



CROSS BORDER CIVIL TRAFFIC ENFORCEMENT - LEGAL RESEARCH

Enforcing Penalties for Traffic Violations across Europe

An abstract of the Eurosparks legal research

Introduction the Sparks Programme and the Eurosparks Project

The SPARKS programme aims to increase the number of foreign registered vehicles which comply with UK decriminalised traffic laws, by addressing issues which at present limit the effectiveness of the enforcement process. In the UK most traffic enforcement is carried out by local authorities, rather than the police, using a civil law process to recover unpaid penalties.

Eurosparks is a project within the SPARKS programme. Eurosparks has conducted research into the existing legal position, at EU level and nationally in selected EU Member States, in relation to cross-border traffic enforcement. It has also created a set of recommendations about how the law could be developed, in order to achieve the SPARKS objectives.

During the course of the research it has become clear that other countries, including Belgium, the Netherlands and Malta, operate similar traffic management regimes to the UK. Other countries are considering doing so, particularly in the area of 'demand management' – through the creation of congestion charging or pollution reduction zones.

The report is based on research from the United Kingdom, Republic of Ireland, Germany, France, Italy, Netherlands and Belgium.

London's local authorities face significant challenges in cross-border enforcement in relation to parking offences, unlawful use of a bus Lane, moving traffic violations such as blocking a box junction, making banned turns or driving the wrong way down a one-way street, breach of weight restrictions, non-payment of congestion charges, from February 2008 avoidance of Low Emission Zone charges and penalties, and (from 2012) breach of the rules relating to the Olympic Route road network.

There is a growing problem of the widespread evasion of traffic laws throughout Europe by owners and drivers of foreign registered vehicles, (i.e. people driving their own cars abroad) where they ignore traffic rules and regulations, ignore the penalties and fail to pay the authorities what they owe. This is often because they know that the country in which they breach a regulation is unable to enforce the laws or collect the penalties if their vehicle is registered in another country. This lack of enforcement results in inequalities of treatment between the compliant nationals within their own Member State and non-compliant visitors from elsewhere.

If the legal innovations proposed by the Eurosparks project are adopted, many public authorities will benefit from being able to carry out more effective traffic enforcement. In the UK the number is estimated to be at least 150 local authorities who would benefit from closing the legal gaps which have been identified. In the Netherlands the equivalent number is estimated at 85 and in Belgium approximately 50 such authorities would benefit.

The results of Eurosparks are being published at a very appropriate time for Europe, for at least three reasons.

First, after a period of preparation of several years, the European Commission appears to be on the point of announcing a proposal for a directive on cross-border enforcement in the area of road safety. The SPARKS Programme submitted a response to the consultation which the Road Safety Unit

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in DG Transport held in January 2007, and the results of the Commission's thinking are about to be made clear. The Eurosparks Project team believes that its conclusions ought to be carefully considered by the Commission, as well as by the Council and Parliament, if the proposal goes forward towards legislation.

Secondly, the European Commission has an open consultation in relation to its Green Paper on Sustainable Urban Transport. The consultation raises questions about the need for cross-border enforcement measures, particularly in the context of protecting the urban environment. The consultation closes in March 2008, and Eurosparks Project team believes that its findings will make a useful contribution to Commission thinking on this topic.

Thirdly, as the national use of road charging schemes increases, and as the thinking by the European Commission around a European Electronic Toll Service to interconnect national schemes develops, now is a good time to highlight the cross-border enforcement issues which may arise from non-payment of road toll charges by owners of foreign registered vehicles. Transport for London's experience with the congestion charge, which is a leading European example of road charging, has highlighted how this problem can affect such schemes.

We believe the European Commission has an important role to play in providing a 'joined-up' approach to providing an effective legal framework for enforcement to work across national borders in each these three areas. It would be a missed opportunity if, for example, a cross-border enforcement regime were to be adopted by Road Safety which was incompatible with the needs of other transport areas such as environmental protection in Europe's cities or the inter-working of Europe's toll roads.

The Eurosparks Project is co-funded by the European Commission's Civil Justice Framework programme (from DG Justice, Freedom & Security) and by London's Enforcement Task Force, a group of public authorities with an interest in traffic enforcement.

