

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)

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)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2004/52/EC of the European Parliament and of the Council of 29 April 2004 on the interoperability of electronic road toll systems in the Community⁽¹⁾, and in particular Article 4 thereof,

Whereas:

- (1) Directive 2004/52/EC requires the Commission to define the European Electronic Toll Service (EETS) in accordance with the procedure referred to in its Article 5(2).
- (2) A single contract with one EETS Provider should allow EETS Users to pay their tolls in all EETS domains of the European road network, in accordance with Article 3(1) of Directive 2004/52/EC by means, among others, of a single on-board equipment (OBE), which can be used on all EETS domains.
- (3) This decision covers the exchange of information between Member States, toll chargers, service providers and road users in view to ensure the correct declaration of tolls due within the context of EETS.
- (4) The introduction of EETS will entail the processing of personal data, which shall be carried out in strict accordance with relevant Community rules, as set out, inter alia, in Directive 95/46/EC of the European Parliament and of the Council⁽²⁾ and Directive 2002/58/EC of the European Parliament and of the Council⁽³⁾.
- (5) Toll Chargers have to give access to their EETS domain to EETS Providers on a non-discriminatory basis.
- (6) To ensure transparency and non-discriminatory access to EETS domains for all EETS Providers, Toll Chargers shall publish all the necessary information relative to access rights in an EETS domain statement.
- (7) The EETS is based on the principles of transparency and efficient and fair pricing.

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- (8) A conciliation procedure has to be ensured in view to settle disputes between Toll Chargers and EETS Providers during contract negotiations and in their contractual relationships. National Conciliation Bodies should be consulted by Toll Chargers and EETS Providers in search of a dispute settlement relating to non-discriminatory access to EETS domains.
- (9) The efficient management of a fair and non-discriminatory access to EETS, including the avoidance of unnecessary administrative burden, requires close cooperation between the Member States' Conciliation Bodies⁽⁴⁾ as regards the application of these Community rules, and as regards the handling of eventual appeals, notwithstanding the possibility of judicial review.
- (10) Toll Chargers may have different charging policies relative to different categories of users and/or vehicles and shall not discriminate between EETS Users, in the sense of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (the General Service Directive)⁽⁵⁾.
- (11) EETS Users will pay no more toll than they would for the corresponding national/local toll.
- (12) For national or local purposes, Toll Chargers may keep or set up their specific national or local services, with manual, automatic or electronic systems. EETS is a complementary service to the national or local electronic toll services of the Member States for the payment of toll, but where Member States have toll systems, they shall take the necessary measures to increase the use of electronic toll systems and endeavour to ensure that at least 50 % of traffic flow in each toll station can use electronic toll systems.
- (13) Tolling policies are based on European, national or local legislation; their application is of the responsibility of Toll Chargers. Each Member State decides in a non-discriminatory way on toll declaration monitoring, in conformity with European legislation where applicable. EETS shall provide interoperable means for monitoring whether a toll is being declared correctly for vehicles allegedly using EETS.
- (14) Tolling technology permits, to the benefit of road safety and decrease of congestion, the collection of tolls without use of physical barriers to guarantee collection.
- (15) Toll income generally contributes to finance the construction and maintenance costs of transport infrastructures; hauliers not paying the tolls would deprive Member States and the Community of financial resources to this end and would gain an unfair competitive advantage in comparison to hauliers who pay; toll evasion could undermine transport policy objectives in terms of traffic, congestion and pollution management.
- (16) It is appropriate to define essential requirements for the whole of the Community which will apply to EETS.
- (17) EETS has technical and organisational aspects. Essential requirements must be specified for both aspects to enable EETS interoperability to work from all points of view. Technical specifications are needed for the whole of the Community, particularly in respect of constituents and interfaces, in order to meet technical essential requirements.

