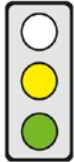


KEY ISSUES

Objective of the Directive: Electronic toll collection systems are to be made interoperable EU wide and the cross-border sharing of information about non-payers is to be made easier.

Affected parties: Toll operators, transport companies, car drivers.



Pro: (1) The removal of legal obligations and the additional options for EETS providers facilitate the latter's market access and may thus give rise to a much larger range of cross-border interoperable systems for electronic toll collection.

(2) Improving the cross-border sharing of information facilitates toll enforcement in the case of foreign vehicles. This strengthens the business model of EETS providers.

Contra: The obligation for EETS providers to disclose plans to expand their services, could lead to – competitively questionable – coordinated action.

The important passages in the text are shown by way of a line in the margin.

CONTENT

Title

Proposal COM(2017) 280 of 31 May 2017 for a **Directive** of the European Parliament and of the Council **on the interoperability of electronic road toll systems and facilitating cross-border exchange of information on the failure to pay road fees** in the Union (recast)

Brief Summary

► Background

- Electronic systems for collecting road-use charges (“electronic road toll systems”) are already in operation in 20 Member States at national, regional and local level (p. 2).
- Most electronic road toll systems require special on-board units in the vehicle which can generally only be used for one electronic road toll system so that vehicles have to be equipped with several – often “more than a dozen” – on-board units [Impact Assessment SWD (2017) 190, p. 76; see also [cepInput 02/2017](#), p. 5]. This gives rise to costs of approx. € 330 million per year (p. 2).
- “European Electronic Toll Services” (EETS) enable the payment of road-use charges in different electronic road toll systems and in different Member States via just one on-board unit and one invoice (“interoperability”; Art. 1 Abs. 3 Directive [2004/52/EC] in conjunction with the Commission’s EETS Decision [2009/750/EC]).
 - An EETS is a service provided by a private EETS provider for an EETS user on the basis of a single contract relating to electronic payment for all types of road-use charges.
 - An EETS covers both the provision of on-board units, which can be used in various different toll systems, and the payment handling.

► Problems and objectives

- Despite the ability to offer EETS, which has existed since 2004, the objective of EU-wide interoperability of electronic road toll systems remains “largely unattained” (p. 2 et seq.).
 - EETS providers are subject to “excessive requirements”, such as
 - an obligation to provide their services EU-wide 24 months after registration (EETS Decision [2009/750/EC], Art. 4) and
 - an obligation to equip light-duty vehicles with “expensive satellite-based on-board units” although there are no satellite-based toll systems for these vehicles.
 - EETS providers face “considerable barriers to market entry”, e.g. due to
 - non-standard technical peculiarities of the local toll systems [SWD(2017) 190, p. 10],
 - discriminatory treatment by the authorities and time-consuming certification and accreditation procedures which are liable to change [p. 2 et seq.] and SWD(2017) 190, p. 7].
- The cross-border enforcement of road-use charges for vehicles registered in other Member States is difficult due to a lack of EU legislation on the sharing of vehicle data. This gives rise to revenue losses of approx. € 300 million per year (p. 3 and 6).
- The recast of the Directive and the planned amendment of the EETS Decision will (Art. (1))
 - ensure the interoperability of electronic road toll systems in the EU and
 - facilitate the cross-border sharing of information between Member States for the purpose of enforcing road-use charges

► **Scope**

- The Directive covers electronic road toll systems for the collection of all types of road-use charges on the entire EU road network (Art. 1 (1)). Different rules apply to heavy-duty and light-duty vehicles.
 - “Heavy-duty vehicles” (HDVs) are lorries over 3.5 tonnes and buses with more than nine seats (Art. 2 (n)).
 - “Light-duty vehicles” (LDVs) are any vehicle which is not a heavy-duty vehicle.
- Excluded are small – “strictly local” – road toll systems for which the costs of compliance with the requirements of this Directive would be “disproportionate to the benefits” (Art. 1 (2)).

► **Technical rules for electronic road toll systems and on-board units**

- All new electronic road toll systems that require on-board units and any such existing systems on which “substantial technological improvements” have to be carried out, must use one or more of the following technologies: satellite positioning, mobile communications, 5.8 GHz microwave technology (Art. 3 (1) in conjunction with Annex IV).
- EETS providers can
 - only provide on-board units which are capable of communicating with all electronic toll systems being operated in the EU (Art. 3 (3));
 - in future supply on-board units which are only designed for HDVs or only for LDVs (deleted Art. 2 (2));
 - until 31 December 2027, also supply LDVs with on-board units exclusively for use with 5.8 GHz microwave technology, on which previously all toll systems for LDVs in the EU were based (Art. 3 (5)).
- In addition to their own hardware and software, on-board units can use elements of other hardware and software present in the vehicle. For the purposes of communicating with other systems inside the vehicle, other technologies, such as Bluetooth, may also be used (Art. 3 (4)).

