS (no need to develop a new tool). This has to be assessed very carefully, especially in light of the general tendency to interconnect all existing databases in order to improve the investigation of all kinds of offences. The question is whether EUCARIS would be able to cope with such a huge demand and whether it would be politically acceptable.

For example, Regulation (EU) 2020/1784 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) seeks to improve the effectiveness and speed of judicial procedures by simplifying and streamlining them as regards the service of judicial and extrajudicial documents in the Union, while at the same time helping to reduce delays and costs for individuals and businesses. As a rule, all communication and exchange of documents between the agencies and bodies designated by the Member States should be carried out through a secure and reliable decentralised IT system comprising national IT systems that are interconnected and technically interoperable, for example, and without prejudice to further technological progress, based on e-CODEX. Accordingly, a decentralised IT system should be established for data exchanges under this Regulation. The decentralised nature of that IT system would enable data exchanges exclusively between one Member State and another, without any of the Union institutions being involved in those exchanges.

Policy measure 5: Keep the information on the user of a vehicle in case the vehicle is leased and provide/disclose it upon request

This measure aims to allow the exchange of information on the final user/ keeper of the vehicle (new article to be added and modification of Annex I) if this information is available in the VRD by default (normally it covers long-term leasing of vehicles). The measure would not mandate Member States to include this type of information in the national VRD. Currently, sharing this type of information is not possible under the CBE Directive, even where it is available. The measure is expected to reduce the administrative burden, especially for car leasing companies and legal persons having a vehicle fleet, in cases where the vehicle user committed a road traffic offence.

The same applies to the exchange of information on the previous owner/holder of a vehicle (see Measure 6).

Policy measure 6: Establish specifically designed investigation mechanism for cross-border exchange of information aimed at better identification of the driver/offender

This measure proposes specific digitised follow-up procedure to find the address of the actual offender (driver), if the address in the vehicle register is or seems to be incorrect. Furthermore, it appears that there is internal incoherence in the CBE Directive; Article 4(3) of the Directive stipulates that: "The Member State of the offence shall, under this

Directive, use the data obtained in order to establish who is personally liable for road-safety-related traffic offences listed in Article 2 of this Directive". This Article does not create any problem for Member States applying vehicle owner/holder legal liability regime, while for Member States applying driver legal liability regime it creates a problem, because the Directive does not contain any rules on investigation procedures to identify the actual offender/driver (e.g. Sweden even does not send out information letter, if there is no clear evidence who was the offender/driver). Thus, a specific digitised follow-up procedure is needed to exchange additional evidence (e.g. pictures of the vehicle owner/holder retrieved from passport or ID registers) to facilitate the identification the offender/driver.

It appears that there is no Member State which applies procedures under the MLA Convention and the European Investigation Order (EIO) to investigate the actual address of a presumed offender and the identity of the offender/driver. Involvement of justice (and particularly judicial) authorities in the procedures as envisaged in the MLA Convention and the EIO seems to be too cumbersome a solution in the case of millions of detected road traffic offences which are minor and often qualified as administrative. A good example of possible digital procedures on finding the actual address and the exchange of evidence could be the Salzburg Forum CBE Agreement concluded between Austria, Hungary, Croatia and Bulgaria, which is based on police-to-police cooperation and the use of EUCARIS. Nevertheless, it has to be further assessed whether especially the exchange of the pictures of presumed offenders, i.e. vehicle owners/holders is not too sensitive, requiring involvement of justice authorities (e.g. criminal courts). It depends on the formulation as to what evidence/investigation is requested - whether only the picture of the vehicle owner/holder is requested to compare it with the picture from detecting equipment (taken on the front of the vehicle), or there is a simple request to investigate who is on the picture from detecting equipment that might be disproportionately complicated and costly as the driver could be a resident of a different Member State from that of the vehicle registration.

The IT platform to be used for both procedures, NCP (or SPOC – single point of contact), the architecture of the platform, the format of metadata, use of data registers and portals have yet to be specified, taking into account existing systems and registers of DG HOME/DG JUST. The strategy for the "Digitalisation of justice in the European Union: A toolbox of opportunities" (COM(2020) 710 final and SWD(2020) 540 final) has to be considered, if needed.

The complicated exchange of evidence to identify the offender/driver can be replaced by a single legal liability regime applied to the offences committed by vehicles registered abroad. Another option how to evade the complicated exchange of evidence is to include in the scope of the revised CBE Directive "offence of non-cooperation in the identification of driver" ("duty of care") which is covered by the Salzburg Forum CBE Agreement. However, this offence is completely different from road traffic offences and there might be serious conflicts with constitutional rights in some Member States.

Last but not least, the identification of the offender/driver seems to play an important role in the application of driving disqualifications that should be considered in the revision of Directive 2006/126/EC on driving licences.