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- (18) To comply with the appropriate provisions on procurement procedures in the road sector and in particular Directive 2004/18/EC of the European Parliament and of the Council⁽⁶⁾, the contracting authorities should include technical specifications in the contract notices or in other documentation, such as general documents or the terms and conditions for each contract. Technical specifications may be defined by reference to certain documents; to this end it is necessary to build up a body of technical specifications in order to serve as references.
- (19) Within the meaning of Directive 2004/18/EC, a technical specification can be defined among others by reference to a European standard or a harmonised standard, a European technical approval or a common technical specification. Harmonised standards are to be drawn up by a European standardisation body such as the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) or the European Telecommunications Standards Institute (ETSI), to the order of the Commission, and their references published in the *Official Journal of the European Union*⁽⁷⁾.
- (20) An international system of standardisation capable of generating standards which are actually used by those involved in international trade and which meet the requirements of Community policy would be in the Community's interest. The European standardisation bodies must therefore continue their cooperation with the international standardisation bodies.
- (21) Further technical specifications or other standards might have to be defined at a later stage. These specifications should help to complete the EETS requirements that have been harmonised at Community level.
- (22) The procedures governing the assessment of conformity to specifications and of suitability for use of EETS interoperability constituents should be based on the use of the modules covered by Decision No 768/2008/EC of the European Parliament and of the Council⁽⁸⁾. As far as possible and in order to promote industrial development, it is appropriate to draw up procedures involving a system of quality assurance. These procedures must enable the bodies notified to assess the conformity to specifications and suitability for use of EETS interoperability constituents to be certain that, at the design, construction, putting into service stages and during operation, the result is in line with the regulations and technical and operational provisions in force. It must also enable manufacturers to be able to count upon equality of treatment whatever the country.
- (23) These notified bodies must coordinate their decisions as closely as possible.
- (24) Conformity to specifications may prove insufficient to assess field operational interoperability; a CE marking on the suitability for use is therefore necessary.
- (25) Directive 2004/52/EC, Article 4(4), foresees that the Commission takes decisions relating to the definition of EETS in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁹⁾. Where appropriate, the Annex to Directive 2004/52/EC may be modified for technical reasons in accordance with the procedure referred to in Article 5(2) of that Directive.

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- (26) The present decision is based on the work done in pan-European research projects⁽¹⁰⁾ supported by the Commission involving major stakeholders, and in Expert Groups set-up by the European Commission, which aimed to define precisely EETS content and organisational structure.
- (27) Given the importance of EETS deployment it is useful that the Commission carries out a review 18 months after the entry into force of this decision. In view of the conclusions of the mid-term review relative to the progress achieved in EETS deployment, the Commission assisted by the Electronic Toll Committee shall propose any necessary measure.
- (28) The measures provided for in this Decision are in accordance with the opinion of the Electronic Toll Committee established by Article 5(1) of Directive 2004/52/EC,

HAS ADOPTED THIS DECISION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1 This Decision defines the European Electronic Toll Service (EETS).

It sets out the necessary technical specifications and requirements for that purpose, and contractual rules relating to EETS provision.

2 This Decision lays down rights and obligations on EETS Providers, Toll Chargers and EETS Users.

Article 2

Definitions

For the purpose of this Decision:

- (a) ‘EETS domain’ means a toll domain falling under the scope of Directive 2004/52/EC;
- (b) ‘EETS Provider’ means a legal entity fulfilling the requirements of Article 3 and registered in a Member State where it is established, which grants access to EETS to an EETS User;
- (c) ‘EETS User’ means a (natural or legal) person who subscribes a contract with an EETS Provider in order to have access to EETS;
- (d) ‘interoperability constituents’ means any elementary component, group of components, subassembly or complete assembly of equipment incorporated or intended to be incorporated into EETS upon which the interoperability of the service depends directly or indirectly, including both tangible objects and intangible objects such as software;

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- (e) ‘on-board equipment’ means the complete set of hardware and software components required for providing EETS which is installed on board a vehicle in order to collect, store, process and remotely receive/transmit data;
- (f) ‘suitability for use’ means the ability of an interoperability constituent to achieve and maintain a specified performance when in service, integrated representatively into EETS in relation with a Toll Charger’s system;
- (g) ‘tariff class’ means the set of vehicles treated similarly by a Toll Charger;
- (h) ‘tariff scheme’ means the allocation to tariff classes of the toll to be paid, as defined by a Toll Charger;
- (i) ‘technical specification’ means a specification as defined in Article 23 and Annex VI to Directive 2004/18/EC;
- (j) ‘toll’ means a charge, tax or duty levied in relation with circulating a vehicle in a toll domain;
- (k) ‘Toll Charger’ means a public or private organisation which levies tolls for the circulation of vehicles in an EETS domain;
- (l) ‘Toll Context Data’ means the information defined by the responsible Toll Charger necessary to establish the toll due for circulating a vehicle on a particular toll domain and conclude the toll transaction;
- (m) ‘toll declaration’ means a statement to a Toll Charger that confirms the circulation of a vehicle in a toll domain in a format agreed between the toll service provider and the Toll Charger;
- (n) ‘toll domain’ means an area of EU territory, a part of the European road network or a structure such as a tunnel, a bridge or a ferry where toll is collected;
- (o) ‘toll regime’ means the set of rules, including enforcement rules, governing the collection of toll in a toll domain;
- (p) ‘toll transaction’ means an action or sequence of actions in which a toll declaration is passed to the Toll Charger;
- (q) ‘vehicle classification parameters’ means the vehicle related information according to which tolls are calculated based on the Toll Context Data.

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;

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- (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.

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.

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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.

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.

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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.

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

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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.

