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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Land Transport
N° Cion doc.:	ST 6792/23 + ADD 1
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/413 facilitating cross-border exchange of information on road-safety-related traffic offences - Comments from Member States

Delegations will find, attached, comments from **Germany** on the above-mentioned proposal.

Federal Ministry for Digital and Transport, Division StV 21

29 March 2023

German comments
on
the Commission's Proposal for a DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2015/413
facilitating cross-border exchange of information on road-safety-related traffic
offences (2023/0052 (COD))

1. General statement

- Germany thanks the Commission for the proposal to improve the Cross Border Enforcement Directive (CBE Directive).
- To negotiate an enforcement mechanism that is as viable and effective as possible, however, Germany asks that the Member States (MS) be given sufficient time to examine the proposal at national level together with all national stakeholders concerned.
- Germany maintains its general scrutiny reservation and can only provide preliminary comments on individual points.

2. Specific amendment proposals

Article 3

Point (a): According to the Commission's statement in the Council Working Party on Land Transport on 15 March 2023, it considers vehicle combinations to be covered. If so, the definition of 'vehicle' should be amended to explicitly include vehicle combinations. This is because the referenced Directive 96/53/EC also distinguishes between vehicle and vehicle combination in its definitions. Directive 96/53/EC stipulates maximum authorized weights for vehicle combinations that are lower than the sum of the maximum authorized weights of the individual vehicles. Wording suggestion:

→ "(a) 'vehicle' means any power-driven vehicle **or vehicle combination**, including motorcycles, which is normally used for carrying persons or goods by road;"

Point (1): Germany welcomes the statement made by the Commission on 15 March 2023 that there could also be different contact points for the exchange of vehicle holder information on the one hand and for the mutual assistance in identifying the liable person on the other hand. Depending on the existing structures in the MS, this may be

more effective and also more economically efficient. This should be reflected in the wording:

➔ “‘national contact point’ means a competent authority designated for **one of** the purposes of this Directive”

Point (q): Germany welcomes the fact that the failure to pay parking fees is explicitly excluded. In addition, parking offences only against the parking regulations which do not directly impair road safety should also be excluded, such as unauthorized parking on charging bays for electric vehicles.

In addition, the definition should not only cover parking but also stopping (stopping for 3 minutes or more), as stopping may already constitute a hazard.

Point (u): Exceeding individual axle weights even when complying with the maximum authorized weight can also constitute a road safety hazard and should be included.

Wording suggestion:

➔ “(u) ‘use of an overloaded vehicle’ means using a vehicle that does not comply with the requirements set for its maximum authorized weights **or axle weights**, as laid down in the national laws, regulations or administrative provisions transposing Council Directive 96/53/EC*, or in the law of the Member State of the offence for vehicles or operations for which there are no such requirements set in that Directive;”

Point (x): Here, according to the understanding of Germany, the person who personally committed the offence must be indicated, i.e. the offender/driver. In contrast, the wording in the proposal could also be construed to mean another person if, in accordance with the respective national law, that person is liable in addition to the offender. In accordance with the applicable purpose limitation in the third subparagraph of Article 4(3) of the current Directive (EU) 2015/413, the point should be worded in a more precise way:

➔ “‘liable person’ means the person who **committed in person** a road-safety-related traffic offence listed in Article 2(1) **and is liable for it**, in accordance with the national law of the Member State of the offence.”

Point (z): “... place of habitual residence...” Is the wording deliberately chosen different from Directive 2006/126/EC? Germany would prefer a consistent wording with regard to Directive 2006/126/EC. Its common wording is “**normal** residence”.

Article 3a

Para 1: Germany welcomes the Commission's statement that there could be different contact points for the exchange of vehicle holder information on the one hand and for the mutual assistance in identifying the liable person on the other hand. This should be reflected in the wording:

→ "1. For the purposes of the exchange of information under this Directive, each Member State shall designate **one or more** national contact points. ..."