Policy measure 7: Establish mutual assistance in the investigation of road traffic offences by including the duty of the vehicle owner/holder to cooperate with authorities in identification of driver/actual offender

This measure establishes a duty to cooperate at the EU level, for road traffic offences committed by drivers in foreign vehicles.

It is important to note that the violation of social rules also includes speeding, as the speed limitation devices of heavy commercial vehicles are integrated with tachographs.

By doing so, many issues related to the follow-up procedures can be overcome, such as whether a picture of the vehicle is taken from the back or from the front.

An alternative to the above measure could be that all offences under the CBE Directive be qualified as criminal, in order to allow uniform follow-up. By applying criminal law, the exchange of information and cross-border enforcement of sanctions would be feasible and consistent with the MLA Convention, EIO and Framework Decision 2005/214/JHA ensuring the full applicability of criminal proceedings' procedural guarantees. However, as laid down in the Treaties, it is up to Member States as to how road traffic offences are qualified (subsidiarity and proportionality).

Policy measure 8a and 8b: Establish a tailored follow-up mechanism for mutual recognition of financial penalties issued in relation to CBE road traffic offences (with limited grounds for refusal under b variant)

This measure proposes digitised follow-up procedures (Lex Specialis) related to the cross-border enforcement of sanctions for the offences covered by the CBE Directive, as following the Dutch and German experience, around 95% of requests to recognise the decisions under Framework Decision 2005/2014/JHA on the application of the principle of mutual recognition to financial penalties ("the Framework Decision") is related to road traffic offences. By streamlining existing procedures (simplification and digitisation) and adapting them to road traffic offences, the effectiveness of the cross-border enforcement of road traffic rules can be increased. It has yet to be specified which articles of the Framework Decision will be applied under the Lex Specialis (as is the case for PRÜM Decisions). The cross-border enforcement of financial penalties is also subject to the Salzburg Forum CBE Agreement. Nevertheless, the mechanism in the Agreement is not entirely clear and requires further analysis. Possible areas of derogation and new elements or modifications to be added are outlined below.

Eligible authorities

The EU instrument for the mutual recognition of a Member State's administrative or judicial decisions on financial penalties issued by a foreign authority is the Framework Decision. According to ECJ, the scope of this instrument covers the cross-border enforcement of financial penalties (pecuniary sanctions) imposed for criminal and administrative offences on condition that these are grounded on decisions subject to a judicial review under a procedure similar to criminal proceedings. The difference between Member States as to the applicable judicial review procedure for road traffic offences which can be qualified as criminal or administrative has a serious impact on whether the mutual recognition established by the Framework Decision can be used. In some Member States jurisdictions, road traffic offences are dealt with by financial administrations/tax authorities (regardless of whether these offences are qualified as administrative or criminal) or by administrative authorities, not applying adequate review that may lead to a refusal of the decisions. Member States such as France, Spain, Italy, Romania and the Czech Republic argue that their decisions are not recognised (especially by Germany) that constitutes unequal treatment generating serious frictions. For Spain, the mutual recognition of financial penalties is the most important issue of the revision.

Thus, specific measures are needed to clarify "minimum" procedural guarantees which administrative authorities have to comply with. According to the ECJ, the decisions concerning road traffic offences can be refused only exceptionally, particularly if the protection of fundamental rights is at stake. Where a decision requiring payment of a financial penalty has been notified in accordance with the national legislation of the Member State issuing the decision, indicating the right to contest the case and the time limit for such a legal remedy, the authority of the Member State executing the decision may not refuse to recognise and execute that decision provided that the person concerned has had sufficient time to contest that decision (see Measure 12), which is for the national court to verify. In criminal proceedings, specific procedural guarantees apply, namely: the right to interpretation and translation, the right to information about the rights, the right to legal advice and legal aid before and at trial, and the presumption of innocence. The question remains open as to which of these guarantees linked to fundamental rights can be abandoned to allow a more flexible mutual recognition of the decisions of administrative authorities namely of Member States applying vehicle owner/holder legal liability regime. There is also an issue of possible discrimination, as in some MS non-residents in road side checks / controls cannot refuse to pay the penalty/fine, i.e. they cannot use an administrative procedure (perhaps due to cumbersome application of FD 2005/214/JHA); see ECJ Case 224-00.

Recognition of decisions

According to Germany (so far not contested by other Members States), the grounds for refusal enlisted in Article 7 of the Framework Decision do not play a significant role in practice. The most important ground for refusal is simply that the person no longer resides in Germany (it is not possible or disproportionately difficult to track down offender) or that their whereabouts cannot be established or that the person simply did not have the means to pay the financial penalty. This problem can be resolved to a certain extent by additional investigation under Measure 6.

