



# **CESARE III PROJECT**

**Interoperability of electronic fee collection systems in Europe**

## **D4.1 - CONTRACTUAL FRAMEWORK - PRELIMINARY EXAMINATION**

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## **Object of the document**

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This document describes the basic issues and choices which are relevant in order to arrive at a contractual framework for the EETS.



# 1 Introduction

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## 1.1 Cesare III background

On 29 April 2004 Directive 2004/52/EC on the interoperability of electronic road toll systems in the Community was adopted by the European parliament and the Council.

The aim of this Directive is clear and can be stated as follows: one should be able to drive with a vehicle throughout Europe having only one contract and only one set of OBE to be used for all European toll systems.<sup>1</sup>

The reason behind is that it is in the interest of the user (cheaper and/or more convenient) to have only one contract and only one set of OBE than a separate contract and/or a separate set of OBE of each single toll system or group of national toll systems.

To this end the Directive:

- constrains the technologies to be used for new systems,
- requires operators to make suitable OBE available to interested users, and
- requires the creation of an European Electronic Toll Service, EETS.

The EETS is defined as a service which shall be provided irrespective of the place of registration of the vehicle, the location of the toll domain, the nationality or residence of the service provider or service user.<sup>2</sup> OBE used for the EETS shall be interoperable with all toll systems within the EU.<sup>3</sup>

It is assumed that the providers of the EETS will operate in competition with each other.

For toll regimes, both the subsidiarity principle and the non-discrimination principle apply. Each Member State is free to define its own toll regime<sup>4</sup> (the subsidiarity principle) as long as it does not discriminate against vehicles from other Member States (the non-discrimination principle).

Note that the Directive merely requires the availability of a European electronic toll service that fulfils the EETS requirements. This does not exclude the use of other – for example regional – electronic toll services. The EETS is a supplementary service and customers are allowed to choose between the EETS and other possible services to pay the toll for a toll domain.

Also note that the term 'toll' in the Directive includes all types of fee like charges, taxes etc.<sup>5</sup>

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1 I.e. all toll systems under the operation of the Directive as stated in 1.2 Scope

2 See article 3(2) of the Directive which states that "The service 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 on the road network in respect of which the toll is due."

3 See article 2(2) of the Directive.

4 As is emphasised in article 3(2) of the Directive.

5 See article 1(1) 'all types of road fees' and article 3(2) 'independent of ... the purpose for which the fee is levied'.



## 1.2 Cesare III objective

As stated in the project management plan, the global objective of the CESARE III is “to create a suite of documentation that can facilitate the interoperation of different charging schemes within Europe that will provide the minimum level of user inconvenience at scheme boundaries. The aim is to minimise the number of business relationships each user has with different charging bodies, to keep to a minimum the number of different invoices that a user may receive per billing period, and to minimise the number of OBU's that have to be carried in each vehicle”.

More precisely, the CESARE III objectives are:

- To revise the CESARE model and to take into account:
  - new actors
  - new technologies
  - new enforcement services
  - new charging schemes and services
  - the new European Directive 2004/52
- To revise the definition of common charging and/or payment services to be supported, paying particular attention to the definition of the European Electronic Toll Service (EETS)
- To establish appropriate national organisational arrangements to support the participation of partner European countries in the contractual framework
- To prepare an appropriate set of draft contractual documents (MoU's) to support the proposed contractual relationship defined by the revised model
- To promote the application of the CESARE approach.

## 1.3 Work Package 4 'Review and revise the contractual documents'

In the Cesare III Detailed Work Plan (Annex 1 of the Grant Agreement with the European Commission) the following objectives for Work Package 4 (WP4) 'Review and revise the contractual documents' were set:

- Analyse the impact of the changes introduced in the Cesare model and services definition;
- Consequently adapt the current Cesare II contractual documents or design new ones if the outcome of WP1 so requires.

In terms of deliverables, WP4 should deliver:

- An update of the Cesare MoU agreement among toll chargers (D4.1)
- An update of the Cesare MoU EETS Provider adherence contract (D4.2)
- An update of Cesare MoU Service User contract or other (D4.3).

As a result of the discussions that occurred in WP4 as well in other packages, the Operational Committee of the project decided that WP4 should deliver only one deliverable:



## D4.1 - Contractual Framework - Preliminary examination.

### 1.4 Cesare III and the Directive 2004/52

CESARE III aims "to prepare an appropriate set of draft contractual documents" and WP4 is devoted to contribute to this contractual framework.

This work should be done by keeping in mind that the European Commission will take decisions for the definition of the service according to Art 4 (4) of the Directive 2004/52 which states :

*"The decisions relating to the definition of the European electronic toll service shall be taken by the Commission in accordance with the procedure referred to in Article 5(2), by 1 July 2006".*

These decisions are the starting point of the countdown before the implementation of the EETS, as stated in Art 3 (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."*

However one should also read article 3 (1) of Directive 2004/52, which states that *"This electronic toll service will be defined by a contractual set of rules allowing all operators and/or issuers to provide the service, ..."*

This means that it should be analysed whether (A) there is or not a contradiction between article 3 (1) on the one hand and articles 4 (4) and 3 (4) on the other hand.

When this is analysed, it should be studied (B) how the work of WP4 may be used for the application of articles 3 and 4 of the Directive.

(A) Is there a contradiction between article 3 (1) on the one hand and articles 4 (4) and 3 (4) on the other hand.

What can be taken for granted is that there is no obligations put on the Members-States and the operators and/issuers as long as there is no decision of the European Commission on the definition of the service; hence the Commission *has* to take a decision, if not there is no EETS.



Once such a decision is taken, one may wonder what may remain in the scope of article 3 (1); probably there remain very little to define, which means that the aim of article 3 (1) is realised as soon as the decision of the Commission is taken. This is not really a contradiction, it means only that this part of article 3 (1) will be implicitly realised once article 4 (4) is realised.

(B) How the work of WP4 may be used for the application of articles 3 and 4 of the Directive.

WP4 should “

- *Analyse the impact of the changes introduced in the Cesare model and services definition;*
- *Consequently adapt the current Cesare II contractual documents or design new ones if the outcome of WP1 so requires.”*

This means that WP4 should analyse the situation and draft contractual documents, once WP1 has revised the Cesare model and WP2 has revised the service definition. In other terms, the task of WP2 is about the content of the service, when the task of WP4 is about the container: how organise the contracts that will contain the service as defined by WP2.

This was the starting point of the Work Package. However it appeared in the discussions that a variety of contractual structures between the EETS Providers and the Toll Chargers are conceivable:

- one common contract among all Toll Chargers and all EETS Providers;
- a common contract among Toll Chargers and a common contract among EETS Providers;
- a standardized bilateral contract between every Toll Charger and every EETS Provider individually
- different bilateral contracts between the Toll Chargers and the EETS Providers, negotiated between them.

The combination of legislation, a common contract and bilateral contracts is further examined in paragraph 2.4 of this report. It will be shown that it is not possible in the current circumstances to decide what is the best option so that an example of a contract was developed for one of the option, meaning that another contract would be necessary if another option is implemented.



## 2 Global setup of the contractual framework

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### 2.1 Introduction

An essential task of the Cesare III project is to produce a contractual framework that will constitute the EETS according to the requirements of EU Directive 2004/52.

The starting point for the creation of this contractual framework according to the Detailed Work Plan (Annex 1 of the Grant Agreement with the European Commission) is the CESARE II contractual documentation. The Detailed Work Plan sets out that analysis will take place of the impact of the changes introduced in the CESARE model and services definition, and that the current CESARE II contractual documents will consequently be adapted or new ones will be designed if the outcome of the analysis so requires.

### 2.2 Starting position

In order to analyse the need for changes and to create a contractual framework for CESARE III, a number of assumptions need to be identified. These assumptions are as follows:

- (a) the contractual framework must work in all countries involved;
- (b) the contractual framework should preferably work without the need for prior legislative harmonisation or new legislation;<sup>6</sup>
- (c) the contractual framework must be as user friendly for Service Users as possible.

These assumptions can be explained as follows.

