



significant.

## **Evaluation of the reoffending scheme for serious traffic offences**

### **Management Summary**

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# 1. Management Summary

## Background and Motivation

01 Drunk driving is a threat to road safety. Every year, there are dozens of fatalities and hundreds of injuries that can be linked to driving under the influence of alcohol (SWOV Institute for Road Safety Research, 2011a). The government is aiming to curb drunk driving in various ways, using both preventive approaches (such as the BOB designated driver information campaign) and repressive approaches (enforcement). Drivers who have drunk too much alcohol (more than 0.2 grams of alcohol per litre of blood for new drivers, or 0.5 grams for all other drivers) and are arrested are subjected to one or more measures. These can be criminal-law measures or administrative-law measures.

02 As of 1 June 2011, drivers may also be subject to the reoffending scheme for serious traffic offences (hereafter referred to as the reoffending scheme) in addition to the criminal law sanctions (such as disqualification from driving a motor vehicle, a fine, a community punishment order or a prison sentence) and the administrative measures (the alcohol and traffic education measure, the alcohol ignition interlock programme and the fitness to drive examination). In brief, the reoffending scheme involves the driving licence becoming legally invalidated if the holder is convicted without appeal for drunk driving twice within five years, with a blood alcohol content of more than 1.3 grams per litre being measured the second time.

03 Now that several years have passed since the introduction of the measure, the Ministry of Security and Justice (Administration of Justice and Crime Control Department) and the Ministry of Infrastructure and the Environment (Directorate for Roads and Traffic Safety) have a need for an evaluation of the reoffending scheme. Significant carried out this evaluation together with MuConsult, in the period from October 2014 to May 2015.

## Objectives and research questions

04 The objective of this study is to obtain insights into the extent to which the reoffending scheme helps achieve the goals of this scheme in the manner intended by the legislative authority and to obtain information on any problems that arise in practice.

05 The questions to be answered in the evaluation are:

- i. How is the reoffending scheme supposed to function and how is it assumed that the goals will be achieved?
- ii. What does the implementation of the reoffending scheme look like in practice?
- iii. Does the reoffending scheme help achieve the goals of this scheme in the manner intended by the legislative authority? What can be said about the achievement of the goals?
- iv. How does the reoffending scheme relate to the other criminal-law and administrative-law measures?
- v. What effect would an amendment to the reoffending scheme have in which the limit for the second drunk driving offence is reduced from 1.3 to 0.8 grams per litre?

## Research Approach

We have adopted a variety of evaluation methods to answer the research questions. In this study, we use a theory-driven evaluation in combination with a process evaluation and an impact analysis. This research report synthesises all the research findings.

06 We used the following research methods and activities for the policy reconstruction and plausibility assessment:

- a. A document study using policy documents, aimed at drawing up an initial version of the policy theory in which the goals and assumed effective mechanisms are made explicit;
- b. Interviews with policy-makers aimed at refining the policy theory;
- c. Literature study. We consulted (scientific) literature with the aim of supplementing the 'political policy theory' and determining how likely it is that the reoffending scheme would indeed deliver the intended results in practice (the plausibility assessment);
- d. A group meeting. We held a group meeting with experts from the SWOV Institute for Road Safety Research with the aim of testing and supplementing the policy reconstruction and plausibility assessment.

07 We carried out the following activities for the process evaluation and theory-driven evaluation:

- a. We held 15 interviews with a total of 21 professionals (from the police, CVOM [public prosecution central processing unit], CBR [central office for motor vehicle driver testing], RDW [Dutch road transport directorate], the judiciary and Trafieq [the organisation that provides the EMA/LEMA alcohol and traffic training courses for CBR]). The aim of these interviews was to find out how the reoffending scheme is implemented and the extent to which the assumed effective mechanisms are activated in practice. We also used these interviews to obtain information on the overlap of criminal-law and administrative-law measures with the reoffending scheme;
- b. Phone interviews with nine motor vehicle drivers: three drivers who have one conviction and are therefore 'in line' for the reoffending scheme, and six drivers who have lost their driving licence through the reoffending scheme. The aim of these interviews was to determine how drivers experienced the process - from the arrest to the consequences of the reoffending scheme - and the extent to which the reoffending scheme had changed their behaviour;
- c. Quantitative data collection and analysis. The Public Prosecution Service and the CJIB (central judicial collection agency) supplied data on all cases involving drunk driving. We processed and analysed this data. We also used several annual reports as a source for the total number of administrative measures imposed;
- d. Dossier study. Based on the Public Prosecution Service data, we made an estimate of the number of cases that qualified for the reoffending scheme. Using data from the CBR and RDW, we carried out a dossier study to determine the extent to which the estimate agrees with the actual application and recorded information.

