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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal 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) (Text with EEA relevance)

Delegations will find attached document COM(2017) 280 final.

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2017/0128 (COD)

Proposal 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)

(Text with EEA relevance)
{SWD(2017) 190 final}
{SWD(2017) 191 final}
{SWD(2017) 192 final}
{SWD(2017) 193 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Electronic toll collection systems have been deployed at national, regional or local level in 20 Member States and the number of systems is increasing constantly. The vast majority require road users to install special equipment ('on-board units' – OBUs) in their vehicles. While a few offer cross-border interoperability, most do not. This results in costs and burdens for users, who must equip their vehicles with multiple OBUs to be able to drive unhindered in different countries. The costs are estimated at EUR 334 million a year currently and are expected to fall to just below EUR 300 million a year by 2025 (with no new action at EU level).

The lack of cross-border interoperability also means costs for authorities, which must procure and service redundant OBUs that work nationally but cannot be used abroad. In just one national system where vehicles' positions are established using satellite positioning,[1] the one-off cost of procuring OBUs amounts to EUR 120 million and servicing costs to EUR 14.5 million per year.

To address these issues, a Directive on the interoperability of electronic road toll systems was adopted in 2004.[2] A 2009 Commission Decision setting out how interoperability should be achieved in practice[3] provided that specialised 'European electronic toll service' (EETS) providers would offer road users OBUs compatible with all electronic toll collection systems in the EU.

The objectives of the legislation remain largely unattained. Some cross-border interoperability has been achieved, but in Croatia, the Czech Republic, Germany, Greece, Hungary,[4] Ireland,[5] Italy, Poland, Slovakia, Slovenia and the United Kingdom, it is still the case that only national OBUs can be used to pay tolls.

Two main reasons for this have been identified:

– EETS providers face considerable barriers to entry, such as:

- discriminatory treatment by authorities (including protection of incumbents);
- long and changing acceptance procedures; and
- technical specificities in local systems that do not comply with established standards.

The fact that current legislation does not set out sufficiently clearly the obligations of toll chargers (which manage the tolling schemes) and Member States vis-à-vis EETS

[1] Such systems are currently deployed in Belgium, Germany, Hungary and Slovakia, but other Member States (currently Bulgaria and Sweden) are considering their introduction.

[2] 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 (OJ L 166, 30.4.2004, p. 124–143).

[3] Commission Decision 2009/750/EC of 6 October 2009 on the definition of the European Electronic Toll Service and its technical elements (OJ L 268, 13.10.2009, p. 11-29).

[4] In the Hungarian tolling system, different OBUs can be used, but they are nearly all national. No EETS OBUs can be used as yet.

[5] In Ireland, there are many providers of OBUs, but they are all national. No cross-border interoperability is available as yet.

providers has allowed the barriers to remain in place without infringing EU law. It is therefore important that these obligations are specified in detail, so that EETS services can develop in parallel with national ones;

– The EETS legislation has imposed excessive requirements on EETS providers, such as:

  - an obligation to provide their services in all Member States within 24 months of their official registration. Reportedly, this has for a long time discouraged possible providers from registering, as they feared de-registration in their Member States of establishment if they failed to cover all EETS domains in time; and
  - an obligation to serve the light-duty vehicle market with expensive satellite-based OBUs (although currently no electronic tolling systems for light-duty vehicles use satellite positioning). This makes it impossible for EETS providers to offer a competitive service to owners of light-duty vehicles. Satellite-based OBUs are still more expensive than the simple microwave OBUs used by national toll-service providers and their additional functionalities and computing power are redundant in the context of tolling light-duty vehicles. As long as satellite OBUs remain so expensive, it is important to provide for a period in which an EETS market for light-duty vehicles can be established by allowing EETS providers to equip their customers with simple OBUs that are compatible with existing tolling schemes.

Another problem relates to the difficulty of enforcing the payment of tolls by owners of vehicles registered in another Member State. A Member State that detects a tolling offence by means of automatic enforcement devices cannot identify the offender on the basis of the licence plate number when the vehicle is registered abroad. There is no legal basis at EU level for the exchange of vehicle registration data between Member States for the purpose of toll enforcement. The resulting revenue leakage for national, regional and local tolling schemes amounts to some EUR 300 million a year.

It is important to monitor the development of new services and applications, in particular that of cooperative Intelligent Transport Services (ITS), to exploit early on their potential for synergies with electronic tolling. It is also important that added-value services be allowed to be offered using the same technological platform (on-board equipment) as that used for electronic toll collection.

This proposal is part of the Regulatory Fitness Programme (REFIT), which focuses on reducing regulatory burden for companies.

- **Consistency with existing policy provisions in the policy area**

This initiative is a recast of an existing legal act (Directive 2004/52/EC). It aims to address the shortcomings of the existing legislation to make it more effective in achieving its objectives. It also proposes that the Directive should more precisely reflect the roles of different categories of EETS market players, which are currently defined only in Decision 2009/750/EC.

- **Consistency with other Union policies**

By improving the framework conditions on the electronic toll collection market, the initiative will help to complete the internal market and the digital single market. Also, by making electronic tolls easier to deploy and apply, it will facilitate the wider application of the 'user pays' and 'polluter pays' principles and thus contribute to achieving the goals of the Energy Union. In particular, it will enhance the effectiveness and efficiency of the proposal to revise Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures,[6] which is presented in parallel to this initiative.

Lastly, the initiative proposes a legal framework for the exchange of vehicle registration data for the purpose of toll enforcement. This will contribute to achieving goals in the fields of justice and fundamental rights. On a more operational level, the relevant provisions are consistent with Directive (EU) 2015/413 facilitating the cross-border exchange of information on road-safety-related traffic offences.[7] The relevant provisions also respect the applicable legislation on the protection of personal data.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposal, as for the existing Directive (2004/52/EC), is Article 91 of the Treaty.

- **Subsidiarity (for non-exclusive competence)**

Unsatisfactory organisation of the electronic toll collection market in Member State A will negatively affect road users registered in Member State B, and vice versa. Individual Member States have no incentive to change things unless the interests of EU citizens and businesses are taken into account. This can be achieved only through action at EU level.

As regards the cross-border enforcement of tolls, a purely intergovernmental approach has shown its limitations, with only a few bilateral agreements having been signed between Member States. Only the EU can put in place an efficient system for exchanging information on toll offenders across all Member States.

- **Proportionality**

The new elements (compared with Directive 2004/52/EC) have been formulated following thorough pre-screening of the full list of policy measures suggested by stakeholders in the course of the public consultation. Proportionality was one of the main evaluation criteria. Less proportionate measures, in particular strict harmonisation of electronic tolling systems in the EU, were analysed in the impact assessment and rejected.

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[6] Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 187, 20.7.1999, p. 42).

[7] Directive (EU) 2015/413 of the European Parliament and of the Council of 11 March 2015 facilitating cross-border exchange of information on road-safety-related traffic offences (OJ L 68, 13.3.2015, p. 9-25).

