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COMMUNICATION FROM THE COMMISSION

Implementation of the European Electronic Toll Service

(Text with EEA relevance)

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1. INTRODUCTION

Directive 2004/52/EC aims to achieve interoperability of the electronic road toll systems in the European Union[1]. It foresees the setting-up of a European Electronic Toll Service (EETS), complementary to the national electronic toll services of the Member States.

Two main stakeholders are concerned:

- Toll chargers, which operate either on behalf of the Member State or in the framework of a concession contract with the Member State, manage the infrastructure and levy the tolls for the circulation of vehicles on the network they manage.
- European Electronic Toll Service providers (EETS providers), supplying motorists or road hauliers with the necessary equipment and services to access all EU tolled infrastructures and ensuring the payment to the toll chargers of the fees due for the use of their network.

Article 3(4) of the Directive provides that Member States having electronic road toll systems would ensure that operators offer the European Electronic Toll Service to heavy goods vehicles at the latest three years after the entry into force of the decision defining EETS and to all other categories of vehicle at the latest five years after.

Commission Decision 2009/750/EC defining the European Electronic Toll Service entered into force on 8 October 2009[2] upon its notification to the Member States. This implementing decision establishes the essential requirements of this service valid over the entire EU and sets the mandatory standards, technical specifications and operational rules. The key obligations include the following:

(1) Member States have to keep national electronic registers of their tolled networks, toll chargers and toll service providers they deemed eligible for registration, and make them electronically accessible to the public. They shall also set up a Conciliation Body in charge of facilitating the contractual negotiations between toll chargers and EETS providers.

(2) Toll chargers must set their electronic road toll systems in conformity with the technical standards referred to in the legislation and make public their contracting conditions; they must accept any registered EETS provider on a non-discriminatory basis.

(3) EETS providers have to be registered in a Member State where they are established. They are to reach full European coverage of all the road infrastructures tolled electronically within 24 months of their registration. EETS providers are in competition: every road user is free to contract with the provider of his/her choice.

[1] OJ L 166, 30.4.2004, p. 124.
[2] OJ L 268, 13.10.2009, p. 11.

Article 21 of Decision 2009/750/EC requires the Commission to draw up a report on the state of advancement of EETS deployment. The present communication, after putting the EETS in the broader context of European transport policy, presents the progress achieved in its implementation and gives the Commission's assessment of the next steps to be taken for making the EETS operational.

2. EUROPEAN TRANSPORT POLICY CONTEXT

An efficient internal market is necessary to economic growth and prosperity, allowing for smooth, swift and safe mobility of goods and persons across the Union. It requires well developed, maintained and efficiently managed infrastructures.

As a way to facilitate the financing and management of road infrastructures, the European Transport Policy has constantly promoted the "user pays" and "polluter pays" principles. Tolls, that is road use charging based on travelled distance, the type of vehicles (e.g. according to their environmental performance and impact on wear and tear) and/or even time (e.g. moment in the day) constitute a fair and efficient way to implement these principles. They offer an even-handed way to pay for mobility and send the right price signals to road users. In other words they can raise the revenue needed to maintain and develop the road infrastructure, manage the transport demand (e.g. reduce peak time, traffic or influence transport choices) or encourage recourse to cleaner vehicles.

Tolls are increasingly used. Twenty-two Member States levy road use charges on heavy goods vehicles on certain part of their network and twelve Member States on private light vehicles. The charged roads in the EU represent a total length of about 72.000 kilometres of which 60 % is equipped with electronic toll systems and 40 % is covered by vignette systems. Today more than 20 million road users, motorists or road hauliers, are subscribers to electronic road toll systems.

Ensuring the full European interoperability of electronic road tolling technologies will create economies of scale and reduce the costs of toll collection equipment. The European Electronic Toll Service will ease the payment of road use charges by cross-border users, including the occasional users[3]. Users will more readily accept to pay for using roads if the payment means are interoperable at European level.