- (a) EU Directive 2004/52 requires the availability of the EETS in all Member States.
- (b) A contractual framework reliant on legislative harmonisation would not be capable of being introduced at short notice. Therefore the CESARE III project should aim to create a contractual framework that works in all countries involved and without a need for prior legislative harmonisation or new legislation.
- (c) EU Directive 2004/52 aims to facilitate the use of toll systems by Service Users. The CESARE III contractual framework should therefore aim to make the EETS as user friendly as possible.

Beside these assumptions, CESARE III has examined the assumption that the contractual framework should be able to operate without the need for bilateral contracts between Toll Chargers and EETS Providers. This would avoid the possibility for a single Toll Charger to block the establishment of the EETS by setting unreasonable conditions. As is explained below, the suggestion was made to include a so-called “fall back option” in a common contractual framework, which option would apply if a Toll Charger and an EETS

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<sup>6</sup> Nevertheless new legislation, e.g. the decision that is currently drafted by the Commission under the operation of Directive 2004/52, will define the service.





Provider would fail to reach agreement on certain commercial conditions. However, no consensus on this approach was reached.

### 2.3 Cesare III Roles and the scope of the EETS contractual framework

CESARE III has defined four Roles in the EETS service: the EETS Provision Role (virtually represented by the EETS Provider - in Directive 2004/52: the issuer), the Toll Charging Role (virtually represented by the Toll Charger - in Directive 2004/52: the operator), the Service User Role (virtually represented by the Service User – Directive 2004/52: the user or the customer), and Interoperability Management (virtually represented by the Interoperability Manager).

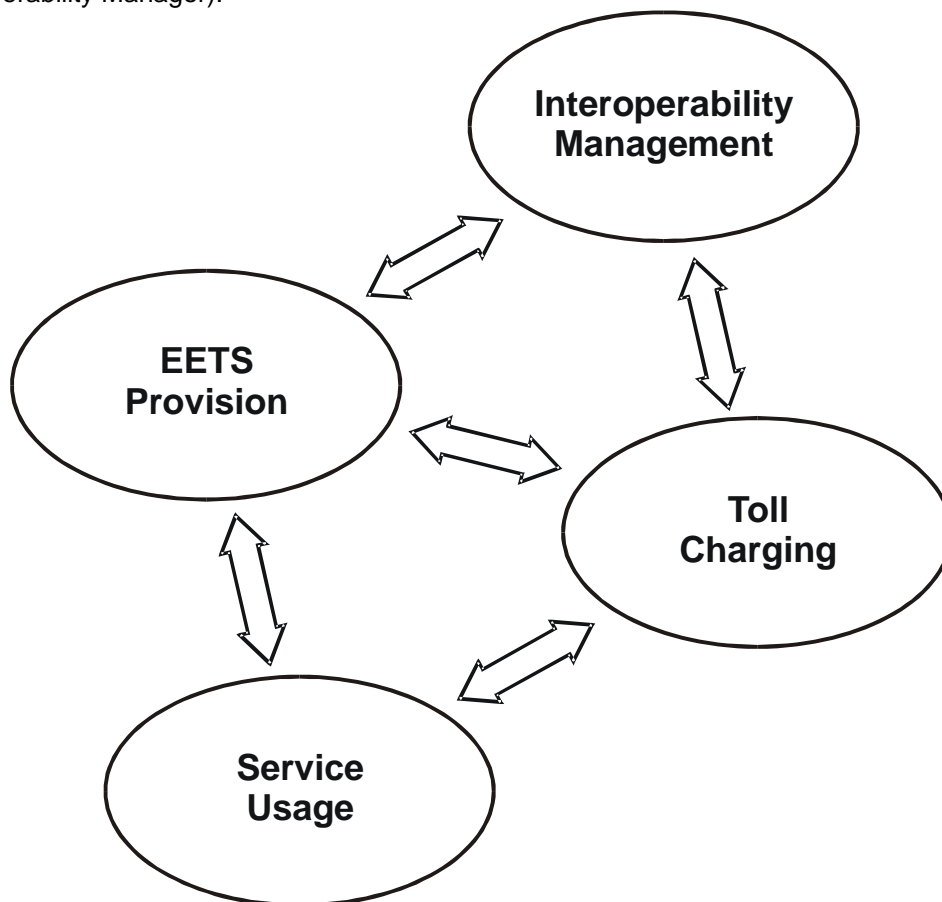


Figure 1: CESARE EETS model

These Roles can be summarised as follows (copied from D1.1) :

#### Toll Charging Role

Toll Charging means providing a transport service (often road usage) to a Service User and charge the latter a fee for this (the “toll”). The responsibility for levying toll in a toll domain is part of the Role and results in claiming payment from a third party within the EETS Provision Role.

#### EETS Provision Role



EETS Provision means providing equipment (OBE), contracts and payment means to those who want to use the EETS. EETS Provision includes claiming money from users and guaranteed payment for genuine claims received from the Toll Charging Role.

#### Service Usage Role

Service Usage means taking advantage of the EETS for payment of tolls in the toll domains of the Toll Charging Role.

#### Interoperability Management Role

Interoperability Management gathers the functionality that deals with overall management of interoperable EFC. This includes rules for interoperability, id-schemes, certification, common specifications, etc.. Therefore this Role represents the regulatory Role of the EETS interoperability scheme.

In real life, the Functions of one Role can be performed by a person, an organisation, or several organisations acting together, as each context can develop its own architecture.

In Cesare III, it was decided not to enter in the details of each of this architecture, but nonetheless there may be a need to name a representative of a Role that would perform all Functions of one Role, and only those Functions.

For example, an organisation within a Toll Charging Role will sign contracts with organisations within the EETS Provision Roles. This is complicated to be described using the names of the roles. In these contexts the generic representative of this role is used, i.e.:

<b>Toll Charger:</b>	generic representative of a toll domain within the Toll Charging Role
<b>EETS Provider:</b>	generic representative of an organisation taking the responsibility for the EETS Provision within the EETS Provision Role
<b>Service User:</b>	generic representative of the Service Usage Role
<b>Interoperability Manager:</b>	generic representative of the Interoperability Management Role

**Important: A generic representative of a role is NOT by all means always one organisation or one entity. There can be different organisations or entities representing the role depending on the interface function between the roles.**

Conclusion: the contractual framework needs only define the relationships between the Roles and should not be concerned with the internal (delegation) structure within the Roles.

Two further issues should be noted concerning the entities who could be a party to the CESARE III contractual framework.

Firstly, as required by Directive 2004/52, all Toll Chargers within the EEA must adhere to the EETS. However, considering the desirability of an even wider interoperability, other Toll Chargers (e.g. Swiss customs) should also be entitled to adhere to the EETS.

Secondly, an EETS provider may as well act as a “super-EETS provider” or as a “sub-EETS provider”. In case he provides additional services to the EETS (acts as a “super-EETS provider”) this may be agreed bilaterally between the EETS Provider and the Toll Charger. A “sub-EETS provider” may provide his services only for – for example – limited types of vehicles or for a limited number of toll domains. In these types of cases there are no reasons to exclude such an (E)ETS provider from adhering to the EETS, be it through an



adhesion to a common contractual framework<sup>7,8</sup>, or through bilateral contracts, even though the relevant provider is not providing the EETS as a whole.<sup>9</sup>

#### 2.4 Levels for determination of the relationship between Toll Charger and EETS Provider

There are three different levels on which the conditions which apply between Toll Chargers and EETS Providers can be stipulated: a legislative level, a common contractual level and a bilateral level (conditions agreed between each EETS Provider and Toll Charger individually). CESARE III has examined six possible options for setting provisions which will apply between the Toll Chargers and the EETS Providers, particularly in relation to the scope of the service to be provided by the EETS Provider to the Toll Charger and the fee to be paid for that service by the Toll Charger to the EETS Provider.