- **Choice of instrument**

The initiative substantially amends the provisions of Directive 2004/52/EC and adds many new provisions. In the interest of clarity, the proposal is therefore for a new (recast) Directive of the European Parliament and of the Council.

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- ***Ex post* evaluations/fitness checks of existing legislation**

An ex post evaluation of Directive 2004/52/EC and Decision 2009/750/EC, set out in a single Commission staff working document,[8] led to the following conclusions:

– The legislation has failed to deliver on most of its objectives: for toll chargers, the costs of electronic tolling have hardly decreased and there is still no EETS for road users;

– Little progress has been made on the interoperability of electronic tolls and, with a few exceptions, OBUs have not been integrated with other devices. Where there is interoperability, it is mainly at national level; only a few, limited cross-border agreements have been concluded. This relative lack of cross-border interoperability is due to the uncompetitive structure of many national markets, with authorities giving a privileged market position to a single tolling system operator, and to hurdles imposed by the EETS legislation itself (in particular, the obligation on EETS providers to be able to offer their services across the EU within 24 months). Cross-border interoperability is expensive and difficult to achieve because of significant differences in the application, in individual national tolling schemes, of the three technologies allowed by the EETS legislation. It is also hampered by the lack of effective provisions on the enforcement of tolls for vehicles registered in another Member State;

– In terms of its scope, the legislation is only partially relevant, as requiring all EETS providers to cover all types of vehicle and all toll domains in Europe is considered excessive. It would be more efficient if providers were free to respond to the needs of their customers, rather than being obliged to impose on them a full but expensive and unnecessary service;

– The legislation could generate high EU added value, as voluntary cooperation agreements between Member States have not contributed to substantial EETS coverage of the internal market. In any case, as few voluntary cooperation agreements have been concluded, this potential has been achieved only to a very small degree; and

– The Directive refers to undefined ‘operators’ as the entities responsible for the provision of the EETS, while the Decision refers to well-defined ‘EETS providers’. There is therefore a degree of inconsistency between the two legal acts.

The results of the ex post evaluation were fed directly into the work to identify the problems which the present initiative aims to solve.

[8] Insert reference when published

- **Stakeholder consultations**

When preparing the ex post evaluation and impact assessment, the Commission carried out five main consultation activities:

1) An open public consultation on the basis of an online questionnaire

   The consultation was open between 8 July and 2 October 2016 (12 weeks). The questionnaire contained questions mainly relevant for the general public, giving them a chance to express their views on electronic tolling without going into technical details. However, it did allow respondents to expand on their views in response to several open questions and to upload position papers and other documents.

   For the Commission, the aim of the consultation was to sound out the general public on the broad policy choices (both in the current legislation and under consideration in the framework of the legislative review). While the relatively low number of responses puts a question mark over their representativeness, they expressed significant support for all broad policy choices in the current proposal;

2) A call for written contributions publicly addressed to all stakeholders

   Stakeholders were given the opportunity to submit contributions to the ex post evaluation and impact assessment exercises. A total of 22 relevant contributions were received: nine from tolling/motorway operators, nine from transport undertakings and four from public authorities;

3) A restricted consultation of professional stakeholders on issues relating to the ex post evaluation

   The targeted stakeholder consultation was launched on 26 June 2015 and was open for responses until 1 September 2015 (10 weeks). The main objective was to gather information and data to fill the Commission's knowledge gaps in the preparation of the ex post evaluation.

   Four separate questionnaires for different EETS stakeholder groups elicited a total of 22 responses. Due to the relatively low number of large stakeholders and the good organisation of the sector, it seems reasonable to assume that these are highly representative.

   The quality of the contributions was mixed, but roughly half of the answers provided hard data and ample information, which the Commission fed into its staff working document. The other half contained mainly opinions and positions which helped the Commission to understand stakeholders' views as to the effectiveness and efficiency of the current legislation;

4) A restricted consultation of professional stakeholders on issues relating to the upcoming proposal on the revision of the EETS legislative framework

   This targeted stakeholder consultation for the impact assessment on the revision of the EETS legislative framework was launched on 5 October 2016 and was open for responses until 13 November 2016 (six weeks).

   The main objective was to gather information and data to fill the Commission's knowledge gaps in the preparation of the 'problem definition' part of the impact assessment, but also to sound out the stakeholder community on the policy options and possible measures that the Commission could propose.

A total of 35 responses to the questionnaire were received, i.e. considerably more than in the similar consultation for the ex post evaluation. A number of excellent contributions contained in-depth analysis of the problems, with statistics/other data and recommendations for concrete policy solutions. The responses contributed considerably to strengthening the evidence base for the impact assessment and to the drafting of potential policy measures;

5) Reactions to the evaluation roadmap and the inception impact assessment

Stakeholders were given the opportunity to react to the published evaluation roadmap and the inception impact assessment. None did so, however.

- **Collection and use of expertise**

Outside experts were commissioned to support the Commission in preparing the impact assessment report. An accompanying study was produced by Ricardo.[9] The impact assessment also used the results of two previous studies prepared for the Commission in the framework of the ex post evaluation: State of the art of electronic tolling[10] and Expert review of the EETS legislative acts.[11]

- **Impact assessment**

The initiative is supported by an impact assessment which first received a negative opinion from the Regulatory Scrutiny Board (RSB). RSB considered that the report did not explicitly set an objective of full interoperability of the electronic tolling systems in the EU and did not explain how the options contribute to interoperability. The options did also not explain sufficiently the real trade-offs and choices to the decision-makers and the report did not sufficiently reflect the views of stakeholders and in particular Member States.

The following changes were made to the report to address the recommendations of the RSB:

- The general objective was revised to explain that the initiative aims at offering each road user access to the level of interoperable tolling services corresponding to his/her needs and requests, which includes the option of full interoperability; furthermore, text was added under the first specific objective to explain that the latter is not only compatible with the objective of achieving three layers of interoperability (technical, procedural and contractual), but also includes the goal of fostering the establishment of a competitive structure of the EETS market.

- Two new sections, 5.1 and 5.2, present the results of the pre-screening of the full list of policy measures which have been discussed with the stakeholders in the framework of the public consultation; furthermore, one of the policy options was changed from a purely harmonisation option into one that also includes market measures.

- The views of the stakeholders, with a particular focus on the Member States, were thoroughly presented in sections 5.1 and 5.2.

Presented with the revised version of the Impact Assessment report, the RSB issued a second, positive opinion with reservations. The reservations of the RSB concerned three main aspects:

[9] Insert link when published.
[10] http://ec.europa.eu/transport/modes/road/road_charging/doc/study-electronic-road-tolling.pdf
[11] http://ec.europa.eu/transport/modes/road/studies/doc/2015-09-ex-post-evaluation-eets-4icom.pdf

- The RSB was of the opinion that the impact assessment report did not identify the core measures which are essential for the envisaged results, and did not assess their interdependences.

- The RSB also indicated that the report was still not clear on how the proposed set of measures would contribute to achieving the envisaged level of interoperability in the EU and what the risks attached to the preferred option would be.

Finally, the RSB pointed to the fact that the report did not explain why intermediate solutions between the most efficient and the most cost effective have not been considered.