In its 2011 White Paper "Roadmap to a Single European Transport Area" the Commission has outlined possible measures to accelerate the development and the harmonisation of road use charging. It stressed that the European Electronic Toll Service can be instrumental in the promotion of road charging strategies that contribute to a sustainable transport system and in facilitating road charging acceptance by users.

Similarly on the occasion of the recent amendment of the "Eurovignette" Directive on the charging of heavy goods vehicles[4], the European Parliament and the Council have asked the Commission to "monitor progress made [in the framework of the Directive] to implement within the agreed dates a genuine European Electronic Toll Service" and "to promote cooperation between Member States that may prove necessary to ensure the interoperability of electronic toll collection systems at European level."

In particular, "where a Member State collects tolls or user charges exclusively by means of a system that requires the use of a vehicle on-board unit, it shall ensure that appropriate on-

[3] Today's road use charging schemes have to put in place costly and cumbersome solutions to deal with occasional users, which are usually not treated on a par with regular users.

[4] Directive 1999/62/EC of the European parliament and of the Council on the charging of heavy goods vehicles for the use of certain infrastructures, OJ L 187, 20.7.1999, p. 42-50.

board units compliant with the requirements of Directive 2004/52/EC […] can be obtained by all users under reasonable administrative and economic arrangements"[5].

3. PROGRESS ACHIEVED

The progress achieved in the advancement of EETS deployment is disappointing. Despite the adoption of Decision 2009/750/EC which sets out the necessary technical specifications and requirements as well as contractual rules relating to EETS provision, efforts of the European Commission[6] and the maturity of tolling technologies, the European Electronic Toll Service is not yet a reality in everyday life of road users. Not all Member States and stakeholders have demonstrated the full commitment necessary to finalise the regulatory and operational context of the service at their level. Until 2009, most Member States having introduced national or local electronic toll systems did so without paying due attention to the future European dimension of this service with a view to respect the timetable set out in the Directive. This failure to implement EETS and to do it in the foreseen timescale is not due to technical reasons. It is not more complicated technically to implement pan-European interoperability of electronic road toll systems than pan-European roaming of mobile phones or worldwide interoperability of credit cards.

Some stakeholders have put forward a number of possible explanations for the above-mentioned delays but most of them are not justified anymore or relate to problems for which solutions exist:

– It is suggested that one problem would be that the European legislation defines only a framework for EETS. This argument does not entirely hold true as the legislation sets up a clear set of the necessary rules and obligations. In conformity with its policy of keeping the service markets opened to competition where possible, the Commission Decision leaves the delivery of the service to market decisions, essentially the emergence of EETS Providers.

– It has also been suggested that the EETS is not interesting from a commercial point of view. However, it is premature to jump to conclusions and there is no doubt that demand exists:

  - Currently 25% of road freight transport is cross-border, and the figure is expected to rise to 30% by 2030. The interest of the EETS for service providers will therefore get even stronger. In addition, professional associations of transporters, at national and European levels, have repeatedly expressed their strong demand for a pan-European interoperable electronic toll system, clearly a call for an EETS.

  - About ten organisations have clearly expressed their intention to seek registration as EETS Providers and recently established a European professional association[7] (AETIS). Although as of today, no EETS Provider has been officially registered, according to information received, at least one prospective EETS Provider has approached its national authorities to seek registration and was turned down because the legal and administrative framework was not ready.

5 Recital 31 and Article 7 j introduced by Directive 2011/76/EU.

6 For instance extensive studies by Expert Groups and the CESARE projects.

7 AETIS: Association of Electronic Toll and Interoperable Services established 22 December 2011.

- The on-going development or extension of road charging schemes in the EU will create new market opportunities for EETS providers. Four Member States[8] have planned to implement new nation-wide tolling scheme in the next three years and extension of existing tolling arrangements are underway in several Member States. In this respect, the White Paper on the Single European Transport Area sets forth a number of actions which will further promote the deployment of road use charging[9].