CHAPTER III

CONCILIATION BODY

Article 10

Establishment and functions

1 Each Member State with at least one EETS domain shall designate or establish a Conciliation Body in order to facilitate mediation between Toll Chargers with a toll domain located within its territory and EETS Providers which have contracts or are in contractual negotiations with those Toll Chargers. The Conciliation Body shall especially be empowered to examine whether the contractual conditions imposed by a Toll Charger on different EETS Providers are non-discriminatory and a fair reflection of the costs and risks of the parties to the contract.

2 That Member State shall take the necessary measures to ensure that its Conciliation Body is independent in its organisation and legal structure from the commercial interests of Toll Chargers and EETS Providers.

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Article 11

Mediation procedure

- 1 A Toll Charger or an EETS Provider should request the relevant Conciliation Body to intervene in any dispute relating to their contractual relations or negotiations.
- 2 The Conciliation Body shall state within a period of 1 month following the receipt of a request for it to intervene whether all documents necessary for the mediation are in its possession.
- 3 The Conciliation Body shall issue its opinion on a dispute no later than 6 months after receipt of the request for it to intervene.
- 4 In order to facilitate its tasks, Member States shall empower the Conciliation Body to request relevant information from Toll Chargers, EETS Providers and any third parties active in the provision of EETS within the Member State concerned.
- 5 The national Conciliation Bodies shall exchange information about their work, guiding principles and practices.

CHAPTER IV

TECHNICAL PROVISIONS

Article 12

Single continuous service

Member States shall ensure that EETS shall be provided to EETS Users as a single continuous service. This means that:

- (a) once the vehicle classification parameters, including the variable ones, have been stored and/or declared no further in-vehicle human intervention is required during a journey unless there is a modification to the vehicle's characteristics;
- (b) human interaction with a particular piece of on-board equipment shall stay the same whatever the EETS domain.

Article 13

Requirements to be fulfilled by EETS

- 1 EETS shall meet the essential requirements laid down in Annex III.
- 2 In addition to tolling, the EETS on-board equipment should enable implementation of future other location-based services. The use of EETS on-board equipment for the purpose of other services shall not interfere with toll operations on any toll domain.

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Article 14

Interoperability constituents

1 Interoperability constituents, including interfaces, shall meet the requirements laid down in Annex II.

Member States shall consider as complying with the relevant essential requirements those interoperability constituents which bear the CE marking.

2 Assessment of the conformity to specifications and/or suitability for use of interoperability constituents shall be carried out as set out in Annex IV.

EETS interoperability constituents may bear the CE marking if they are covered by 'EC' declarations of conformity to specifications and/or suitability for use.

3 Declarations of conformity to specifications and/or suitability for use shall be drawn up by the manufacturer of the interoperability constituents, the EETS Provider or an authorised representative in accordance with Annex IV.

The content of the declaration shall be as set out in Part 3 of Annex IV.

4 Member States shall not, on grounds concerning this Decision, prohibit, restrict or hinder the placing on the market of interoperability constituents for use in EETS where they bear the CE marking or declaration of conformity to specifications and/or suitability for use. In particular, they may not require checks which have already been carried out as part of the procedure for checking conformity to specifications and/or suitability for use.

5 When EETS relevant technical specifications are published after adoption of this Decision, the Commission shall consider their applicability in accordance with the procedure referred to in Article 5(2) of Directive 2004/52/EC.

CHAPTER V

SAFEGUARD CLAUSES

Article 15

1 Where a Member State has reason to believe that interoperability constituents bearing a CE marking and placed on the market are unlikely, when used as intended, to meet the essential requirements, it shall take all necessary steps to restrict their field of application, prohibit their use or withdraw them from the market. The Member State shall forthwith inform the Commission of the measures taken and give the reasons for its decision, stating in particular whether failure to conform is due to:

- a incorrect application of technical specifications;
- b inadequacy of technical specifications.

2 The Commission shall consult the parties concerned as quickly as possible.

- a Where, following that consultation, the Commission establishes that the measure is justified, it shall forthwith inform the Member State concerned as well as the other Member States.
- b Where, following consultation with the parties concerned, the Commission establishes that the measure is unjustified, it shall forthwith inform the Member State concerned,

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as well as the manufacturer or its authorised representative established within the Community and the other Member States.

3 Where interoperability constituents bearing the CE marking fail to comply with interoperability requirements, the competent Member State shall require the manufacturer or its authorised representative established in the Community to restore the interoperability constituent to a state of conformity to specifications and/or suitability for use under the conditions laid down by that Member State and shall inform the Commission and the other Member States thereof.

Article 16

Any decision concerning the assessment of conformity to specifications or suitability for use of interoperability constituents and any decision taken pursuant to Article 15 shall set out in detail the reasons on which it is based. It shall be notified as soon as possible to the party concerned, together with an indication of the remedies available under the laws in force in the Member State concerned and of the time limits allowed for the exercise of such remedies.