It would seem obvious that the determination of the scope of the service to be provided and the level of the fee to be paid are necessarily linked to each other. However, as stated in Art 4 (4) of the Directive, the definition of the service will be made by decisions of the European Commission (*“Art 4.(4) The decisions relating to the definition of the European electronic toll service shall be taken by the Commission in accordance with the procedure referred to in Article 5(2), by 1 July 2006”*). In contrast to that, the level of the fee would be the subject of commercial negotiations between the parties involved, as well as additional services they would agree on. Here is all the difficulty of the situation: on the one hand the Toll Charger is obliged to provide his part of the EETS, which greatly impairs his freedom to negotiate (and to terminate negotiations if these fail); on the other hand the EETS Provider, in order to provide the full EETS, must establish a relationship with each individual Toll Charger, so that his freedom to negotiate (and to terminate negotiations if these fail) is practically also greatly impaired.

Given these specific conditions under which the relationship between Toll Chargers and EETS Providers must be established, CESARE III examined the following options for determination of the conditions which apply between Toll Chargers and EETS Providers:

1	Regulatory Level : Directive Common Contract Level : Scope & fee Bilateral Level : None  In this option the stipulation of the provisions necessary to give effect to the Directive are made at the common contractual level. There are no bilateral agreements.
2	Regulatory Level : All provisions Common Contract Level : None Bilateral Level : None  In this option, everything will be arranged by legislation of the European Union.

7 More precisely, the term EETS Provider is used consistently with deliverable D1.1 but the common contractual framework will contain no provisions to exclude “sub-EETS providers” from joining the common contractual framework.

8 Moreover, allowing “sub-EETS providers” to join the common EETS contractual framework also facilitates various evolutionary scenarios in which the EETS starts with a limited service and may grow to a full EETS service. It also allows an EETS Provider to start before all the necessary bilateral contracts have been concluded.

9 As Directive 2004/52 calls the EETS a supplementary service, the contracting parties may support a sub-EETS variants as well.



3	<p>Regulatory Level : Directive and possible further details  Common Contract Level : High level complete common contract + dispute resolution procedure  Bilateral Level : Detailed scope &amp; fee and additional services (mandatory)</p> <p>In option 3, it is left to the Toll Chargers and EETS Providers to arrange all the details of the scope of the service which has been generally described at the common contractual level bilaterally. If an individual Toll Charger and an individual EETS Provider fail to reach agreement, there will be dispute resolution in accordance with the common contract.</p>
4	<p>Regulatory Level : Directive  Common Contract Level : Minimum common contract + detailed fallback  Bilateral Level : Further and more detailed scope and fee (not mandatory)</p> <p>In option 4, there will be a common contract providing the minimum necessary for the functioning of the EETS which will function as a fallback if the individual Toll Chargers and the individual EETS Providers fail to reach bilateral agreement. Toll Chargers and EETS Providers will be free to negotiate the fee and the details of the service. The fallback is structured so that there is a balanced negotiating position between the Toll Chargers and the EETS Providers.</p> <p>This absolute minimum service does not include any payment guarantee from the EETS Provider to the Toll Charger. In this situation, both parties are encouraged to negotiate commercial terms in bilateral contracts, as the Toll Charger will wish to obtain a payment guarantee and the EETS Provider will wish to obtain a fee for its services. However, if the parties can not come to an agreement, the absolute minimum service for no fee will apply (the fallback solution). This means that an individual Toll Charger can not block the establishment of the EETS.</p>
5	<p>Regulatory Level : Change Directive, reintroduce exit-rights  Common Contract Level :  Bilateral Level : Scope &amp; fee</p> <p>Option 5 requires the Directive to change to reintroduce the right for Toll Chargers to end the negotiations.</p>
6 <sup>10</sup>	<p>Regulatory Level : Directive and decisions of the Commission defining the service (Art 4 (4) of the Directive)  Common Contract Level : -  Bilateral Level : Detailed scope &amp; fee and additional services</p> <p>In option 6 there would be no common contractual level, but all aspects of the EETS would be regulated either on the legislative level or on the bilateral level. It would be left to all individual Toll Chargers and EETS Providers to negotiate bilateral agreements that would enable the EETS Providers to offer the EETS to their customers.</p>

Option1) Definition of the basic EETS service at a common contractual level and establishment of the fee for that service at the common contractual level.

<sup>10</sup> Due to the timing of the discussions this 6th option was never discussed in a WP4 meeting with the participants.



This option means that the principles for establishment of the fee will have to be set out in the common contractual framework. Also, the governance process within the interoperability management function will have to be agreed. In theory this would probably be the most direct way to achieve the EETS, but this result would be reached at the expense of market flexibility. The majority of participants in CESARE III therefore rejected this option.

- Option 2) Definition of the basic EETS service at a legislative level and establishment of the fee for that service at the legislative level.

Setting a fixed service definition and fixed compensation in legislation would be so inflexible that it would not be workable in practice. No space would be left to market.

- Option 3) Definition of the basic EETS service at a common contractual level and establishment of the detailed service and the fee for that service at a bilateral contractual level.

This option means that if the EETS Provider and each individual Toll Charger fail to reach agreement on the price for the basic service, the fee will be determined by arbitration. As stressed by legal experts, any dispute resolution body would require at least guidelines to render a decision, and it would not be easy to create such guidelines.

- Option 4) Definition of an absolute minimum service for the EETS to work in the common contractual framework for which no fee is due.

The minimum service definition of this option does not include the payment guarantee from the EETS Provider, which is an essential element of the service definition agreed in WP2. Inclusion of a payment guarantee in the minimum service would mean that there would no longer be a correct balance for commercial negotiations between the parties. Therefore, the option for pricing explained above was found not to be feasible for inclusion in the Cesare III contractual framework.

In addition, some Toll Chargers don't want to be forced to accept conditions (the fallback) which may negatively impact their business (i.e. operational and financial consequences). Furthermore, some Toll Chargers are sovereign governments and refuse to submit to a common contract containing a decision making process that may overrule them.

- Option 5) The Commission is requested to no longer make it mandatory for Toll Chargers to enter into the EETS contractual framework.

This, however, is in contradiction with the starting positions mentioned above and is not regarded as a realistic option by CESARE III.

- Option 6) All arrangements to be made on the legislative level or the bilateral level.

In this option the service would be defined by decisions of the European Commission, as ruled in Art 4 (4) of the Directive 2004/52. Additional services and the fees would be defined in bilateral agreements that would link each Toll Charger to each EETS Provider.



This options supposes that the Toll Chargers and the EETS Providers can find their interest in signing such bilateral agreements; this will happen if there is a business case for both parties.

As all the options could not be studied in detail in the limited scope of Cesare III, only option 3 was further explored in this report. Option 3 leaves a large number of issues to the bilateral contractual level and establishes a dispute resolution in case parties fail to reach agreement. Therefore, a clear dispute resolution mechanism needs to be established at the common contractual level. An advantage of this option is that EETS Providers who are able to reach agreement with certain Toll Chargers, can start to operate as a “sub-EETS provider”.<sup>11</sup>

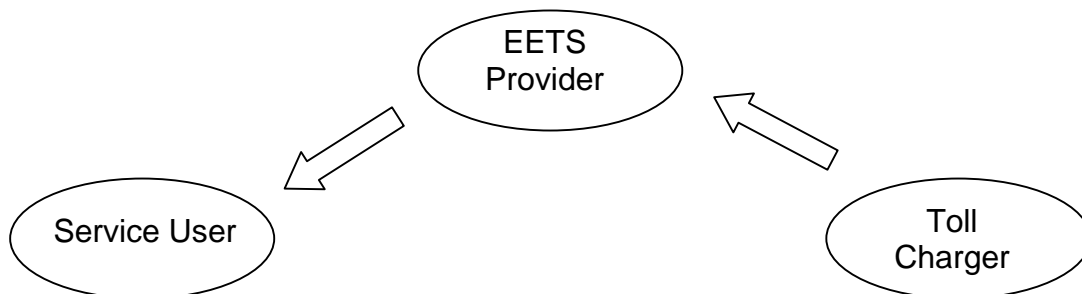
Annex C of the present report contains an initial example of a Common EETS Agreement in accordance with option 3. This should be viewed not as a conclusion of Cesare III, but merely as an option among others. This does not impair the possibility to make another option work using or not elements contained in this annex.