The following additions were made to address the reservations:

– in table 9, detailed explanations as to which measures are essential and which are not, and of the interdependence between measures;

– a new table 19 on effectiveness in achieving the general objective and the risks that option 2 would not actually achieve it; and

– new text in sections 5.1.4 and 5.4 to explain why intermediate solutions between the most efficient and the most cost-effective were not considered.

The impact assessment examined three broad policy options:

1. addressing some problems through self-regulation and others through legislation;

2. addressing all problems through legislation, keeping the 'market-based' approach taken in Decision 2009/750/EC; and

3. addressing some problems through full technical and procedural harmonisation of electronic toll collection systems in the EU and others through legislation.

Option 2 is the **preferred option**. It was chosen on the basis of its high effectiveness and highest efficiency (costs *versus* benefits) in achieving the objectives, with overall positive side effects.

The expected benefits are as follows:

- for road users – cumulated savings of EUR 370 million (net present value – NPV) until 2025. Most of these will benefit road transport operators, i.e. predominantly SMEs;

- for road network managers – savings of EUR 48 million (NPV) until 2025 from not having to procure redundant OBUs, and additional toll revenues (EUR 150 million a year) thanks to better rules on cross-border enforcement; and

- for EETS providers – a reduction in regulatory burden linked to entering national markets (EUR 10 million NPV until 2025, for an expected 12 providers) and market expansion, with additional revenues of EUR 700 million a year.

The expected costs are as follows:[12]

- for road network managers – additional costs of adapting tolling systems to new requirements (cumulated EUR 174 million NPV until 2025) and paying EETS providers an additional EUR 700 million a year (cumulated value, all road managers, all EETS providers). However, this is a budgetary neutral impact, as it will

[12] The environmental and social costs of the initiative are not significant.

correspond to the outsourcing of activities currently performed by the managers themselves or by their subcontractors.

Overall, the net cumulated benefit of the preferred policy option (benefits minus costs) is EUR 254 million (NPV) until 2025.

- **Regulatory fitness and simplification**

The initiative is expected to reduce regulatory burden for companies by a cumulated EUR 254 million until 2025 as a result of:

– a cumulated EUR 370 million reduction in regulatory burden for road users until 2025. Most of this will benefit road hauliers, the majority of which are small businesses (mostly micro-enterprises);

– a cumulated EUR 126 million increase in regulatory burden for toll chargers (i.e. road managers), none of which are SMEs; and

– a cumulated EUR 10 million reduction in regulatory burden for EETS providers (predominantly subsidiaries of large or very large companies).

Because SMEs and micro-enterprises predominate in the largest category of affected stakeholders (i.e. road hauliers) and the impacts for them are positive, there is no provision for exemptions or specific rules for them.

The initiative is likely to promote competition, allowing new operators to enter previously monopolistic national electronic toll collection markets. It will reduce regulatory burdens for the road haulage industry, thereby increasing its sectoral competitiveness. Also, greater harmonisation of electronic toll collection methods will benefit European equipment manufacturers, who are already global leaders thanks to strong and efficient EU standards.

The proposal contributes to the objectives of the single digital market[13]

- **Fundamental rights**

Progress towards a functioning EETS should facilitate cross-border travel and so support the free movement of goods and people. Improved enforcement, as a result of the exchange of information on the identity of toll offenders, will ensure equal treatment of national and foreign-registered road users. The proposal also introduces provisions which should allow EETS providers to be treated on an equal footing with the incumbent operators.

The main impact related to the right to protection of personal data and the right to privacy results from the establishment of a mechanism for the mandatory exchange of information between Member States on the identity of vehicle owners who are proven or suspected of committing fraud against the toll system. The mechanism is largely based on the provisions of Directive (EU) 2015/413 for the cross-border enforcement of road safety related offences. Therefore, appropriate safeguards are put in place to ensure that the proposal fully respects Article 7 and 8 of the Charter of Fundamental Rights, as well as the applicable legal framework on the protection of personal data. The data collected under this Directive should not be used for purposes other than those of this Directive. Member States should comply with the obligations on the conditions of use and of temporary storage of the data and, in a

[13] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A digital Single Market Strategy for Europe*, COME(2015) 192 final, Brussels, 6.5.2015.

more general way, with the principles of necessity and proportionality on the use of personal data.

The proposal has been consulted with the European Data Protection Supervisor (EDPS) in two stages: first, the EDPS was consulted on the principles of the foreseen system for the exchange of information; second, the EDPS was consulted on the actual legislative text. The EDPS did not have any further comments.

4. BUDGETARY IMPLICATIONS

There are no budgetary implications for the Union.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The impact assessment sets out a detailed monitoring plan based on 11 indicators for monitoring and evaluating the effects of the legislation five years after its entry into force. A specific reporting clause has been included in the proposal to evaluate the impact of the new provisions on the cross-border exchange of information for the purpose of toll enforcement.

- **Explanatory documents (for directives)**

Considering the scope of the proposal and the fact that it is a recast of an existing Directive (2004/52/EC) which all Member States have transposed in full, it does not seem justified or proportionate to require explanatory documents.

- **Detailed explanation of the specific provisions of the proposal**

The main substantive amendments to the text of Directive 2004/52/EC are as follows:

Article 1: Subject matter and scope

In paragraph 1, a second objective is added (on top of ensuring the interoperability of electronic road toll systems): to facilitate the cross-border exchange of information on the failure to pay road fees in the Union.

In paragraph 2, subparagraph (b) is deleted to allow Member States to exchange information on those who fail to pay road fees where toll systems do not require the installation of on-board equipment. This change is necessary to allow, for instance, for cross-border enforcement of city tolls (including congestion-charging systems) and other systems using automatic number plate recognition technology for electronic toll transactions.

Paragraph 3 is amended to confirm that the EETS is provided by EETS providers, not by toll chargers.

Article 2: Definitions

An article with definitions is added to clarify the terms used in the Directive.

Article 3: Technological solutions

Paragraph 1 specifies that its provisions apply only to toll systems that require the installation or use of on-board equipment. 'Use' is included to confirm that portable devices used for electronic toll transactions are to be considered as on-board equipment for the purpose of the Directive. Paragraph 1 explains the technological solutions applicable to new and existing electronic toll systems.

Also in paragraph 1, the list of technologies that can be used for electronic toll transactions is moved to Annex IV. The Commission is authorised to amend the list by delegated act if a technology becomes obsolete or if a new technology, tested in the framework of pilot tests in compliance with Article 20 of Decision 2009/750/EC, should be added to the list.

Old paragraph 2 is removed, as it repeats other provisions in the Directive.

New paragraph 2 provides that on-board equipment which uses satellite positioning technology is compatible with the positioning services provided by the Galileo and the European Geostationary Navigation Overlay Service ('EGNOS') systems and may be compatible with other satellite navigation systems.

Paragraph 3 clarifies that, for the purpose of complying with the technological requirements of the Directive and in particular Annex IV, EETS on-board equipment can link to other devices installed or present in the vehicle, such as satellite navigation systems or smartphones. It also clarifies that communication between the on-board equipment and such other devices may use technologies not listed in Annex IV (for example Bluetooth).