Contributions to the costs of the project have also been provided by many project partners and sponsors including the Association of London Councils, Regione Lazio, Vereniging van Nederlandse Gemeenten, EITCO GmbH, Vereniging van Vlaamse Steden en Gemeenten, the International Bar Association, Association of Maltese Local Councils, the Institut d'Études Politiques de Paris ("Sciences Po"), Euro Parking Collection plc, and Eversheds LLP.

Executive Summary of the Legal Research Report

The Eurosparks legal research team has produced its report on cross-border enforcement of traffic penalties. The report addresses a serious problem: decriminalisation of traffic charges and the non-enforcement of traffic charges and penalties as against non-residents. This produces widespread evasion of the law.

Generally, national legal systems have their own ways of dealing with enforcement of road traffic violations. There is no common approach in categorising the topic, and this is a particular problem in the context of penalties and charges where jurisdictions may describe the subject areas as 'civil', 'criminal' or 'administrative'. Each country gives its own priority to traffic violations, which leads to a wide range of financial penalty levels and a multiplicity of procedural protection in proceedings for traffic charges.

There is a distinct difficulty in relation to data transfer between the transport authorities of Member States. This can be part of an enforcement process or a type of mutual assistance, addressed in various instruments including the Prüm Convention on cross-border co-operation against crime, terrorism and illegal immigration and the Agreement on Co-operation in Proceedings for Road Traffic Offences within the Schengen system.

The Framework Decision 2005/214/JHA under the existing Third Pillar EU on mutual recognition of financial penalties only applies to 'offences' defined as criminal and to cases in which there was some option of access to a court with criminal jurisdiction. It provides no authorisation for data sharing and has difficulties in relation to enforcement.

Civil judgments and orders issued in one member state may be enforced in another member state (Regulation 44/2001 EC) but the definition of 'civil and commercial' excludes the administrative area; the European Enforcement Order procedure is similarly limited.

There is no EC competence in criminal law (though penalties can be imposed where rules are enacted within other competences) but there is a range of conventions and agreements between European countries (e.g. the European Convention on the Punishment of Road Traffic Offences 1964 under the aegis of the Council of Europe which has attracted limited support, the Convention on the Enforcement of Foreign Criminal Sentences 1991, the Convention on Mutual Assistance on Criminal Matters between EC Member States, and relevant Schengen instruments. These conventions and instruments are however limited to criminal matters.

This leaves a gap where the matter is classed as 'administrative' in the State of origin or the State of enforcement, or both; and where the categorisations are different in the States concerned. There are very limited instruments dealing with administrative co-operation, even in some fiscal matters, but they do not seem to address the road traffic problem.

Our report examines the case for establishing a competence within the existing EC Treaty to address the issue by Directive or Regulation. Article 65 EC is effectively limited to civil and commercial matters and the more general 'internal market' powers under article 95 seem unsuited to the present issue. Enhanced co-operation between some Member States under article 11 EC seems equally unpromising. However, article 71 EC on transport policy does, we suggest, provide a basis, and there is the precedent of the Directive 2004/52/EC on electronic road toll systems. Article 71 would be a convenient vehicle for recognition, enforcement and data transfer within the terms of the Data Protection Directive 95/46/EC.

For reference Article 71(1)EC of the treaty, which establishes the legal basis of the Common Transport Policy, is set out here:

“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:

(a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;

(b) the conditions under which non-resident carriers may operate transport services within a Member State;

(c) measures to improve transport safety;

(d) any other appropriate provisions.”

Indicators that Article 71 could be used as a basis for a new legal instrument can be found in the decisions of the European Court of Justice in Case C-211/01 *Commission v. Council*, Case C-336/03 *EasyCar* and Case C-440/05 *Commission v. Council*.

Other possibilities have also been investigated and examples are examined in other areas.

Provisions as to mutual assistance, information-sharing and the recovery of sums claimed can be found in the EC in the consumer protection, competition and taxation contexts.

So, given the political will, there are examples of most of the necessary ‘building-blocks’ of some future instrument. Flexibility would be needed which argues, assuming EC legislation, for a Directive and not a Regulation. A possible set of contents is explored and recommendations are made.

Should our preferred route not prove negotiable, we recommend as an alternative the use of the Financial Penalties Framework Decision (COPEN 24). However, some important changes would have to be introduced to that provision to make it operable in the areas covered by this report.