The principles for the arbitrators to resolve any disputes must be determined at the common contractual level. Cesare III has not reached agreement on these principles. The non-discrimination principle has been suggested, as well as principles such as “the payment should reflect services” and the equality principle. Also, there is a real possibility that a great number of disputes will arise concerning the failure to reach bilateral agreement between Toll Chargers and EETS Providers. This will make it uncertain if and when the EETS will be constituted.

**2.5 Relationship between Toll Chargers and EETS Providers; three model options**

Basically, there are three main options for the relationship between the Toll Charger, the EETS Provider and the Service User:

- (i) a reselling model, in which the EETS Provider buys toll passages from Toll Charger and resells these to Service Users.



**Figure 2 The reselling model**

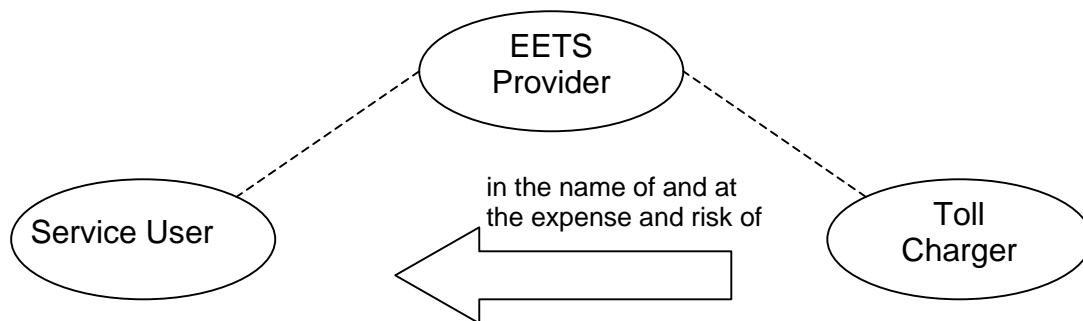
<sup>11</sup> But option 3 can be modified as well to allow sub-EETS providers to start to deliver sub-EETSs before the full EETS.



In the reselling model, the EETS Provider buys toll passages from the Toll Charger. The EETS Provider then resells toll passages to the Service Users. The EETS Provider operates in its own name and assumes all toll service risk and any additional service risk involved. The EETS Provider is likely to enter into back-to-back contracts with Toll Chargers, which will force a certain amount of harmonisation of Toll Chargers' conditions.

However, reselling is not legally permitted in all countries.

- (ii) a direct agency model, in which the EETS Provider provides toll services and collects payments in the name of the Toll Chargers.

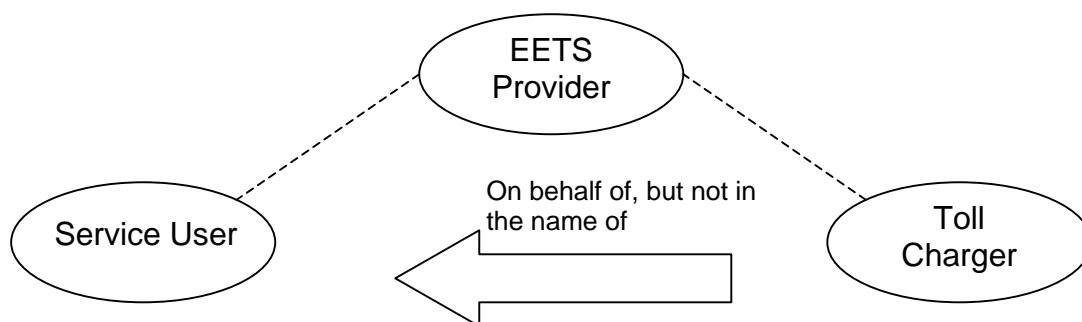


**Figure 3 The direct agency model**

In the direct agency model the EETS Provider provides toll services and collects payments on behalf of the Toll Chargers. The EETS Provider operates both in the name of and at the expense and risk of the Toll Charger.

Note that a payment guarantee is not part of this model, as the EETS Provider is acting at the risk of the Toll Charger. Obviously, this can be provided for with additional contractual provisions.

- (iii) an indirect agency model, in which the EETS Provider provides toll services and collects payments in his own name, but on behalf of the Toll Chargers.



**Figure 4 The indirect agency model**

In the indirect agency model the EETS Provider provides toll services and collects payments in its own name, but operates at the expense and for the account of the Toll Chargers.

In the agency models, it is important to realise the EETS Provider has a dual role between the Service User and the Toll Charger. On the one hand, the EETS Provider will have a duty towards the Toll Charger to provide financial account of his dealings with Service Users, to provide customer data when necessary, to assist in the collection of toll, to perform certain credit checks or other minimum conditions for acceptance of Service Users and to provide information for blacklisting of non-paying customers. On the other hand, the EETS Provider will have a duty towards the Service User to provide access to the toll domain on behalf of the Toll Charger and to transfer toll received to the Toll Charger.

In accordance with option 3, it will be a matter for bilateral agreement between the Toll Chargers and the EETS Providers which of these models will be applied in each individual case. The issues arising in choosing between these models are described in Annex B to this report.

## 2.6 Legislative harmonisation

According to the basic assumptions mentioned above, the contractual framework should preferably work in all countries involved without a need for prior legislative harmonisation or new legislation.

However there should be made a distinction between the issues that are directly in the scope of the Directive, 2004/52 for which Decisions of the European Commission will be taken, and the issues which are outside the scope of the Directive, but are important for the conditions in which the EETS is provided.

Decisions of the European Commission can – and will – be taken to define the EETS, as these are the starting point of the countdown before the implementation of the EETS. Those decisions will define as well how the Interoperability Management Role will be played.

On other issues (like allowing the reselling model for tolls in all countries, making VAT taxable in the country of the reseller or of the Service User, ...) some changes in legislation would facilitate the functioning of the EETS, but it can not be expected that these changes may occur just for this reason.







### 3 Other issues

#### 3.1 Legal constraints

As indicated above, in certain countries a reselling model cannot be applied as this is legally not permitted. This is the case in France [and Italy]. It is also likely to be the case in countries where tolling will be based on a fiscal (taxation) regime. The latter is also likely to apply to an indirect agency model.

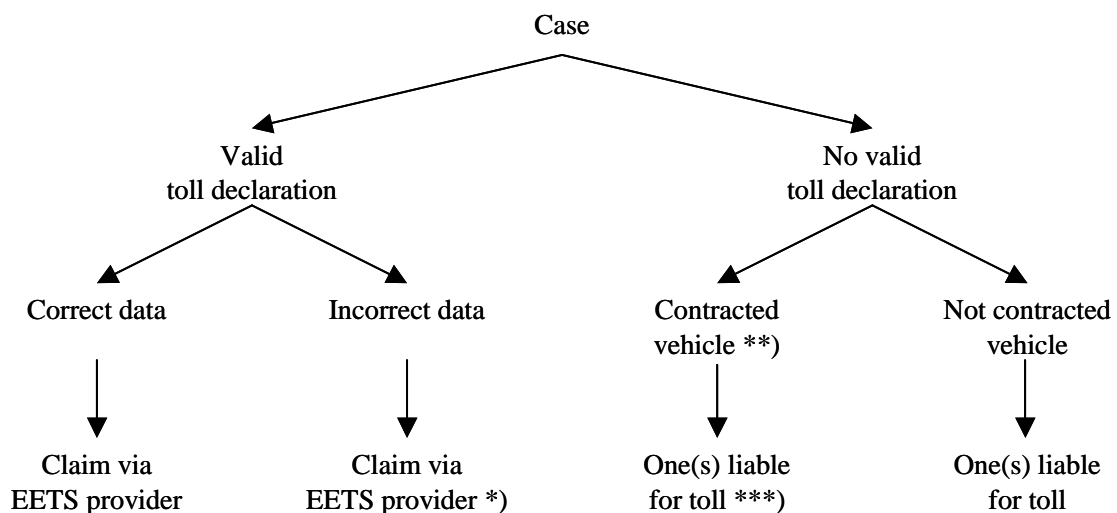
The EETS contract has taken this issue into account by basing the basic model on the direct agency option.

#### 3.2 Enforcement

For the drafting of the contractual framework, it is necessary to define the scope of the agreement in relation to enforcement.