- 08 We carried out the following activities for the impact analysis:
- a. We held several interviews with experts about the consequences of an extension of the reoffending scheme. These consequences were only discussed in qualitative terms;
  - b. A quantitative analysis to estimate the potential size of the target group if a lower limit were to be applied.

## Findings and Conclusions

### *Origins of reoffending scheme lie in the points system*

09 The reoffending scheme has its origins in the bill 'Changes to the 1994 Road Traffic Act in connection with the introduction of a points system for driving licences', legislation that provided for a points system for various traffic offences, including drunk driving. Parliament had seen a need for such a system ever since 1991. However, an amendment introduced while the bill was being debated in Parliament led to a fundamental change in the nature of the bill: rather than a broad-based points system, it became a reoffending scheme directed specifically at drunk driving and based on the notion that 'two yellow cards make a red'.

### *The process broadly functions as intended although there are areas for improvement*

10 When the reoffending scheme was introduced, a working process was established in which the Public Prosecution Service, RDW and CBR have the biggest roles. The Public Prosecution Service keeps track of whether a driver has committed an offence that qualifies for a point and makes sure that the driving licence is declared invalid if there is a conviction without appeal for a second offence involving a blood alcohol concentration of more than 1.3 grams. The Public Prosecution Service processes the invalidity in the driving licence records and sends a letter to the person in question informing them that their driving licence has been declared invalid. RDW is responsible for managing the driving licence records. RDW passes on any changes to CBR on a weekly basis. CBR records this status so that in the event of a new application for a driving licence, the driver will be required to demonstrate both their fitness to drive and their driving skills. Multiple parties in different areas of law are involved in a complex system that has been set up to obtain the driving licence and declare it invalid. The implementation and execution are complex as a result. In addition to the reoffending scheme, the driver generally also faces a criminal law sanction (for example a fine or disqualification from driving) and an administrative measure imposed by CBR.

- 11 The execution of the process is largely as intended, but there are shortcomings in the implementation for some of the target drivers:
- a. The main problem is that not all drivers who are eligible for the reoffending scheme have their driving licence declared legally invalid. The reoffending scheme was not applied in 200 to 350 cases, mainly because the first or second point was not recorded properly by the Public Prosecution Service;
  - b. CBR is not informed of everyone to whom the reoffending scheme applies. As a result, CBR does not have all the relevant information about the offence, whereas this information is often desirable when assessing any application for a new driving licence;
  - c. The reoffending scheme is barely mentioned during the criminal justice process. No warning letters are sent after the first offence, and the scheme is not referred to, or only in passing, in the trial;

- d. The message that the reoffending scheme applies is sometimes conveyed later than the drivers would wish;
- e. Some drivers to whom the reoffending scheme applies do not hand in their driving licence. It is not clear whether this is deliberate or not. What *is* clear is that the driving licence looks like a valid document at first glance to the police if they do not check the driving licence records. Given that the police do not always check the status in the driving licence records when they stop someone, there is a risk of people being able to continue driving around without consequences;
- f. Finally, the overlap with other criminal-law sanctions and administrative measures can also cause problems. This issue is discussed in more detail in the next section.

*The effectiveness of the reoffending scheme seems to be limited*

- 12 The academic literature distinguishes between three effective mechanisms in the points system:
  - a. Prevention. This is due to the deterrent effect that the sanction has on all drivers who are aware of the sanction (and receptive to it). Special prevention is a specific form of prevention and results from the deterrent effect of a sanction that may be imposed in the event of a repeat offence;
  - b. Selection. This occurs when drivers are temporarily barred from using the roads;
  - c. Correction. This involves changing the drivers' behaviour through direct interaction with them, with an emphasis is on teaching skills and insight.
  