CHAPTER VI

ADMINISTRATIVE ARRANGEMENTS

Article 17

Notified bodies

1 Member States shall notify to the Commission and the other Member States any bodies entitled to carry out or supervise the procedure for the assessment of conformity to specifications or suitability for use referred to in Annex IV, indicating each body's area of competence, and the identification numbers obtained in advance from the Commission. The Commission shall publish in the *Official Journal of the European Union* the list of bodies, their identification numbers and areas of competence, and shall keep the list updated.

2 Member States shall apply the criteria provided for in Annex V for the assessment of the bodies to be notified. Bodies meeting the assessment criteria provided for in the relevant European standards shall be deemed to meet the said criteria.

3 A Member State shall withdraw approval from a body which no longer meets the criteria referred to in Annex V. It shall forthwith inform the Commission and the other Member States thereof.

4 Where a Member State or the Commission considers that a body notified by another Member State does not meet the relevant criteria, the matter shall be referred to the Electronic Toll Committee, which shall deliver its opinion within 3 months. In the light of the opinion of the Committee, the Commission shall inform the Member State in question of any changes that are necessary for the notified body to retain the status conferred upon it.

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Article 18

Coordination Group

A Coordination Group (hereinafter the Coordination Group) of the bodies notified under Article 17(1) of this Decision shall be set up as a working group of the Electronic Toll Committee, in accordance with the Committee's Rules of Procedure.

The Coordination Group shall compile and maintain a comprehensive list of standards, technical specifications and normative documents against which EETS interoperability constituents' conformity to specifications and suitability for use can be assessed. The Coordination Group shall serve as a forum for discussing any problems that may arise in relation to the conformity to specifications and suitability for use assessment procedures and for proposing solutions to these problems.

Article 19

Registers

1 For the purposes of the implementation of this Decision, each Member State shall keep a national electronic register of the following:

- a the EETS domains within their territory, including information relating to:
 - the corresponding Toll Chargers,
 - the tolling technologies employed,
 - the Toll Context Data,
 - the EETS domain statement,
 - the EETS Providers having EETS contracts with the Toll Chargers active in their area of competence.

A Member State shall enter modifications to the Toll Chargers register, including where applicable the date of their entry into force, immediately after these modifications have been adopted, taking into account Annex VI(3) and (4);

- b the EETS Providers to whom it has granted registration according to Article 3.

Unless otherwise specified, Member States shall verify at least once a year that requirements (a), (d), (e) and (f) in Article 3 and Article 4(2) are still met and update the register accordingly. The register shall also contain the conclusions of the audit foreseen in Article 3(e). A Member State shall not be held liable for the actions of the EETS Providers mentioned in its register.

2 Member States shall take all necessary measures to ensure that all the data contained in the national electronic register is kept up-to-date and is accurate.

3 The registers shall be electronically accessible to the public.

4 These registers shall be available within 9 months of the entry into force of this Decision.

5 The Member States authorities in charge of the registers shall communicate by electronic means to their counterparts in the other Member States and the Commission the registers of EETS domains and EETS Providers at the end of each calendar year. Any

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inconsistencies with the situation in a Member State shall be brought to the attention of the Member State of registration and of the Commission.

CHAPTER VII

FINAL PROVISIONS

Article 20

Pilot toll systems

To allow for EETS technical development Member States may temporarily authorise, on limited parts of their toll domain and in parallel to the EETS compliant system, pilot toll systems incorporating new technologies or new concepts which do not comply with one or more provisions of Directive 2004/52/EC or this Decision.

Such authorisation shall be subject to the prior approval of the Commission. The initial period of such authorisation shall not exceed 3 years.

EETS Providers shall not be required to participate in pilot toll systems.

Article 21

Report

By 18 months after entry into force of this Decision at the latest, the Commission shall draw up a report on the state of advancement of EETS deployment.

Article 22

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 6 October 2009.

For the Commission

Antonio TAJANI

Vice-President

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ANNEX I

CONTENTS OF AN EETS DOMAIN STATEMENT

An EETS domain statement shall contain the following information:

1. A section on the requirements towards EETS Providers which shall include at least the fixed charges imposed on EETS Providers based on the costs for the Toll Charger to provide, operate and maintain an EETS compliant system in its toll domain when such costs are not included in the toll.

This may include as well provisions on a bank guarantee or equivalent financial instrument, which shall not exceed the average monthly toll transaction amount paid by the EETS Provider for this toll domain. This amount shall be determined on the basis of the total toll transaction amount paid by the EETS Provider for this toll domain the previous year. For new companies the amount shall be based on the expected average monthly toll transactions payable by the EETS Provider for this toll domain according to the number of contracts and average toll per contract estimated in the EETS Provider's business plan.

