

Dutch response to the European Commission's consultation paper 'Respecting the Rules: Better Road Safety Enforcement in the European Union' by DGTREN, published on 7 November 2006 by the head of the Road Safety Unit, Mr S. Tostmann. The European Commission will contact the stakeholders in February 2007 for further consultation.

Commentary on the consultation paper should be submitted no later than 19 January 2007 by fax or email to:

European Commission

Directorate General for Energy and Transport

Road Safety Unit

Reference: Cross-border enforcement

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1. Introduction

The Netherlands thanks the European Commission for the opportunity to express its views on how traffic law enforcement can help improve road safety throughout the EU. The Ministry of Transport, Public Works and Water Management has drafted this response in collaboration with the Ministries of the Interior & Kingdom Relations, Justice (including the Public Prosecution Service and the Central Judicial Collection Agency) and Finance, together with the police and the Road Safety Agency.

Further to this aim, the Netherlands agrees that member states should be able to impose (and enforce) penalties for traffic offences (whether petty or serious) committed by non-residents. This is in the interest of safe roads and credible law enforcement practices.

The purpose of the consultation is to give member states a chance to comment on the Commission's proposal for an Union-wide strategy for achieving the EU objective of improving road safety by increasing cross-border traffic law enforcement and cooperation. This objective (halving the number of road deaths by 2010) is included in a 2003 recommendation by the European Commission which concentrates on three areas of enforcement: speed limits, drink driving and seatbelt use.¹

¹ European road safety action programme, halving the number of road accident victims in the European Union by 2010: a shared responsibility (COM(2003) 311 final, 2 June 2003); Recommendation 2004/345/EC of 21 October 2003.

The Commission's analysis is based on the premise that increased observance of traffic rules will benefit road safety. Best practices have shown that widespread compliance with and enforcement of traffic rules can prevent 14,000 deaths (speeding: 5,800; drink driving: 3,800; failure to fasten seatbelts: 4,300) and 680,000 injuries in the EU each year. Current thinking is that meeting the EU objective will not be possible without supplementary measures.

A mid-term review shows that the present approach will only result in a 35% reduction at most.² Performance figures vary substantially between member states, as road fatalities are relatively more common in some member states than others.

Owing to difficulties of both a legal and practical nature, penalties are not always imposed on non-residents who commit traffic offences, and even if they are, the authorities are not necessarily in a position to enforce them. According to the consultation paper there are still no EU-wide statistics available on this, but the following figures illustrate the likely extent of the problem. In Luxembourg 30% of traffic offences are committed by non-residents and 23% of all road fatalities are caused by non-residents. In France 15% of all traffic offences are committed by non-residents (this number rises to 25% for the border region). In the Netherlands the figure is 10% of all cases.³ On some roads in Switzerland, over 15% of all road traffic consists of non-residents, a group that accounts for a full 50% of the total number of traffic offences in that country. The Commission believes that an additional EU initiative would be advisable under article 71 of the EC Treaty⁴ and the Framework Decision on the application of the principle of mutual recognition to financial penalties.⁵

The 2007 work programme for the European Commission already makes reference to a directive/regulation on cross-border traffic law enforcement.⁶

² Communication from the Commission: European Road Safety Action Programme Mid-Term Review (COM(2006) 74 final, 22 February 2006).

³ In the Netherlands 15% of fines for traffic offences are issued following police stops, while 85% are the result of violations registered by automated traffic cameras. Agreements have been made with a limited number of countries on the exchange of registration information between law enforcement agencies. The proportion of fines issued to non-residents in 2005 comes to 4.75% (of a total of 500,000). This percentage is expected to rise substantially if more countries become involved in sharing registration information.

⁴ 'For the purpose of implementing Article 70, and taking into account the distinctive features of transport, the Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, lay down: ... (c) measures to improve transport safety.'

⁵ The Council Framework Decision 2005/214/JHA of 24 February 2005; this also includes fines for traffic offences.

The Commission poses a number of questions in the consultation paper. It can be inferred from the document that the thinking on European road safety policy is still taking shape. The Netherlands is also seeking the best way of organising cross-border traffic law enforcement in the EU. The Netherlands would like to contribute to the follow-up to the consultation round, possibly by means of expert groups.

Before answering the questions, we would like to make a number of general remarks. In this response a distinction is made between national traffic law enforcement and cross-border traffic law enforcement. In the latter case, specific attention is given to the international exchange of information on vehicles, owners and driving licences for the purpose of combating traffic offences.

Please note that the term 'non-resident' is used in this response to refer only to EU residents. Non-EU residents are not discussed in this response.