Another problem appears to be the application of different legal liability regimes (citizen rights normally granted by constitutions). For example, Germany which applies driver legal liability regime refuses the recognition (approx. 9% of request for recognition per year), if the decisions of Member States are based on vehicle owner/holder legal liability and the German vehicle owner/holder objected accordingly upon being heard.

Specific issue is the EUR 70 threshold as ground for refusal (Article 7(2)(h) of the Framework Decision). It appears that this threshold is too high for a road traffic offence, the vast majority of which are minor administrative offences. This threshold should be either lowered or entirely abolished – to be analysed further.

Following the above mentioned, it appears that it would not be necessary to specifically refer to the grounds for refusal (Article 7 of the Framework Decision) in the Lex Specialis.

Enforcement of decisions

A specific issue is the lapse of time in the mutual recognition of procedures, where different time limits must be considered. At first, there is the time limit under the law of the State issuing the decision (e.g. 5 years in the Netherlands). If this period is over, the decision issuing State is obliged to withdraw the decision in accordance with Article 12 of the Framework Decision. Additionally, there may be a time limit for the recognition of the decision by the executing State. Last, but not least, there is a ground for refusal in Article 7(2)(c) of the Framework Decision that covers a very specific scenario where the decision relates to acts which fall within the jurisdiction of the State executing the decision and where the execution is statute-barred according to its law (i.e. the deadline for enforcement of the decision expired). Moreover, the time limits for the enforcement may differ according to the amount of financial penalty.

In some Member States (e.g. Germany), transmitting the decision to another Member State does not interrupt the time limit. It means that some of this time can already be consumed by preparing the request and particularly by translating the certificate on the decision. In the meantime, quite often the administrative authorities and the public prosecutor's offices that are in charge of the national execution try to make the person pay the financial penalty and may decide to grant payment of the penalty in instalments – fully in line with Article 9(1) of the Framework Decision (according to which the enforcement of the decision shall be governed by the law of the State executing the decision in the same way as a financial penalty of that State). Consequently, many decisions may have to be withdrawn (Art. 12(1) of the Framework Decision) because they have become statute-barred and the financial penalties are paid only partially. Due to different time limits, similar execution in other Member State may have been successful.

The above-mentioned calls for the harmonisation of the time limits, at least partially, taken also into account the time limits under the investigation of road traffic offences.

Accrual of monies

Currently, the income from financial penalties remains in the decision of the Member State executing the decision. To motivate Member States which issue the decisions and thus bear the main costs of the procedure, it seems to be reasonable to establish fair accrual of monies from financial penalties between the decision issuing and executing Member State (specific distribution keys could be established according to the incurred costs or just fifty-fifty accrual could be applied).

The existing provision of the Framework Decision, which allows the competent authority of the decision executing Member State to give the offender/driver the opportunity to pay the financial penalty to the decision issuing Member State before continuing with the proceedings should also apply to road traffic offences qualified as administrative.

Digitalisation, translation, service and authenticity of Member States forms

In 2017, an expert group in COPEN (the Council working group on justice cooperation) developed five standard forms covering the exchange of information between the decision issuing and executing Member State under Article 14 of the Framework Decision on the outcome of the case. These standard forms were translated into all official languages and can be retrieved on the e-Justice portal. The two forms that transmit the information on full recognition and full execution of the decision seem to considerably facilitate the communication between Member States. However, the use of these forms is not obligatory. It should also be analysed whether the number of the forms cannot be further reduced in the case of road traffic offences. As such, it still occurs that the executing Member States transmit the recognition decision in their own language, and this decision then needs to be expensively translated by the decision-issuing Member State, only to learn afterwards that the decision was recognised. Some executing Member States translate this recognition decision themselves before sending it to the issuing Member State. The idea of the standard forms is to save the effort and the costs of translation on both sides. Some Member States' authorities (e.g. the Netherlands, Poland, Bulgaria, Finland, the Slovak Republic, Spain, the Czech Republic and Romania) have already begun to use these forms. The exchange of forms must comply with personal data protection rules.

It appears that a specific measure is needed to speed up the procedure, by ensuring obligatory electronic exchange of the 5 (or less) standardised forms via one central NCP (to ensure authenticity) in the cross-border enforcement of financial penalties for road traffic offences. There is a possibility to digitise the exchange of other documents (Article 4 of the Framework Decision).

The IT platform for the electronic exchange of the forms (e.g. e-CODEX), NCP (or SPOC – single point of contact), the format of metadata, the use of data registers and portals have yet to be specified, taking into account existing systems and registers of DG JUST. The strategy for the "Digitalisation of justice in the European Union: A toolbox of opportunities" (COM(2020) 710 final and SWD(2020) 710 final) has to be considered.