In paragraph 3, the wording 'and which is suitable for use in all types of vehicles, in accordance with the timetable set out in Article 3(4)' is removed for two reasons:

– the EETS providers should not be obliged to provide the EETS to all vehicles, but be able to choose to provide it to heavy-duty vehicles or to light-duty vehicles only; and

– as explained in paragraph 4, on-board equipment in light-duty vehicles may be suitable for use with the 5.8 GHz microwave technology only and thus not in certain toll-collection systems applying to heavy-duty vehicles which require equipment suitable for use with all three permitted technologies.

New paragraph 4 clarifies that on-board equipment can be integrated with other devices and serve purposes other than tolling.

In the new paragraph 4, an exemption is added to allow EETS providers serving light-duty vehicles to offer their clients on-board equipment suitable for use with the 5.8 GHz microwave technology only. This exemption applies until 31 December 2027.

Old paragraph 3 is removed, as it refers to obsolete requirements.

Article 4 is deleted.

Paragraph 1 is deleted because it has become superfluous.

Paragraphs 2 and 3 have been moved to other articles.

Paragraph 4 is deleted because Member States have no influence on the date by which EETS providers must offer the EETS.

Article 5: Features of the European electronic toll service

Paragraph 1 refers to 'Annex I' rather than 'the annex', because new annexes are being added and all annexes therefore have to be numbered.

Old paragraphs 2, 4 and 5 are replaced by new provisions in Article 11 to adapt the regulatory procedure with scrutiny to the delegation of powers procedure, as referred to in Article 290(1) of the Treaty on the Functioning of the European Union (TFEU).

New paragraph 5 contains a specific provision to ensure that, when European standardisation bodies review EETS-relevant standards, appropriate transition arrangements will preserve the continual compatibility of interoperability constituents.

Also in new paragraph 5, the reference to Article 2(1) is replaced by a reference to Annex IV, to which the relevant provisions are transferred.

Articles 6, 7, 8, 9 and 10 and Annexes II and III

These five articles and two annexes provide for a procedure for the cross-border exchange of information on toll offenders. They result from adaptation of the provisions of Directive (EU) 2015/413 to the tolling context. The European Data Protection Supervisor (EDPS) was consulted on the draft legislative text and did not raise any objections.

The following provisions of Directive 2004/52/EC remain unchanged in the proposed initiative:

Article 16 (old Article 8), which specifies the addressees of the Directive; and

Annex I (old Annex), which specifies the items required for establishing and deploying the EETS.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50 (adapted)

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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~~Community~~ ⌦ Union ⌫ (recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the ⌦ Treaty on the Functioning of the European Union ⌫ ~~Treaty establishing the European Community~~, and in particular Article ~~7~~ ⌦ 91 ⌫ (1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[14],

Having regard to the opinion of the Committee of the Regions[15],

Acting in accordance with the ordinary legislative procedure,

Whereas:

⇩ new

(1) Directive 2004/52/EC of the European Parliament and of the Council[16] has been substantially amended. Since further amendments are to be made, that Directive should be recast in the interests of clarity.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 1 (adapted)

~~By its Resolution of 17 June 1997 on the development of telematics in road transport, in particular with respect to electronic fee collection (EFC)[17], the Council called on the Commission and Member States to develop a strategy for the convergence of EFC systems in order to achieve an appropriate level of interoperability at a European level. The~~

14 OJ C , , p. .

15 OJ C , , p. .

16 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 (OJ L 166, 30.4.2004, p. 124).

17 ~~OJ C 194, 25.6.1997, p. 5.~~

~~communication of the Commission on interoperable electronic fee collection systems in Europe was the first stage of this strategy.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 2 (adapted)

~~The majority of Member States which have installed electronic toll systems to finance road infrastructure costs or to collect road usage fees (jointly referred to hereinafter as 'electronic toll systems') use short-range microwave technology and frequencies close to 5,8 GHz, but these systems are currently not totally compatible. The work on microwave technology undertaken by the European Committee for Standardisation (CEN) resulted in January 2003 in the preparation of technical standards making for the compatibility of 5,8 GHz microwave electronic toll systems, following the adoption of technical pre-standards in 1997. However, these pre-standards do not cover all the dedicated short-range communications (DSRC) 5,8 GHz systems in operation in the Community and encompass two variants which are not totally compatible. They are based on the open systems interconnection model defined by the International Standardisation Organisation for communication between computer systems.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 3 (adapted)

~~Manufacturers of equipment and infrastructure managers have nonetheless agreed, within the Community, to develop interoperable products based on existing DSRC 5,8 GHz systems. The equipment that will need to be made available to users should accordingly be capable of communicating with the technologies that may only be used in new electronic toll systems to be deployed in the Community after 1 January 2007, namely satellite positioning technology, mobile communications technology using the GSM-GPRS standard and 5,8 GHz microwave technology.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 4 (adapted)

~~It is essential that the standardisation work be completed as quickly as possible to establish technical standards ensuring technical compatibility among electronic toll systems based on 5,8 GHz microwave technology and on satellite positioning and mobile communications technologies, in order to avoid further fragmentation of the market.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 5 (adapted)

(2) It is necessary to provide for the widespread deployment of electronic toll systems in the Member States and neighbouring countries, and ~~the need is arising~~ to have interoperable systems suited to the future development of road-charging policy at ~~Community~~ ⌦ Union ⌫ level and to future technical developments.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 6

(3) The electronic toll systems should be interoperable and based on open and public standards, available on a non-discriminatory basis to all system suppliers.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 7

~~In introducing new electronic toll systems, sufficient equipment should be made available to avoid discrimination between the undertakings concerned.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 8

~~In particular, owing to their great flexibility and versatility, application of the new satellite positioning (GNSS) and mobile communications (GSM/GPRS) technologies to electronic toll systems may serve to meet the requirements of the new road-charging policies planned at Community and Member State level. These technologies enable the number of kilometres covered per category of road to be counted without requiring costly investment in infrastructure. They also open the door to additional new safety and information services for travellers, such as the automatic alarm triggered by a vehicle involved in an accident and indicating its position, and real-time information on traffic conditions, traffic levels and journey times. With regard to satellite positioning, the Galileo project launched by the Community in 2002 is designed to provide, as of 2008, information services of higher quality than that provided by the current satellite navigation systems and which are optimal for road telematic services. The European geostationary navigation overlay service (EGNOS) precursor system will already be operational in 2004, providing similar results. However, these innovative systems could raise problems concerning the reliability of checks and with regard to fraud prevention. However, owing to the considerable advantages referred to above, the application of satellite positioning and mobile communications technologies is in principle to be recommended in introducing new electronic toll systems.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 9 (adapted)

(4) The proliferation of ~~technologies for electronic toll systems already in use or planned in the coming years (mainly 5,8 GHz microwave, satellite positioning and mobile communications) and the proliferation of~~ specifications imposed by the Member States and neighbouring countries for their electronic toll systems may compromise both the smooth operation of the internal market and transport policy objectives. Such a situation is liable to lead to the proliferation of incompatible and expensive electronic boxes in the driving cabs of heavy ~~goods~~ ⌦ duty ⌫ vehicles, and to drivers making mistakes when using them with the result, for example, of unintentionally avoiding payment. Such a proliferation is unacceptable to users and to manufacturers of vehicles for cost, safety and legal reasons.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 10 (adapted)