2. General remarks

a. National traffic law enforcement

The Netherlands has set itself an ambitious goal for improving road safety, and the government realises that achieving it will require some effort. Although this country has managed to reduce the number of road casualties substantially over the past several years, an unwavering focus on road safety will be necessary to achieve further reductions. For that reason the goal for 2010 for the Netherlands was tightened up last year.

Traffic law enforcement is an important tool for reaching this more ambitious goal, though it is not the only one. Under the three-pronged approach to road safety practised in the Netherlands (i.e. people, roads and vehicles), the project 'Advancing Sustainable Safety' (*Duurzaam Veilig*), factors like infrastructure, vehicle safety, education and public information all come into play.

⁶ Commission Legislative and Work Programme for 2007, COM(2006) 629 final.

b. Cross-border traffic law enforcement (including international information sharing)

The government acknowledges that cross-border traffic law enforcement can be a problem, particularly when it comes to identifying non-residents who have committed traffic offences, and imposing penalties (financial and otherwise). In the third pillar, legal instruments exist (or are being developed) for cross-border cooperation, information sharing and the imposition and enforcement of penalties for some or all criminal offences, serious and petty.

It would be advisable to take account of these existing instruments, such as:

- the Prüm Convention;⁷
- the Principle of Availability;⁸
- the Council Framework Decision on the application of the principle of mutual recognition to financial penalties.⁹

More will be said on this point in the response to the first consultation question.

In the case of a relatively small number of traffic offences that are not subject to criminal law penalties in the Netherlands and fall outside the scope of the third pillar (certain administrative or fiscal penalties), a first-pillar legal instrument could provide a solution. This suggestion is addressed in the response to the third consultation question.

3. Response to the individual consultation questions

1. Do you agree with the definition of the problem and the goals set out in the course of action proposed by the EU?

a. National traffic law enforcement

The Dutch system of traffic law enforcement works well. If efforts to enforce traffic laws in the Netherlands remain at the present level, an initiative from the

⁷ Convention between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration (Treaty Series 2005, 197)

⁸ Proposal for a Council Framework Decision on the exchange of information under the principle of availability (COM(2005)490 final).

European Commission will not be required. As stated above, the Netherlands would like to maintain its good record on road safety and, whenever possible and necessary, even improve it.

An EU-wide approach for those countries where road safety still leaves much to be desired should not be so all-encompassing that it constrains successful policies in other countries. The Netherlands feels strongly about preserving a degree of latitude for domestic policymaking and the concomitant application of certain instruments to maintain or even improve the current level of road safety. In this respect the Netherlands can be both a model for some member states and a student of others. The exchange of best practices is preferable to a directive or some other type of EU instrument. For the time being the present recommendation (2004/345/EC) is adequate.

For this reason the Netherlands does not support a directive or regulation on national traffic law enforcement.

b. Cross-border traffic law enforcement (including information sharing)

The Netherlands subscribes to the problem definition put forward by the Commission, namely that a large number of non-residents in this country are committing traffic offences for which penalties cannot be imposed or enforced. The extent of the problem is indicative (see footnote 3). The nature of the problem is twofold: not only is it often difficult to identify the offender, the authorities also have trouble enforcing penalties once they have been imposed.

a. International information sharing for the purpose of identification

Legal basis

International information sharing is an integral part of cross-border traffic law enforcement. However the practice requires a basis in law, which guarantees respect for individual privacy.

⁹ See footnote 5.

In all likelihood, the Prüm Convention will enter into force for the Netherlands in 2007. The Convention was drafted to address issues associated with counterterrorism, cross-border crime and illegal migration. Article 12 of the Convention provides a foundation for the exchange of vehicle registration numbers and the personal data of owners and operators between the contracting parties by granting them direct access to databases containing this information. Within the third pillar a proposal is being developed to facilitate information sharing between member states on the basis of the principle of availability.

The Netherlands believes these trends offer good prospects and would therefore request support for a clear and unambiguous elaboration of the rules governing cross-border information sharing in the third pillar, on the model of the Prüm Convention. Yet if this is to occur, such a framework decision must state unequivocally that it also applies to information about traffic offences committed by non-residents. The Netherlands is seeking to avoid an unduly narrow approach (e.g. one which embraces just the three main themes or just traffic offences).

The legal basis for a legal instrument for the international exchange of information to deal with violations of administrative law and fiscal offences may lie outside the third pillar. The Netherlands would be in favour of examining whether solutions can be found within the first pillar for which the system of information sharing provided for by the Prüm Convention or a Framework Decision can serve as an example.

