

Commission Decision of 6 October 2009 on the definition of the European Electronic Toll Service and its technical elements (notified under document C(2009) 7547) (Text with EEA relevance) (2009/750/EC)

CHAPTER II

**GENERAL PRINCIPLES**

*Article 3*

**Requirements to be fulfilled by EETS Providers**

EETS Providers shall seek registration in a Member State where they are established, which shall be granted if they fulfil the following requirements:

- (a) hold EN ISO 9001 certification or equivalent;
- (b) demonstrate having the technical equipments and the EC declaration or certificate attesting the compliance of the interoperability constituents as laid down in Annex IV(1) to the present Decision;
- (c) demonstrate competence in the provision of electronic tolling services or in relevant domains;
- (d) have appropriate financial standing;
- (e) maintain a global risk management plan, which is audited at least every 2 years;
- (f) be of good repute.

*Article 4*

**Rights and obligations of EETS Providers**

1 EETS Providers shall conclude EETS contracts covering all EETS domains within 24 months following their registration in accordance with Article 19.

The EETS Provider shall maintain its coverage of all EETS domains at all times. In the event of changes to the EETS domains or any other reason affecting full coverage, it shall re-establish full coverage within 6 months.

2 EETS Providers shall inform EETS Users of their EETS domains coverage and of any changes thereto.

EETS Providers shall make a yearly declaration to the Member State of registration concerning their EETS domains coverage.

3 When necessary, EETS Providers shall provide EETS Users with OBE which fulfils the relevant technical requirements laid down in this Decision. They shall provide evidence that those requirements are fulfilled.

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4 EETS Providers shall monitor the performance of their service level. They shall have in place audited operational processes which provide for appropriate measures to be taken where performance problems or integrity breaches are detected.

5 EETS Providers shall provide appropriate service and technical support in order to ensure the correct personalisation of on-board equipment. EETS Providers shall be responsible for fixed vehicle classification parameters stored in on-board equipment or in their information system. Variable vehicle classification parameters, which can vary from trip to trip or within a trip and are intended to be introduced by in-vehicle intervention shall be configurable through an appropriate human-machine interface.

6 EETS Providers shall keep lists of invalidated on-board equipment related to their EETS contracts with the EETS Users. Such lists shall be maintained in strict compliance with the Community rules on the protection of personal data as set out, inter alia, in Directive 95/46/EC and Directive 2002/58/EC.

7 EETS Providers shall make public their contracting policy towards EETS Users.

8 Invoicing of individual EETS Users by EETS Providers shall clearly separate the service charges of the EETS Provider and tolls incurred, and shall specify, unless the user decides otherwise, at least, the time at which and the location where the tolls were incurred and the user-relevant composition of specific tolls.

9 EETS Providers shall inform an EETS User as quickly as practicable of any toll non-declaration situation in relation to his account, offering where possible the opportunity to regularise the account before any enforcement action is taken.

10 EETS Providers shall collaborate with Toll Chargers in their enforcement efforts.

#### *Article 5*

### **Rights and obligations of Toll Chargers**

1 Where an EETS domain does not comply with the technical and procedural EETS interoperability conditions set by Directive 2004/52/EC and this Decision, the responsible Toll Charger shall assess the problem with the involved stakeholders and, if within its sphere of responsibilities, take remedial actions in view to ensure EETS interoperability of the toll system. If the case arises, the Toll Charger shall inform the Member State in order to update the register referred to under Article 19(1)(a).

2 Each Toll Charger shall develop and maintain an EETS domain statement setting out the general conditions for EETS Providers for accessing their toll domains, in accordance with Annex I.

3 Toll Chargers shall accept on a non-discriminatory basis any EETS Provider requesting to provide EETS on the EETS domain(s) under the Toll Charger's responsibility.

Acceptance of an EETS Provider in a toll domain shall be governed by compliance with the general conditions set out in the EETS domain statement with the objective to complete negotiations within the timeframe indicated in Article 4(1) and may also be subject to specific contractual conditions.

If a Toll Charger and an EETS Provider cannot reach an agreement, the matter may be referred to the Conciliation Body responsible for the relevant toll domain.