(5) Artificial barriers to the operation of the internal market should be removed, while still allowing the Member States and the ~~Community~~ ⌦ Union ⌫ to implement a variety of road-charging policies for all types of vehicles at local, national or international level. The equipment installed in vehicles should allow such road-charging policies to

be implemented in accordance with the principles of non-discrimination between the citizens of all Member States. The interoperability of electronic toll systems at ~~Community~~ ⌦ Union ⌫ level therefore needs to be ensured as soon as possible.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 11

~~Drivers are legitimately concerned to see improved quality of service on the road infrastructure, in particular in terms of safety, as well as a substantial reduction in congestion at toll plazas, especially on busy days and at certain particularly congested points in the road network. The definition of the European electronic toll service needs to address that concern. Provision should, moreover, be made to ensure that the technologies and components provided for can, as far as technically possible, also be combined with other vehicle components, in particular the electronic tachograph and emergency call capabilities. Intermodal systems should not be excluded at a later stage.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 12

~~The option of accessing other, future applications in addition to toll collection should be ensured by fitting appropriate equipment.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 13

(6) A European electronic toll service should provide interoperability at technical, contractual and procedural level, covering:

(a) a single contract between the clients and the operators offering the service, complying with a contractual set of rules allowing all operators and/or issuers to provide the service, giving access to the whole network;

(b) a set of technical standards and requirements allowing the industry to provide the necessary equipment for the provision of the service.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 14

(7) Contractual interoperability provides the potential for important facilitation to some road users and for significant economies in administration for commercial road users.

⇩ new

(8) It should be confirmed that the European Electronic Toll Service (EETS) is provided by EETS providers, as specified in Commission Decision 2009/750/EC[18].

(9) For the purpose of covering, with their on-board equipment, the required communication technologies, EETS providers should be allowed to make use of- and

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[18] Commission Decision 2009/750/EC of 6 October 2009 on the definition of the European Electronic Toll Service and its technical elements (OJ L 268, 13.10.2009, p. 11).

link to other hardware and software systems already present in the vehicle such as satellite navigation systems or smartphones.

(10) Electronic tolling and co-operative ITS (C-ITS) applications use similar technologies and neighbouring frequency bands for short range vehicle-to-vehicle and vehicle-to-infrastructure communication. In the future, the potential for merging electronic tolling with C-ITS in the 5.9 GHz band, currently used by C-ITS, should be explored, after a thorough assessment of the costs, benefits, technical barriers and possible solutions thereto.

(11) The specific characteristics of electronic tolling systems which are today applied to light-duty vehicles should be taken into account. Since no such electronic tolling systems currently use satellite positioning or mobile communications, EETS providers should be allowed, for a limited period of time, to provide light-duty vehicles with on-board equipment suitable for use with the 5.8 GHz technology only.

(12) When standards relevant for the EETS are reviewed by the European standardisation bodies, there should be appropriate transition arrangements to ensure the continuity of the EETS and the compatibility, with the tolling systems, of interoperability constituents already in use at the moment of the revision of the standards.

(13) Problems with identifying non-resident offenders to electronic tolling systems hamper further deployment of such systems and the wider application of the 'user pays' and 'polluter pays' principles on Union roads.

(14) For reasons of consistency and efficient use of resources, the system for exchanging information on those who fail to pay a road fee should use the same tools as the system used for exchanging information on road-safety-related traffic offenses provided for in Directive (EU) 2015/413 of the European Parliament and of the Council [19].

(15) Cross-border exchange of information on those who fail to pay a road fee should be made possible to Member States independently of the technology which is used for carrying out electronic toll transactions.

(16) Member States should be required to provide the Commission information and data necessary to evaluate the effectiveness and efficiency of the system for exchanging information on those who fail to pay a road fee. The Commission should be required to assess the data and information obtained, and to propose, if necessary, amendments to the legislation.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 15

~~Electronic toll systems contribute significantly to reducing the risk of accidents, thus increasing road safety, to reducing the number of cash transactions and to reducing congestion at toll plazas, especially on busy days. They also reduce the negative environmental impact of waiting and restarting vehicles and congestion, as well as the environmental impact related to the installation of new toll gates or expansion of existing toll stations.~~

[19] Directive (EU) 2015/413 of the European Parliament and of the Council of 11 March 2015 facilitating cross-border exchange of information on road-safety-related traffic offences (OJ L 68, 13.3.2015, p. 9).

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 16 (adapted)

~~The White Paper on European Transport Policy for 2010 contains objectives of safety and fluidity of road traffic. Interoperable intelligent transport services and systems are a key tool in the achievement of these objectives.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 17 (adapted)

(17) The introduction of electronic toll systems will entail the processing of personal data. Such processing needs to be carried out in accordance with ~~Community~~ ⌦ Union ⌫ rules, as set out, *inter alia*, in ~~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~~[20] Regulation (EU) 2016/679 of the European Parliament and of the Council[21], Directive (EU) 2016/680 of the European Parliament and of the Council[22] and 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~~[23]. The right to protection of personal data is explicitly recognised by Article 8 of the Charter of Fundamental Rights of the European Union.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 18

~~Automatic debiting of toll charges to bank accounts or credit/debit card accounts which are domiciled anywhere, in the Community and beyond, is conditional on a fully operational Community payments area with non-discriminatory service charges.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 19

~~Systems of electronic toll collection which are put in place in the Member States should meet the following fundamental criteria: the system should be amenable to ready incorporation of future technological and systems improvements and developments without costly redundancy~~

[20] ~~OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).~~

[21] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p.1),

[22] Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

[23] 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).

~~of older models and methods, the costs of its adoption by commercial and private road users should be insignificant compared with the benefits to those road users as well as to society as a whole, and its implementation in any Member State should be non-discriminatory in all respects between domestic road users and road users from other Member States.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 20 (adapted)

~~Since the objectives of this Directive, in particular, the interoperability of electronic toll systems in the internal market and the introduction of a European electronic toll service covering the entire Community road network on which tolls are charged, cannot be sufficiently achieved by the Member States and can therefore, by reason of their European dimension, be better achieved at Community level, the Community may take measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 21 (adapted)

~~The inclusion of interested parties (such as toll-service operators, infrastructure managers, electronics and motor industries and users) in Commission consultations on technical and contractual aspects of creating the European electronic toll service should be provided for. Where appropriate, the Commission should also consult non-governmental organisations active in the field of privacy protection, road safety and the environment.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 22 (adapted)

~~To set up the European electronic toll service it will first be necessary to establish guidelines to be laid down by the Electronic Toll Committee established by this Directive.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 23

(18) This Directive does not affect the Member States' freedom to lay down rules governing road infrastructure charging and taxation matters.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50, recital 24

~~The measures necessary for the implementation of this Directive should be adopted 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[24];~~

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[24] ~~OJ L 184, 17.7.1999, p. 23.~~

⇩ new

(19) In order to ensure the interoperability of electronic road toll systems and to facilitate the cross-border exchange of information on the failure to pay road fees, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the adapting to technological progress of the list of technologies which can be used for carrying out electronic toll transactions in electronic toll systems which require the installation or use of on-board equipment. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(20) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

(21) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for the transposition into national law of the Directive set out in Annex V, Part B.