Method of operation

International information sharing in the context of traffic law enforcement deals mainly with vehicle registration data, owner information and driving licence records. The necessary information can be found in databases which are managed in the Netherlands by the Road Transport Agency (RDW). These data are also used to identify individuals suspected of crimes other than traffic offences. It would be undesirable for a situation to arise whereby any police officer in a member state can communicate directly with the Dutch registration authorities (or Dutch municipalities or police forces). At the same time police officers in this country should not have to make an undue effort to

acquire the information necessary from other European authorities to prosecute a non-resident. The Netherlands therefore believes that any policy on international data exchange should be premised on the use of a single structure (the network of the national registration authorities) and a single system (one technology) for sharing vehicle and personal data, regardless of the need for information or functionality. This will mean that each member state will have to make its own arrangements for accessing international information via its own national registration authority.

In the interest of cost effectiveness and efficiency, existing (international) systems and methods of registration should be used as much as possible for international information exchange. Fifteen EU member states now use EUCARIS to share vehicle information. In 2007 the eleven contracting parties of the Prüm Convention will also share vehicle and owner information by means of the above structure with the help of EUCARIS II technology. Driving licence data is shared among five member states through EUCARIS. For these reasons the Netherlands supports using this system for cross-border traffic law enforcement, with the necessary modifications.

b. Enforcing penalties

Financial penalties

Offences under Dutch traffic law, whether serious or petty, fall within the scope of the Framework Decision on the application of the principle of mutual recognition to financial penalties, which must be incorporated into the national legislation of the member states by 22 March 2007.

This Framework Decision offers the option of setting a minimum fine level of €70 as an optional or compulsory ground for refusal in each national legislative bill. Every EU member state would thus be free to interpret this minimum in its own way. This could result in scenarios arising in which penalties below €70 imposed on non-residents are not recognised by and thus cannot be collected in member states where this limit obtains. It remains to be seen how the €70 minimum will work in practice and whether enough fines below this threshold can be collected in accordance with the Framework

Decision to justify the policy on the grounds of road safety. Member states' approach to this ground for refusal should ideally be uniform.

In principle, the Framework Decision provides a legal foundation for the mutual recognition of financial penalties for traffic offences, leaving open the possibility of appeal to a court competent in criminal matters. It may be advisable not to apply the limit of €70 for traffic offences as a compelling ground for refusal in any of the member states. Perhaps the Commission might consider the question of whether member states should make additional agreements on this point.

Non-financial penalties

In theory the same principles and premises apply to non-financial penalties as to financial penalties. In conjunction with the third driving licence directive, preparations are already being made for the international exchange of driving licence data. This exchange of information will help prevent new licences from being issued to individuals whose licences have been revoked by other member states. This system can also be used to relay the same kind of information about non-residents. For reasons of effectiveness and efficiency the Netherlands feels that the existing technical system and network should also be used for both the international exchange of vehicle, owner and holder data (in the case of traffic offences) and for the implementation of the Prüm Convention as it relates to vehicle information (see also part b of the response to consultation question 1).

As regards the points-based licence, it can be reported that a legislative bill on the subject is now being considered by parliament. Given the wide variety of point systems found throughout the Union, the Netherlands is currently not in favour of European legislation on this matter.

2. Should the actions of the EU be confined to the Trans-European Networks, or should they apply to all roads?

Cross-border traffic law enforcement must apply to all roads since it is actually provincial and local roads that are typically the most dangerous. This justifies treating these roads the same as TEN roads.

3. Should the actions of the EU be confined to the three themes of speed limits, drink driving and seatbelts, or should they apply to all traffic offences?

1. National traffic law enforcement

Speed limits, drink driving and seatbelts are also the priority themes of Dutch policy. In the case of a road accident, failure to obey the pertinent laws dramatically increases the chance of material damage, injury or death. For the time being there is no need to expand on the themes mentioned in the recommendation.

2. Cross-border traffic law enforcement (including information sharing)

An EU initiative on cross-border traffic law enforcement need not confine itself to the three priority themes. The Netherlands has multiple penalty systems. While certain traffic offences fall under criminal law (including those covered by the Traffic Regulations (Administrative Enforcement) Act), others can be (or will be able to be) dealt with by means of a fiscal or administrative law penalty, without giving the offender the option of appealing to a court competent in criminal matters. The third-pillar tools for information exchange and mutual recognition of financial penalties will not provide for a range of instruments for the latter type of penalty. From the perspective of both road safety and credible law enforcement, offences of this kind committed by non-residents should also be subject to penalties. Two common types of offences in this category are parking violations and the failure to pay tolls.