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4 The toll charged by Toll Chargers to EETS Users shall not exceed the corresponding national/local toll.

5 Toll Chargers shall accept on their EETS domains any operational on-board equipment from EETS Providers with whom they have contractual relationships which have been certified in accordance with Annex IV and which do not appear on a list of invalidated on-board equipment referred to in Article 7(3).

Toll Chargers shall keep on their website an easily accessible public list of all EETS Providers with whom they have a contract.

6 A Toll Charger may require an EETS Provider's collaboration to perform unannounced and detailed toll system tests involving vehicles circulating or having recently circulated on the Toll Charger's EETS domain(s). The number of vehicles submitted to such tests over a year for a particular EETS Provider shall be commensurate with the yearly average traffic or traffic projections of the EETS Provider on the Toll Charger's EETS domain(s).

7 In the event of an EETS dysfunction attributable to the Toll Charger, the Toll Charger shall provide for a degraded mode of service enabling vehicles with the equipment referred to in paragraph 5 to circulate safely with a minimum of delay and without being considered as toll evaders.

8 Toll Chargers shall collaborate in a non-discriminatory way with EETS Providers and/or manufacturer and/or notified body with a view to assessing the suitability for use of interoperability constituents on their toll domains.

#### Article 6

#### **Toll Context Data**

Toll Chargers shall communicate any changes to their Toll Context Data to the Member State(s) in which their toll domains are located relating *inter alia* to the following:

- (a) definition of the EETS domain, in particular its geographic extension and infrastructure subject to toll;
- (b) nature of toll and levy principles;
- (c) vehicles liable to toll;
- (d) vehicle classification parameters (such as number of axles, maximum permissible weight of trailer, suspension type, etc.) with their mapping into the Toll Charger's tariff structure;
- (e) toll declarations required.

#### Article 7

#### **Tolls**

1 The toll shall be determined by the Toll Charger according *inter alia* to the vehicle's classification. A vehicle's classification shall be determined on the basis of the vehicle classification parameters in Annex VI. In the event of a discrepancy between the vehicle classification used by the EETS Provider and the Toll Charger, the Toll Charger's classification shall prevail, unless an error can be demonstrated.

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2 In addition to requiring payment from an EETS provider for any substantiated toll declaration, a Toll Charger may require payment from an EETS Provider for any substantiated toll non-declaration relative to any user account managed by that EETS Provider.

3 Where an EETS Provider has sent a Toll Charger a list of invalidated on-board equipment referred to in Article 4(6), the EETS Provider shall not be held liable for any further toll incurred through the use of such invalidated on-board equipment. The number of entries in the list of invalidated OBE, the list's format and its updating frequency shall be agreed between Toll Chargers and EETS Providers.

4 In microwave-based toll systems Toll Chargers shall communicate substantiated toll declarations to EETS Providers for tolls incurred by their respective EETS Users.

#### *Article 8*

### **Accounting**

Where an organisation provides both Toll Charger and EETS Provider services, Member States shall take the measures necessary to ensure that separate profit and loss accounts and balance sheets are kept and published separately for each type of activity and that cross subsidies between the two activities are excluded.

The accounting systems for Toll Charger and EETS Provider activities shall be kept separate and from accounts relating to any other type of activities so that a clear evaluation can be made of the costs and benefits related to EETS provision.

#### *Article 9*

### **Rights and obligations of EETS Users**

1 EETS Users may subscribe to EETS through any EETS Provider, regardless of nationality, State of residence or the State in which the vehicle is registered. When entering into a contract, EETS users shall be duly informed about the processing of their personal data and the rights stemming from applicable legislation on the protection of personal data.

2 EETS Users shall ensure that all user and vehicle data they provide to the EETS Provider are correct.

3 EETS Users shall take all possible measures to ensure that the on-board equipment is operational whilst the vehicle is circulating within an EETS domain.

4 EETS Users shall operate on-board equipment in accordance with the EETS Provider's instructions, in particular as these apply to the declaration of variable vehicle parameters.

5 The payment of a toll by an EETS User to its EETS Provider shall be deemed to fulfil the EETS User's payment obligations towards the relevant Toll Charger.

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