– EETS introduction would also be hampered by the long life cycles of the existing national systems for which adapting to EETS before obsolescence is an additional cost. However this argument does not seem to hold true any longer. Most systems currently in place date from the mid-1990s and are nearing technological obsolescence. Moreover the legislator when adopting Directive 2004/52/EC took a clear view that the investments needed to migrate towards fully interoperable systems should be done, even if a certain degree of flexibility was left as to the sharing of the burden between the stakeholders of the expenditures necessary to finance the investments required. For instance costs or part of the costs of investments can be financed by the introduction of new toll rates. In other words all the road users subject to toll, and not only the EETS users, could participate financially in these investments since the costs related to EETS can qualify as permissible chargeable infrastructure costs under Directive 1999/62/EC (the Eurovignette Directive).

In spite of the delays, **a number of developments have taken place**:

– Member States have set up their national electronic register listing the tolled road infrastructures falling under the scope of Directive 2004/52/EC within their territory. The Toll Chargers have published their EETS Domain Statements which set the general conditions for delivering EETS on their infrastructures and constitute the basis for the contractual relationships between toll chargers and EETS providers.

– A number of national authorities responsible for road electronic fee collection have set up an informal group, the so-called Stockholm Group[10], where they actively cooperate with a view to the deployment of the European Electronic Toll Service and the exchange of best practices. This group also cooperates with AETIS[7].

– European Standards Organisations have decisively progressed in the fields of Electronic Fee Collection and EETS standardisation, also for satellite-based toll systems. Test procedures for mobile and fixed equipment[11] and an important standard[12] relative to the exchange of information between service providers and toll

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8 FR, BE, HU and DK.

9 Goal #10: Move towards full application of "user pays" and "polluter pays" principles …to generate revenues and ensure financing for future transport investments.

Page 15: Externalities (noise, pollution...) could be internalised by RUC: 1 Proposal for Euro-vignette amendment, 2. Further action will examine the gradual phasing in of a mandatory harmonised internalisation system for commercial vehicles on the entire inter-urban network…

Action #32: An EU framework for urban road user charging.

Action #39: Smart pricing and taxation / Evaluate existing car road charging schemes…/ Proceed with the internalisation of external costs…

10 Members of the Stockholm Group are ministries or national authorities from AT, DE, DK, FI, FR, HU, IE, NL, PL, SE, SI, UK as well as CH, NO.

11 Standards CEN EN 15509, EN 15876, CEN/ISO EN 14906, TS 14907 and TS 25110.

12 Standard CEN/ISO EN 12855.

chargers in satellite-based tolling systems, including enforcement, have been adopted.

– The Commission has published in 2010 the "Guide for the application of Directive 2004/52/EC of the European Parliament and of the Council and of Commission Decision 2009/750/EC" [13] as a reference manual for professional stakeholders directly or indirectly concerned by the implementation of the European Electronic Toll Service.

– The Commission, after a consultation of all the stakeholders involved, is currently preparing a Guidance Note on the interpretation of concepts referred to in Annex I of Decision 2009/750/EC. This note, to be issued shortly, provides guidance on how conciliation bodies should ensure that the contractual conditions to access the network of toll chargers remain fair, reasonable and non-discriminatory. It also clarifies possible models for sharing charges and remunerations between professional stakeholders. Lastly it addresses EETS implementation issues, such as the costs for assessing interoperability and carrying out "suitability for use" tests.

– A Coordination Group of the bodies entitled to certify the "conformity to specifications" or "suitability for use" of EETS equipment has been set up in compliance with Article 18 of Decision 2009/750/EC. This Group will develop guidance documents to be submitted for approval to the Toll Committee which will set common procedures for carrying "suitability for use" tests. Fourteen certification bodies from six Member States are interested in being formally notified to the Commission.

– Professional stakeholders are becoming increasingly aware of their respective rights and obligations[14]. They generally agree that momentum has been gained to put into place EETS and many elements essential to EETS have already been established. Manufacturers are increasingly contacting the Commission services for additional information or clarifications. Contractual negotiations between potential EETS providers and toll chargers have started.