Policy measure 9: Provide a dedicated list of entities in different Member States that are entitled to issue information letters to ensure authenticity of documents

The aim of this measure is to specify the rules concerning the authenticity of the information letter to avoid abuse of personal data and financial fraud, and ensure equal/non-discriminatory service of documents.

Quite often, outsourced private bodies representing a Member State's local/municipal authorities send pre-information letters to presumed offenders, at the very beginning of the procedure, in order to inform offenders on the committed offence with the possibility to settle the financial penalty without further administrative steps. If the penalty is not paid, the pre-information letters can be followed by the information letters issued by various legal companies (advocates, debt collectors) representing the authorities of the Member State, in which the offence was committed, in the Member State of the residence of the presumed offender. Sometimes, the information letters are sent directly by such legal companies without any pre-information. Moreover, even the information letters can be followed by letters informing of the imposition of additional sanctions (e.g. driving disqualifications) or administrative (increased) fines or just informing that the case was transmitted to another institution e.g. a criminal court which an appeal can be lodged with. This approach is not transparent, citizens are often confused as it is not clear what language regime (or procedure) is applicable and the question is whether it is in line with other relevant EU law (e.g. the MLA Convention if road traffic offences are qualified as criminal). It appears to be useful to provide a precise definition of the information letter and which entity can issue, transmit and service it; such a provision is currently missing. A good example can be found in Regulation (EU) 2020/1784 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, which however does not apply to administrative matters.

For each Member State, a list of authorities/entities entitled to issue information letters (according the CBE Directive) and other letters/notices serviced to a presumed offender until the stage of appeal before a court could be established and the samples of these letters provided on a dedicated cross-border enforcement/CBE portal (G2G), where Member States authorities could share such information for verification purposes in a secure way (if the information was made public, the letters could be even more easily subject to fraud). Nevertheless, this would be a huge work. The IT platform to be used to exchange information through the portal, the architecture of the platform, the format of metadata, use of data registers have yet to be specified.

An alternative option would be to service the information letters (and the other communication mentioned above) exclusively via one national contact point (NCP) in each Member State, which would guarantee their authenticity.

A legal definition will be provided for information letters/notices, something that is currently missing. It should have a broad scope encompassing any type of written act (e.g. in the form of formal notification, registered mail, etc.).

The question remains open as to whether the debt collectors and/or outsourced private bodies should not be excluded from the service of documents mentioned above until the stage of appeal before a court (very good justification would be needed e.g. to avoid personal data smuggling or misuse, or abusing procedures of mutual recognition of financial penalties).

Policy measure 10: Establish harmonised time limit for sending the information letter + use of registered mail to ensure fair service of documents

A harmonised time limit for sending out the information letter (after registration of the offence) should be established. This time limit has to reflect the time limit for the retention/storage (and review) of the information on a previous vehicle owner/holder (see Measure 3). In other words, the deadline for sending out the information letter should not be longer than the retention/storage time limit of the vehicle data.

It also appears that the means of the delivery of the information letter has to be harmonised (e.g. obligatory use of registered mail) to ensure that the presumed offender is informed. There are various websites and apps in Member States (e.g. Spain) allowing payment of fines and monitoring procedural stages. However, access to these websites and apps requires registration via national ID card microchips of residents/nationals. Non-residents/foreigners cannot use these IT solutions, due to the problems with e-IDAS. The question remains open whether this can be perceived as discriminatory treatment, as it is surely not equal treatment.

Some Member States apply lower penalties if paid off within a shorter time. For example, in Spain, offenders paying their fines within 20 days of receiving the information letter are entitled to a 50% reduction. However, it is not clear what is considered as the date of the receipt of the information letter in the case of non-residents/foreigners. Shorter payment times linked to the date of sending out the information letter and related rebates should either not be allowed, or the time limits should be longer for non-resident/foreign offenders and/or the definition of the date of the receipt of the information letter harmonised.

Policy measure 11: Establish mandatory minimum requirements for the information to be shared with presumed offender

Minimum obligatory requirements should be established for the structure and content of the information letter. Although certain requirements are already included in the template of the information letter in Annex II of the CBE Directive, it seems that no Member State is using it. Member States do use their own forms, the content of which is often the same for residents and non-residents/foreigners. This is not the right approach, because non-residents/foreigners are usually not familiar with the legal system of the Member State in which the offence was committed and need more information. This measure will provide an obligatory structure of the information letter for non-residents/foreigners with the obligatory content as already laid down in Article 5 of the Directive and complemented by new elements, as follows:

1) Provision of information on deducted demerit/penalty points and driving disqualifications that may be applied on the territory of the Member State in which the offence was committed;
2) Provision of information on appeal procedures i.e. where and how to lodge an appeal, details of “in absentia procedures” - particularly whether these procedures are applicable or not, if yes, how they are applicable and especially whether there is an obligation to have a representative/counsel;
3) The presumed non-resident/foreign offender must be given sufficient time after the receipt of the information letter to appeal (time limit/rules to be specified);
4) Provision of evidence on the committed road traffic offence upon the request of the presumed offender;
5) Provision of IBAN account number and the name and address of the authority where the financial penalty can be settled.