The last two possibilities examined are: a specific convention on the road traffic issues with the same scope as the proposed Directive and a general Convention on the Enforcement of Regulatory or Administrative Penalties, although this may be too ambitious. An alternative to such bilateral conventions might be to develop a model bilateral agreement which could be adapted to suit the particular circumstances of the States Parties, perhaps coupled with a more generally-adopted agreement on information-sharing.

Recommendations

On the basis of our study and investigation, we make the following alternative recommendations which are set out in our preferred order of priority:

Our First Recommendation – A new Directive Under Article 71 EC

We recommend that a new Directive be introduced under Art 71 EC

The Directive would follow the procedure set out in the present Art 251 EC and would provide for the extra jurisdictional enforcement of charges, fines, penalties, or debts arising from violation of transport laws and regulations incurred by citizens belonging to a state other than that in which a

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traffic violation occurs, whose address for service in the country of the violation cannot be identified and where that violation is punishable by a financial penalty.

The Directive:

- Would not attempt to harmonise substantive provisions relating to traffic violations within Member States' jurisdictions.
- Would provide for the enforcement of penalties imposed in another state
- Should be appropriately worded to allow for *eiusdem generis* additions to suit local conditions and which would be acceptable to Member States.
- Would cover those matters relating to vehicle infractions which are presently and variously defined in Member States as criminal, civil (decriminalised), administrative, regulatory or criminal/administrative/regulatory.
- Would provide that objection might not be made by the enforcing state (ES) because of a different classification of the violation in the issuing state (IS).
- The ES will allow for enforcement of the penalty through procedures it uses for its own traffic violations in comparable areas.
- Proper service would be deemed to occur when the notice of charge is served on the address of the owner. Time would run accordingly.
- The Directive would make provision for enforcement practices, time limits and means of transmitting payments to the requesting authority. The European Enforcement Order (5.5) could provide an example for an easy means of enforcement.
- As enforcement would be undertaken by the judgment creditor (i.e. the person in whose favour a judgment involving a financial award/penalty has been given), the judgment creditor would keep the receipts. Under the EEO, the enforcement procedures are those of the state enforcing the judgment.
- If Art 71 EC provides the competence, the Data Protection Directive will be applicable.
- Data transfer within the terms of the Data Protection Directive as implemented by Member States will be authorised specifically for the purposes of enforcing charges/debts/fines in another jurisdiction so that driving and vehicle agencies and their analogues in Member States will be empowered to transfer such data to a requesting authority. This should be achieved by a straightforward provision.
- The Directive would ensure compliance with European standards concerning human rights, the rule of law and procedural safeguards for the defaulter and proportionality of penalty within each Member State.

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Our Second Recommendation - Extension of Council Framework Decision 2005/214/JHA (COPEN 24) OJ L 76/16 22.03.05

If the case for using Art 71 EC is not felt sufficiently robust, then our second alternative would be to press for an extension of COPEN 24 to cover the matters which are presently under review.

The following would need to be specifically addressed and clarified:

- Decriminalised offences would have to be deemed as criminal for the operation of COPEN 24
- The measure would have to be extended without a doubt to cover the violations that our report has addressed;
- Appropriate provisions would need to be established for straightforward transfer of data. Existing Third Pillar provisions are too complex for the subject matter of this report.
- There would have to be provision for the enforcement of judgments in another state by bodies which are not prosecuting authorities, such as local authorities in England;
- In the absence of such a provision there should be provision for the sharing of penalties between the Issuing state and the Enforcing state (ES). As it is open to parties to make alternative arrangements to that which exists in the existing provision (they currently go to the ES), it may well be argued by other Member States that there is no need for such a provision on sharing. Adding a new provision would have to be acceptable to the governments of the Member States.
- Implementation of COPEN 24 would need to be effected.

Our Third Recommendation – International Agreements outside the EU Framework

Should neither of the first two recommendations be accepted, the only alternative would be for states to pursue bilateral or multilateral conventions. A less ambitious programme might involve use of model agreements as a kind of tool kit which could be used in an adapted form by other states to suit their particular circumstances although some features may take common form on eg data sharing.

The bilateral convention (or agreement subject to modification as explained above) would:

1. Establish a framework for the mutual enforcement of uncontested penalties imposed by courts or administrative bodies by the courts or administrative bodies of the state in which a violator permanently resides.
2. Provide a level of procedural protection for violators which are consistent with the European Convention on Human Rights.
3. Provide for the exchange and transfer of personal data involving ownership of data concerning ownership of motor vehicles within the terms of the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981).

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