– To gain experience in technical as well as contractual interoperability, some toll chargers have established joint ventures offering to customers on-board units that can be used on all the networks under their responsibility ("EasyGo+", a contractual interoperability service currently in implementation, combining the various DSRC technologies used in Denmark, Sweden, Norway and Austria and "TOLL2GO", a technical interoperability service already in operation, ensuring DSRC/satellite interoperability between Austria and Germany). Other toll chargers went even further: an agreement was found on both technical and contractual interoperability between TIS-PL and VIA-T, which allows regional service providers to offer electronic toll services covering toll domains in Spain and France.

However, **a number of problems subsist**:

– EETS implementation is still hampered by a lack of cooperation between the different stakeholders groups, most of whom have shown too little commitment for resolving problems of common interest. Efforts by Member States have been limited so far at the level of separate national interoperability, which is now implemented in most countries with electronic tolling systems. A step change in the sense of pan-

[13] http://ec.europa.eu/transport/publications/doc/2011-eets-european-electronic-toll-service_en.pdf

[14] Professional stakeholders were consulted in 2011 by a questionnaire survey and a conference.

European interoperability is required for a timely delivery of EETS at fair, reasonable and non-discriminatory access conditions.

– Most Member States still have to complete the national framework so that potential EETS providers know how to register in practice and where to complain in case of obstructive behaviour of Toll Chargers. As of now, only two of the Member States having electronic road toll systems have setup a Conciliation Body where such complaints can be addressed[15]. Discussions are still on-going in all the other Member States with a view to finalising the corresponding legal and regulatory framework before October 2012.

– Some Toll Chargers are proposing a contractual clause which automatically ends the contract if the EETS provider has not reached full European coverage within 24 months[16]. Such a clause sets a considerable business risk and discourages potential EETS providers. This was not the legislator's intention, which was to prevent that an EETS Provider would concentrate only on the most profitable markets and unduly delay its coverage of the others. The loss of the status of EETS provider depends on public authorities and should be decided only if there is no genuine intention from the part of the concerned organisation to reach full European coverage.

– The aggregated costs for assessing interoperability and carrying out "suitability for use" tests required by certain Toll Chargers from an EETS Provider may constitute a barrier to business entry. But as explained before, professional stakeholders should use the options offered in the Eurovignette legislation to mitigate the possible financial risks of Toll Chargers and EETS Providers.

– A number of running concession contracts may need to be amended. For instance Toll Chargers may need to adjust the toll rates to be able to finance the necessary investments they must do to adapt their infrastructure. In the case of road tolling, concession contracts for levying tolls are between a Toll Charger and the Member State or an agency working under direct control of public authorities. Therefore the responsibility for making possible the implementation of EETS on their territory lies primarily with the Member State concerned who can amend the existing concession contracts if necessary.

4. NEXT STEPS

In order to facilitate the timely introduction of EETS by Member States and the industry and to promote the necessary cooperation as requested by the European Parliament and the Council, the following actions are necessary:

(1) Accelerate a uniform implementation of the decision

– The Commission and the Member States will intensify the works of the Toll Committee set up by Directive 2004/52/EC. Member States should fulfil as a matter of urgency their obligations provided for by Decision 2009/750/EC regarding in

[15] The national Conciliation Body's main mission is to verify, upon request, that fair and non-discriminatory contractual conditions are granted to all the EETS Providers on any EETS toll domain on the Member State's territory, i.e. that the contractual conditions required by a Toll Chargers on different EETS Providers are non-discriminatory and a fair reflection of the costs and risks of the parties to the contract.

[16] Article 4(1) of Decision 2009/750/EC on the rights and obligations of EETS Providers provides that EETS Providers shall cover all the EETS domains in the Community within 24 months following their registration.

particular the designation of their national Conciliation Body (Article 10). The Commission will launch infringement procedures where appropriate.