(22) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council.[25]

🡻 Corrigendum, OJ L 200, 7.6.2004, p. 50 (adapted)
⇨ new

HAVE ADOPTED THIS DIRECTIVE:

Article 1

~~Objective~~ ⌦ Subject-matter ⌫ and scope

1. This Directive lays down the conditions necessary to ensure the interoperability of electronic road toll systems ⇨ and to facilitate the cross-border exchange of information on the failure to pay road fees ⇦ in the ~~Community~~ ⌦ Union ⌫ . It applies to the electronic collection of all types of road fees, on the entire ~~Community~~ ⌦ Union ⌫ road network, urban and interurban, motorways, major and minor roads, and various structures such as tunnels, bridges and ferries.

[25] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⇨ This Directive shall apply without prejudice to the decisions taken by Member States to levy fees on particular types of vehicles, to determine the level of those fees and the purpose for which such fees are levied. ⇦

2. This Directive does not apply to:

(a) road toll systems for which no electronic means of toll collection exists;

~~(b) electronic road toll systems which do not need the installation of on-board equipment;~~

(~~c~~b) small, strictly local road toll systems for which the costs of compliance with the requirements of this Directive would be disproportionate to the benefits;

⇨ (c) parking fees. ⇦

3. ~~To achieve~~ t~~T~~he objective ~~set in paragraph 1,~~ ⌦ of the interoperability of ⌫ ~~a European~~ electronic ⌦ road ⌫ toll ~~service~~ ⌦ systems in the Union ⌫ shall be ~~created~~ ⌦ achieved by means of the European Electronic Toll Service (EETS) which shall ⌫ be. ~~This service, which is~~ complementary to the national electronic toll services of the Member States~~, shall 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 this Directive~~.

⇩ new

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

(a) 'European Electronic Toll Service (EETS)' means the services provided, under a contract, by an EETS provider to an EETS user. Those services shall include making available and guaranteeing the correct parametrisation and functioning of on-board equipment necessary to pay road fees in all electronic toll domains agreed upon in the contract, processing the payment of road fees due by the user to the toll charger on behalf of the user, and providing other services and assistance required for the user in order to comply with the obligations imposed by the toll chargers in the toll domains agreed upon in the contract;

(b) 'toll charger' means a public or private entity which levies road fees for the circulation of vehicles in an electronic toll domain;

(c) 'EETS provider' means an entity which grants access to EETS to an EETS user under a contract and which is registered by its Member State of establishment ;

(d) 'EETS user' means a natural or legal person who has a contract with an EETS provider in order to have access to the EETS;

(e) 'electronic toll domain' means a road, a road network, a structure such as a bridge or a tunnel, or ferry, where road fees are collected using, exclusively or partially, automatic detection mechanisms such as communication with on-board equipment inside the vehicle or automatic number plate recognition;

(f) 'on-board equipment' means the complete set of hardware and software components required for providing EETS which is installed or carried on board a vehicle in order to collect, store, process and remotely receive/transmit data;

(g) 'road fee' means the fee which must be paid by the road user for circulating on a given road, road network, structure such as a bridge or tunnel, or ferry;

(h) 'failure to pay a road fee' means the commission of an offence resulting in the failure by a road user to pay a road fee in a Member State, as defined by the relevant laws of that Member State;

(i) 'Member State of registration' means the Member State of registration of the vehicle with which the offence of failing to pay a road fee was committed;

(j) 'national contact point' means a designated competent authority for the exchange of vehicle registration data;

(k) 'automated search' means an online access procedure for consulting the databases of one, more than one, or all of the Member States or of the participating countries;

(l) 'vehicle' means any power-driven vehicle, including motorcycles, which is normally used for carrying persons or goods by road;

(m) 'holder of the vehicle' means the person in whose name the vehicle is registered, as defined in the law of the Member State of registration;

(n) 'heavy-duty vehicle' means a vehicle intended for the carriage of goods and having a maximum permissible mass exceeding 3,5 tonnes, or a vehicle intended for the carriage of passengers and equipped with more than nine seats, including the driver's seat;

(o) 'light-duty vehicle' means any vehicle which is not a heavy-duty vehicle.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50 (adapted)
⇨ new

Article ~~2~~ 3

Technological solutions

1. All new electronic toll systems ⇨ which require the installation or use of on-board equipment ⇦ ~~brought into service on or after 1 January 2007~~ shall, for carrying out electronic toll transactions, use one or more of the ~~following~~ technologies ⌦ listed in Annex IV ⌫ .

⇨ Existing electronic toll systems which use technologies other than those listed in Annex IV shall comply with those technologies if substantial technological improvements are carried out ⇦

~~(a) satellite positioning;~~

~~(b) mobile communications using the GSM-GPRS standard (reference GSM TS 03.60/23.060);~~

~~(c) 5,8 GHz microwave technology~~

⇩ new

2. On-board equipment which uses satellite positioning technology shall be compatible with the positioning services provided by the Galileo and the European Geostationary

Navigation Overlay Service ('EGNOS') systems and may be compatible with other satellite navigation systems.

3. EETS providers shall make available to users on-board equipment which is suitable for use, interoperable and capable of communicating with all electronic toll systems in service in the Member States using the technologies listed in Annex IV.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50

~~2. The European electronic toll service shall be brought into service pursuant to Article 3 (1). Operators shall make available to interested users on-board equipment which is suitable for use with all electronic toll systems in service in the Member States using the technologies referred to in paragraph 1 and which is suitable for use in all types of vehicle, in accordance with the timetable set out in Article 3(4). This equipment shall at least be interoperable and capable of communicating with all the systems operating in the Member States using one or more of the technologies listed in paragraph 1 Annex IV. The detailed arrangements in this respect shall be determined by the Committee referred to in Article 5(1), including arrangements for the availability of on-board equipment to meet the demand of interested users~~.

⇩ new

4.The on-board equipment may use its own hardware and software, use elements of other hardware and software present in the vehicle, or both. For the purpose of communicating with other hardware systems present in the vehicle, the on-board equipment may use technologies other than those listed in Annex IV.