The information on appeal procedures in Member States concerning the cases where road traffic rules are violated can be provided on a dedicated portal. Alternative option (or even main option) could be the e-Justice portal.

Policy measure 12: Ensure consistent and seamless language regime in the follow-up communication with presumed offender

This measure clarifies the use of languages in the communication with a presumed offender (before and after receipt of the information letter) until the stage of appeal before a court, when Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings applies. It has to be ensured that the language regime is clearly defined not only in the case where a national authority communicates with the presumed offender, but also in the case where the presumed offender communicates with a national authority. A reasonable standard of protection of the right to information and translation for the communication seems to be the application of Article 5(3) of the CBE Directive. Some Member States (e.g. Belgium) indicated problems with the interpretation of "official language". Good example of the definition can be found in Regulation (EU) 2020/1784on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. Many complaints of citizens suggest that it is necessary to clarify the consequences on the applied sanction (financial penalty and/or driving disqualification), if the language regime is not observed by Member State authorities (currently missing). Language of vehicle registration documents to be used as default, definition of the official language is important – EL/BG/RO border controls where documents have to be signed on the spot in the language of the Member State of the offence. Google translations should be forbidden.

Policy measure 13: Ensure adequate and non-discriminatory access of citizens and businesses to information regarding cross-border enforcement of road traffic rules

Increasing requests of Member States to extend the information provided on the "Going Abroad" website established according to Article 8 of the CBE Directive (approx. 250 000 visits and 1 million webpage entries per year), together with the need to share more information with Member States authorities (see Measure 11) raises the need to create a dedicated portal (G2B, G2C) replacing the Going Abroad website, which has already the structure of a database.

The portal should be compatible with the interface established under the Single Digital Gateway Regulation, thus strengthening citizens' rights to free movement and non-discriminatory access to information that is particularly important for road users to understand what their rights and obligations are, what road traffic rules apply to them in relation to their cross-border activities. Through the portal and specific IT platforms (e.g. using the functionality of eDelivery network solutions), Member States authorities could share or exchange information in a secure way with citizens and businesses, e.g. on findings of compliance checks/enforcement controls, and inform of the road traffic rules in place. Possible links could be established with other portals, especially the e-Justice portal. This has to be further analysed and if needed, specific rules can be laid down in a separate act.

There are various websites and apps in Member States (e.g. Spain) allowing the payment of fines, monitoring procedural stages and service of various documents. However, the access to these websites and apps requires registration via national ID card microchips of residents/nationals. Non-residents/foreigners cannot use these IT solutions, due to the problems with e-IDAS. The question remains open whether this can be perceived as discriminatory treatment (as it is surely not equal treatment) and what the measures should be to address this issue.

Policy measure 14: Ensure authenticity and fair service of final decisions

The Framework Decision is founded on the principle of mutual recognition and its aim seems to be to facilitate the enforcement of financial penalties in a Member State other than the State in which the penalties are imposed, without taking into consideration the conduct of the proceedings in accordance with the national law of the decision issuing Member State. The Framework Decision does not contain any provision explicitly referring to the issue of the service and the translation of a decision imposing a financial penalty that needs to be transmitted and executed in another Member State, or to how the decision has become final.

According to Germany, this sometimes hampers the cooperation between Member States under the Framework Decision especially when it has to be established whether, for example, the person (presumed offender) ever received the final decision or not, which is very important in terms of fundamental rights protection. Member States´ different rules on how the decision is served to the person, whether it is accompanied by a translation into a language that he or she understands, and how a written procedure takes place and the person is informed of it also led to the refusal of recognition in a limited number of cases. It appears that it would be useful to establish in the Lex Specialis, rules regarding the notification of the final decision to the offender.

Policy measure 15: Ensure that the information exchange under the CBE Directive complies with GDPR and LED

This measure specifies how the regime of personal data protection under GDPR and LED will be applied in the context of the cross-border enforcement of road traffic rules, resp. the CBE Directive.

By 6 May 2018, Member States had to transpose the Data Protection Law Enforcement Directive (Directive 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, hereinafter "LED"). LED also imposes certain obligations on the Commission: under Article 62(6), the Commission had to review, by May 2019, legal acts of the Union which regulate personal data processing by the competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties (so called "former third pillar data protection acquis"), in order to assess the need to align them with LED requirements. Following such a review, and where appropriate, the Commission is to make proposal(s) to amend those acts to ensure a consistent approach to the protection of personal data.