2. A section on procedural conditions, which shall be non-discriminatory and include at least:
 - (a) Toll transaction policy (authorisation parameters, toll context data, black lists etc.);
 - (b) procedures and Service Level Agreement (such as format for communicating toll declaration data, times and periodicity for the transfer of toll declaration data, accepted percentage of missed/erroneous tolls, accuracy of toll declaration data, operational availability performance etc.);
 - (c) Invoicing policy;
 - (d) Payment policy;
 - (e) Commercial conditions, which shall be agreed upon by bilateral negotiations between the Toll Charger and the EETS Provider including service level requirements.

ANNEX II

EETS STAKEHOLDER ROLES AND INTERFACES

1. EETS Users do not interact directly with Toll Chargers as part of EETS. Interactions between EETS Users and EETS Providers (or their OBE) can be specific to each EETS Provider without compromising EETS interoperability.
2. Electronic interfaces between EETS Providers and Toll Chargers fall into two categories: Electronic interfaces at the roadside between the EETS Provider's OBE and the Toll Charger's fixed or mobile equipment, and electronic interfaces between the respective back office systems.
3. As a minimum, standardised roadside interfaces between OBE and Toll Chargers' fixed or mobile equipment shall enable:

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- (a) DSRC (Dedicated Short-Range Communication) charging transactions;
- (b) Real-time compliance checking transactions;
- (c) Localisation augmentation (where applicable).

EETS Providers must implement all these three interfaces in their OBE. Toll Chargers may implement any or all of these interfaces in their fixed or mobile roadside equipment according to their requirements.

4. As a minimum, the following standardised back office interfaces must be implemented by all EETS Providers. Toll Chargers must implement each interface, but can choose only to support either the GNSS or DSRC charging process.
 - (a) Exchange of toll declaration data between EETS Providers and Toll Chargers, specifically:
 - Submission and validation of claims for toll payment based on DSRC charging transactions,
 - Submission and validation of GNSS toll declarations;
 - (b) Invoicing/settlement;
 - (c) Exchange of information to support exception handling:
 - in the DSRC charging process,
 - in the GNSS charging process;
 - (d) Exchange of EETS blacklists;
 - (e) Exchange of trust objects;
 - (f) Sending of Toll Context Data from Toll Chargers to EETS Providers.

ANNEX III

ESSENTIAL REQUIREMENTS

1. General requirements

1.1. *Safety/Health*

Any devices intended to be handled by users must be so designed as not to impair the safe operation of the devices or the health and safety of users if used in a foreseeable manner not in accordance with the posted instructions.

1.2. *Reliability and availability*

The monitoring and maintenance of fixed or movable components that are involved in the functioning of EETS must be organised, carried out and quantified in such a manner as to maintain their operation under the intended conditions.

The design of EETS must be such as to enable the system to continue its mission in case of components malfunction or failure, possibly in a degraded mode, with a minimum of delay for EETS Users.

1.3. *Environmental protection*

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The on-board equipment and the ground infrastructure must be designed and manufactured in such a way as to be electro-magnetically compatible with the installations, equipment and public or private networks with which they might interfere.

1.4. *Technical compatibility*

Where they are interfacing within the framework of EETS the technical characteristics of the EETS Providers and Toll Chargers equipment must be compatible.

1.5. *Security/Privacy*

1. EETS shall provide means to protect Toll Chargers, EETS Providers and EETS Users against fraud/abuse.
2. EETS shall provide security features relative to the protection of data stored, handled and transferred between stakeholders in the EETS environment. The security features shall protect the interests of EETS stakeholders from harm or damage caused by lack of availability, confidentiality, integrity, authentication, non-repudiation and access protection of sensitive user data appropriate to a European multi-user environment.

2. **Specific requirements**

2.1. *Infrastructure requirements*

2.1.1. *General*

- 2.1.1.1. With a view to ensure the interoperability throughout the Community, for users, of the electronic toll systems that have already been introduced in the Member States and of those to be introduced in the future in the framework of the European Electronic Toll Service, the EETS infrastructure subsystem shall be compliant with Directive 2004/52/EC Article 2(1) and Article 4(3).
- 2.1.1.2. EETS infrastructure shall ensure that the accuracy of toll declaration data is commensurate with the toll regime requirements in view to guarantee equality of treatment between EETS Users relative to tolls and charges (fairness).
- 2.1.1.3. In conformity with the EETS interface requirements described in Annex II, common communication protocols between Toll Chargers and EETS Providers equipment shall be implemented. EETS Providers shall, through interoperable communication channels, provide Toll Chargers secured information relative to tolling operations and control/enforcement in conformity with applicable technical specifications.
- 2.1.1.4. EETS shall provide means for Toll Chargers to easily and unambiguously detect whether a vehicle circulating on their toll domain and allegedly using EETS is actually equipped with a validated and properly functioning EETS OBE providing truthful information.
- 2.1.1.5. The OBE shall provide the means for Toll Chargers to identify the responsible EETS Provider. The OBE shall regularly monitor this feature, invalidate itself if an irregularity is detected and, where possible, inform the EETS Provider of the anomaly.
- 2.1.1.6. Where applicable, EETS equipment shall be designed in such a manner that its interoperability constituents utilise open standards.
- 2.1.1.7. EETS on-board equipment shall provide a human-machine interface, which indicates to the user that the OBE is functioning properly, and an interface for declaring variable toll parameters as well as for indicating the settings of those parameters.