- Various municipalities, both here and abroad, are involved in ongoing efforts to obtain information on non-residents who fail to pay parking fines; in December 2004 the Association of Netherlands Municipalities (*Vereniging van Nederlandse Gemeenten*) submitted letters on this subject to two parliamentary committees (justice and finance).
- Toll authorities have also reported the problem of non-residents who fail to pay toll charges.

For traffic offences not subject to criminal penalties and for closely related offences for which present and future third-pillar instruments offer no options for

cross-border traffic law enforcement, a first-pillar approach could be the way forward. That said, any initiative by the Commission along these lines should not go any further than strictly necessary.

Attempting to address the problems associated with driving times, breaks and rest periods in such an initiative would be, by contrast, inadvisable since a directive on this subject already exists. The directive in question, which has recently been amended, will soon enter into force.¹⁰

4. Which of the options described would you prefer?

The consultation paper sketches out several scenarios for cross-border traffic law enforcement. It is not yet clear for every scenario what exactly is envisioned and what the consequences might be. Below is an initial response to the scenarios.

- a. Section 5.1 of the consultation paper: business as usual

1. National traffic law enforcement

Please refer to the general remarks above (section 2 (a)) and part a of the response to consultation question 1.

2. Cross-border traffic law enforcement (including information sharing)

See the response to the general remarks above (section 2(b)) and part b of the response to consultation question 1.

- b. Section 5.2 of the consultation paper: more structured cross-border traffic law enforcement and heightened exchange of best practices through the European Commission, via a forum (and in other ways). Investigation, prosecution and the enforcement of any penalties occur in the country where the crime was committed. Number plates of offenders are recorded automatically; this information is passed on to law enforcement officials who then track down and stop the vehicles in question.

¹⁰ Directive 2006/22/EC on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC, Article 11, Annexes I, II and III.

1. *National traffic law enforcement*

See the general remarks (section 2(a)) and part a of the response to consultation question 1. In addition, it should be remarked that a forum could provide added value.

2. *Cross-border traffic law enforcement (including information sharing)*

See the general remarks (section 2(b)) and part b of the response to consultation question 1. In addition, it could be argued that a forum might provide added value.

- c. Section 5.3 of the consultation paper: cross-border law enforcement on the basis of open and EU-wide information sharing (including the exchange of best practices) at EU level. Vehicle owners are identified by means of an EU-wide information exchange system, linked up to all national registration authorities. Vehicle owners are sent a penalty notice in their own language by the authorities of the country where the offence was committed. The penalty is thus enforced by the country where the offence was committed in accordance with national law. In the Netherlands and France this system is said to have a deterrent effect, but in practice, foreign nationals who commit a traffic offence are seldom fined.

See the general remarks (section 2(b)) and part b of the response to consultation question 1. There is no need for an entirely new EU-wide system. It is sufficient to facilitate information sharing between the national registration authorities, as described in consultation question 1. It is uncertain whether it will be necessary to introduce a translation module to the system provided for in the Framework Decision for the application of the principle of mutual recognition to financial penalties.

- d. Section 5.4 of the consultation paper: cross-border law enforcement, in which the penalty is enforced in the offender's country of residence. This measure is based on mutual recognition of evidence by the various member states, a practice that goes further than the Framework Decision. (This principle of mutual recognition is already applied by Germany and Austria.)

See the general remarks (section 2(b)) and part b of the response to consultation question 1. For the Netherlands the third-pillar initiatives for the cross-border enforcement of traffic law offer a sufficient basis, bearing in mind our earlier remarks on the optional or compulsory threshold of €70 from the Framework Decision in part b of our response to question 1. For that reason the mutual recognition of evidence is not deemed to be necessary.

- e. Section 5.5 of the consultation paper: enforcement methods, measures and information sharing are implemented by member states, as described in, for example, Directive 2006/22. The imposition and enforcement of penalties can be dealt with by the offender's country of origin. Such a system does not yet exist.

This is the most radical option, as it dictates methods for investigation and prosecution. The Netherlands takes the position that the legal foundation for police and judicial cooperation in criminal matters is established in the EU Treaty and that a legal instrument facilitating such cooperation should be created in the third pillar. The Netherlands believes strongly in retaining the authority to set its own priorities with respect to law enforcement and would not wish to be compelled to adopt certain types of technology and follow certain communication practices that do not promote road safety in this country. The Netherlands must also be free to take any action necessary to maintain and improve road safety at national level. For these reasons, the Dutch government currently regards a road safety directive similar to Directive 2006/22 as unnecessary.