The contractual framework can only deal with provisions that can be agreed between Toll Chargers and EETS Providers. As a consequence the EETS contract does not deal with non-equipped vehicles or with vehicles equipped with OBE that has not been issued by an EETS Provider. The issue of criminal proceedings also lies outside the scope of the EETS contract.

In the normal case a valid and correct toll declaration submitted by the OBE to the toll system will provide the toll charger with a correct and valid claim for the fee from the EETS provider or its customer<sup>12</sup>. EETS enforcement is limited to dealing with defects relating to valid and correct toll declarations. Figure 4-1 below provides an overview of the different cases to be considered.



\*) Included in the common EETS contract

\*\*) Tracing via a database of EETS provider(s) for contracted vehicle, if established  
Not included in the common EETS contract, but may be arranged bilaterally

\*\*\*) Not included in the common EETS contract, but may be arranged bilaterally

**Figure 5 Enforcement: main cases**



Based on the concept of valid toll declarations the following main cases can be distinguished (see figure 5):

- 1 The toll system receives a legally valid toll declaration from the OBE, i.e. the toll declaration provides the Toll Charger with a valid claim for a fee from the EETS Provider and/or its Service User. In this case there are two sub cases:
    - a The toll declaration provided by the OBE is not shown to be incorrect  
This is the regular case in which the toll charger can charge the EETS Provider or his Service User under the provisions of the EETS contractual framework;
    - b The content of the data provided by the OBE is shown to be incorrect.  
In this sub case we have a valid toll declaration on behalf of the EETS Provider with an incorrect contents (e.g., the number of axles is wrong).  
Also in this case the Toll Charger can charge the EETS Provider or his Service User with the additional fee and a possible additional penalty under the provisions of the EETS contractual framework.  
If the EETS Provider is acting as an agent the Toll Charger can treat the customer of the EETS Provider as any other customer and in case of reselling the EETS Provider is the only one that can be held responsible.
  
  - 2 The toll system did not receive a legally valid toll declaration from the OBE, e.g. because there is no OBE, the OBE is illegal, defect or sabotaged, or the toll system itself is malfunctioning. In case the toll charger wants to recover the fee (plus a possible penalty), he may hold the one(s) liable for toll responsible.  
The one(s) liable for toll may hold in turn several other parties responsible for the defect, e.g.:
    - a The toll service provider,
    - b The OBE manufacturer (product liability),
    - c The OBE installer or maintenance organisation,
    - d The customer, the driver, the vehicle owner, etc.
- This, however, is a local issue. It shall not have any impact on the interoperability arrangements. However, for vehicles under a contract of an EETS Provider, a Toll Charger may make additional bilateral (commercial) agreements with EETS Providers:
- a He may e.g. request the assistance of the EETS Provider in tracking down in the case that the vehicle is a vehicle of one of his customers,
  - b Additionally, he may agree on additional levels and types of assistance.

### 3.3 Claims handling

The EETS can consist of both toll services originating from the various Toll Chargers and additional services originating from by the EETS Provider.

In a reselling model, all of these services are provided to the Service User by the EETS Provider. If the Service User has a complaint about the service or a claim resulting from the service, such a complaint or claim can and must be directed to the EETS Provider. This is a clear and transparent situation for the Service User, particularly where the EETS Provider is guaranteeing payment.



In an agency model the additional services are provided by the EETS Provider, and the toll services are provided by each of the Toll Chargers. This means that the Service User must direct his complaints and claims to the EETS Provider if these concern any additional services, and to the relevant Toll Charger if this concerns a toll service. This can lead to unclear and impractical situations for the Service User. Therefore, the service definition determines that the EETS Provider is obligated to act as the focal point for customer claims and that the Toll Charger will be required to support the EETS Provider in claim handling. This should make the system more user friendly.

### **3.4 Privacy**

If a Service User disputes an invoice, it may be necessary for information concerning the proof of passage by a Service User to be exchanged between the Toll Charger and the EETS Provider.

This is the case in a reseller model, where the EETS Provider will be reliant on information from the Toll Charger to counter any claim from a Service User that a Service User has not used the service for which he has been charged or that he has not been charged correctly. In an agency model information may also have to be exchanged, for instance if the EETS Provider and Toll Charger have bilaterally agreed that the EETS Provider will collect payment from the Service Users at his risk.

The exchange of proof of passage information raises issues of personal information and privacy protection. Exchange of such information is not permitted without the Service Users prior consent in a number of countries. For this and for a number of other reasons, the contractual framework is based on the assumption that the Service User must sign a new agreement with the EETS Provider to use the EETS, also if he is already an existing customer of the EETS Provider (a so-called opt-in system).

### **3.5 VAT**

In a direct agency model, the EETS Provider charges toll in the name of and on behalf of the Toll Chargers. If it is required that VAT is added to the toll, it is the Toll Chargers who are responsible for payment of such VAT to the tax authorities.

In a reseller model, however, it is the EETS Provider who is responsible for payment of VAT to the tax authorities if it is required that VAT is added to the toll. This is also likely to be the case in an indirect agency model.

The foregoing means that if a reseller model is adopted, EETS Providers would be required to register for VAT in each Member State, to keep a VAT administration for each Member State and to pay VAT to the tax authorities in each Member State. This would create a considerable administrative burden on the EETS Provider. Therefore, the contractual framework assumes the use of direct agency as the basic model.

Another issue related to VAT is the issue of bad debt relief.

The agent model implies that it is the operators who supply the services to the customer. However, it will be the issuer that has the credit risk and must bear any losses if the customer does not pay. Thus, neither the



issuer nor the operator will be able to get any bad debt relief on the VAT. The operator does not suffer a loss, and the issuer has not supplied a VAT taxable service.

First of all, it must be noted that the VAT rules on bad debt relief may differ from country to country and that in some countries it is not possible to get bad debt relief. Generally, only the supplier of VAT taxable goods and services has the right to get bad debt relief and only if the supplier suffers a loss. If a third party (e.g. the issuer) pays the supplier, the supplier does not suffer a loss and is therefore not entitled to bad debt relief. The third party has not supplied any VAT taxable goods and services and is therefore not able to get bad debt relief. However, it is not unusual that a supplier covers the risk for bad debts through a so-called debtor insurance. If the customer does not pay, the insurance company pays the supplier the amount exclusive of VAT. The payment from the insurance company is compensation outside the scope of VAT. Therefore, the supplier in our opinion is entitled to get bad debt relief for the VAT amount. It is a condition that the claim is not transferred to the insurance company.

If it is agreed that the issuer only guarantees the operator payment for the toll fee exclusive of VAT, this guarantee can in our opinion be compared to a debtor insurance. Therefore, it should in our opinion be possible for the operator to get bad debt relief.

Because the rules for bad debt relief differ from country to country, we suggest that this issue is examined further.

### **3.6 Time bar aspects**

The legal limitation period for making claims by Service Users regarding the EETS will be different in many of the countries involved. As indicated under paragraph 3.3, in a reselling model, all claims by the Service User can and must be directed to the EETS Provider. Different limitation periods therefore do not form a problem for the Service User in this model. However, in its back-to-back contracts with the Toll Chargers, the EETS Provider will be confronted with this variety of limitation periods. It can be assumed that EETS Providers will seek to harmonise these periods in their agreements with Toll Chargers to the greatest extent possible.

In an agency model, the Service User must direct his complaints and claims to the EETS Provider if these concern any additional services, and to the relevant Toll Charger if this concerns a toll service. Different time bars for these claims will apply due to the different limitation periods in the relevant countries. From the point of view of the Service User, this leads to a complicated and impractical system.

An obvious solution would seem to be to include a standard contractual time bar in the agreement between the Service User and the EETS Provider, which would be applicable to all claims. However, legislation in various countries may prevent shorter limitation periods than those applicable by law being applied in general terms and conditions with private customers. An option could be to offer the Service User the option to file his claim with the EETS Provider (who will pass this on to the Toll Charger if required) within the shortest applicable limitation period. This would leave the Service User the choice to use this claim procedure or to claim directly with the relevant Toll Charger himself, taking account of the applicable limitation period.