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2.1.1.8. OBE shall be integrated in a safe and secure way. Its fitment will be compliant with prescriptions relative to vehicles forward vision⁽¹¹⁾ and interior fittings⁽¹²⁾.

2.1.1.9. Where applicable Toll Chargers shall inform drivers, through roadside signage or other means, of the requirement to pay a toll or charge for circulating a vehicle in a toll domain, and in particular when they enter and leave a toll domain.

2.1.2. *Microwave technologies based toll systems*

EETS microwave technologies-based applications will support:

- for EETS Providers' OBE: both EN1 5509 and ETSI ES 200674-1 and its related Technical Reports for protocol implementation;
- for Toll Chargers' fixed and mobile roadside equipment: EN 15509. Within Italy, Toll Chargers' fixed and mobile roadside equipment may support instead ETSI ES 200674-1 and its related Technical Reports for protocol implementation.

2.1.3. *Global Navigation Satellite System (GNSS) based toll systems*

EETS Providers shall monitor the availability of Navigation and Positioning satellite localisation data.

EETS Providers shall inform Toll Chargers of difficulties they may have to establish toll declaration data related to the reception of satellite signals. Toll Chargers shall use the information received to identify problem areas and, where necessary, provide augmentation localisation signals, in agreement with EETS Providers.

2.2. *Operation and Management requirements*

1. EETS shall fulfil the requirements of European legislation on the protection of individuals with regard to the processing of personal data and on the free movement of such data. In particular, compliance shall be ensured with Directive 95/46/EC and Directive 2002/58/EC.
2. Toll Chargers and EETS Providers shall determine contingency plans in view to avoid important traffic flow disruptions in case of EETS unavailability.

ANNEX IV

CONFORMITY TO SPECIFICATIONS AND SUITABILITY FOR USE OF INTEROPERABILITY CONSTITUENTS'EC' DECLARATIONS

1. Conformity to specifications

For assessing interoperability constituents conformity (including road side equipment and interfaces) with the requirements set out in this decision and all relevant technical specifications, the manufacturer of the interoperability constituents to be used in EETS provision or his authorised representative shall choose the procedures from among the modules listed in Decision 768/2008/EC. As a result, it shall draw up the interoperability constituents 'EC' declaration of conformity to specifications, where applicable subject to obtaining an examination certificate from a notified body.

Depending on the chosen conformity assessment modules of Decision No 768/2008/EC, the 'EC' declaration of conformity to specifications covers the manufacturer's self-assessment or

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the assessment by a notified body or bodies of the intrinsic conformity of interoperability constituents, considered in isolation, to the specifications to be met.

2. Suitability for use (interoperability of service)

The suitability for use of interoperability constituents is assessed by operation or use of the constituents in service, integrated representatively into the EETS toll system of the Toll Charger(s) on whose domain the on-board equipment shall circulate over a specified operation time.

To carry out such a type examination by in-service experience aiming to demonstrate the in-service interoperability of the interoperability constituents, the manufacturer, the EETS Provider or an authorised representative shall:

- (a) either collaborate directly with the Toll Charger(s) on whose domain the on-board equipment shall circulate. In this case,

the manufacturer, the EETS Provider or an authorised representative shall:

1. place in service one (or more) specimens representative of the production envisaged;
2. monitor the in-service behaviour of the interoperability constituents by a procedure agreed and surveyed by the Toll Charger(s);
3. give evidence to the Toll Charger(s) that the interoperability constituents meet all the interoperability requirements of this (these) Toll Charger(s);
4. draw up a Declaration of suitability for use, conditional to obtaining a suitability for use attestation delivered by the Toll Charger(s). The Declaration of suitability for use covers the assessment by the Toll Charger(s) of the suitability for use of the EETS interoperability constituents within the EETS environment of this (these) Toll Charger(s);

and the Toll Charger(s) shall:

