



Council of the European Union
General Secretariat

Brussels, 28 March 2023

Interinstitutional files:
2023/0052 (COD)

WK 4268/2023 INIT

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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 **Austria** on the above-mentioned proposal.

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2015/413 facilitating crossborder exchange of information on road-safety-related traffic offences

AT Initial observations and suggestions on the proposed CBE Directive

1. These are only initial observations and suggestions on the proposed CBE Directive.
Austria expressly reserves the right to further question and comment on all articles as well as on the proposed Directive as a whole.
Some of the Austrian text proposals could not be further elaborated due to time constraints.
2. Based on the practical experience of the Salzburg Forum CBE cooperation Austria suggest to additionally include the following measures of mutual assistance:
 - a. Address Establishment
 - b. Subsidiary possibility to obtain data on the holder or owner
 - c. Cross-border execution of final and enforceable CBE decisions under the FWD 2005/214/JHA
3. Austria wants to mention some important points that should be taken into account:
 - a. There is no benefit from an obligation to use registered delivery.
 - b. A request for mutual assistance always leads to a domestic procedure in the requested Member State with a resident.
In some Articles there seems to be a misunderstanding about this fact and it is tried to introduce regulations that already exist nationally.
 - c. To prevent blockades from the side of the requested Member States inside the CBE cooperation and as it would not be proportionate we suggest to not allow:
 - i. to do a (judicial) validation on the side of the requested Member State
 - ii. to demand a prior (judicial) validation on the side of the requesting Member State
 - d. The principle of subsidiarity should be respected, especially when it comes to introducing new procedures and deadlines that interfere with national law.
 - e. At a roadside check, it is not possible for the Police Officer to hand over a translated information letter in the driver's language on the spot, describing the committed traffic offence.
4. Austria would have an important question to be assessed by the Legal Services of the Council and the European Commission:
 - a. In our understanding there is no legal possibility to establish a "similar institution" below the level of a tribunal in the sense of Article 6 ECHR.
Generally speaking we think that mutual assistance for CBE cases can only be requested, if tribunals are provided by the Member State of the offence (at least in the related appeal procedures).
5. General comments on the legal drafting:
 - a. The order of the Articles and paragraphs should be in a logical and chronological order and therefore should be reconsidered.
 - b. It deems necessary to also define the responses for any introduced request.
Not only to clarify the requirements, but also in order to allow a definition in the Implementing Acts.
 - c. It should be considered to:
 - i. move certain paragraphs into other Articles.
 - ii. address each measure in a separate Article.
 - iii. address references to the national law in a general Article.
 - iv. also define responses
 - d. It should be assessed:
 - i. In which paragraphs the competent authority should be mentioned instead of the Member State or National Contact Point.

- ii. If a definition for the combination of Member State of registration and Member State of residence could be introduced.
- iii. If the split between holders, owners and end-users of vehicles and their respective “previous” form in the Annex is really necessary.

In the following comments and questions are seen as marks in the proposal document.

Article 1

Directive (EU) 2015/413 is amended as follows:

(1) Article 2 is amended as follows:

- (a) in the first paragraph, the following points are added:
- ‘(i) not keeping sufficient distance from the vehicle in front;
 - (j) dangerous overtaking;
 - (k) dangerous parking;
 - (l) crossing one or more solid white lines;
 - (m) wrong-way driving;
 - (n) not respecting the rules on the creation and use of emergency corridors;
 - (p) use of an overloaded vehicle.’;
- (b) the following paragraph is added:
- ‘This Directive shall not affect the rights and obligations stemming from the following provisions of Union legal acts:
- (a) Council Framework Decision 2005/214/JHA;
 - (b) Directive 2014/41/EU of the European Parliament and of the Council*;
 - (c) the procedures for service of documents laid down in Article 5 of the Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union**;
 - (d) the provisions concerning the rights of suspects and accused persons laid down in Directives 2010/64/EU***, 2012/13/EU****, 2013/48/EU*****, (EU) 2016/343*****, (EU) 2016/800***** and (EU) 2016/1919 of the European Parliament and of the Council*****.

* 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).

** OJ C 197, 12.7.2000, p. 3.

*** Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

**** Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

**** Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

***** Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

***** Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

***** Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).’;

(2) Article 3 is amended as follows:

(a) point (j) is replaced by the following:

‘(j) ‘use of a forbidden lane’ means illegally using part of an already existing permanent or temporary road section, such as a public transport lane or a temporarily closed lane for reasons of congestion or road works, as defined in the law of the Member State of the offence’;

(b) point (l) is replaced by the following:

‘(l) ‘national contact point’ means a competent authority designated for the purposes of this Directive’;

(c) the following points (o) to (z) are added:

‘(o) ‘not keeping sufficient distance from the vehicle in front’ means not maintaining the distance necessary to avoid collision with the vehicle in front of the vehicle driven by the driver, if the preceding vehicle were to suddenly slow down or stop, as defined in the law of the Member State of the offence;

(p) ‘dangerous overtaking’ means overtaking another vehicle or another road user in a way that infringes the applicable rules on dangerous overtaking in the Member State of the offence;

(q) ‘dangerous parking’ means parking the vehicle in a way that infringes the applicable rules on dangerous parking in the Member State of the offence.