### **3.7 Professional and financial preliminary conditions for applying as EETS Provider**

Some participants have stressed the need for professional and financial preliminary conditions for EETS Provider to be defined in order to reduce the risks related to the EETS Providers ability to fulfil their obligations.

However, as the majority opted for option 3, this could be arranged bilaterally and the issue was not further elaborated.

## **4 Conclusions and recommendations**

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In the current circumstances, there is no unanimously agreed model for a common EETS contract in the present circumstances where the service definition is not yet defined by a decision of the European Commission.

As proposed in the deliverables issued by WP3, the Interoperability Manager will be in charge of a number of processes, among which is the management of the contractual framework.

Therefore, it will be up to the Interoperability Manager to decide which option is best for the implementation of the EETS.



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## A. Annex A - Glossary

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Terms, definitions and abbreviations

### A.1 Terms and definitions

#### A.1.1 Toll collection c.a.

**toll**

a charge, a tax, or a duty in connection with using a vehicle within a toll domain.

NOTE: The definition is based on Directive 2004/52 and is a generalization of the classic definition of a toll as 'a charge, a tax, or a duty for permission to pass a barrier or to proceed along a road, over a bridge, etc.'. The definition above also includes fees regarded as an (administrative) obligation, e.g. a tax or a duty.

**toll charger**

generic representative of a toll domain within the Toll Charging Role .

**toll charging role**

Toll Charging means providing a transport service (often road usage) to a Service User and charge the latter a fee for this (the "toll"). The responsibility for levying toll in a toll domain is part of the Role and results in claiming payment from a third party within the EETS Provision Role.

**toll domain**

an area or part of a road and ferry network where a toll regime is applied.

**tolled object**

a distinguished part of a toll domain.

NOTE: A tolled object may be e.g. a bridge, a zone, or a stretch of a road (network).

**toll regime**

the set of rules, including enforcement rules, governing the collection of toll in a toll domain.

**toll system**

the off board equipment and possible other provisions used by a toll charger for the collection of toll for vehicles.

NOTE 1: The OBE is excluded from the definition. If not, OBE should be part of any toll system for which it can be used

NOTE 2: The actual payment (collection of the fee) may be take place outside the toll system.

**toll scheme**

A generic term used for toll regime and/or toll domain and/or toll system depending on the context.

**electronic fee collection (EFC)**

the collection of toll by electronic means via a wireless interface.

#### A.1.2 Toll payment c.a.

**toll service**

A service enabling users having only one contract and one set of OBE to use a vehicle in one or more toll domains.



**EETS (European Electronic Toll Service)**

As service enabling users having only one contract and one set of OBE to use a vehicle in all toll domains under the operation of Directive 2004/52.

**EETS provider**

generic representative of an organisation taking the responsibility for the EETS Provision within the EETS Provision Role.

**EETS provision role**

EETS Provision means providing equipment (OBE), contracts and payment means to those who want to use the EETS. EETS Provision includes claiming money from users and guaranteed payment for genuine claims received from the Toll Charging Role.

**onboard toll equipment (OBE)**

equipment fitted within or on the outside of a vehicle and used for toll purposes.

NOTE 1: The OBE does not need to include payment means.

NOTE 2: See also onboard toll unit

**onboard toll unit (OBU)**

onboard toll equipment assembled in one monolithic device.

**one(s) liable for toll**

natural or legal person(s) liable to pay toll under the operation of a toll regime.

NOTE: A toll regime may designate more than one person to be (jointly and severally) liable for the paying the toll.

**service user**

generic representative of the Service Usage Role

**service usage role**

Service Usage means taking advantage of the EETS for payment of tolls in the toll domains of the Toll Charging Role.

**A.1.3 Interoperability****interoperability manager**

generic representative of the Interoperability Management Role.

**interoperability management role**

Interoperability Management gathers the functionality that deals with overall management of interoperable EFC. This includes rules for interoperability, id-schemes, certification, common specifications, etc.. Therefore this Role represents the regulatory Role of the EETS interoperability scheme.

**interoperability**

the ability to operate in conjunction

**equipment interoperability**

the ability of two or more pieces of equipment to operate in conjunction

**organisational interoperability**

the ability of two or more persons or legal entities to operate in conjunction

NOTE: the ability of organisations to operate in conjunction includes, if applicable, the interoperability of their equipment.



#### **A.1.4 Enforcement and security**

##### **enforcement**

the process of compelling observance of a law, regulation, etc

NOTE: In this context: the process of compelling observance of a toll regime.

##### **toll declaration**

a statement from an OBE to a toll system confirming the presence of a vehicle in a toll domain and providing the (security) information described in the common toll interface.

NOTE: A valid toll declaration has to fulfil the formal requirements, including non-repudiation requirements, agreed between the toll service provider and the toll charger.

##### **non-repudiation**

in this context, the property that neither the toll service provider nor the toll charger can deny in all or in part the participation of their OBE respectively toll system in a communication (see ISO 9498-2)

##### **accepted tolling communication**

A tolling declaration that is not contested by the toll charger.

NOTE: A tolling declaration may contain incorrect data, e.g. a wrong declared parameter or a wrong vehicle location.

#### **A.2 Abbreviations**

DSRC	Dedicated Short Range Communication
EEA	European Economic Area
EETS	European Electronic Toll Service
EFC	Electronic Fee Collection
OBE	OnBoard Equipment
WP4	Work Package 4 (of the Cesare III project)



## B. Annex B

	Reselling	Direct Agency	Indirect Agency	Conclusion
Division of Risk	Reseller assumes all toll service risk and additional service risk	Agent does not assume toll service risk but assumes additional service risk	Reseller assumes all toll service risk and additional service risk	No preference
Claims handling	Single focal point for customers	No single focal point for customers	Single focal point to certain content for customers	Preference for reseller model
Privacy regarding proof of passage information	Service User consent for personal integrity protection necessary	Service User consent for personal integrity protection not necessary	Service User consent for anonymous personal integrity protection necessary	Preference for agency model
Legal constraints	Model legally not allowed in some countries	None	[Possible]	Agency model required
Time bar aspects	Time bars easily harmonised	Various time bars apply	Time bars may be harmonised to certain extent	Preference for reselling model
VAT	VAT registration in each Member State	VAT registration in single Member State	VAT registration in each Member State	Preference for direct agency model
Rebates	Rebates easily passed on customer	Rebates more complicated	Rebates more complicated	Preference for reselling model
Need for bilateral contracts	Yes	No	No	Preference for agency model





## **C. Annex C - Draft common agreement (option 3)**

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### **Disclaimer**

Deliverable 4.1 shows that the participants have not been able to agree upon a proposed structure for the contractual set of rules referred to in article 3.1 of Directive 2004/52. This present draft may therefore not be regarded as a possible common EETS contract; it is merely a first tentative exercise of possible contractual clauses, and a starting point for further discussions.

### **Object of the document**

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This draft report merely contains a first tentative exercise of possible contractual clauses for a possible common EETS contract, and a starting point for further discussions. It may not yet be regarded as a possible common EETS contract.