Article 4

Para 1: Germany requests that the mandatory limitation of the purposes for the processing of the data obtained be kept and that the sentence contained in the third subparagraph of Article 4(3) of the current Directive (EU) 2015/413 be retained for this purpose:

→ "**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(1) of this Directive.**"

Para 3: Germany understands "after any modification of the ownership OR use of the vehicle" to mean that there are two alternatives with regard to the beginning of the period. Germany keeps data on a vehicle available in the central register for up to 7 years after the vehicle's de-registration and therefore (only) complies with the second alternative. The first alternative as from the change of ownership could not be considered, as in Germany changes of ownership are not recorded if they do not also constitute changes of holder. → The Commission is asked to confirm this alternative interpretation.

Para 4 subpara 1: A reference date should be laid down, namely the date the offence was committed. Wording suggestion:

→ "Member States shall return the message 'Information not disclosed' instead of the requested data elements, in the following cases, **if on the reference date of the offence**: [...]"

Para 4 subpara 1(a): Other EUCARIS procedures offer numerous indications (so-called 'signals') that explain the information. Point (a) lists "Scrapped" separately, whereas the "Exported" and "De-registered" signals, which are also present, would fall under point (c), "Outdated". To clarify, it should be possible to indicate the various signals in a differentiated manner. Wording suggestion:

→ "(a) the vehicle was scrapped, **de-registered, or exported**,"

Para 4 subpara 1(d) (new): In the current wording of the proposal, there is no reference to cases where transmission is to be excluded (e.g. witness protection programmes, diplomatic immunity, especially protected vehicles etc.). Recital (13), however, provides for “safeguards [...] to avoid revealing the identity of protected persons”. Cf. Article 4a(7)(e). Wording suggestion:

→ “(d) the requested information would reveal the identity of a person protected in accordance with the national law of the Member State of registration or the Member State of residence.”

Para 4 Subpara 2:

Wording suggestion for better differentiation:

→ “Member States shall return the **messages ‘Stolen Vehicle’ or ‘Stolen Registration Plate’ [...]”**

Article 4a

Para 3 subpara 2(a): The wording is imprecise. The national authorities should compare the photographic evidence with the person about whom information has been provided in accordance with Article 4 as owner, holder or end user. It is not intended to confirm the status of owner, etc. These are solely measures on the way to determining the particulars of the offender/driver in the photo. This ultimate purpose should be expressed more clearly.

→ “(a) to confirm ... that the person visually recorded ... is **registered as owner, holder or end user of the vehicle, or **is** any person presumed to be liable ...”**

Para 6, 7(f): The details of this validation procedure are not entirely clear: Should the Member State of the offence confirm the request again electronically (this is probably the intention in para 7(f), para 11 subpara 2(a))? Or is the requested Member State of residence to assess the proportionality of the requested investigative activities on a case by case basis (this is probably the intention in para 6)? The wording should be made more precise to ensure that investigative assistance is provided in an effective way. A list of very serious offences could also be specified, where, given the severity of the offences, a proportionality assessment is not required in individual cases and where investigative assistance must always be provided.

Germany asks if the following understanding is correct: State A where the offence was committed successfully obtains holder information in state B regarding the vehicle. The information reveals that the holder has his/her residence in state C. If state A then requests assistance in identifying the holder from state B, state B could refuse this request, since the holder has no residence in this state but in state C. Would the request

in this case be refused on the grounds of para 4 subpara 1 (“not possible”) or para 7(f) (“not proportional”)?

Para 7(c): More precise wording suggestion:

➔ “(c) providing the requested information would be **contrary to or** would harm **the essential interests of the national security of the requested Member State**, jeopardise the source of ...“

Para 7(g): Wording suggestion for a further reason to refuse:

➔ “(g) **there are objective reasons to believe that providing the requested information would jeopardise**
a) an ongoing investigation of a criminal offence or
b) the safety of an individual“.

Article 4c sentence 2 should be worded as follows in line with the more clearly worded explanation about Article 4c. Moreover, it should be possible to consider national rules and regulations in line with recital (15):

➔ “They shall do so only insofar as such exchange or access is **explicitly allowed under other** Union **and national** legislation.”

Article 5

Para 1 subpara 3: According to the answer the Commission gave on 15 March 2023, “other purposes” means information on the further enforcement procedure.