Failure to pay parking fees and other similar offences shall not be considered dangerous parking;

- (r) 'crossing one or more solid white lines' means changing lanes with the vehicle through unlawfully crossing at least one solid white line, as defined in the law of the Member State of the offence;
- (s) 'wrong-way driving' means driving a vehicle against the designated direction of traffic, as defined in the law of the Member State of the offence;
- (t) 'not respecting the rules on the creation and use of emergency corridors' means non-compliance with the rules concerning the creation and use for emergency purposes only of a temporary lane created between vehicles, which has to be formed by the drivers in order to enable emergency service vehicles, such as police vehicles, rescue vehicles or fire trucks, to pass through and arrive to the site of emergency, as defined in the law of the Member State of the offence;
- (u) 'use of an overloaded vehicle' means using a vehicle that does not comply with the requirements set for its maximum authorized 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;
- (v) 'information letter' means the first communication received by the persons referred to in Article 5(1), second subparagraph, whether it is an administrative or judicial decision or any other document sent by the Member State of the offence or any entity empowered to do so under its law, issued until the stage of appeal before a competent court and which contains at least the information referred to in Article 5(2);
- (w) 'follow-up documents' mean administrative or judicial decisions or any other documents that the Member State of the offence, or any entity empowered to do so under its law, issues after the information letter in connection to that letter or to the road-safety-related traffic offence in question, until the stage of appeal before a competent court;
- (x) 'liable person' means the person who is liable for a road-safety-related traffic offence listed in Article 2(1), in accordance with the national law of the Member State of the offence;
- (y) 'end user' means any natural person who is not the owner or the holder of the vehicle with which one of the offences listed in Article 2(1) was committed, but who was lawfully using that vehicle, in particular under a long-term lease or rental contract or as part of a vehicle fleet available to employees;
- (z) 'Member State of residence' means any Member State that can be assumed to a reasonable degree of certainty to be the place of habitual residence of the persons referred to in Article 5(1), second subparagraph.

* 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, p. 59).';

- (3) the following Article 3a is inserted:

'Article 3a

National contact points

1. For the purposes of the exchange of information under this Directive, each Member State shall designate a national contact point for each measure defined in para 1a. The powers of the national contact points shall be governed by the applicable law of the Member State concerned.

1a. This Directive defines the following measures:

- VRD data-exchange as set out in Article 4
- Mutual assistance as set out in Article 4a para 3 lit a
- Mutual assistance as set out in Article 4a para 3 lit b
- Mutual assistance as set out in Article 4a para 3 lit c
- Mutual assistance as set out in Article 4a para 3 lit d
- Mutual assistance as set out in Article 5a para 3
- Mutual assistance as set out in Article 5c

Commented [REDACTED] We suggest to introduce "Address Establishment" as lit c

Commented [REDACTED] We suggest to introduce "Subsidiary Holder Investigation" as lit d

Commented [REDACTED] We suggest to introduce the FWD 2005/214/JHA in Article 5c

1b. One national contact point may be in charge of one or more measures.

1c. The competent national authorities of the Member States shall communicate via their national contact points.

1d. The national contact point shall forward any incoming request and response to the competent national authority.

1e. The competent national authorities shall send any outgoing request and response via their national contact point.

2. Member States shall ensure that their respective competent authorities ~~national contact points cooperate with the authorities involved in the measures, as set out in para 1a, cooperate with each other investigation of the road safety related traffic offences listed in Article 2(1), in particular in order to ensure that all necessary information is shared in due time, and that the time limits laid down in Article 4a(5) and Article 5a(2) are complied with.~~

- (4) Article 4 is replaced by the following:

'Article 4

Procedures for the exchange of VRD information between Member States

1. For the investigation of the road-safety-related traffic offences listed in Article 2(1), Member States shall grant the competent authorities of other Member States ~~national contact points~~ access via their national contact point to the following national vehicle registration data, with the power to conduct automated searches thereon:

- (a) data relating to vehicles;
- (b) data relating to owners, holders and/or end users of the vehicles ~~where available~~.
~~The data elements referred to in the first subparagraph, points (a) and (b), which are necessary to conduct a search shall be those set out in the Annex.~~

When conducting a search ~~in the form of an outgoing request, the national contact point~~

the competent authority of the Member State of the offence shall use all relevant data about the offence and a full registration number or a full vehicle identification number.

The result of such a search shall contain the data elements referred to in the first paragraph at the time of the offence.

In cases where it is necessary to verify if an offence was committed, the result of such a search shall contain only data relating to the vehicles.

The data elements for the search and the different search results shall be those set out in the Annex.

2. Member States shall ensure that the data elements listed in Section 2, ~~Parts I, II and IV~~ of the Annex are available and up-to-date ~~in their national vehicle registers, where possible with other national registers.~~

This obligation only applies to data elements already available in a Member State's national vehicle register.

3. Member States shall retain a history of the data elements referred to in Section 2, ~~Part IV and, when available, Section 2, Part V~~ of the Annex, in the national vehicle registers for at least ~~6 months~~ 1 year after any modification of the holdership or ownership or use of the vehicle in question.

4. Member States shall return appropriate error messages or signals ~~the message 'Information not disclosed'~~ instead of the requested data elements at least in the following cases:-

(a) if the vehicle was is marked as scrapped in any national register at the time of the offence;

(b) if the vehicle's full registration number is unknown or at least not registered in any national register at the time of the offence not provided in the search conducted in the form of an outgoing request under paragraph 1;

(c) if the vehicle's full registration number, provided in the search conducted in the form of an outgoing request under paragraph 1, is outdated or syntactically incorrect;

(d) if the vehicle is marked as stolen in any national register at the time of the offence;

(e) if the registration plate is marked as stolen in any national register at the time of the offence;

Where possible the vehicle related data shall be returned so that the requesting authorities can verify if this was the vehicle they were searching for.