– The Commission will monitor the implementation of EETS by the Member States also in the light of its Guidance Note on the interpretation of concepts referred to in Annex I of Decision 2009/750/EC. The Member States and national conciliation bodies should use the note in their contacts with Toll Chargers and potential EETS providers. The latter should also use it in their contractual negotiations. Furthermore the Commission will create a European network of national Conciliation Bodies which would contribute to securing an EU-wide level playing field for the EETS professional stakeholders.

– Members States shall see to it that contractual clauses automatically ending the contract if an EETS Provider does not reach full European coverage within 24 months are not allowed. Such clauses go against the intended useful effect of Decision 2009/750/EC. If such practice is kept, the Commission will launch infringement proceedings.

– The Commission will take an initiative using the structure established by the current EETS legislation to develop a uniform set of protocols for "suitability for use" tests, including on the security aspects, in order to limit the discrepancy of these protocols between toll Chargers, which would in turn contribute to reducing the costs charged to EETS Providers.

– The Commission will set-up with the stakeholders a comprehensive information sharing resource platform, providing up-to-date information on EETS through a single point of access on the Internet. This platform will also contribute to the exchange of best practice and dissemination of up-to-date information on EETS among professional stakeholders.

(2) A stepwise approach

As a first step towards full European interoperability, Member States with significant volume of traffic on the trans-European network should encourage the cross-border interoperability of their electronic road toll systems. These early deployment project(s), on a regional basis, will be promoted in a way so that they can be extended to cover all the electronically tolled road infrastructures in the EU as soon as possible at a later stage and can provide concrete experiences in solving practical EETS issues.

Attention should be paid to the involvement of a sufficiently wide set of Toll Chargers and Member States to ensure these projects are scalable to the entire Union. The knowledge gained in implementing these regional projects fully complying with the single contract/single on-board unit principle should be shared effectively across all the stakeholders.

The Commission is willing to provide a technical assistance to such regional initiatives and is ready to examine the provision of possible financial support to large scale regional projects in the context of the TEN-T programme. Electronic toll systems are an integral component of the trans-European-network (Article 9(3) of Decision 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union Guidelines for the development of the trans-European transport network[17]) and therefore eligible to EU financial support. The Commission will consider including in the next TEN-T work programme a section on EETS and such regional

[17] OJ L 204 of 5.8.2010, p. 1.

projects. Depending on the adoption of the work programme, a call for proposals could be published by the end of the year.

(3) Closely monitor development and take new initiatives if need be

Member States when starting new projects or renewing concessions should systematically check and ensure compliance with EETS requirements. When adopting its opinion on new tolling arrangements which are notified in the framework of Article 7h of Directive 1999/62/EC (Eurovignette), the Commission will issue a negative opinion if they do not include a fully EETS compatible system.

If disputes between toll chargers and EETS Providers cannot be solved by the Conciliation Body, the Commission will examine the points of contention and whether the arrangements between toll chargers and their existing local/national service providers are discriminatory in comparison with those proposed to EETS providers.

Lastly, it can be noted that the White Paper on transport has indicated that if, despite all these efforts, its assessment shows that no substantial progress has been achieved by mid-2013, with no availability of an interoperable electronic toll service on a substantial scale, the Commission reserves its right to present a new initiative to the European Parliament and the Council.

The Commission reaffirms its commitment to take all the necessary measures to facilitate the establishment of full technical and operational interoperability of European electronic road tolling systems. Together with stakeholders, it will redouble efforts to achieve availability to all interested road users of a genuine European-wide electronic toll service[18].

The European industry is at present a global front-runner in road charging and tolling equipment. European companies keep winning tolling contracts over the world [19]. EETS can facilitate the introduction and roll-out on a global scale of new products such as interoperable on-board units, combining the digital tachograph and tolling with other intelligent transport systems applications. This in turn may give rise to completely new services and applications, again with a potentially global market, which will contribute to the creation of growth and jobs in the European economy.

[18] The EETS legislation ensures that road users' fundamental rights, in particular the protection of personal data, are fully respected.

[19] E.g. recently Australia, Belarus, Canada, Israel