➔ Germany asks that “other purposes” be replaced by a more specific wording in line with the purposes of the Directive.

Article 5a

Para 3: Should the delivery assistance also be provided for analogue letters? If so, does the Member State of the offence make the analogue letter available via the national contact point and is it necessary to establish an analogue path for this?

Paras 4, 6: Should “electronically structured requests” or “electronically structured certificates” be sent via EUCARIS? If so, this has to be laid down. Otherwise, if another electronic transmission path is chosen, it must offer the same level of trust in accordance with the EIDAS Regulation as the transmission via EUCARIS.

Article 6:

Para 1: Contrary to recital (25), the termination of the two-year reporting period is unclear. Only one specific date for the last two-year report should be indicated.

Para 2: The new four-year reporting obligation should follow on seamlessly from the last report.

➔ “2. By [four years after the date **for the report as referred to in the first paragraph**]...”,

Para 3: It should be more clearly stated whether the new report should include aggregate information over four years or information on each individual year within the four-year period.

Article 7

Germany would favor the **deletion of Article 7** in its entirety.

- The reference to Article 10 Directive (EU) 2022/2555 (NIS-2-Directive) appears to be incorrect, the reporting obligations of entities covered by the scope of NIS-2 are provided in Article 23 NIS-2.
- We reject the substance of Article 7. It is questionable whether the competent authority under NIS-2 will be able to identify whether the incident also relates to cloud services when a report is made in accordance with Article 23 NIS-2. In our view, this information is not required by NIS-2 to be supplied by the reporting entity. In this respect, a forwarding obligation as envisaged in Article 7 could not be put into practice.
- The blanket forwarding obligation as foreseen in Article 7 also appears disproportionate in view of the motivation given in recital (30). That recital states that personal data of non-residents presumed to be liable or liable for a road-safety-related traffic offence may be stored in the cloud. Whereas a blanket report under the proposed obligation wouldn't bear the information if such personal data are affected by the particular incident.

Article 8

- This new CBE portal is not differentiated clearly enough from the EUCARIS platform. Duplicate structures must be avoided.
- Vehicle holder information must only be exchanged via EUCARIS. Wording Suggestion:
 - ➔ Therefore, **para 1(b) sentence 2** (“This may include exchanging vehicle registration data and the data ...”) must be deleted.
- Regarding the investigative assistance procedure in accordance with Article 4a and 5a, it has to be clarified separately whether the CBE portal should be used for this purpose and whether this portal can also be established on the basis of EUCARIS.
- For data protection reasons, there must be no double storage of personal data in no way.

Article 10a

Para 2 sentence 2: The second subparagraph of Article 3(5) of Regulation (EU) No.

182/2011 lays down the principle that a single committee member can request a procedure be terminated without result. Here, in contrast, this right is only to be granted from a simple majority of the committee members. There are no obvious reasons for this deviation. On the contrary, it is in particular in determining procedures and technical specifications that the particularities in the MS must be sufficiently taken into account. The principle of Article 3(5) of Regulation (EU) No. 182/2011 should be kept.
Wording suggestion:

➔ **Deletion of sentence 2 requested.**

Annex – Part I

“Registration date”

Germany sees no need to exchange this data element. The decisive factor for Germany is that the information contains the holder at the time the offence was committed.

➔ **Deletion requested.**

“Previous inquiries”

Which ‘inquiries’ are meant here? Is there a difference to the wording “request” which is solely used in this Directive so far? Do the inquiries only include CBE inquiries or also other inquiries (Prüm etc.)? Do they also include inquiries from other MS/bodies on other offences/matters? This information cannot be kept in the register, as it is only available as log data. Log data cannot be processed within the scope of the CBE Directive and their processing would raise data protection concerns.

➔ **The data element must be specified further.**

Annex – Part II

Key: Under the table, the key/definition “M” must be added in accordance with Article 4 para 1(b) and para 2: “Data relating to owners, holders or end users, where available”. Germany does not keep a register on owners or end users of vehicles. Unless these are registered as holders, Germany cannot provide data on them.

➔ “M = Mandatory communication of the data element when available in a Member State's national register “

- We reserve the right to make further comments on all points. -