The Commission may define further details in the Implementing Act.

~~Member States shall return the message 'Stolen vehicle or registration plate' instead of the requested data elements where the vehicle or the vehicle registration plate are recorded as stolen in the national vehicle registers.~~

Commented [REDACTED] We think that it is essential to explicitly mention, that VRD exchange always has to take the date and time of the offence into account and provide the corresponding ("historic") information. This also removes the need to differentiate between previous and non-previous data elements in the Annex and all references to it.

Commented [REDACTED] Sometimes you have to check the maximum allowed weight of the involved vehicle to determine whether an offence was committed or not. This additionally follows the GDPR rule of data minimization as no personal data would have to be shared.

Commented [REDACTED] Such as population registers, commercial registers, etc.

Commented [REDACTED] This clarifies that there is no obligation to include fields that are not foreseen in the national legislation into the VRD database.

Commented [REDACTED] This is rather short. We think that most MS have retention periods that are longer, because of more serious infringements (criminal, tax, etc.) in national legislation already.

Commented [REDACTED] Due to time constraints we were not able to take over the already existing list of EUCARIS response codes.

Commented [REDACTED] It should be checked if there is a need to specify it in so much detail in the Directive.

5. For automated searching of vehicle registration data, Member States shall use the specifically designed software application of the European Vehicle and Driving Licence Information System (Eucaris), and amended versions of this software.

Member States shall ensure that the automated searching of vehicle registration data is secure, cost-efficient, expeditious and reliable, and carried out by interoperable means within a decentralized structure.

The software shall provide for both online real-time exchange mode and batch exchange mode, the latter allowing for the exchange of multiple requests or responses within one message. The information exchanged via Eucaris shall be transmitted in encrypted form.

6. The Commission shall adopt implementing acts to establish the procedures and technical specifications, including cybersecurity measures for the automated searches conducted under this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10a(2).

7. Until the implementing acts referred to in paragraph 6 of this Article have become applicable, the searches referred to in paragraph 1 of this Article shall be conducted in compliance with the procedures described in Chapter 3, points 2 and 3, of the Annex to Decision 2008/616/JHA*, applied jointly with the Annex to this Directive.

8. Each Member State shall bear its own costs arising from the administration, use and maintenance of the software application and its amended versions referred to in paragraph 5.

* 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 (OJ L 210, 6.8.2008, p. 12).²;

(5) the following Articles 4a, 4b and 4c are inserted:

'Article 4a

Mutual assistance in identifying the liable person

1. Member States shall provide mutual assistance to each other where, based on the results of the automated search conducted in accordance with Article 4(1), the Member State of the offence cannot identify the liable person to the necessary degree of certainty required by its national legislation to initiate or conduct the follow-up proceedings referred to in Article 5(1).

1a. Before requesting mutual assistance the competent authorities shall try to deliver the information letter as foreseen in Article 5a or use other registers as foreseen in Article 4c in accordance with the national law of the Member State of offence.

2. The competent authority of the Member State of the offence shall decide in accordance with the national law whether to request mutual assistance. ~~to obtain additional information referred to in paragraph 2, second subparagraph. The request may be issued only by an administrative or judicial authority, or by the police authority competent in the case concerned, in accordance with the national law of that Member State.~~

3. As set out in Article 3a, ~~When the competent authority of the Member State of the offence has decided to~~shall transmit the request for mutual assistance in accordance with paragraph 1, its national contact point shall send in an electronically structured form and signed request to the national contact point of ~~to the Member State of registration or Member State of residence. The data shall be transmitted by using state-~~

Commented [REDACTED] We would suggest to merge para 2 and 3.

Commented [REDACTED] Please do not mention "signed". Such a wording already resulted in problems in mutual assistance with some Member States, that request a physical signature. This system works on mutual trust and therefore such a requirement would not be proportionate.

Commented [REDACTED] Copied from Article 5a para 12.

of-the-art encryption technology.

The Member State of registration or Member State of residence may be requested:

- (a) to confirm, on the basis of a photo ~~information~~ already in its possession, that it can be assumed to a reasonable degree of certainty that the person on the photo and the personal details of the presumed liable person provided by visually recorded

Commented [REDACTED] We would suggest to make this a separate paragraph.

~~by the detecting equipment of competent authority of the Member State of the offence is the owner, holder or end user of the vehicle, or any person presumed to be liable for one of the road safety related traffic offences listed in Article 2(1) are the same person;~~

- (b) ~~to ask the owner, holder or end user of the vehicle, or any person presumed to be liable person for one of the road safety related traffic offences listed in Article 2(1) to provide information on the identity and address of the liable person, in accordance with its national law.~~
- (c) ~~to establish the current address of the owner, holder or end user of the vehicle, or any presumed liable person, in accordance with its national law.~~
- (d) ~~to provide the identity and address of the owner, holder or end user of the vehicle in cases where the data exchange as set out in Article 4 led to a questionable result.~~

4. ~~Where the competent authority of the Member State of registration or the Member State of residence receives a request referred to in paragraph 3, it shall gather the requested information, unless it decides to invoke one of the grounds for refusal listed in paragraph 7 or it is not possible to gather the requested information. The Member State of registration or Member State of residence competent authority shall transmit the requested information electronically without undue delay via its national contact point to the national contact point of the Member State of the offence, as set out in Article 3a.~~

~~In the case referred to in paragraph 3, second subparagraph, point (b), the Member State of registration or Member State of residence shall request the information in accordance with the national procedures applicable as if the investigative measure concerned had been ordered by its own authorities, unless it decides to invoke one of the grounds for refusal listed in paragraph 7.~~

~~The Member State of registration and the Member State of residence shall comply with the formalities and procedures expressly requested by the Member State of the offence, when gathering the additional information, to the extent that they are not incompatible with their national legislation.~~

5. Member States shall ensure that they provide the requested information without any undue delay from the receipt of the request.