5. Until 31 December 2027, EETS providers may provide users of light-duty vehicles with on-board equipment suitable for use only with the 5.8 GHz microwave technology.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50 (adapted)
⇨ new

~~3. It is recommended that new electronic toll systems brought into service after the adoption of this Directive use the satellite positioning and mobile communications technologies listed in paragraph 1. In respect of the possible migration to systems using such technologies by systems using other technologies, the Commission, in liaison with the Committee referred to in Article 5(1), shall draw up a report by 31 December 2009. This report shall include a study of use of each of the technologies referred to in paragraph 1, as well as a cost-benefit analysis. If appropriate, the Commission shall accompany the report with a proposal to the European Parliament and the Council for a migration strategy.~~

~~4. Without prejudice to paragraph 1, on-board equipment may also be suitable for other technologies, on condition that this does not lead to an additional burden for users or create discrimination between them. Where relevant, on-board equipment may also be linked to the vehicle's electronic tachograph.~~

~~5. Where Member States have toll systems, they shall take the necessary measures to increase the use of electronic toll systems. They shall endeavour to ensure that, by 1 January 2007 at the latest, at least 50 % of traffic flow in each toll station can use electronic toll~~

~~systems. Lanes used for electronic toll collection may also be used for toll collection by other means, with due regard to safety.~~

~~6. Interoperability work on existing toll technologies undertaken in connection with the European electronic toll service shall ensure the full compatibility and interfacing of those technologies with the technologies referred to in paragraph 1 and of their equipment with each other.~~

~~7~~6. Member States shall ensure that processing of personal data necessary for the operation of the ~~European electronic toll service~~ ⌦ EETS ⌫ is carried out in accordance with the ~~Community~~ ⌦ Union ⌫ rules protecting the freedoms and fundamental rights of individuals, including their privacy, and that, in particular, the provisions of ~~Directives 95/46/EC~~ Regulation (EU) 2016/679, Directive (EU) 2016/680 and of Directive 2002/58/EC are complied with.

~~*Article 3*~~

~~Setting-up of **a European electronic toll service**~~

~~1. A European electronic toll service shall be set up which encompasses all the road networks in the Community on which tolls or road-usage fees are collected electronically. This electronic toll service will be defined by a contractual set of rules allowing all operators and/or issuers to provide the service, a set of technical standards and requirements and a single subscription contract between the clients and the operators and/or issuers offering the service. This contract shall give access to the service on the whole of the network and subscriptions shall be available from the operator of any part of the network and/or from the issuer.~~

~~4. Where Member States have national systems of electronic toll collection, they shall ensure that operators and/or issuers offer the European electronic toll service to their customers in accordance with the following timetable:~~

~~(a) for all vehicles exceeding 3,5 tonnes and for all vehicles which are allowed to carry more than nine passengers (driver + 8), at the latest three years after the decisions on the definition of the European electronic toll service, as referred to in Article 4(4), have been taken;~~

~~(b) for all other types of vehicle, at the latest five years after the decisions on the definition of the European electronic toll service, as referred to in Article 4(4), have been taken.~~

Article 4

Features of the ~~European electronic toll service~~ ⌦ EETS ⌫

1. The ~~European electronic toll service~~ ⌦ EETS ⌫ shall be based on the items listed in ~~the~~ Annex I ~~to this Directive~~.

⇓ 219/2009 Art. 1 and Annex .7(7)

~~2. Where appropriate, the Annex may be adapted for technical reasons. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 5(2).~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50 (adapted)

2. ~~The European electronic toll service shall be independent of the fundamental decisions taken by Member States to levy tolls on particular types of vehicles, of the level of charges and of the purpose for which such charges are levied. It shall concern only the method of collecting tolls or fees.~~ The ~~service~~ ⌦ EETS ⌫ shall allow for contracts to be concluded irrespective of the place of registration of the vehicle, the nationality of the parties to the contract, and the zone or ~~point~~ ⌦ section ⌫ on the road network in respect of which the ~~toll~~ ⌦ road fee ⌫ is due.

3. The ~~system~~ ⌦ EETS ⌫ shall allow intermodality to develop without creating disadvantages for other modes of transport.

~~3~~4. The ~~European electronic toll service~~ ⌦ EETS ⌫ shall ~~employ~~ ⌦ use ⌫ the technological solutions referred to in Article ~~2~~3~~, using~~ ⌦ and the technical ⌫ specifications ⌦ referred to in Article 10(2) ⌫ ~~which shall be publicly available~~.

↓ 219/2009 Art. 1 and Annex .7(7)

~~4. The decisions relating to the definition of the European electronic toll service shall be taken by the Commission. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 5(2). Such decisions shall only be taken if all the conditions, evaluated on the basis of appropriate studies, are in place to enable interoperability to work from all points of view, including technical, legal and commercial conditions.~~

~~5. Technical decisions relating to the realisation of the European electronic toll service shall be taken by the Commission. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 5(2).~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50 (adapted) ⇨ new

~~7~~5. The Commission shall ~~ask~~ ⌦ request ⌫ the relevant standardisation bodies, in particular the CEN, in accordance with the procedure laid down by Directive 2015/1535/EU of the European Parliament and of the Council[26] ~~Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations[27],~~ ~~to~~ ~~make every necessary effort~~ ~~rapidly~~ to ⌦ swiftly ⌫ adopt standards applicable to electronic toll systems with regard to the technologies listed in ~~Article 2(1)~~ Annex IV ⇨ , and to update them where necessary ⇦. ⇨ The Commission shall request that the standardisation bodies ensure the continual compatibility of interoperability constituents. ⇦

[26] Directive 2015/1535/EU of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

[27] ~~OJ L 204, 21.7.1998, p. 37. Directive as last amended by the 2003 Act of Accession.~~

~~8~~6. ⌦ On-board ⌫ ~~E~~equipment for the ~~European electronic toll service~~ ⌦ EETS ⌫ shall comply ~~in particular~~ with the requirements of ~~Directives 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity~~[28] Directive 2014/53/EU of the European Parliament and of the Council[29] and ~~Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility~~[30] Directive 2014/30/EU of the European Parliament and of the Council[31].

⇩ new

Article 5

Procedure for the exchange of information between Member States

1. For the investigation of the failure to pay road fees, the Member State shall grant other Member States' national contact points access to the following national vehicle registration data, with the power to conduct automated searches thereon:

   (a) data relating to vehicles; and

   (b) data relating to the owners or holders of the vehicle.

   The data elements referred to in points (a) and (b) which are necessary to conduct an automated search shall be in compliance with Annex II.

2. For the purposes of the exchange of data referred to in paragraph 1, each Member State shall designate a national contact point. The powers of the national contact points shall be governed by the applicable law of the Member State concerned.

3. When conducting an automated search in the form of an outgoing request, the national contact point of the Member State in whose territory there was a failure to pay a road fee shall use a full registration number.

   Those automated searches shall be conducted in compliance with the procedures referred to in points 2 and 3 of Chapter 3 of the Annex to Council Decision 2008/616/JHA[32] and with the requirements of Annex II to this Directive.

   The Member State in whose territory there was a failure to pay a road fee shall use the data obtained in order to establish who is liable for the failure to pay that fee.

4. Member States shall take all necessary measures to ensure that the exchange of information is carried out by interoperable electronic means without exchange of data involving other databases which are not used for the purposes of this Directive. Member States shall ensure that such exchange of information is conducted in a cost-

28 ~~OJ L 91, 7.4.1999, p. 10. Directive as amended by Regulation (EC) No 1882/2003.~~

29 Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment (OJ L 153, 22.5.2014, p. 62).