In preparation of this task, and following the explicit request of the European Parliament, the Commission launched the Pilot Project "Fundamental Rights Review of EU Data Collection Instruments and Programmes". The project was carried out by Fondazione Giacomo Brodolini (FGB), an Italian independent and non-profit research organisation. The project aimed to carry out a fundamental rights review of the existing EU legislation, instruments or agreements with third parties that involve the collection, retention, storage or transfer of personal data. In phase 3 of the Pilot Project, the consultants carried out a review of the former third pillar data protection acquis and assessed its compliance with the LED. They suggested concrete amendments to Article 7 of the CBE Directive and clear references to the GDPR and LED. The references to Prüm Decisions should be replaced by correct references to LED. This is not considered to be a problem, as the proposal for Prüm II is aligned with LED.

Consequently, the Commission adopted the Communication to the EP and the Council "Way forward on aligning the former third pillar acquis with data protection rules" (COM(2020) 262 final of 24.6.2020), which stipulates that:

Directive (EU) 2015/413 should be aligned with the LED on the following points:

- Introduce an explicit reference to the applicability of the LED where the road-traffic-related act is considered a criminal offence. Given that the main objective is a high level of protection of road users, the Directive is based on Article 91(1)(c) TFEU on measures to improve road safety, and currently refers to the provisions on data protection set out in Directive 95/46/EC as applicable. Nevertheless, the aim of the Directive is to facilitate sanctioning road-traffic-related offences, which in some Member States are qualified as "administrative", while in others as "criminal". In the first case, the General Data Protection Regulation replaces Directive 95/46/EC and the application of the correct legal framework for processing personal data is ensured. In the latter case, as mentioned in Recital 23 of the Directive, Member States have the possibility to apply specific data protection provisions set out in Decision 2008/615/JHA. The access to the data exchanged under this Decision, and their subsequent processing, needs to be aligned with the LED by providing clear reference to applicability of the LED in such cases …;
- The alignment should ensure that the obligation to send an information letter to the owner or holder of the vehicle, or the otherwise identified person suspected of committing the road-safety-related traffic offence, on initiating the investigation or prosecution and granting them specific information is without prejudice to the right to information under Article 13 of the LED."

Special attention is required for the retention/storage and processing of personal data of non-resident/foreign offenders. In some Member States, these data are stored in various "clouds" under non-transparent conditions (e.g. can be disclosed upon a request of private bodies). This calls for basic harmonisation/regulation, i.e. it appears that the retention/storage, review and processing of these data cannot be only subject to national law, as suggested by Fondazione Giacomo Brodolini (FGB). More detailed harmonisation/regulation content and use of "clouds" could be also done via a "delegated act" and/or the reference to Prüm II.

The retention/storage and review of the personal data in virtual driving licences (demerit/penalty points inflicted on non-residents) should also be harmonised in the upcoming revision of Directive 2006/126/EC on driving licences.

ANNEX 12 DISCARDED AND RETAINED MEASURES

The longlist of identified policy measures has been pre-screened to ensure that only feasible measures are retained for further analysis. This pre-screening exercise is based on Better Regulation Tool #16 (especially step III)[316].

The table below offers a justification for retained policy measures.

#	Title	Justification for retaining
1	**Extend the scope of the CBE Directive to other road-safety-related offences, clearly define them and specify their method of detection**	This measure seems adequate to further increase road safety. However, it must be noted that speeding currently is the main offence for which the CBE Directive is used.
2	**Establish mandatory minimum data content of vehicle registers necessary for the investigation of road traffic offences**	This would require a modification of Annex 1 of the CBE Directive, which is independent from CD 1999/37/EC. By ensuring that VRDs include vital data (such as date-of-birth and address of the owner/holder), problems in the investigation phase might be overcome.
3	**Keep the information on previous owner/holder of a vehicle for specific time and provide/disclose it upon request**	This measure seems adequate to prevent issues with untimely re-registration of vehicle in national vehicle databases, resulting in the wrong person receiving the information letter and penalty notice. Please note that this measure should be seen in relation with measure 10.
4	**Ensure access to data registers (other than vehicle registers) through one single system**	The problem analysis revealed that Member States sometimes require additional information which cannot be exchanged under the CBE Directive. By giving access to other databases, through one single system, the CBE Directive provides Member State with a means to do so.
5	**Keep the information on the user of a vehicle in case the vehicle is leased and provide/disclose it upon request**	This measure seems an effective way to further ensure that the driver that committed an offence would also receive the penalty notice. Especially for leasing and rental companies, this measure would seem to be helpful as it reduces the costs for 'passing on' traffic offences sent to them.
6	**Establish a tailored investigation mechanism for cross-border exchange of information of road traffic offences, aimed at better identification of the driver/offender**	This measure aims to provide Member States with an alternative for using the MLA Convention and EIO to request additional information for investigating offences. The problem analysis revealed that these are hardly used. The exchange process could be made more efficient (and therefore more appealing to use) if the exchange is based on police-to-police cooperation instead of justice-to-justice cooperation.