~~Where it is not possible to gather the information without undue delay from the receipt of the request, the national contact points of the Member State of registration or the Member State of residence shall transmit that information to the Member State of the offence as soon as possible, with an adequate explanation of the reasons for the delay.~~

~~Where it has become clear that the Member State of registration or the Member State of residence will not be able to gather all or a part of the requested information, it shall immediately notify a detailed explanation of the reasons thereof to the Member State of the offence about the reason.~~

6. ~~Only if required by the national law, the requested requesting Member States may provide for a prior administrative or judicial validation procedures as foreseen in Directive 2014/41/EU in order to ensure that the requested information is necessary and proportionate for the purpose of the identification of the liable person, in particular taking into account the rights of presumed liable persons.~~

~~The requested Member State shall not ask for such a judicial validation as this would be not proportionate.~~

Commented XXXXXX Wording: Split positive and negative case in separate paragraphs and put them in the correct order.

Commented XXXXXX Mutual assistance leads to a national procedure and therefore this paragraph could be removed.

Commented XXXXXX What concrete formalities and procedures would the EC intend to cover? Examples? Such requirements are not in line with usual standards of mutual assistance and all this would be hard to cover in electronically structured forms. We would suggest to remove this paragraph.

Commented XXXXXX Wording: Repeated from para 4

Commented XXXXXX We would suggest to introduce the possibility to send reminders (Member State of the Offence) instead.

Commented XXXXXX The structured forms will have a list of predefined reasons. Therefore there is no need for detailed explanations.

Commented XXXXXX To prevent blockades from the side of the requested Member States inside the CBE cooperation and as it would not be proportionate we suggest to not allow: 1) to do a (judicial) validation on the side of the requested Member State 2) to demand a prior (judicial) validation on the side of the requesting Member State

7. Member States may refuse to provide the additional information requested in accordance with paragraph 3. They shall do so only in the following cases:

- (a) there is an immunity or a privilege under the law of the Member State of the registration or the Member State of residence, which makes it impossible to provide the information;
- (b) providing the requested information would be contrary to the principle of *ne bis in idem*;

- (c) providing the requested information would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;
- (d) there are substantial grounds to believe that providing the requested information would be incompatible with the Member State of registration's or with the Member State of residence's obligations in accordance with Article 6 of the Treaty on European Union and the Charter of Fundamental Rights of the European Union;
- (e) providing 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;

~~(f) where the Member State of registration or the Member State of residence provides for a prior administrative or judicial validation procedure referred to in paragraph 6, but the request was not validated by the Member State of the offence before transmitting it and, based on the circumstances of the particular case, the requested information is not considered necessary and proportionate for the purpose of the identification of the liable person.~~

Member States shall decide as soon as possible, ~~but at the latest within 15 days after receiving the request~~, whether they invoke a ground for refusal. Member States which decide to apply a ground for refusal shall inform the Member State of the offence thereof via its national contact point, without any undue delay.

~~8. Member States shall ensure that legal remedies equivalent to those available in a similar domestic case, are applicable to the case referred to in paragraph 3, second subparagraph, point (b).~~

9. The ~~national contact points~~ competent authorities of the Member State of the offence, of the Member State of registration and of the Member State of residence may consult each other, by any appropriate means, with a view to facilitating the efficient application of this Article.

~~10. The request referred to in paragraph 2 shall be communicated in the language or one of the languages of the Member State of registration or Member State of residence notified to the Commission, in accordance with Article 5a(9).~~

~~The information provided in response to the request shall be communicated in the language or languages of the Member State of the offence notified to the Commission in accordance with Article 5a(8).~~

11. The Commission shall adopt implementing acts to further specify the content of the standard electronic forms for the requests and responses, the means of transmission of the information ~~referred to in paragraphs 3 and 4~~, and the functionalities and technical specifications of the software application for data exchange, including cybersecurity measures. The software specifications shall provide for ~~both online and asynchronous batch exchange mode~~, as well as for transmission of the data elements in encrypted form. ~~The data shall be transmitted by using state-of-the-art encryption technology.~~

The standard electronic form for the request shall include the following information:

~~(a) the administrative or judicial decision on the validation of the requested information, referred to in paragraph 6, and details on the authority that took the decision, if applicable;~~

Commented [REDACTED] Introducing such a possibility would lead to a blockade in this cooperation. See suggestion in para 6

Commented [REDACTED] Mutual assistance leads to a national procedure (a domestic case) and therefore this paragraph should be removed.

Commented [REDACTED] Communication will be electronically structured and the language will not play any role.

Commented [REDACTED] Copied from Article 5a para 12.

Commented [REDACTED] See suggestion in para 6

- (b) data elements relating to the owners, holders or end users of the vehicles obtained as a result of the automated search conducted in accordance with Article 4(1);
- (c) if available and proportionate, the visual recording of the liable person retrieved from detection equipment, in particular speed cameras.
- (d) data relating to the road-safety-related traffic offence
- (e) data relating to the involved vehicle
- (f) a reason for the request of mutual assistance

The standard electronic form for the response shall include the following information:

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10a(2).