1. agree with the programme for validation by in-service experience;
2. approve the monitoring procedure of the in-service behaviour in its (their) toll domains and carry out specific verifications;
3. assess the in-service interoperability with its (their) system;
4. attest the suitability for use on its (their) toll domains in case of successful behaviour of the interoperability constituents;

- (b) or apply to a notified body. In this case,

the manufacturer, the EETS Provider or an authorised representative shall:

1. place in service one (or more) specimens representative of the production envisaged;
2. monitor the in-service behaviour of the interoperability constituents by a procedure approved and surveyed by the notified body (harmonised with the related Modules of Decision No 768/2008/EC);

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3. provide evidence to the notified body that the interoperability constituents meet all the requirements of this decision, including the results of in-service experience;
4. draw up the 'EC' Declaration of suitability for use, conditional to obtaining a suitability for use certificate delivered by the notified body. The 'EC' declaration of suitability for use covers the assessment/judgement by the notified body of the suitability for use of the EETS interoperability constituents, considered within the EETS environment of the selected Toll Charger(s) and, in particular in cases where the interfaces are involved, in relation to the technical specifications, particularly those of a functional nature, which are to be checked;

and the notified body shall:

1. take into consideration the declaration of conformity to specifications. Therefore the in-service examination shall not re-assess the type specifications already covered by the declaration of conformity, except where there is evidence that encountered non-interoperability problems are linked to such specifications;
2. organise the collaboration with the Toll Charger(s) selected by the manufacturer;
3. verify the technical documentation and the programme for validation by in-service experience;
4. approve the monitoring procedure of the in-service behaviour and carry out specific surveillance;
5. assess the in-service interoperability with Toll Charger(s) systems and operational processes;
6. issue a suitability for use certificate in case of successful behaviour of the interoperability constituents;
7. issue an explanatory report in case of unsuccessful behaviour of the interoperability constituents. The report shall also consider the problems which may arise as a result of non-compliance of a Toll Charger's systems and processes with relevant standards and technical specifications. If appropriate, the report shall make recommendations in view to resolve the problems.

3. Contents of the 'EC' Declarations

'EC' declarations of conformity to specifications and of suitability for use and the accompanying documents must be dated and signed.

The declarations must be written in the same language as the instructions and must contain the following:

- (a) the Directive references;
- (b) the name and address of the manufacturer, EETS Provider or the authorised representative established within the Community (give trade name and full address, in the case of the authorised representative, also give the trade name of the manufacturer or constructor);

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- (c) description of interoperability constituents (make, type, version, etc.);
- (d) description of the procedure followed in order to declare conformity to specifications or suitability for use;
- (e) all the relevant requirements met by the interoperability constituents and, in particular, their conditions of use;
- (f) where applicable, name and address of the Toll Charger(s)/notified body(ies) involved in the procedure followed in respect of conformity to specifications or suitability for use assessment;
- (g) where appropriate, reference to the technical specifications;
- (h) identification of the signatory empowered to enter into commitments on behalf of the manufacturer or of the manufacturer's authorised representative established within the Community.

ANNEX V

MINIMUM CRITERIA WHICH MUST BE TAKEN INTO ACCOUNT BY MEMBER STATES WHEN NOTIFYING BODIES

- (a)

The body shall be accredited according to the EN 45000 series of standards.
- (b) The body and the staff responsible for the checks must carry out the checks with the greatest possible professional integrity and the greatest possible technical competence and must be free of any pressure and incentive, in particular of a financial type, which could affect their judgement or the results of their inspection, in particular from persons or groups of persons affected by the results of the checks.
- (c) The body, its Director and the staff responsible for carrying out or supervising the checks may not become involved, either directly or as authorised representatives, in the design, manufacture, construction, marketing or maintenance of the interoperability constituents or in their use. This does not exclude the possibility of an exchange of technical information between the manufacturer or constructor and that body.
- (d) The body must possess or have access to the means required to perform adequately the technical and administrative tasks linked with the checks.
- (e) The staff responsible for the checks must possess:
 - proper technical and vocational training;
 - a satisfactory knowledge of the requirements relating to the checks that they carry out and sufficient practice in those checks;
 - the ability to draw up the certificates, records and reports which constitute the formal record of the inspections conducted.
- (f) The independence of the staff responsible for the checks must be guaranteed. No official must be remunerated either on the basis of the number of checks performed or of the results of those checks.

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- (g) The body must take out civil liability insurance unless that liability is covered by the State under national law or unless the checks are carried out directly by that Member State.
- (h) The staff of the body are bound by professional secrecy with regard to everything they learn in the performance of their duties (with the exception of the competent administrative authorities in the State where they perform those activities) in pursuance of Directive 2004/52/EC and this Decision or any provision of national law implementing the Directive.

