

# Road Safety Management

## following the amendment to Directive 2008/96/EC

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The EU has reformed the rules guaranteeing the safety of road infrastructure. cep provides the following assessment of the amendments that have been passed to the Road Safety Management Directive [2008/96/EC]:

- ▶ The mandatory “proactive” “network-wide road assessment” is a sensible addition to existing “reactive” safety management.
- ▶ The obligation to “follow-up” on the “network-wide road assessment” and on targeted road-safety inspections is crucial for improving transport safety.
- ▶ The deployment of an expert group to prepare common specifications on the readability and detectability of road signs and road markings is crucial for the safe operation and marketability of (partially) automated and autonomous vehicles in the EU.
- ▶ The general extension of the scope of the Directive to include all motorways and primary roads beyond the TEN-T is in breach of the principle of subsidiarity and is therefore contrary to EU law.

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## 1 Introduction

The number of road fatalities in the EU fell steadily between 1991 and 2013 from 76,600 to 26,000 but has remained almost constant since 2013.<sup>1</sup> The EU Commission therefore considers the existing EU legislation on road safety to be inadequate – particularly in view of the increasing volume of traffic.<sup>2</sup>

The Road Safety Management Directive of 2008<sup>3</sup> sets out procedures to ensure high safety standards when planning and operating roads – motorways and primary roads – in the “Trans European Transport Network” (TEN-T).<sup>4,5</sup> It is restricted to accident black-spots on roads that are already in operation (“reactive approach”).<sup>6</sup> The Road Safety Management Directive has not been fully implemented in all Member States.<sup>7</sup> According to the EU Commission, Member States that are applying the Directive voluntarily on other roads, have achieved a “much better road safety performance”.<sup>8</sup>

In May 2018, the Commission therefore proposed a Directive to amend the Road Safety Management Directive<sup>9</sup> in order to reform road safety management in the EU and to extend the scope of the Directive. This will reduce the number of deaths and serious injuries on the roads.<sup>10</sup>

In February 2019, the Commission, the European Parliament and the Council agreed on a common text which was passed by the European Parliament in its 1st Reading on 4 April 2019.<sup>11</sup> Following formal approval by the Council, the amending Directive will come into effect on its publication in the Official Journal of the EU.

This cepInput presents the main changes to the EU legislation on road safety management contained in the reformed Road Safety Management Directive<sup>12</sup> (Section 2). The subsequent assessment (Section 3) first concentrates on the Economic Impact Assessment (Section 3.1). This is followed by the Legal Assessment (Section 3.2).

## 2 Main Changes

### 2.1 Extended scope

The Road Safety Management Directive applies not just, as previously, to the motorways and primary roads of the TEN-T but also to other motorways and primary roads – except for sections with a low risk

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<sup>1</sup> EU Commission, Proposal COM(2018) 286 for a Regulation on type-approval for motor vehicles as regards their general safety and the protection of vehicle occupants and vulnerable road users, p. 1 and footnote 2; see [cepPolicyBrief 34/2018](#).

<sup>2</sup> EU Commission, Proposal COM(2018) 286, p. 2.

<sup>3</sup> Directive [2008/96/EC] on road infrastructure safety management [hereinafter: “Road Safety Management Directive”].

<sup>4</sup> TEN-T Regulation (EU) No. 1315/2013; see [cepPolicyBrief](#).

<sup>5</sup> Directive [2008/96/EC] on road infrastructure safety management, Art. 1 (2) and Recitals 4 and 5.

<sup>6</sup> EU Commission, Proposal COM(2018) 274 amending Directive 2008/96/EC on road infrastructure safety management, p. 10.

<sup>7</sup> Ibid., p. 2.

<sup>8</sup> Ibid., Recital 4.

<sup>9</sup> EU Commission, Proposal COM(2018) 274.

<sup>10</sup> Ibid., p. 2.

<sup>11</sup> European Parliament, 1st Reading: [P8\\_TA-PROV\(2019\)0346](#).

<sup>12</sup> Road Safety Management Directive [2008/96/EC] as amended by the Parliament’s position of 4 April 2019 [[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST\\_8059\\_2019\\_INIT&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_8059_2019_INIT&from=EN)]. As of the editorial deadline (30 April 2019) only formal acceptance by the Council was required.

for safety which are registered with the Commission as exemptions by the Member State.<sup>13</sup> In addition, it applies to roads outside urban areas, which do not serve properties bordering on them and which are completed using Union funding.<sup>14</sup> In this regard, it remains irrelevant whether the roads are at the design stage, under construction or in operation. The Directive defines a primary road as a road that connects major cities and/or regions but is not a motorway and belongs to the highest category of road below the motorway in the relevant Member State<sup>15</sup>. In Germany this would be the “Bundesstraße”.