Article 4b

National measures facilitating the identification of the liable person

1. Member States ~~may~~ shall take any measures in relation to the road-safety-related traffic offences listed in Article 2(1) under their national legislation, in order to successfully identify the liable person, such as measures related to the obligation to cooperate in the identification of the liable person, provided that fundamental and procedural rights under Union and national law are respected.
2. In accordance with paragraph 1, Member States may, in particular:
 - (a) serve documents to persons presumed to be liable of committing the road-safety-related traffic offences listed in Article 2(1), including documents asking these persons to confirm their liability;
 - (b) apply obligations placed on presumed liable persons which are relevant to the identification of the liable person, to the furthest possible extent.

Article 4c

Use of other databases

¹Member States may exchange or access data by using other databases such as driving licence registers or population registers for the sole purpose of the identification of the liable person. They shall do so only in so far as such exchange or access is explicitly based on Union legislation.²

- (6) Article 5 is replaced by the following:

Article 5

Information letter on the road-safety-related traffic offences

1. The Member State of the offence shall decide whether or not to initiate follow-up proceedings in relation to the road-safety-related traffic offences listed in Article 2(1).

Where the Member State of the offence decides to initiate such proceedings, that Member State shall promptly inform the presumed liable person about the road-safety-related traffic offence and of the decision to initiate follow-up proceedings by an information letter.

The information letter may serve other purposes than those set out in the second

Commented [REDACTED] The response also has to be defined.

Commented [REDACTED] National law shall be respected. This is not optional.

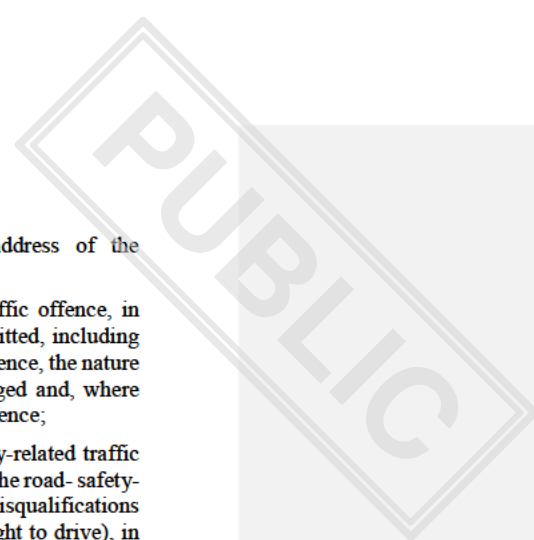
Commented [REDACTED] We would suggest to move this Article before 4a so that the steps are in the correct logical and chronological order. Before asking for mutual assistance authorities should use other databases (such as RESPER).

subparagraph such as a request for payment or disclosure of the liable person

2. The information letter shall contain at least:

(a) the indication that the letter is issued for the purposes of a reference to this Directive;

Commented [REDACTED] Wording: The meaning of the text is too general and not clear.



- (b) the name, postal address, telephone number and e-mail address of the competent authority;
- (c) all relevant information concerning the road-safety-related traffic offence, in particular data on the vehicle with which the offence was committed, including the vehicle registration number, the place, date and time of the offence, the nature of the offence, detailed reference to the legal provisions infringed and, where appropriate, data concerning the device used for detecting the offence;
- (d) detailed information on the legal classification of the road-safety-related traffic offence, the applicable sanctions and other legal consequences of the road-safety-related traffic offence, including information related to driving disqualifications (including penalty points or other restrictions imposed on the right to drive), in accordance with the national law of the Member State of the offence;
- (e) detailed information on where and how to exercise the rights of defence or to appeal against the decision related to ~~pursue the~~ road-safety-related traffic offence, including the requirements for the admissibility of such an appeal and the time limit for lodging the appeal, and on whether and under what conditions *in absentia* procedures apply, in accordance with the national law of the Member State of the offence;
- (f) where applicable, information on the procedures for the persons referred to in paragraph 1, second subparagraph, of this Article to inform the authorities of the Member State of the offence on the identity of the liable person in accordance with Article 4b;
- (g) where applicable, detailed information on the name, address and International Bank Account Number (IBAN) of the authority where an imposed financial penalty can be settled, on the deadline for the payment and on alternative payment methods, in particular specific software applications, as long as those methods are accessible to both residents and non-residents;
- (h) information on the applicable data protection rules, the rights of the data subjects and the availability of further information or reference to the place where this information may be easily retrieved pursuant to Article 13 of Directive (EU) 2016/680 of the European Parliament and of the Council, including information from which source the personal data originate, or Article 13 and 14 of Regulation (EU) 2016/679 of the European Parliament and of the Council;
- (i) where applicable, detailed information on whether and how the sanctions for the offences listed in Article 2(1) can be mitigated, including by early payment of a financial penalty;
- (j) where applicable, a clear indication that the private or public entity which sends it is a proxy empowered by the Member State of the offence in accordance with Article 5b and a clean delineation between the amounts of monies claimed, based on their legal ground.

Commented [REDACTED] You cannot appeal against the "pursue" itself.

3. By way of derogation from paragraph 2, Member States shall ensure that in the case where the liable person is a non-resident driver who was checked on the spot in a road control, the information letter contains at least the data listed in paragraph 2, points (c), (d), (e) and (g).

Commented [REDACTED] This paragraph is a red line for Austria.
The requirements cannot be fulfilled in daily police practice.
In particular this would require that the police officer would formulate an information letter in the language of the driver (see language requirement in Article 5a para 8) on the spot.