► **Rights and duties of EETS providers, EETS users and toll chargers**

In future, the Commission will be empowered to establish the rights and duties of EETS providers, EETS users and toll chargers in a delegated act which will replace Commission Decision 2009/750/EC (Art. 10 (2) in conjunction with Art. 11). The Commission plans to include inter alia the following provisions in this delegated act, [SWD(2017) 190, p. 33 et seq.):

- EETS providers no longer have to offer their services EU-wide but must in future regularly publish their strategy for expanding their services.
- A list of services – e.g. provision of on-board units, data transfer, payment enforcement – will be established for which the toll chargers will have to remunerate the EETS providers at “market value”.
- Where operation of the toll collection system and toll services is carried out by the same company, the two categories of service must be entered into the accounts separately to avoid cross-subsidisation.
- The toll charger must publish its requirements for the authorisation of EETS providers in a toll area (“accreditation”) – incl. contractual conditions, test procedure and applied standards – nine months before the start of the toll system. The test phase in the authorisation procedure cannot exceed six months.
- Contractual relationships with EETS providers must comply with the “reseller model” under which EETS providers can issue their own invoices. This is contrary to the “agency model” practised in some Member States, where road-use charges are deemed to be taxes, invoices are issued by the tax authorities and EETS providers are debt collection agencies for the state [SWD(2017) 190, p. 8].

► **Exchange of information on failure to pay road-use charges**

- For investigation of the failure to pay road-use charges, Member States have to allow each other access – via an automated search using vehicle registration numbers – to data relating to owners and holders of vehicles, inter alia name and address (Art. 5 (1) in conjunction with Annex II).
- Searches must comply with the rules on data security and data sharing under the Council Resolution on cross-border cooperation in combating terrorism and crime ([2008/616/J], Annex Chapter 3 No. 2 and 3) (Art. 5 Abs. 3).
- Data sharing must not include any data from other data bases – not used for the purpose of the Directive – (Art. 5 (4)).

► **Data protection**

- The processing of personal data must comply with (Art. 3 (6) and Art. 8 (1); see [cepStudy EU-Data Protection Law](#), p. 2 et seq.):
 - the General Data Protection Regulation [(EU) 2016/679; applies from 25 May 2018],
 - the Data Protection Directive for the Police and Judiciary [(EU) 2016/680; applies from 6 May 2018] and
 - the Data Protection Directive for Electronic Communication (E-Privacy Directive [2002/58/EC]).
- All “personal data processed under this Directive” can only be used to enforce payment of outstanding road-use charges (Art. 8 (2)).
- Member States must set a time limit on the maximum storage period for personal data (Art. 8 (2)).
- Any person concerned has the right to information about which personal data has been transmitted to which authority of another Member State and when the data was requested (Art. 8 (3)).

Main Changes to the Status Quo

- ▶ Until now, EETS providers had to offer on-board units which were suitable for LDVs and HDVs. Now they can also offer on-board units especially designed for either LDVs or HDVs.
- ▶ Until now, EETS providers were only permitted to offer on-board units with all three transmission technologies. Now, until the end of 2027, they can also offer users of LDVs on-board units exclusively based on 5.8 GHz microwave technology.
- ▶ New: EETS providers no longer have to offer their services for the entire EU.
- ▶ New: information sharing in order to enforce payment of road-use charges.

Statement on subsidiarity by the Commission

With varying technologies and accounting systems for electronic toll collection being used in the Member States, there is considerable additional cost involved in the payment of road-use charges when it comes to cross-border traffic. Member States alone have no incentive to change the situation. Measures at EU level are therefore essential. With a lack of bilateral agreements, only the EU can put in place an efficient system for exchanging information on toll offenders. (P. 4 et seq.)

Policy Context

In its “Strategy for Low-Emission Mobility” [COM(2016) 501, see [cepPolicyBrief 30/2016](#)] the Commission called for “increased” imposition of road-use charges in application of the user-pays and polluter-pays principles. At the end of May 2017, it published a “Roads Package” with a draft Directive on the design of road-use charges [COM(2017) 275, see [cepPolicyBrief 24/2017](#)] and this proposal for a recast of the EETS-Directive. By introducing interoperable electronic road toll systems, it will be easier to implement the user-pays and polluter-pays principles. In parallel the Commission’s EETS Decision is to be revised [2009/750/EC].

