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**Exchange of Information on Traffic Violations
Affecting the Road Safety in the European Union**

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Abstract: In this paper we examine the provisions of European legislative act which provide the exchange of information between competent authorities at the level of Member States in the field of road safety, the importance of the research resulting in the need for insuring cooperation at EU level in this area as well. The conducted research continues others concerning the complex system of cooperation between EU Member States. The work may be useful to Romanian authorities involved in the enforcement of European legislative act, and also to those who conduct research in police and judicial cooperation. The results and the essential contribution of the work, its originality, consist of the general examination of the European legislative act, critical remarks and proposals of amending and supplementing the current provisions, which can cause difficulties in practice.

Keywords: police and judicial cooperation; crime; critical opinions

1. Introduction

The achievement of the EU assumed objective of establishing an area of freedom, security and justice requires an understanding from the Member States of these concepts based on freedom, democracy, human rights and fundamental freedoms principles and the rule of law. (Rusu, 2010, p. 24)

The legal cooperation in the European Union must be achieved in our opinion on two main directions, namely the judicial cooperation in criminal, civil or commercial matters and police cooperation.

Judicial cooperation especially in criminal matters cannot be achieved without improving the police cooperation system between the police authorities of each Member State, as, ultimately, the fulfillment of all decisions made by the courts or other judicial bodies with powers in the field is performed by the police.

One of the essential elements of police and judicial cooperation within the European Union is represented by the mutual recognition of judgments, a principle established in the conclusions of the European Council meeting which was held in Tampere on 15-16 October 1999 and reaffirmed in the Hague Programme of 4 to 5 November 2004 for strengthening freedom, security and justice in the European Union. (Rusu, 2010, p. 24)

The importance of police cooperation at EU level results in concrete tasks of this institution in the complex activity of preventing and combating crime of all kinds. The Police cooperation in the European Union is provided in the Treaty of Lisbon, under Title 5, entitled suggestively in this regard "Police Cooperation".

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According to the provisions of the Treaty of Lisbon, at the level of European Union within the framework of police cooperation there will be included all competent authorities of Member States, i.e. police services, customs and other specialized services in law enforcement in the domain of prevention, detection or investigation of offenses. (Boroi & Rusu, 2008, p. 499)

Currently, the cooperation of police units at the European Union level is ensured by the European Police Office.

According to the provisions of the Convention on establishing the European Police Office, the Europol's objective is to improve the relations of cooperation between Member States, the effectiveness and cooperation of competent authorities of Member States in preventing and combating terrorism, drug trafficking and other serious forms of international crime, where there is clear evidence regarding the involvement of organized crime structures and the damage of two or more Member States of the mentioned criminal activity, requiring joint involvement of Member States, due to the magnitude, significance and consequences of the considered crimes. (Boroi & Rusu, 2008, p. 509)

Given the above, it can be concluded that in terms of police cooperation in the European Union, this can be achieved on two distinct levels, namely: cooperation in preventing and combating serious crime forms, which is achieved through Europol and cooperation in other cases of police competence achieved in all cases by police units of the Member States (other than those mentioned in the first case). Given the object of the legislative act which is to be examined, the police cooperation regards other forms of criminality, other than of organized crime.

In order to ensure a higher degree of individual security to its citizens, at the EU's level it was adopted the Directive 2011/82/UE Parliament and the Council of 25 October 2011 to facilitate the cross-border exchange of information on traffic violations that affect the safety road.

In the present paper we will undertake an examination of the European legislative act, during which we will formulate some critical opinions as well, that seem to bring difficulties in practice.

2. Purpose, Scope, Definitions

The objective of the European legislative act is to ensure a high level of protection for all road users in the Union, facilitating the cross-border exchange of information on traffic violations affecting the road safety and, thus, the enforcement of sanctions when such violations are committed with a vehicle registered in another Member State, other than the Member State where the infringement was committed.

The above provisions shall be applied to the following violations of traffic regulations affecting the road safety:

- speeding;
- not wearing a seatbelt;
- jumping red traffic light;
- driving under the influence of alcohol;
- driving under the influence of drugs;
- not using crash helmets;
- use a forbidden lane circulating tracks;
- illegal use of a mobile telephone or communications devices while driving.

In order to avoid other interpretations than those intended by the legislator, there have been defined in the legislative act each of these violations, we will not dwell on that because the definition is identical to the Romanian legislation.

We believe however that it is necessary mentioning the three phrases, as defined in the European legislative act, i.e., national point of contact, automated search and vehicle owner. Thus, by the

“national contact point” we understand a competent authority designated for the exchange of DIV (vehicle registered holder).

“Automated search” means an online access procedure for consulting the database of one, several or all Member States or participating countries, and the “vehicle owner” means the person in whose name the vehicle is registered, as defined in the Member State law of registration.

3. Procedure for Exchange of Information

In the purpose of the investigations on violations of traffic regulations affecting the road safety, Member States shall allow access to the national contact points of other Member States, authorizing them to conduct automated searches on vehicle and on owners’ data or vehicle’s keepers.

The Member State in which the infringement was committed will use the data obtained in order to determine who is responsible for traffic violations affecting the road safety.

The Member States shall take all measures to ensure the exchange of interoperable electronic information, without an exchange of data between other databases. Each Member State shall bear its own costs arising from the administration, operation and maintenance of computer applications.

The decision to initiate or not the proceedings to the violation of unsafe road traffic belongs to the Member State in which the violation occurred.