[316] Tool #16 provides key criteria for screening. These are mentioned below, and will explicitly be mentioned in the justification:
- Legal feasibility
- Technical feasibility
- Previous policy choices
- Coherence with other EU policy objectives
- Effectiveness and efficiency
- Proportionality
- Political feasibility
- Relevance

#	Title	Justification for retaining
7	**Establish mutual assistance in the investigation of road traffic offences by including the duty of the vehicle owner/holder to cooperate with authorities in identification of driver/actual offender**	This measure seems effective, especially in cases where Member States cannot use the CBE Directive (or do not recognise requests for the enforcement from abroad) as the information exchanged under the CBE Directive does not suffice in their investigation needs (e.g. Germany and Sweden adopt a strict driver liability regime).
8a	**Establish tailored follow-up mechanism for mutual recognition of financial penalties issued in relation to CBE road traffic offences**	This measure aims to develop a specifically designed follow-up recognition to cross-border enforcement of financial penalties, instead of using the Framework Decision 2005/214/JHA. This system has the potential to address all problem drivers under Problem 3. Although it is our understanding that this measure is legally feasible, the political feasibility is questionable.
8b	**Establish tailored follow-up mechanism for mutual recognition of financial penalties issued in relation to CBE road traffic offences, with limited grounds for refusal**	This measure aims to develop a specifically designed follow-up recognition to cross-border enforcement of financial penalties, instead of using the Framework Decision 2005/214/JHA. This system has the potential to address all problem drivers under Problem 3. Although it is our understanding that this measure is legally feasible, the political feasibility is questionable.
9	**Provide a dedicated list of entities in different Member States that are entitled to issue information letters to ensure authenticity of documents**	This measure adequately addresses the problem driver. It ensures that presumed offenders recognise letters from entitled organisations as official penalty notices. Especially, this measure therefore regulates the use of debt collection companies by some Member States.
10	**Establish harmonised time limit for sending the information letter + use of registered mail to ensure fair service of documents**	In order to ensure that personal data on a presumed offender is not stored too long (and to prevent personal data to be missing), a harmonised time limit is proposed. In this way, Member States have a harmonised approach for the storage and disclosure of personal information. Currently, sometimes historical data turns out to be unavailable (or personal data is stored longer than necessary, which according to GDPR is not allowed).
11	**Establish mandatory minimum requirements for the information to be shared with presumed offender**	This ensures that citizens' rights are respected throughout Europe. Moreover, it provides Member States with a harmonised set of information requirements to be provided in the information letter, which might lead to a better recognition/familiarity of the notice by presumed offenders.
12	**Ensure consistent and seamless language regime in the follow-up communication with presumed offender**	The problem analysis revealed that the initial information letter often is properly translated in the language of the presumed offender. However, if the offender chooses to appeal or requests additional information, follow-up correspondence with the presumed offender is usually not translated (although this is required).
13	**Ensure adequate and non-discriminatory access of citizens and businesses to information regarding**	The Going Abroad webpage, established under the CBE Directive, is one of the most frequently visited pages of the European Commission. However, although information is available on traffic rules, road

#	Title	Justification for retaining
	cross-border enforcement of road traffic rules	users should also be able to inform themselves on applicable sanction schemes and appeal procedures for committing offences. Since domestic road users might be more familiar with local sanction schemes, and have more possibilities to obtain information, the current situation might be perceived as a non-equal treatment of EU citizens.
14	**Ensure authenticity and fair service of final decisions**	This measure arranges that, when the CBE Directive would also cover the cross-border enforcement of financial penalties, the offender receives the final decisions. There is currently no EU law that arranges this.
15	**Ensure that the information exchange under the CBE Directive complies with GDPR and Law Enforcement Directive (LED)**	This measure adequately addresses the problem driver. The references to privacy- and law enforcement regulations need to be updated.

The table below offers a justification for **discarded** policy measures.