## The common EETS agreement

# **AGREEMENT**

for

the creation of an European Electronic Toll Service



## AGREEMENT

among

- 1) the toll chargers listed in Annex A.1 in which the particulars of each toll charger are found, hereinafter individually referred to as a "Toll Charger" and collectively referred to as the "Toll Chargers";

and

- 2) the EETS providers listed in Annex A.2 in which the particulars of each EETS provider are found, hereinafter individually referred to as an "EETS Provider" and collectively referred to as the "EETS Providers";

each Toll Charger and EETS Provider individually referred to as a "Party" and the Toll Chargers and the EETS Providers together referred to as the "Parties";

### WHEREAS:

- (a) article 129 of the European Union Treaty stresses the importance of undertaking actions aimed at ensuring the interconnection and interoperability of transport networks and the access to such networks;
- (b) directive EU 2004/52 of the Parliament and the Council of Ministers sets a program for the Member States to implement interoperable electronic toll collection systems based on extensive technical, contractual and administrative harmonization in the European Union (EU) and the European Economic Area (EEA);
- (c) article 3.1 of Directive 2004/52 stipulates that a European electronic toll service will be set up which encompasses all the road network in the Community on which tolls or road usage Service Fees are collected electronically;
- (d) article 3.1 of the Directive further stipulates that the electronic toll system referred to in recital (c) 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, which 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 the issuer;
- (e) the present agreement forms the contractual set of rules as referred to in recital (d), to which toll chargers and EETS providers can become a party by entering into the relevant adhesion contract;



- (f) the present agreement needs to be supplemented by bilateral agreements between individual Toll Chargers and EETS Providers in order to improve the service for customers and to achieve mutually beneficial commercial conditions;

**HAVE AGREED AS FOLLOWS:**

**1 Definitions**

- 1.1 In this Agreement and its Annexes (as hereinafter defined, which are to be considered an integral part of this Agreement), words and expressions beginning with a capital letter, unless defined elsewhere in this Agreement, will have the meaning set forth below:

Annex:	an annex to this Agreement;
Agreement:	the present agreement;
Auditor:	an independent auditor that is legally authorized to certify annual accounts in a Member State of the EEA;
Bilateral Contract:	any agreement between one or more Toll Chargers and one or more EETS Providers supplemental to this Agreement and concerning the interoperable European electronic Toll service;
Black List:	a list identifying OBE's that are no longer acceptable to an EETS Provider in relation to one or more Toll Domains;
Common Service Definition:	the services to be supplied to the Service Users by the Parties in relation to the EETS, as well as the principles to be applied by the Parties in connection therewith as detailed herein and in the Annexes;
Common Toll Interface:	the specifications and requirements for the interface between OBE and a Toll System used in the EETS as detailed in Annex C and D;
Service User:	a person or legal entity who has entered into a Service User Contract with an EETS Provider;
Service User Contract:	a contract between an EETS Provider and a Service User containing at a minimum the conditions set out in Annex F;
EETS:	the European electronic toll service as described in EU directive 2004/52 and as defined by this Agreement;
EETS Provider:	each of the Parties listed in Annex A.2;
EETS Provider Adhesion Certificate:	the certificate to be signed by an EETS Provider in order to become a party to this Agreement in the form set out in Annex B;
Equipment Certification Procedure:	the procedures to be applied for the certification of the equipment to be used for the provision of the EETS (both Toll System and OBE) and the relationships to be implemented by the Parties and the certifying bodies, as set out in





	Annex I;
General Assembly:	the body referred to in article 11;
OBE:	on board Toll equipment issued by an EETS Provider and installed within or on the outside of a vehicle and used for Tolling purposes, which complies with the requirements set out in the Common Toll Interface and in Annex E and which has been certified according to Annex I;
Parties:	the Toll Chargers and the EETS Providers collectively;
Secretary:	the person referred to in article 11;
Service Fee:	the amount to be paid by each Toll Charger to each EETS Provider by way of remuneration for the provision of the services set out in this Agreement as established in accordance with article 6;
Toll:	a charge, a tax, or a duty in connection with using a vehicle within a Toll Domain;
Toll Charger:	each of the Parties listed in Annex A.1;
Toll Charger Adhesion Certificate:	the certificate to be signed by a Toll Charger in order to become a party to this Agreement in the form set out in Annex B;
Toll Declaration:	a statement from an OBE that was not placed on the Black List at the time of use of the Toll Domain to a Toll System confirming the presence of the vehicle in a Toll Domain and providing the (security) information described in the Common Toll Interface;
Toll Domain:	an area or part of a road network where a Toll regime is applied;
Toll System:	the off board equipment and possible other provisions used by a Toll Charger for the collection of Toll for vehicles which complies with the requirements set out in the Common Toll Interface.

1.2 Words importing the singular only also include the plural and vice versa where the context so requires.

## **2 Object of this Agreement**

2.1 The Parties agree to enter into a common contractual framework, by which each Party undertakes to implement and achieve, jointly with all other Parties and under the terms and conditions of the present Agreement, a common platform in order to accomplish and achieve the EETS.

2.2 The Parties agree that, upon the adherence of a new Toll Charger according to the terms and conditions in article 12 and the signing by such a Toll Charger of a Toll Charger Adhesion Certificate, Annex A shall be updated to include such a Toll Charger and Annex A will be deemed to be substituted by the updated annex.



- 2.3 The Parties agree that, upon the acceptance of a new EETS Provider according to the terms and conditions in article 12 and the signing by such an EETS Provider of an EETS Provider Adhesion Certificate, Annex A shall be updated to include such an EETS Provider and Annex A will be deemed to be substituted by the updated annex.
- 2.4 The Parties acknowledge the main purpose and scope of the EETS, as well as its objectives, organisational model and common service's guidelines as explained herein and in the Annexes, which the Parties undertake to implement and accomplish by carrying out any and all activities which they will be requested to carry out, pursuant to the terms and conditions of this Agreement.
- 2.5 It is recognized among the Parties that the ongoing process of developing an interoperable European electronic Toll service may cause adjustments to this Agreement. The Parties will closely follow the development on the European level and be prepared to negotiate in good faith necessary adjustments to this Agreement for the purpose of complying with anticipated regulations in good time once they become effective.
- 2.6 Each of the Toll Chargers represents and guarantees that it has full right to supply the transport related services and/or the Toll collection service within the Toll Domain managed by it, pursuant to the local legislation, regulations, statutory disciplines and rules and/or public authorisation or any other public measure (if any), and that it has the capability and all necessary powers to adhere to this Agreement, to execute it and to undertake the obligations provided herein.
- 2.7 Each of the Parties warrants that the underwriting and the execution of this Agreement have been duly authorised in accordance with the by-laws of the Party (if applicable pursuant to the legal nature of the Party) and/or in compliance with the local legislation, regulations, statutory disciplines and rules and/or public authorisation or any other public measure (if applicable to the Party) and do not require any further consent, authorisation, approval or issuance of authorisations, concessions, licenses and/or any other measure by any private or public administration.
- 2.8 Each of the Parties represents and guarantees that the execution of this Agreement and the fulfilment of the obligations provided herein do not result to infringe:
- (a) any domestic law, regulation, statutory discipline and rule and/or any public authorisation or any other public measure;
  - (b) the respective company's by-laws (if applicable);
  - (c) any contractual obligation and/or any decision, order or judicial or arbitrary proceeding issued toward the Party.

### **3 Main obligations of the Parties**



- 3.1 The Parties undertake to jointly implement and achieve the EETS. For this purpose each Party will carry out the activities and make the investments related to his operations which are necessary to achieve the Common Service Definition and the Common Toll Interface, and in addition thereto make the contributions to the common resources as requested and deemed necessary by the General Assembly from time to time.
- 3.2 The Parties acknowledge that:
- (a) the Common Service Definition indicates the services to be supplied by the Parties in relation to the EETS;
  - (b) the Common Toll Interface defines the transaction model and the equipment characteristics ensuring full technical compatibility among the Toll System and the OBE to be used for the EETS; and
  - (d) the Equipment Certification Procedure defines the procedures to be applied for the certification of the equipment used for the provision of the Toll System and the OBE.
- 3.3 The Toll Chargers acknowledge that the obligations undertaken by the Toll Chargers pursuant to article 3.1 and 3.2 include, but are not limited to, the following activities:
- (a) ensure that the respective Toll System is adequate in order to render them compliant with the Common Service Definition and the Common Toll Interface as well as to render the EETS effective, operational and functional as detailed in the Common Service Definition and the Common Toll Interface;
  - (b) maintain and manage the Toll System in order to guarantee the effectiveness, operativeness and functionality of the EETS;
  - (c) accept the OBE issued by each of the EETS Providers in accordance with this Agreement and the Toll Declarations submitted by such OBE in order to allow the vehicle to travel in the Toll Domain;
  - (d) collect the transit data at the Toll Domain and communicate such data in strict compliance with the procedures provided for by the Common Service Definition and the Common Toll Interface;
  - (e) adhere to the invoicing procedures described in this Agreement and their Bilateral Contract;
  - (f) adhere to the Black List procedures in strict compliance with the provisions of this Agreement;



- (g) handle claims in accordance with article 9;
- (h) pay the Service Fee to the EETS Providers in accordance with their Bilateral Contract.