If the Member State in which the violation occurred decides to initiate such proceedings, it shall notify in accordance with its internal law, the owner, vehicle’s keepre or the person otherwise identified, suspected to have violated the traffic rules affecting safety road. This information relates, in accordance with the internal law and the legal consequences of violating those rules in the Member State where the infringement occurred under the internal law of that State.

When sending a letter to inform the owner, the vehicle owner or person otherwise identified, suspected to have committed traffic infringements affecting the road safety, the Member State where the violations were committed include, in accordance with its internal law, any relevant information, in particular the nature of traffic rule violation, the date and time of the committed offence, a reference to the provisions applicable (including their title) according to the national law that were violated and the appropriate sanction, and, where appropriate, data on the device used to detect the violations. In this case, the requesting Member State transmits the letter of information, in order to guarantee the fundamental rights, in the language of the registration document, if available, or in the official language of the Member State of registration.

As regards personal data the Member States shall take measures on processing in a suitable time, to amend where they are inaccurate, deleted or locked and when they are no longer needed. Also, the Member States shall take measures to protect the personal data in accordance with European standards and that they will be used only for achieving the purpose of the examined legislative act.

All persons concerned are entitled to obtain information on which the personal data are registered in the State of registration and sent to the Member State where the infringement was committed, including the requesting data and the competent authority of the Member State where the infringement was committed. In order to inform citizens of Member States, the Commission will publish on its website, in all official languages of the Union, a summary of the rules of Member States relating to the regulation of traffic.

4. Conclusions and Critical Opinions

The adoption of the examined legislative act represents an objective necessity, driven by the need to prevent and combat more effectively the acts of drivers affecting road safety. The legislative act in question is in its essence a European cooperation instrument of police cooperation between Member

States in the European Union. However, note that not all Member States have accepted its terms, except the United Kingdom, Northern Ireland and Denmark.

To summarize, the examined legislative act establishes a general procedure of police cooperation designed to help identify and punish the participants in trafficking or keepers or owners of vehicles for violating the legal rules affecting road safety.

Thus, according to the mentioned legislative act, the police authorities of the Member States shall take measures to contact the involved owner, keeper of the vehicle or otherwise identified person, suspected of committing an infringement of traffic affecting road safety, in order to transmit the information to the person on the procedures and legal consequences of infringement under the law of that Member State.

In this context, the Member States by their authorized institutions shall submit the information on violations of traffic regulations affecting road safety in the language of the registration document, the language that the person concerned understands in order to ensure correct transmission of information.

At the same time, the person concerned must have the opportunity to respond to the information, to request additional information, to pay the fine or to exercise the right of defense, especially when there is a slip in mistaking the identity.

No doubt the European legislative act is a novelty in EU police cooperation, having the final role to prevent and combat more effectively the infringements of road traffic safety within the European Union.

The examination of the European police cooperation instrument within the European Union, allows us to formulate critical opinions, designed to help improve the legislation in the field.

The first criticism concerns the exclusion from the scope of responsibility in the transport of hazardous prohibited materials or transport of hazardous materials in violation of safety requirements set by the state law in which the consignment was found.

We consider that such provisions were required, given that such transport in certain circumstances can become more dangerous than any of the rules of the European legislative act (speeding, drunk driving, not using crash helmets etc.).

On the other hand, examining the road rules that may be the object in police cooperation matters, we find that the legislative act does not make a clear difference between them. Thus, all road rules specified in the European legislative act can be established on spot by the police forces agencies within the State. Under these circumstances, we would naturally wonder what would be the efficiency of the European legislative act, which in this case it cannot be relied upon, as identifying and punishing the person in question is done on spot when the person is caught.

At the same time there are situations where certain infringements of the rules relating to road safety can be found and then committed. Thus, except for breaches of road safety by driving a vehicle under the influence of alcohol or drugs, all other violations can be established later. We believe that if they may be identified only through tools of identification by using facilities provided by the European legislative act and not those that can be found "in flagrante" under the criminal proceedings.

Of course, the identification of persons that directly participated in the infringement by which it is endangered the road safety or the owners or holders of vehicles involved, it may be achieved under the European legislative act at fact finding, when the involved people have used false identities, aspect involving subsequent verification in their country.

In this context we consider that the European legislative act would have to make a clear distinction between cases where it can make use of its provisions and exceptional situations. It is quite clear that solving the infringements according to which the road safety is affected, on spot, on the moment of fact finding, it does not require further verification in the home Member State of the ones involved, except in certain situations, which we consider to be an exception.

Another criticism regards the absence of rules on the legal person responsibility, in its quality of owner or keepers of the vehicle involved or participating directly in the offence. We insist upon this situation because the legal person responsibility varies from case to case, being required each time a pertinent analysis, based on the involvement degree of the legal person to the breach that affects road safety laws in a Member State.

Finally a last remark concerns the rights of the person concerned, regardless of its quality, the driver of the vehicle, its owner or its keeper. Thus, when the person contests taken action, to which court will the person address? To the Member State where the infringement was committed or the State of residence or home? We find that European legislative act does not solve this problem more so it did not even get it into account. We believe that in such a situation, given the existing facts, that person may only address to a competent court of the State where the crime was committed. But, in that case, the person concerned will have to contest a fine, during which you have to go to court, after being first identified, involving a number of expenses that will surely be greater than the amount of the applied fee. In these conditions, one may naturally wonder whether this right is respected. This issue is extremely sensitive, requiring a different approach which we will analyze in a future paper.

5. Bibliography

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