#	Title	Justification for discarding
16	**Further harmonise the format of Member States' license plates to improve road traffic offences detection (ANPR)**	The format of license plates falls outside the scope of the CBE Directive. Rather, it seems that other European legislation on this matter applicable[317] would be a better place to introduces the change. Moreover, the effectiveness of this option in addressing the problem drivers is doubtful, as there are no clear signs that the readability of license plates is a problem. Therefore, the measure is discarded because of legal considerations and a lack of effectiveness.
17	**Harmonise the time limits for the re-registration of vehicles**	This measure aims to solve outdated/erroneous VRDs on vehicle data. VRDs are regulated by Directive 1999/37/EC where it concerns vehicle data, and by the CBE Directive where it concerns enforcement tools. Since this is more of an issue related to vehicle data, it is advised to include this measure in a possible revision of this Directive. Especially, it seems that art. 5(2) of Directive 1999/37/EC should be revised.
18	**Include further information in national vehicle registers e.g. the picture of the vehicle owner/holder, vehicle insurance information, the information on the owners' all other vehicles**	There are serious concerns regarding political and legal feasibility, since this might give rise to concerns regarding the proportionality of this measure, in particular regarding privacy and data protection issues. Moreover, it is expected that the costs involved would be very high, and that the benefits obtained (in terms of more information available to investigate offences) are rather small.
19	**Regularly update the CBE Directive and other relevant legislation to keep track with the changing vehicle**	This measure is discarded, as it is not certain what legal grounds would exist for possible revisions. Also, since this measure is quite intervening, there are concerns regarding the proportionality of this

317 such as Council Regulation (EC) No 2411/98.

#	Title	Justification for discarding
	technology and increasing availability of in-car data.	measure. For example, sharing in-car data with police authorities raises concerns about privacy, data protection issues.
20	**Apply "Once only principle" for sharing information between administrations (local and central government registers) at national level**	This measure is discarded as it goes far beyond the scope of a revision of the CBE Directive, as it states that national governments should organise their system in such a way that data in one register is automatically updated if data in another register is updated/changed. Although it might improve the functioning of the CBE Directive (in terms of IT issues), the implications are assessed to be too large.
21	**Ensure that all offences under the CBE Directive fall under criminal law to establish uniform follow-up**	This measure is discarded as there is a subsidiarity issue (proportionality). The classification of offences (e.g. under criminal or administrative law) is up to Member States as laid down in the Treaties.
22	**Extending the scope to non-safety related traffic offences**	An elaborate justification is provided in the legal analysis (in particular Section 2.4.3).
23	**Mandate that all outgoing request need to be done through one single system**	This measure is discarded as it reaches far beyond the scope of the CBE revision, as it states that also requests all other offences (e.g. not included in the scope of the revision) should be exchanged via one system (proportionality issue).
24	**Incentivise Member States to use of the procedures under Framework Decision 2005/214/JHA by sharing costs and benefits**	This measure aims to stimulate a fair accrual of monies (Art. 13 of the FD). However, according to Art. 13, Member States already have the ability to agree on how the revenues stemming from financial payments should be divided between issuing and executing State. Hence, the added value of this measure is questionable. Moreover, Measure 8 is expected to be more effective in achieving the use of procedures to enforce financial penalties for road-traffic offences under the CBE Directive abroad due to problems observed under Problem 3.
25	**Extend the scope of the CBE Directive to violations of road-safety-related Urban Vehicle Access Restrictions (UVARs)**	This measure is discarded due to the inability to specify which UVARs are road-safety-related and which ones are not. Thereby, there is a risk that the Directive might be used for the enforcement of offences with a weak link to road safety, which could lead to issues with the legal scope of the CBE Directive. Thereby, the measure is discarded due to a perceived lack of legal feasibility.
26	**Harmonise methods of use and technical specifications for detection equipment**	This measure could reduce issues that result from different legal liability regimes that are applied for (automatically detected) road traffic offences in Member States, as it could ensure that photos are taken from the front and back of the vehicle. This would increase the number of cases in which the driver is visible. However, calculations showed that this measure is very costly, as many Member State would have to invest in new checking equipment with only small effects on the number of successfully enforced cross-border traffic offences. Thereby, the measure is discarded due to a perceived low cost-effectiveness (and possibly also subsidiarity).

#	Title	Justification for discarding
27	**Increase resources for road safety measures providing recommendations on how revenues from cross-border fines should be used**	Providing a recommendation would likely yield no significant impact. Requiring earmarking (instead of a recommendation) would go against the subsidiarity principle. Furthermore, even if earmarking would be proposed, one might wonder why only revenues from cross-border fines should be earmarked. Thereby, this measure is discarded due to a lack of expected impacts.
28	**Establish a single legal liability regime for offences committed in a foreign-registered vehicle**	This measure is essentially a variant of PM7 as it aims to tackle the issue with the limited effectiveness of the CBE Directive for Member States that adopt a strict driver liability regime. Under PM7, this issue is tackled by requiring the owner/holder of the vehicle to identify the driver of the vehicle at the time the offence was committed. In PM28, a uniform owner/holder liability regime is foreseen, in which the owner/holder of the vehicle (the person to which the vehicle is registered), is automatically held accountable for the offence. This measure is discarded due to legal feasibility and subsidiarity. A ‘soft’ variant of this measure is retained through PM7.

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