In this regard, the Directive applies as before to the entire road infrastructure. That includes roads and intersections as well as rail and pedestrian crossings, roadsides, crash barriers and wildlife fencing, road markings, signs and traffic signals.<sup>16</sup>

## 2.2 Periodic road safety inspections

In future, Member States will have to carry out “periodic road safety inspections” – to identify features and defects which, for reasons of safety, require maintenance work – “with sufficient frequency” to safeguard adequate safety levels.<sup>17</sup> In particular, Member States must ensure the safety of sections of road adjoining road tunnels by carrying out road safety inspections in those areas at least every six years, in which the bodies responsible for tunnels and roads must be involved.<sup>18</sup>

## 2.3 Network-wide road assessment

For the first time, Member States must carry out a “network-wide road assessment” (NRA) by 2024 for the entire road network that is covered by the Directive.<sup>19</sup> It will identify sections of road that are at high-risk of accidents based on previous experience with accident black-spots (“proactive”<sup>20</sup> approach) and categorise them into at least three risk categories.<sup>21</sup> An NRA includes a visual inspection of “safety characteristics” – such as the curvature of curves, adequate crash-barriers, intersections, rail crossings and obstacles at the roadside – an analysis of traffic volume and accident data as well as an evaluation of the risk of accidents and their severity.<sup>22</sup> These must be “sufficiently frequent” but in any case take place at least every five years.<sup>23</sup>

## 2.4 Targeted road safety inspections and remedial action

In order for the results of NRAs to result in improved road safety, Member States have to “follow up” with direct remedial measures or “targeted road safety inspections”.<sup>24</sup> The latter are targeted on-site inspections of the road infrastructure on existing sections of road. They aim to identify “hazardous

<sup>13</sup> Ibid., new Art. 1 (2a). This exemption was proposed by the Council.

<sup>14</sup> Ibid., amended Art. 1 (2) and (3).

<sup>15</sup> Ibid., new Art. 2 (2b). This is the definition modified by the European Parliament and the Council.

<sup>16</sup> Road Safety Management Directive, Annex IIa

<sup>17</sup> Ibid., amended Art. 6 (1) in conjunction with amended Annex II. The Council emphasised the word “periodic”.

<sup>18</sup> Ibid., amended Art. 6 (3) in conjunction with the Tunnel Safety Directive 2004/54/EC.

<sup>19</sup> Ibid., amended Art. 5 (1).

<sup>20</sup> EU Commission, Proposal COM(2018) 274, p. 11.

<sup>21</sup> Road Safety Management Directive, amended Art. 5 (3).

<sup>22</sup> Ibid., amended Art. 5 (2) in conjunction with Annex III.

<sup>23</sup> Ibid., amended Art. 5 (1).

<sup>24</sup> Ibid., new Art. 6a (1). The Council emphasised the word “targeted road safety inspections”.

conditions, faults and deficiencies” that increase the risk of accidents and injuries.<sup>25</sup> The inspections must be carried out by expert teams<sup>26</sup> who have to take account of a list of criteria.<sup>27</sup>

Member States must ensure that a targeted road safety inspection is followed up by a reasoned decision determining if any remedial action is necessary. In order to plan remedial action, they must identify the road sections requiring improvements to road infrastructure. In addition, they must define the actions that have priority for improving the safety of those road sections.<sup>28</sup>

In implementing remedial action, Member States must give priority to those road sections with low safety levels and which offer the opportunity of remedial measures with “high potential” for improving safety and reducing accident costs.<sup>29</sup> In addition, they must regularly prepare and update an action plan.<sup>30</sup>

## 2.5 Protecting vulnerable road users

In future, Member States will have to ensure that the “needs of vulnerable road users are taken into account” in road safety management procedures.<sup>31</sup> These are users of powered two-wheelers - such as motorbikes and mopeds - as well as cyclists and pedestrians.<sup>32</sup>

## 2.6 Road markings and road signs

As regards road markings and road signs, Member States must pay specific attention to their readability and detectability for human drivers and for automated driver assistance systems.<sup>33</sup>

By June 2021, a group of experts established by the Commission must – in consultation with the United Nations Economic Commission for Europe (UNECE) – assess the opportunity to establish common specifications on the readability and detectability of road markings and road signs for human drivers and automated driver assistance systems.<sup>34</sup> Taking account of this assessment, the Commission can then establish common specifications by way of implementing acts.<sup>35</sup>

# 3 Assessment

## 3.1 Economic Impact Assessment

In view of the importance of the road infrastructure for transport safety in the EU, effective road safety management is essential. Extending the scope of the Directive to include all motorways and primary roads gives greater safety to road users in the EU because, as a result of the extension, road safety is

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<sup>25</sup> Ibid., amended Art. 2 (7).

