

Summary

By Law of the 24th of October 2008 a legal base has been embedded in the Dutch Road Traffic Act 1994 (hereafter: the RTA 1994) for a Recidivist Regulation for serious traffic offences (hereafter: the Regulation). According to this Regulation the drivers' license of the driver of a motor vehicle becomes invalid by law in case of a second serious traffic offence by the driver within five years after a criminal conviction for a previous traffic offence. The driver then has to request for a new drivers' license when he wishes to continue driving a motor vehicle. At several times during the parliamentary debates on this Regulation the issue rose what specific traffic offences should fall under this Regulation. This has resulted in the Dutch government requesting the WODC for the start of a research covering a number of specific questions concerning this issue. These questions are as follows:

1. What serious traffic offences within the built-up area can fall under the scope of the Regulation, taken into consideration the seriousness of the offence and the local situation?
2. What other measurable traffic offences on all Dutch roads can fall under the scope of the Regulation, taken into consideration the nature of the offence and the (legal) status of the road?
3. What legal consequences can an enlargement of the number of offences falling under the Regulation have for other law enforcing instruments in the field of Dutch traffic law that can lead to the loss of a drivers' license?

To begin with the present legal contents of the Regulation and other law enforcing instruments in the field of Dutch traffic law are described. In regard to the other instruments particular attention is given to the criminal sanction of disqualification of driving and the preceding instruments of the demand to surrender a drivers' license and the suspension of a drivers' license. Also attention is given to the administrative order of the drivers' license, including the regulations for the beginning (non-experienced) driver and the intended alcohol lock-programme.

The research concerning the first question has resulted in the following conclusions:

- Excessive speed offences in the built-up area could fall under the scope of the Regulation. A starting point could be that in the built-up area excessive speed offences are those offences where the speed limit is exceeded by 50 kilometres per hour or more in driving a motor vehicle and 30 kilometres per hour or more in driving a moped.
- A severe (but not excessive) speed offence in the built-up area under hazardous circumstances could be regarded as an excessive speed offence. This concerns circumstances that result in a clear breach of the so called safety principle and/of the principle of legitimate expectations in (Dutch) traffic law. Relevant to the level of hazardless of these circumstances could be the hazardless nature of the motor vehicle, the vulnerability of other users of the road nearby or a certain spot within the built-up area that commonly is used by vulnerable users of the road.

The research on the second question has led to the following conclusions

- Severe traffic offences committed with intent could fall under the scope of the Regulation. The same applies for the offence of causing a traffic accident resulting in

bodily injury and death (by negligence) committed in one or more of the aggravating circumstances of article 175 par. 3 of the RTA 1994.

- For speeding offences outside the built-up area it seems that the type of road on which this offence was committed is of such importance that there is not enough justification for a (working) definition of excessive speed offences. An alternative approach could be to relate the level of hazardless of the type of road to the speeding offence. In this approach the speeding offence committed in one or more aggravating circumstances of article 175 par. 3 of the RTA 1994 could be seen as excessive more swiftly.

- Specific repeated traffic offences could fall under the scope of the Regulation. This involves offences like for example driving against the traffic on motorways, repeated and prolonged tailgating, repeated dangerous overtaking and intentionally disobeying or neglecting stop signs of competent authorities.

The research on the third question has led to the following observations:

- It seems a sound approach to continue to emphasize (in the explanatory memorandum) the exclusive administrative legal nature of the Regulation in light of a certain degree of uncertainty in the review of the impact of article 6 of the European Convention on Human Rights on national procedures that can lead to the loss of a drivers' license.

- When there is concurrence between the invalidation by law of the drivers' license on the base the Regulation and the intake of a drivers' license to promote the collection of a fine for a minor traffic offence (according to the procedures of the Wahv: Law on Administrative Enforcement of Traffic Regulations) it seems wise to use only the other two coercive measures foreseen in the Wahv in the following order: first the taking out of service of the vehicle of the driver, if necessary followed by the imprisonment for debt of the driver.