4. Upon request of the presumed liable persons, the Member State of the offence shall ensure that access is granted to all material information in the possession of the authorities competent for the investigation of a road-safety-related offence listed in Article 2(1).

5. Member States shall ensure that the start of the time limits for non-residents to exercise their rights of appeal or to mitigate sanctions, in accordance with paragraph 2, points (e) and (i) points (e) and (i), correspond to the date of the receipt of the information letter.'

(7) The following Articles 5a and 5b are inserted:

'Article 5a

Service of the information letter and follow-up documents

1. Member States shall send the information letter and the follow-up documents to the presumed liable persons by post, or where appropriate, by registered delivery or electronic means with equal value in accordance with Chapter III, Section 7 of Regulation (EU) 910/2014 of the European Parliament and of the Council*, or in the case referred to in Article 5(3) of this Regulation give the information letter directly to the presumed liable person.

2. ~~Member States shall ensure that the information letter is sent no later than one month from the registration of a road safety related traffic offence listed in Article 2(1), or where more information letters need to be sent during the investigation, 15 days from the event that made sending the subsequent information letters necessary.~~

Member States shall ensure that the information letter and any other follow-up documents are sent within 15 days from as soon as possible after the event that made sending them necessary.

3. The Member State of the offence may send the information letter or the follow-up documents to the presumed liable persons via the authorities of the Member State of registration or the Member State of residence, in the following cases:

- ~~(a) the address of the person for whom the document is intended is unknown, incomplete or uncertain;~~
- (b) the procedural rules under the national law of the Member State of the offence require proof of service of the document, other than proof that can be obtained by registered delivery or by equivalent electronic means;
- (c) it has not been possible to serve the document by post, by registered delivery or by equivalent electronic means;
- (d) the Member State of the offence has justified reasons for considering that the service of the document by post, by registered delivery or by equivalent electronic means in that particular case will be ineffective or is inappropriate.

4. The request to initiate the mutual assistance procedure referred to in paragraph 3 may be issued by an administrative or judicial authority, or by the police authority competent in the case concerned, in accordance with the national law of the Member State of the offence.

As set out in Article 3a, the national contact point competent authority of the Member State of the offence shall transmit the information letter or the follow-up documents intended to be served in an electronically structured form to the competent authority ~~the national contact point~~ of the Member State of registration or the Member State of residence, together with an electronically structured request.

Commented [REDACTED] A mandatory registered delivery is a red line for Austria as normal delivery is working perfectly fine in most of the cases (in AT about 75% payment rate of 1.7mio CBE cases). Normal delivery has many practical and economic benefits.

It also has to be underlined that international registered delivery has a number of practical problems and it is not possible to coerce a service of the document against the will of the addressee.

Generally it should be up to the competent authority to decide about using registered delivery or not.

Principle of subsidiarity.

Commented [REDACTED] This is related to the red line for Austria mentioned in Article 5 para 3.

Commented [REDACTED] The intended deadlines interfere with the national law of the MS and it does not seem to be proportionate to establish such deadlines on EU level.

Principle of subsidiarity.

Commented [REDACTED] See suggestion in Article 4a para 3 lit c.

~~5. Member States shall ensure that the information letter and the follow-up documents to be served in accordance with paragraph 3 are served either in accordance with their national law, or when duly justified, by a particular method requested by the Member State of the offence, unless such method is incompatible with their national law.~~

Commented [REDACTED] Mutual assistance leads to a national procedure and therefore this paragraph should be removed. Such requirements are not in line with existing legal standards for service of documents.

6. The Member State of registration or the Member State of residence shall ensure that ~~its national contact point draws up the competent authority provides an electronically structured response certificate and sends it to the national contact point of the Member State of the offence in the following cases including:~~

(a) ~~where the delivery is successful upon completion of the formalities concerning the service of the information letter or of the follow-up documents in accordance with paragraph 3 the date of service and data about the person receiving the document,~~

(b) ~~where the delivery is not successful a reason shall be given.~~

~~Where requested by the Member State of the offence, the certificate shall be accompanied by a copy of the documents served.~~

Commented [REDACTED] The document is the document provided by the requesting MS. It would be useless to return a copy of it.

~~7. The document to be served request referred to in paragraph 4 shall be communicated translated in the language or at least one of the languages of the Member State of registration or Member State of residence notified to the Commission in accordance with paragraph 8 as provided via the data exchange set out in Article 4. The certificate referred to in paragraph 6 shall be communicated in the language of the Member State of the offence notified of the Commission in accordance with paragraph 8.~~

Commented [REDACTED] Communication is electronically structured and between the authorities. No translation needed!

8. Where the Member State of the offence decides to initiate follow-up proceedings in relation to the road-safety-related traffic offences listed in Article 2(1), that Member State shall send the information letter and the follow-up documents in the language of the registration document of the vehicle.

Commented [REDACTED] For reasons of coherence we would suggest to move the first sub paragraph into Article 5 to ensure that all legally binding provisions for the information letter and follow-up documents can be found at the same place.

~~Where the language of the registration document of the vehicle is not available, or when there are reasonable doubts on whether sending the information letter or the follow-up documents in the language of the registration document of the vehicle would comply with the protection of fundamental rights of the person concerned, the information letter and the follow-up documents shall be sent in the official language or languages of the Member State of registration or the Member State of residence of the presumed liable person.~~

Commented [REDACTED] We would suggest to include an additional data element for the official language in Article 4.

