

# SPARKS breakthrough

A new Directive on cross-border enforcement signals a major breakthrough in the campaign to stop the loopholes which allow drivers across Europe to flout local laws with impunity.



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The EC plans February 2008 publication of proposals for a new Directive on cross-border enforcement of traffic violations. This could be the first step towards blocking loopholes that are allowing rising number of drivers across Europe to flout, with impunity, safety and other legislation when travelling through countries other than their own (see 'Progress at last!' by Colin Wilson and Jan Malenstein in ITS Solutions, September 2007).

The proposals will then be subject to a co-decision process lasting some 18 months. Key elements are thought likely to include:

- A new legal process for transferring vehicle registration mark (VRM) data held by registration authorities in foreign countries for use in enforcement action;
- An extranet-based communications infrastructure;
- The introduction of standardised procedures for notifying penalties to offenders in their own language; and
- Enforcement via the COPEN24 European Framework decision (see below).

The scope is likely initially to be restrict-

ed to road safety violations. Others, including parking, would come in later.

A new Directive, under Article 71 of the Consolidated European Treaty, is the legislative instrument favoured - as the most effective way of increasing levels of foreign-registered vehicles' compliance with national traffic and parking laws - by a team of legal academics who have been working on the EuroSPARKS research project. In their interim findings, the experts - from France, Germany, Italy, The Netherlands and the UK - urge the implementation of one of three new legislative alternatives needed for the effective implementation of cross-border enforcement.

In addition to the proposed Directive, these are:

- An extension of the scope of European Council Framework Decision 2005/214/JHA (COPEN24), on the application of the principle of mutual recognition to financial penalties, to cover all traffic offences, minor as well as serious; and
- Agreement by Member States of bilateral or multilateral treaties covering mutual enforcement.

## New Directive

A new Directive would need to provide for straightforward data transfer, recognition of foreign judgments and enforcement under national procedures. Key practical elements should, says the EuroSPARKS team, include:

- Flexibility for adaptation to local conditions within Member States;
- Application to all specified minor traffic offences irrespective of their classification within individual Member States to exclude classification-based objections;
- Enforcement through Member States' standard procedures;
- Availability of reports of proceedings to the judgment creditor in the issuing state;
- Authorisation of data sharing specifically for enforcement purposes;
- Compliance with European standards on human rights, the rule of law, safeguards for defaulters and proportionality; and
- Provision for enforcement practices, time limits and transmission of payments.

Should the EU eventually decide

against a new Directive, the EuroSPARKS' team's second preference is for COPEN24 to be reviewed and extended to cover all traffic violations, minor as well as serious. (It was due to have been adopted as national law by all EU Member States by 22 March 2007; but most, including Germany and the UK, have yet to do so).

Currently applying only to criminal offences (and not, therefore, to decriminalised parking violations), it does offer an enforcement mechanism, following the levying of a financial penalty. However, it has no provision for identifying vehicle owners or drivers via data transfer of licence plate details; while monies recovered accrue to the enforcing state with costs not being reclaimable by the issuing state, unless this is mutually agreed in advance.

Necessary amendments identified by EuroSPARKS include:

- Recategorisation of decriminalised offences as criminal for the purposes of COPEN24;
- Provision for the enforcement of judgments by eg local authorities;
- Introduction of straightforward data and cost transfer between Member States; and
- Implementation by all Member States.

Says EuroSPARKS' team leader Professor Patrick Birkinshaw of Hull University, UK: "If Member States were unanimous in extending the scope, then this could be an effective instrument".

If the EU rejects both these recommendations, the EuroSPARKS team sees only one feasible remaining alternative – bilateral or multilateral treaties between Member States. These should provide:

- A framework for mutual enforcement of uncontested penalties;
- Protection for offenders consistent with the European Convention of Human Rights; and
- Mechanisms for the transfer of personal owner and vehicle data.

The researchers are confident that bipartite agreements between a small number of sympathetic Member States could potentially be agreed and ratified within 12 to 18 months from initial discussions. But the content would need to be restricted to the three points listed.

A multipartite treaty, on the other hand, would be far more ambitious project, needing negotiations over many years prior to ratification by all national parliaments.

In the UK, the Government has already heeded calls from the SPARKS (Shared Parking and Registered Keeper Information Service) Programme for more powers for the national Driver and Vehicle Licensing Agency (DVLA) to pre-

vent foreign-registered drivers avoid paying parking and other traffic penalties. A draft Local Transport Bill, published on 8 November 2007, includes a proposal for the DVLA to receive data from foreign licensing agencies and share it with UK local authorities and the police. For lack of this information, vast numbers of penalties issued to foreign-registered vehicles are going unpaid.

EuroSPARKS has intensively tested its recommendations at a series of regional seminars, across Europe. Dutch parking managers, for example, have stressed that cross-border enforcement will grow in importance as international traffic levels rise and Member States introduce road pricing and environmentally-friendly taxation.

They support bilateral agreements and other practical solutions, which they feel would be neglected if the focus were solely to be on legislation.

Italian municipalities have expressed frustration at their inability to prosecute foreign traffic offenders, with police officers apparently suffering psychological stress from the impossibility of carrying out their jobs. Delegates have welcomed recommendations for new European legislation, but raised concerns over the ability of all Member States to comply with the procedures envisaged by EuroSPARKS.

They have also highlighted the scope for voluntary agreements, such as one recently signed by the Mayor of Rome, Italy and the Prime Minister of Romania. (Numbers of people from Romania, which became an EU Member State in 2007, are moving to Italy with whom they share linguistic links).

"We have done this", Alessandro Drago of the Lazio Regional

Administration told a EuroSPARKS seminar in Rome, "in order to have the means to prosecute offenders who commit serious offences that injure people and property. But it can only be partially effective until we have a European legal framework".

EuroSPARKS, which started on 1 February 2007 and ends on 31 January 2008, is presenting its final report at a wind-up dissemination seminar on 24 January 2008 in Brussels, Belgium (see Diary). A project within the SPARKS Programme, it has been co-funded by the EC's Civil Justice Framework programme and the London Enforcement Task Force (ETF), which is chaired by Transport for London and comprises police and local authority agencies in the UK capital.

EuroSPARKS has emerged in response to evidence that the adoption of civil legal procedures for road traffic enforcement and road user charging in EU Member States including Belgium, Malta, The Netherlands and the UK is creating problems with cross-border enforcement of civil judgments and tribunal decisions. This is leading to inevitable inequalities of treatment between different classes of driver, and in particular between compliant nationals within their own Member States and non-compliant visitors from elsewhere.

The SPARKS Programme, an initiative of the London ETF, brings together local traffic enforcement authorities in the UK and other EU Member States to collaborate in resolving the issue of cross-border enforcement of civil traffic contraventions.

[www.sparksproject.org](http://www.sparksproject.org)  
[www.eurosparks.org](http://www.eurosparks.org)

Table 1

Countries currently willing and able to share data for civil enforcement

Countries confirmed as being willing and able	Countries thought likely to be willing and able
Belgium	Austria
Denmark	Hungary
Finland	Iceland
Germany	Norway
Gibraltar	Poland
Ireland	Portugal
The Netherlands	Slovenia
Sweden	Spain

Table courtesy of the SPARKS Programme