- 13 Policy-makers expected the reoffending scheme to have an effect through the special prevention and selection mechanisms. Based on this study, the following conclusions can be drawn:
  - a. Given the current way of working, there is no general preventive effect. The scheme is not known widely enough for that and is obscured by all the other possible sanctions and measures that could be imposed;
  - b. Given the current way of working, there is almost no special preventive effect, as drivers usually do not realise that they are in line for the scheme: they are not sent a warning letter with their first point, while the scheme is often not mentioned during the criminal proceedings either. Furthermore, it seems that the threat of this punishment is not a deciding factor even for people who are in line for the scheme when it comes to the point when they are drunk and face the decision of driving or not;
  - c. Given the current way of working, there is a selection effect for the more than 650 drivers whose driving licences are currently legally invalid under the reoffending scheme. Some of these drivers will indeed stop driving, or else drive more carefully and avoid drunk driving. Some of them will continue to drive as before. The Dutch road transport directorate, for example, has only about half the licences of the drivers covered by the scheme while checks of whether the licence is valid are carried out in by no means all cases when a driver is stopped by the police;
  - d. Given the current way of working, there is no correction effect, as the organisations involved do not pay attention to this aspect in the manner that would be required to bring about a change in behaviour.
  
- 14 The reoffending scheme should be seen as one part of the criminal law and administrative law system set up to prevent drunk driving. Considered as part of that system, it would seem to be one of the less effective measures in that system. The alcohol ignition interlock programme (which may currently no longer be imposed) seems to be a more effective measure.

Moreover, as part of the system, the reoffending scheme is concurrent with criminal law and administrative law measures. This overlap is inherent in the system, which means that overlap can occur even when implementation is optimal. This overlap means that when the system works perfectly, drivers can receive three punishments for a single offence, often at different points in time. Incidentally, this does not always happen as the system does not always work perfectly and drivers may only get two punishments (or even one). Three punishments for a single offence is an undesirable side-effect as this reduces the acceptance of the punishments, making drivers possibly more likely to start driving again (whether or not under the influence of alcohol).

15 The overlap means that the reoffending scheme sometimes has only a limited effect. In the case of the alcohol ignition interlock programme there are two messages: not driving (the reoffending scheme) or driving under supervision (the alcohol ignition interlock programme). Not only are these conflicting messages, in some cases the reoffending scheme has meant that the alcohol ignition interlock programme had to be stopped. In addition, there is sometimes also concurrence between the reoffending scheme and the CBR examination. In both cases, the fitness to drive is investigated in a similar fashion. What is added to the fitness to drive examination by the reoffending scheme is a requirement for a driving skills examination. That is not necessary after the CBR's examination. The question is whether the addition of the driving skills examination has any added value other than creating a barrier to getting a new driving licence.

16 All in all, the reoffending scheme seems at present to have little impact on road safety. This is a scheme that can and should be improved in certain respects. The scheme currently has a limited effect and even seems to be counterproductive in some cases. Even when the reoffending scheme works perfectly, it is debatable whether the scheme has any added value over and above the other sanctions and measures. Based on this study, the reoffending scheme seems to have some effect for a small group of repeat offenders (with a second offence with a high concentration of alcohol) who might otherwise have been able to get their driving licence back. These drivers are (temporarily) barred from using the roads.

*A reduction of the limit seems to have limited added value*

17 A quantitative exploration of the consequences of a reduction in the limit above which the reoffending scheme applies for a second offence gives an ambivalent result. On the one hand, the extension of the scheme would lead to 700 more potential repeat offenders - i.e. even more repeat offenders who are temporarily or permanently not allowed a driving licence.

18 On the other hand, the effect of the scheme seems to be limited given the current way of working while a reduction in the limit would lead to even more concurrence. If the alcohol ignition interlock programme remains part of administrative law, this will mainly mean concurrence with the alcohol and traffic training courses and the alcohol ignition interlock programme; in both cases, this means conflicting messages and possibly even a restriction of the effectiveness of the measures. If the alcohol ignition interlock programme is transferred to criminal law, this will create an undesirable situation as judges will probably not impose an alcohol ignition interlock programme in the case of a repeat offence as the reoffending scheme becomes applicable by law if this second sentence becomes irrevocable. Furthermore, overlap with the examination will be even more

common in administrative law. The only added value from the reoffending scheme in that case is that driving skills also have to be tested.