Legislative Procedure

31 May 2017	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	Transport
Committees of the European Parliament:	Transport (leading), Rapporteur: Massimiliano Salini (EVP Group, IT);
Committees of the German Bundestag:	Transport (leading)
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

Formalities

Competence:	Art. 91 TFEU (Transport)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

The interoperability of electronic road toll systems within the EU, envisaged by the Directive, reduces costs and red tape for cross-border, long-distance traffic because it will no longer be necessary to carry several expensive on-board units. In addition, the road-use charges arising in different countries can be billed via a single provider. EU regulations for EETS providers and other market entry barriers have until now prevented the development of a competitive market for electronic toll collection and thus cross-border interoperability in the EU.

The proposed cancellation of legal obligations and the additional options for EETS providers on the design of their services facilitate their market entry and may thereby give rise to a much larger range of cross-border interoperable systems for electronic toll collection.

In particular, the plan to allow EETS providers to limit their services, in future, to a few Member States – rather than having to provide their services in all Member States 24 months after registration – may help to persuade potential providers of these services to actually enter the market.

Abolishing the obligation to provide on-board units which can be used in both HDVs and LDVs, and suspending until the end of 2027 the obligation to equip LDVs with on-board units using mobile or expensive satellite-based communication, allows EETS providers to establish themselves initially just on the LDV, and particularly the car, market using cheaper on-board units. The creation of a separate market just for LDVs also therefore facilitates market entry because several Member States only impose tolls on HDVs and not on LDVs so the number of contract partners for EETS providers may at first be smaller.

The proposed changes to the rights of EETS providers and the obligations of toll chargers also remove major market entry barriers to EETS providers because toll chargers who also maintain electronic toll services will not be able to protect themselves so easily from competition by acquiring advantages over EETS providers through cross-subsidisation, limited remuneration of services or authorisation procedures designed in their favour.

In addition, the abolition of the agency model for the design of contracts with toll chargers, reduces the costs for EETS providers because treating road-use charges as taxes requires the invoice to be issued by the tax authorities. Thus EETS providers have to provide customers with an additional payment statement and enter the value added tax differently. In future, this additional red tape for EETS providers will no longer be necessary.

The new obligations for EETS providers to disclose, on a regular basis, their **plans to expand their services** to include further toll services, makes it easier for potential customers to choose the appropriate provider for their needs but allows competitors to gain an insight into the medium-term company strategy and **could lead to – competitively questionable – coordinated action** (collusion).

Improving the cross-border sharing of information facilitates toll enforcement with regard to foreign vehicles. This reduces the revenue losses of toll operators and prevents them from being shifted onto paying users. In addition, better enforcement of tolls also **strengthens the business model of EETS providers.**

Legal Assessment

Legislative Competency

Unproblematic because cross-border transport is affected. The EU can adopt rules for a “common transport policy” (Art. 90, Art. 91 (1) (a) TFEU). This includes rules to enable the interoperability of electronic road toll systems in the EU.

Subsidiarity

Unproblematic. The aim of creating cross-border interoperability of electronic toll services thus facilitating the transport of persons and goods within the EU, justifies EU action.

Compatibility with EU Law in other respects

The operation of electronic road toll systems as well as the proposed sharing of information for the purpose of cross-border enforcement of unpaid road-use charges involves the collection and processing of “personal data” – such as the name and address of the vehicle owner and the car registration number – which is subject to special protection under the Charter of Fundamental Rights of the European Union (Art. 8). Consequently, the Commission’s proposal rightly emphasises the importance of compliance with EU data protection law (see [cepStudy EU Data Protection Law](#)). The cross-border enforcement of unpaid road-use charges requires the toll chargers to collect, and the Member States to store and share, the registration numbers of vehicles for which no road-use charges have been paid. The requirement in the Commission’s proposal that data must be processed “exclusively” for the enforcement of road-use charges corresponds to the principle of EU data protection law that the processing of personal data can only take place for legitimate and clearly specified purposes (“Specified Purposes Principle”; General Data Protection Regulation, Art. 5 (1) (b). The obligation of the Member States to establish a maximum storage period aims to ensure that personal data is only stored for as long as necessary (General Data Protection Regulation, Art. 5 (1) (e). The right to information serves to ensure that those affected fully comprehend the processing of their personal data (“Transparency Principle”; General Data Protection Regulation, Art. 5 (1) (a)).

Conclusion

The removal of legal obligations and the additional options for EETS providers facilitate the latter’s market access and may thus give rise to a much larger range of cross-border interoperable systems for electronic toll collection. The obligation for EETS providers to disclose plans to expand their services, could lead to – competitively questionable – coordinated action. Improving the cross-border sharing of information facilitates toll enforcement in the case of foreign vehicles. This strengthens the business model of EETS providers.