ANNEX VI

VEHICLE CLASSIFICATION PARAMETERS

1. **General Provisions**
 - 1.1. The set of vehicle classification parameters to be supported by EETS shall not restrict the choice of tariff schemes by Toll Chargers. EETS shall have flexibility to allow the set of classification parameters to evolve according to foreseeable future needs.
 - 1.2. A Toll Charger shall communicate the correspondence between the set of used vehicle classification parameters and its vehicle tariff classes for each tariff scheme applied in a toll domain under its responsibility in accordance with the provisions in Article 19 at least 3 months before its use.
 - 1.3. A Toll Charger shall publish the correspondence of its vehicle tariff classes with its tariffs structure for each tariff scheme applied in a toll domain under its responsibility in accordance with the provisions in Article 19.
2. **Vehicle Classification Parameters**
 - 2.1. Without prejudice to General Provision 1.1 here-above, a Toll Charger may use as vehicle classification parameters:
 - (a) any measurable vehicle parameter that can be unambiguously measured by its road side equipment;
 - (b) any vehicle parameter that is supported by standard EN 15509 and ETSI ES 200674-1 and its related Technical Reports for protocol implementation;
 - (c) the vehicle parameters which are mandatory in vehicles registration documents⁽¹³⁾ and as standardised in CEN ISO/TS24534;
 - (d) the variable vehicle classification parameters currently used in toll systems, e.g. number of axles (including lifted axles), presence of a trailer etc.;
 - (e) the following environmental parameters;
 - the vehicle's emission class, i.e. its environmental category in accordance to Council Directive 88/77/EEC⁽¹⁴⁾ and Directive 2006/38/EC of the European Parliament and of the Council⁽¹⁵⁾;
 - an harmonised CO₂ related parameter, e.g. the harmonised community code V.7 in vehicles registration documents.

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- 2.2. When circulating in a toll domain, a vehicle on-board equipment shall be capable to communicate its vehicle classification parameters and OBE status information to the toll-declaration monitoring equipment of the Toll Charger.

3. **New Vehicle Classification Parameters**

In case a Toll Charger intends to introduce new vehicle classification parameters, the Member State where the Toll Charger is registered shall inform the Commission and the other Member States thereof. The Commission shall refer the matter to the Electronic Toll Committee provided for in Article 5(1) of Directive 2004/52/EC and deliver its opinion within 6 months, in accordance with the procedure referred to in Article 5(2) of Directive 2004/52/EC.

4. **New Tariff Schemes**

- 4.1. Where a new tariff scheme is based on vehicle classification parameters already in use in at least one EETS domain, EETS Providers shall support the new tariff scheme as of the date of its entry into force;
- 4.2. Where a new tariff scheme introduces one or more new vehicle classification parameters, the procedure under point 3 shall be followed.

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- (1) [OJ L 166, 30.4.2004, p. 124.](#)
- (2) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([OJ L 281, 23.11.1995, p. 31](#)).
- (3) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector ([OJ L 201, 31.7.2002, p. 37](#)).
- (4) The decision on the practical implementation of a Conciliation Body entrusted with mediation function lays with each Member State provided the requirements of Chapter IV ensuring all EETS Providers fair access to the national EETS domains are fulfilled.
- (5) [OJ L 376, 27.12.2006, p. 36.](#)
- (6) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([OJ L 134, 30.4.2004, p. 114](#)).
- (7) The main elements of the New Approach have been defined in the Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards ([OJ C 136, 4.6.1985, p. 1](#)).
- (8) Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC ([OJ L 218, 13.8.2008, p. 82](#)).
- (9) [OJ L 184, 17.7.1999, p. 23.](#)
- (10) Projects CESARE and RCI.
- (11) Commission Directive 90/630/EEC of 30 October 1990 adapting to technical progress Council Directive 77/649/EEC on the approximation of the laws of the Member States relating to the field of vision of motor vehicle drivers ([OJ L 341, 6.12.1990, p. 20](#)).
- (12) Directive 2000/4/EC of the European Parliament and of the Council of 28 February 2000 amending Council Directive 74/60/EEC on the approximation of the laws of the Member States relating to the interior fittings of motor vehicles (interior parts of the passenger compartment other than the interior rear-view mirrors, layout of controls, the roof or sliding roof, the backrest and rear part of the seats) ([OJ L 87, 8.4.2000, p. 22](#)).
- (13) Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles ([OJ L 138, 1.6.1999, p. 57](#)).
- (14) Council Directive 88/77/EEC of 3 December 1987 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression ignition engines for use in vehicles, and the emission of gaseous pollutants from positive ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles ([OJ L 36, 9.2.1988, p. 33](#)).
- (15) Directive 2006/38/EC of the European Parliament and of the Council of 17 May 2006 amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures ([OJ L 157, 9.6.2006, p. 8](#)).

Changes to legislation:

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