~~In cases covered by the second subparagraph of this paragraph, where there are several official languages in the Member State of registration or the Member State of residence, the information letters and the follow-up documents shall be sent in the official language or languages of the region or other geographical sub-division where the address of the presumed liable persons is located, or in another language which that Member State has indicated it would accept.~~

Commented [REDACTED] This should be handled with the data element suggested above and could be specified in the Implementing Act.

Each Member State shall communicate to the Commission any official language of the Union, in which the information letter may be sent, where necessary broken down by regions or other geographical sub-divisions. The Commission shall make the list of the accepted languages available on the online portal referred to in Article 8.

Commented [REDACTED] We suggest moving the last sub paragraph to Article 8 (CBE Portal)

9. Member States shall ensure that the presumed liable persons are allowed to communicate with the authorities of the Member State of the offence, until the stage of appeal before a court, in any of the languages communicated by either the

Member State of registration or the Member State of residence, or by the Member State of the offence to the Commission in accordance with paragraph 8, or, if the

Commented [REDACTED] This language regime is reaching too far and can only be provided at a later stage in the proceedings.

~~concerned person has insufficient knowledge of those languages, in a Union language that the person speaks or understands.~~

10. Member States shall ensure that the quality of the translation of the information letter and of the follow-up documents is at least of the standard laid down in Article 3(9) of Directive 2010/64/EU.

11. The Member State of the offence shall ensure that the information letter and the follow-up documents served to the presumed liable persons may be reviewed effectively and rapidly by a court ~~or tribunal or similar institution with the power to adopt legally binding decisions~~, at the request of any person who has a vested legal interest in the outcome of the procedures initiated under Article 5, on the grounds that such documents do not comply with this Article.

12. The Commission shall adopt implementing acts to specify the content of electronic forms for the request referred to in paragraph 4 and of the ~~certificate response~~ referred to in paragraph 6, and the functionalities and technical specifications of the software application for data exchange, including cybersecurity measures. The software specifications shall provide for ~~both online asynchronous exchange mode and asynchronous batch exchange mode~~. The data shall be transmitted by using state-of-the-art encryption technology. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10a(2).

Article 5b

Financial claims of legal entities empowered by Member States

Member States shall ensure that where they empower a private or public entity with distinct legal personality to administer the follow-up proceedings or part thereof initiated under Article 5(1), including the enforcement of financial penalties, the presumed liable persons are not subject to that entity's charges related to legal and administrative expenses incurred by administering those proceedings. This is without prejudice for the right of the authorities of Member States to charge proportionate administrative fees.

Commented [REDACTED] In our understanding there is no legal possibility to establish a "similar institution" below the level of a tribunal in the sense of Article 6 ECHR. Generally speaking we think that mutual assistance for CBE cases can only be requested, if tribunals are provided by the MS of the offence (at least in the related appeal procedures). This basic legal question should be assessed by the legal services of the Council and the Commission.

Commented [REDACTED] Wording: The reference and meaning is not fully clear. Clarification would be appreciated.

Commented [REDACTED] As pointed out in the Working Party Landtransport already we would suggest to clarify also which tasks can be delegated. In particular it would be necessary to clarify if private or public entities can be empowered to access VRD registers of other MS.

Article 5c

Mutual recognition of financial penalties issued for road-safety-related traffic offences

1. The Member States shall cooperate in the cross-border execution of final and enforceable decisions related to road-safety-related traffic offences listed in Article 2(1). For this purpose, they shall follow the procedures of the Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties, unless this Directive, in accordance with Article 18 of the Framework Decision, provides otherwise.

2. As set out in Article 3a, the competent authority of the Member State of the offence shall transmit the request for execution of a financial penalty in an electronically structured form to the Member State of registration or Member State of residence.

3. As set out in Article 3a, the competent authority of the Member State of registration or Member State of residence shall transmit the response to a request for execution of a financial penalty in an electronically structured form to the Member State of the offence.

[define request and response]

Commented [REDACTED] Due to time constraints we were unable to complete the full necessary text.

[x]. The Commission shall adopt implementing acts to specify the content of electronic forms for the request referred to in paragraph [x] and of the response referred to in paragraph [x], and the functionalities and technical specifications of the software application for data exchange, including cybersecurity measures. The software specifications shall provide for asynchronous exchange mode. The data shall be transmitted by using state-of-the-art encryption technology. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10a(2).

* Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).';

(8) Articles 6, 7 and 8 are replaced by the following:

Article 6

Reporting and monitoring

1. At the latest on the following dates: 6 May 2024, 6 May 2026 (...), each Member State shall send a comprehensive report to the Commission in accordance with the second and third subparagraph of this paragraph.

Each comprehensive report shall indicate the number of automated searches conducted by the Member State of the offence addressed to the national contact point of the Member State of registration, following offences committed on its territory, together with the type of offences for which requests were addressed and the number of failed

requests.



Each comprehensive report shall also include a description of the situation at national level in relation to the follow-up given to the road-safety-related traffic offences, based on the proportion of such offences which have been followed up by information letters.

2. By [four years after the date of entry into force of this Directive], and every four years thereafter, each Member State shall send a report to the Commission on the application of this Directive.

3. The report shall indicate the number of automated searches conducted by the Member State of the offence in accordance with Article 4(1) and addressed to the national contact point of the Member State of registration, following road-safety-related traffic offences listed in Article 2(1) that were committed on its territory, together with the type of the offences for which requests were addressed and the structured number of failed requests according to the type of failure. This information may be based on the data provided through Eucaris.