5. Can you suggest any other policy options besides those discussed in the consultation paper?

Earlier in this response mention was made of problems associated with the inability to impose penalties on non-residents who have committed parking offences or failed to pay road tolls. Please refer to consultation question 3.

6. Do you have any specific comments on the costs and benefits of the various instruments and measures?

The consultation paper does not contain any projections of the cost of the various instruments. Nor has any attempt been made to quantify the possible reduction in accident victims that the proposed measures could achieve. At this stage of the process, both costs and benefits are difficult to estimate. For this reason we have refrained from offering any comment on this aspect of the proposals. However, when it comes time to give substance to these proposals, concrete projections will have to be made early on about the specific benefits and the financial and organisational repercussions, at national and EU level. Only then will it be possible to consider the effectiveness of the chosen policy.

7. Additional remarks

At various points in the consultation paper, certain topics are mentioned in passing and not expanded upon. The following are relevant to the Netherlands.

a. Liability on the party in whose name a vehicle is registered

The Netherlands is very attached to current practice, which is highly effective and efficient.

b. Road safety campaigns

In the Netherlands a large number of parties have worked together on a multi-year information campaign with coordinated enforcement efforts. This approach should be continued in the future. The member states can learn from one another by sharing best practices.

c. Type approval of measuring instruments

For some topics the type approval of measuring instruments can be useful with a view to achieving harmonised measurements within the EU. This is closely linked to norms set down in specific directives. Ideally, the type approval of measuring instruments should be covered by a specific directive

and not by a general directive on road safety. Please refer to part a of the response to consultation question 1. The Netherlands would like to preserve the policy scope and latitude for the application of instruments for the purpose of maintaining and improving the level of road safety.

d. Up-to-date overview of fines

Annexe III of the consultation paper contains an overview of speeding fines issued in the Netherlands. A modified overview can be found on the next page.

Modification to the Road Safety Enforcement – Consultation Paper

TREN E3 – ANNEX, 6 November 2006, p. 10

Country	km/hr over the speed limit	Amount of fine* (inside built-up areas / outside built-up areas / motorways / roads under construction within built-up areas)	Demerit point	Comments
The Netherlands	<ul style="list-style-type: none"> • 4 km/hr • 5 km/hr • 10 km/hr • 15 km/hr • 20 km/hr • 25 km/hr • > 30 km/hr • > 50 km/hr 	<ul style="list-style-type: none"> • €16 / 14 / 14 / 26 • €20 / 18 / 17 / 31 • €39 / 36 / 34 / 57 • €63 / 60 / 56 / 90 • €93 / 88 / 83 / 128 • €129 / 121 / 114 / 173 • ** • *** 	Not applicable	

* Motor vehicles (excluding trucks, buses, motor vehicles with trailers) and motorbikes.

** For this category of speeding offence the penalty is determined by the Public Prosecutor, with the amount of the fine dependent on the offender's previous conduct. Motorists found to be driving more than 30km/hr over the limit (or more than 40 km/hr on a motorway) are registered.

*** Upon stopping a motorist who has exceeded the speed limit by 50 km/hr, the police will confiscate his or her licence and send a report to the Public Prosecutor, who decides on the course of action to be taken.

Notes:

1. Relatively minor traffic offences are dealt with under a special law (Traffic Regulations (Administrative Enforcement) Act). The act contains specific codes corresponding to certain violations, each of which is coupled to a fixed financial penalty. The payment of these fines, which is governed by administrative law, is overseen by the Central Judicial Collection Agency.
2. Fines may be imposed on any motorist driving over 4km/hr above the legal limit. The size of the fine increases with each kilometre per hour over the limit. The measured speed is 'corrected' by a legally prescribed amount. For example, a motorist caught driving 57 km/hr in a 50 km/hr zone will be fined at the level of 54 km/hr.
3. Motorists caught speeding in an area where road works are taking place are fined at a higher level than would normally be the case.
4. Speeding fines are higher for trucks, buses and motor vehicles with a trailer.
5. There are special provisions for repeat offenders, who are given a higher penalty for a second or third traffic violation if the subsequent offence is committed within one year of the first. This provision covers speeding offences which do not fall under the Traffic Regulations (Administrative Enforcement) Act.
6. In the case of exceptionally flagrant violations, motorists may be subjected to an examination to determine whether they are physically and mentally fit to drive a motor vehicle. A negative outcome could mean the permanent revocation of their licence.