30 ~~OJ L 139, 23.5.1989, p. 19. Directive as last amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).~~

31 Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility (OJ L 96, 29.3.2014, p. 79).

32 Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 12).

efficient and secure manner. Member States shall ensure the security and protection of the data transmitted, as far as possible using existing software applications such as the one referred to in Article 15 of Decision 2008/616/JHA and amended versions of those software applications, in compliance with Annex II to this Directive and with points 2 and 3 of Chapter 3 of the Annex to Decision 2008/616/JHA. The amended versions of the software applications shall provide for both online real-time exchange mode and batch exchange mode, the latter allowing for the exchange of multiple requests or responses within one message.

5. Each Member State shall bear its own costs arising from the administration, use and maintenance of the software applications referred to in paragraph 4.

Article 6

Information letter on the failure to pay a road fee

1. The Member State in whose territory there was a failure to pay a road fee shall decide whether or not to initiate follow-up proceedings in relation to the failure to pay a road fee.

   Where the Member State in whose territory there was a failure to pay a road fee decides to initiate such proceedings, that Member State shall, in accordance with its national law, inform the owner, the holder of the vehicle or the otherwise identified person suspected of failing to pay the road fee. This information shall, as applicable under national law, include the legal consequences thereof within the territory of the Member State in which there was a failure to pay a road fee under the law of that Member State.

2. When sending the information letter to the owner, the holder of the vehicle or to the otherwise identified person suspected of failing to pay the road fee, the Member State in whose territory there was a failure to pay a road fee shall, in accordance with its law, include any relevant information, notably the nature of the failure to pay the road fee, the place, date and time of the failure to pay the road fee, the title of the texts of the national law infringed and the sanction and, where appropriate, data concerning the device used for detecting the offence. For that purpose, the Member State in whose territory there was a failure to pay a road fee may use the template set out in Annex III.

3. Where the Member State in whose territory there was a failure to pay a road fee decides to initiate follow-up proceedings in relation to the failure to pay a road fee, it shall, for the purpose of ensuring the respect of fundamental rights, send the information letter in the language of the registration document of the vehicle, if available, or in one of the official languages of the Member State of registration.

Article 7

Reporting by Member States to the Commission

Each Member State shall send a comprehensive report to the Commission by [4 years after the entry into force of this Directive] and every two years thereafter.

The comprehensive report shall indicate the number of automated searches conducted by the Member State in whose territory there was a failure to pay a road fee addressed to the national contact point of the Member State of registration, following failures to pay road fees

committed on its territory, together with the nature of the failure to pay a road fee for which requests were addressed and the number of failed requests.

The comprehensive report shall also include a description of the situation at national level in relation to the follow-up concerning the failures to pay road fees, based on the proportion of such failures to pay road fees which have been followed up by information letters.

Article 8

Data protection

1. The provisions of Regulation (EU) 2016/679 and the national laws, regulations or administrative provisions transposing Directive (EU) 2016/680 shall apply to personal data processed under this Directive.

2. Member States shall ensure that personal data processed under this Directive are, within an appropriate time period, rectified if inaccurate, or erased or restricted, and that a time limit for the storage of data is established in accordance with Regulation (EU) 2016/679 and the national laws, regulations or administrative provisions transposing Directive (EU) 2016/680.

   Member States shall ensure that all personal data processed under this Directive are only used for the purpose of facilitating the cross-border exchange of information on failures to pay road fees, and that the data subjects have the same rights to information, access, rectification, erasure and blocking, compensation and judicial redress as provided for in Regulation (EU) 2016/679 and the national laws, regulations or administrative provisions transposing Directive (EU) 2016/680.

3. Any person concerned shall have the right to obtain information on which personal data recorded in the Member State of registration were transmitted to the Member State in which there was a failure to pay a road fee, including the date of the request and the competent authority of the Member State in whose territory there was a failure to pay a road fee.

Article 9

Report

The Commission shall, by [5 years after the entry into force of this Directive], submit a report to the European Parliament and to the Council on the application of Articles 6 and 7 of this Directive by the Member States. In its report, the Commission shall focus in particular on, and shall, as appropriate, make proposals to cover, the following aspects:

– an assessment of the effectiveness of Articles 6 and 7 on the reduction in the number of failures to pay road fees in the Union,

– an assessment of the need to further facilitate the cross-border enforcement of the payment of road fees in the Union by establishing a mechanism of assistance by the Member State of registration to the Member State in whose territory there was a failure to pay a road fee in the recovery of road fees and fines.

Article 10

Delegated acts

1. The Commission is empowered to adopt delegated acts in accordance with Article 11 amending Annexes I and IV in order to adapt them to technical progress.

2. The Commission is empowered to adopt delegated acts in accordance with Article 11 concerning the definition of technical specifications and requirements of the EETS and the contractual rules relating to its provision, including rights and obligations of EETS providers, toll chargers and EETS users.

3. The Commission is empowered to adopt delegated acts in accordance with Article 11 concerning administrative arrangements, safeguard clauses and a conciliation procedure between toll chargers and EETS providers.

4. The Commission is empowered to adopt delegated acts, in accordance with Article 11, updating Annex II to take into account any relevant amendments to be made to Council Decisions 2008/615/JHA[33] and 2008/616/JHA or where this is required by any other relevant Union acts.

Article 11

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 10 shall be conferred on the Commission for an indeterminate period of time from [the entry into force of this Directive].

3. The delegation of power referred to in Article 10 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.[34]

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 10 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

[33] Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

[34] OJ L 123, 12.5.2016, p. 1

↓ 219/2009 Art. 1 and Annex .7(7)

~~*Article 5*~~

~~**Committee procedure**~~

~~1. The Commission shall be assisted by an Electronic Toll Committee.~~

~~2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50 (adapted)

Article ~~6~~ 12

~~Implementation~~ ⌦ Transposition ⌫

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive~~ ⌦ Articles 1 and 3 to 8 and Annexes II and III by [18 months after the entry into force of this Directive] ⌫ ~~before 20 November 2005~~. They shall immediately ~~forward~~ ⌦ communicate the text of those measures ⌫ to the Commission ~~the text of those provisions, together with a table correlating those provisions with this Directive~~.

When Member States adopt ~~these~~ ⌦ those ⌫ measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. ⌦ They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. ⌫ ~~The methods of making~~ ⌦ Member States shall determine how ⌫ such reference ⌦ is to be made and how that statement is to be formulated ⌫ ~~shall be laid down by Member States~~.

⌦ 2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive. ⌫

⇩ new

Article 13

Repeal

Directive 2004/52/EC is repealed with effect from [the day after the date in the first subparagraph of Article 12(1)], without prejudice to the obligations of the Member States relating to the time-limit for the transposition into national law of the Directive set out in Annex V, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VI.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50 (adapted)

Article ~~7~~ 14

Entry into force

This Directive shall enter into force on the ~~20th~~ ⌦ twentieth ⌫ day following that of its publication in the *Official Journal of the European Union*.

↓ Corrigendum, OJ L 200, 7.6.2004, p. 50

Article ~~8~~ 15

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*