The report shall also include a description of the situation at national level in relation to the follow-up given to the road-safety-related traffic offences. The description shall at least specify:

- (a) the total number of registered road-safety-related traffic offences listed in Article 2(1) which were detected automatically or without the identification of the liable person on the spot;
- (b) the number of registered road-safety-related traffic offences listed in Article 2(1) which were committed with vehicles registered in a Member State other than the Member State in which the offence took place and detected automatically or without the identification of the liable person on the spot;
- (c) the number of fixed or removable automatic detection equipment, including speed cameras;
- (d) the number of financial penalties paid voluntarily by non-residents;
- (e) the number of electronically transmitted mutual assistance requests in accordance with Article 4a(3) and the number of such requests where the information was not provided;
- (f) the number of electronically transmitted mutual assistance requests in accordance with Article 5a(4) and the number of such requests where it was not possible to serve the documents.

4. The Commission shall assess the reports sent by the Member States and inform the Committee referred to in Article 10a on their content no later than 6 months after receiving the reports from all the Member States.

Article 7

Additional obligations

Without prejudice to obligations under Regulation (EU) 2016/679, Directive (EU) 2016/680 and Directive (EU) 2022/2555 of the European Parliament and of the Council*, Member States shall inform each other on cybersecurity incidents, notified pursuant to Article 10 of Directive (EU) 2022/2555, where the incidents relate to data stored in virtual or physical clouds or cloud-hosting services.

Article 8

Portal for cross-border exchange of information on road-safety-related traffic offences ('CBE Portal')

1. The Commission shall establish and maintain an online CBE Portal available in all official languages of the Union dedicated to:
 - (a) sharing information with road users on the rules in force in Member States in the field covered by this Directive, in particular road-safety-related traffic rules, appeal procedures, applied sanctions, and the schemes and available means for the payment of financial penalties;
 - (b) the exchange of information and other interactions between national contact points and other relevant authorities of Member States with each other and with other road users, in particular by providing access to specific applications of the Member States facilitating the enforcement of sanctions, including for the payment of financial penalties, where applicable. This may include exchanging vehicle registration data and the data on persons presumed to be liable or liable for road-safety-related offences listed in Article 2(1).
2. Access to the CBE Portal shall be provided for the national contact points and other relevant authorities that are competent in the identification of the liable persons and in the cross-border enforcement of road-safety-related traffic rules in Member States.
3. Member States shall help road users in verifying the authenticity of the information letters and follow-up documents. For this purpose, Member States shall share with each other and with the Commission through the CBE Portal the templates of information letters and follow-up documents issued by their authorities, which are used in cross-border cases. Member States shall also inform each other on the authorities and empowered legal entities that have the right to issue those letters and documents. The Commission shall be the controller of the CBE Portal, in accordance with Regulation 2018/1725**.
4. The CBE Portal shall be compatible with the interface established under Regulation (EU) 2018/1724 of the European Parliament and of the Council*** and with other portals or platforms with a similar purpose, such as the European e-Justice Portal.
5. Member States shall provide up-to-date information to each other and to the Commission, for the purposes of this Article, and interact with road users through the CBE Portal on a regular basis.
6. The Commission shall adopt implementing acts in order to establish the technical specifications, including cybersecurity measures, necessary for the use and maintenance of the CBE Portal. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10a (2).

* Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive) (OJ L 333, 27.12.2022, p. 80).

** Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free

movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, (OJ L 295, 21.11.2018, p. 39).

*** Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).’

- (9) The following Article 8a is inserted:

‘Article 8a

Financial support for cross-border cooperation in enforcement activities

The Commission shall provide financial support to initiatives that contribute to cross-border cooperation in the enforcement of road-safety-related traffic rules in the Union, in particular the exchange of best practices, the application of smart enforcement methodologies and techniques in the Member States, increasing the capacity building of enforcement authorities and awareness raising campaigns regarding cross-border enforcement actions.’

- (10) Article 9 is replaced by the following:

‘Article 9

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 10 to amend the Annex to update it in the light of technical progress or where this is required by legal acts of the Union directly relevant to the updating of the Annex.’

- (11) The following Article 10a is inserted:

‘Article 10a

Committee procedure

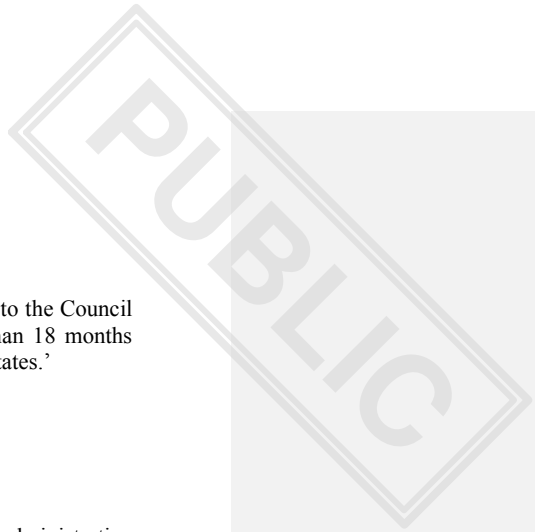
1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council*.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.

* Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).’;

- (12) Article 11 is replaced by the following:



Article 11

Reporting by the Commission

The Commission shall submit a report to the European Parliament and to the Council on the application of this Directive by the Member States no later than 18 months after receiving the reports referred to in Article 6(2) from all Member States.'

- (13) Annex I is replaced by the text in the Annex to this Directive;
- (14) Annex II is deleted.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years after the date of entry into force of this Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President