<sup>26</sup> Ibid., Art. 6(1a) in conjunction with Art. 9 (4)(a).

<sup>27</sup> Ibid., amended Annex IIa.

<sup>28</sup> Ibid., new Art. 6a (2).

<sup>29</sup> Ibid., new Art. 6a (3).

<sup>30</sup> Ibid., new Art. 6a (4).

<sup>31</sup> Ibid., new Art. 6b.

<sup>32</sup> Ibid., new Art. 2 (10).

<sup>33</sup> Ibid., new Art. 6c (1).

<sup>34</sup> Ibid., new Art. 6c (2).

<sup>35</sup> Ibid., new Art. 6c (3) in conjunction with Art. 13 (2). The European Parliament and the Council opposed empowering the Commission to adopt general performance requirements on readability and detectability without first convening a committee of experts.

also likely to increase in Member States that do not yet apply the Directive voluntarily on motorways and primary roads outside the trans-European transport network (TEN-T).

The fact that the Directive also includes sections of road outside urban areas that are financed from EU funds, reduces the risk that EU funds will be used to build unsafe roads. It may however lead to a patchwork of different rules on road safety management in one Member State. This is even true for same-category roads, such as B-roads, where some of them are co-financed by the EU and others are not. It is however open to every Member State to standardise their safety management for all similar roads outside urban areas according to the provisions of this Directive or to ensure that competences are effectively defined.

The mandatory “proactive” “network-wide road assessment” is a sensible addition to the existing “reactive” safety management because the NRA enables important conclusions regarding safety deficiencies, drawn from known accident black-spots, to be applied to other sections of road - not yet affected by frequent accidents.

The obligation to “follow-up” on the NRA and on targeted road-safety inspections is crucial for better traffic safety because it is pointless if recommendations from the NRA or from the targeted road-safety inspections disappear into a filing cabinet without any action being taken.

The newly added express obligation to ensure that “vulnerable road users” are “taken into account” in road safety management, may improve their protection in Member States where this has so far been neglected. However, this very general obligation leaves plenty of scope for discretion so it is difficult to determine what practical impact it will have.

Clearly visible road markings and road signs facilitate orientation for lane-keeping and ensure compliance with the mandatory speed limits. Thus, they not only promote driving safety especially where visibility and road conditions are poor but are also crucial for the safe operation and marketability of (partially) automated and autonomous vehicles in the EU. It is therefore appropriate for the Commission to set up an expert group to prepare common specifications on the readability and detectability of road markings and road signs.

### 3.2 Legal Assessment

The EU can take measures to improve transport safety in order to implement a “common transport policy”.<sup>36</sup> The general extension of the scope of all provisions of the Directive to include all motorways and primary roads beyond TEN-T is, however, in breach of the principle of subsidiarity<sup>37</sup> and therefore contrary to EU law. It is basically desirable to ensure that road markings and road signs are properly designed and maintained EU-wide so that they are easily and reliably visible to drivers and driver assistance systems as well as (partially) automated and autonomous vehicles. However, the general justification – also put forward by the EU Commission in its amendment proposal – that the negative external effects of road accidents constitute “trans-boundary problems”<sup>38</sup>, is incorrect. Although road accidents have a cross-border impact, these are predominantly limited to the roads of the TEN-T which was designed with precisely such cross-border situations, and the “added value” of EU action, in mind.<sup>39</sup> By contrast, general application of the Directive to all motorways and primary roads outside the TEN-T will have the result of imposing EU requirements on situations that are purely internal in nature. In such cases, however, ensuring road safety is the responsibility of the Member States. The fact that, without EU action, they fail to comply with this obligation to the extent required,<sup>40</sup> although they could do so by way of their own measures or voluntary application of the Directive, is not in itself sufficient grounds for completely disregarding the EU legal principles on the division of responsibilities between the EU and Member States.

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<sup>36</sup> TFEU, Art. 91.

<sup>37</sup> TEU, Art. 5 (3).

<sup>38</sup> EU Commission, Proposal COM(2018) 274, p. 4.

<sup>39</sup> TEN-T-Regulation, Recital 2, (1), Art. 2 and Art. 3 (a) and (d).

<sup>40</sup> EU Commission, Proposal COM(2018) 274, p. 5.

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