3.4 The EETS Providers acknowledge that the obligations undertaken by the EETS Providers pursuant to article 3.1 and 3.2 include, but are not limited to, the following activities:

- (a) enter into agreements with third parties for provision of the EETS in accordance with a Service User Contract only and comply with such agreements;
- (b) issue OBE to Service Users in strict compliance with the Common Service Definition and the Common Toll Interface;
- (c) handle the initialisation of the OBE supplied to the Service User, provide the Service User with all necessary information on its functionality as well as guarantee the maintenance services of the OBE and all related technical support in favour of the Service User;
- (d) collect Toll from the Service Users in accordance with this Agreement and their Bilateral Contract;
- (e) adhere to the invoicing procedures described in this Agreement and their Bilateral Contract;
- (f) provide a guarantee of payment of Toll to the Toll Chargers in accordance with this Agreement and their Bilateral Contract;
- (g) directly manage any and all relationships with the Service Users relating to the EETS, including the payment services, the debiting/invoicing procedures but excluding the handling of claims from the Service User pursuant to Article 9;
- (h) adhere to the Black List procedures in strict compliance with the provisions of this Agreement.

3.5 The Parties will co-operate for the purpose of developing and using road sign(s) to indicate the EETS dedicated lanes and ease their acknowledgement by the Service Users.

#### **4 Service User Contracts**

4.1 The EETS Providers shall enter into agreements with third parties for provision of the EETS in accordance with the Service User Contract only. Subject to the obligation of EETS Providers to comply with any laws and regulations binding upon them, EETS Providers shall be free to enter into or refuse to enter into Service User Contracts with third parties at their sole discretion.



4.2 Each Service User Contract shall contain at a minimum the conditions set out in Annex F. The EETS Provider undertakes to comply with the provisions of the Service User Contract.

4.3 The EETS Provider shall be entitled to offer any rebates available from the Toll Charger to its Service Users.

## 5 Toll Declaration

5.1 The Toll Chargers shall allow access to their Toll Domain to each vehicle that has made a Toll Declaration. The Toll Charger shall charge Toll for such vehicles in accordance with this Agreement only.

5.2 Article 5.1 applies only to vehicles that are fitted with an OBE that is certified according to Annex I and is functioning according to the Common Toll Interface and Annex E at the time of the Toll Declaration.

## 6 Invoicing and payment of Toll

6.1 A Toll Charger shall supply each individual EETS Provider with statements for amounts of Toll due in connection with the Toll Declarations made by vehicles equipped with an OBE issued by that EETS Provider. Such statements shall meet the requirements set out in Annex G.

6.2 On 1 April of each year, the Toll Charger shall supply each EETS Provider with a statement issued by an Auditor confirming that the amounts of Toll due in respect to each OBE as produced by its Toll System and by its billing system in the previous year, reflect the actual amount of Toll due in connection with the Toll Declarations in that year.

6.3 The Toll Charger authorizes the EETS Provider to collect the relevant amounts of Toll specified in each statement from the relevant Service Users. The EETS Provider undertakes to use its best endeavours to collect such amounts of Toll from the relevant Service Users.

6.4 Unless otherwise provided in article 9.4, the EETS Provider shall bear the risk of any non-payment by the Service User of any Toll due in connection with a Toll Declaration made by a vehicle equipped with an OBE issued by that EETS Provider. The EETS Provider shall pay any amount of Toll due to the Toll Charger in connection with such a Toll Declaration if payment has not been received and a payment period of **[common time bar]** has elapsed, unless the EETS Provider had placed the relevant OBE on the Black List before the time of passage. The Toll Charger hereby transfers any claim for Toll it may have upon the Service User to the EETS Provider to the extent that the EETS Provider has paid the amount of Toll Due pursuant to this article 6.4. To the extent that such a claim for Toll cannot be transferred by the Toll Charger to the EETS Provider in advance or the Toll Charger needs to perform any further acts in order to effect such a transfer, the Toll Charger agrees to do and perform all further acts as shall be necessary for such transfer.



6.5 The Toll Charger shall supply to the EETS Provider all information that may be necessary or helpful to collect amounts of Toll due, including a proof of the Toll Declaration, as set out in Annex G.

6.6 Toll Chargers and EETS Providers may deviate from the provisions of this article 6 in Bilateral Contracts.

## **7 Determination of the Service Fee**

7.1 Each Toll Charger shall pay each EETS Provider the Service Fee as remuneration for the services provided by the EETS Provider to the Toll Charger pursuant to this Agreement and Bilateral Contracts.

7.2 The Service Fee will be determined by all Toll Chargers and all EETS Providers separately on a bilateral basis. The Parties are obliged to reach agreement on the Service Fee within [time frame] after this Agreement has entered into force. If no agreement has been reached within that period, either Party may call for dispute resolution as described in article 14.4.

7.3 Toll Chargers and EETS Providers may deviate from the provisions of this article 7 in Bilateral Contracts.

## **8 Black Listing process**

8.1 Each EETS Provider may place an OBE issued by it on the Black List for some or all toll domains.

8.2 The placing of OBE's on the Black List and the management and distribution of the Black List shall take place in accordance with Annex F.

## **9 Complaints and claims**

9.1 Unless otherwise agreed in a Bilateral Contract, the EETS Providers agree to process and handle all claims from Service Users based on improper charges for Toll or the provision of the transport service in accordance with this article 9.

9.2 The Parties agree that the EETS Providers must notify the Toll Chargers of any claim based on improper charge of Tolls within a period of [ ] following the date of transmittance of relevant transit data with the consequence that the EETS Provider will have no recourse against the Toll Charger for claims subsequently submitted. Among the minimum set of clauses in the Service User Contract appearing in Annex F there is an obligation to submit claims to the EETS Providers and a time-bar provision for claims by the Service Users and the Parties agree to apply this provision consistently in relation to Service Users.

9.3 A claim from a Service User based on wrongly charged Toll and submitted by the EETS Provider to the Toll Charger before it is time-barred and under all circumstances within [ ] days following transmittance of relevant transit data will be handled directly and expediently by the Toll Charger. The Toll Charger



shall either accept the complaint or inform the EETS Provider of all relevant data that the EETS Provider may need to handle the complaint pursuant to the conditions appearing in Annex G. The Toll Charger must provide assistance to the extent requested by the EETS Provider in the handling of a claim with the aim of finding a quick and fair resolution of the subject matter. Any possible refund of the Toll subject to the claim (in whole or in part) will be made upon final resolution of the claim. [subject to relevant time bars under public law]

9.4 The EETS Provider shall carry all risks associated with the collection of the Toll as provided in article 6.4, except for the following cases where the Toll Charger shall carry the risk for non-payment:

(a) a claim for improper charge of Toll has been submitted to the Toll Charger within [ ] days following the transmittance of the relevant transaction data and the Toll Charger is not able to verify the passage or the accuracy of the charged amount;

(b) [ ].

## 10 Bilateral Contracts

10.1 Toll Chargers and EETS Providers may enter into Bilateral Contracts concerning the provision of other services by the EETS Provider to the Toll Charger than the services provided pursuant to this Agreement.

10.2 Toll Chargers and EETS Providers may deviate from this Agreement in Bilateral Contracts only if this does not have negative consequences for the other Parties to this Agreement.

## 11 The General Assembly and the Secretary

11.1 All Parties are a member of the General Assembly. The General Assembly shall:

- (a) discuss all issues related to the implementation of this Agreement;
- (b) determine the adhesion criteria in accordance with article 12.2;
- (c) decide upon any amendments to this Agreement;
- (d) decide upon possible recommendations to the Parties and to the European Union;
- (e) determine the annual contribution to be paid by the Parties for the activities of the Secretary and possible committees and working groups and other common expenses; and
- (f) establish such committees and working groups as it deems necessary.

11.2 A representative of each Party may attend meetings of the General Assembly and may vote on any decisions and recommendations to be made by the General Assembly in such meetings. The number of votes attributed to a Party is confirmed by the Secretary at the beginning of each meeting. The number votes attributed to each Party is equal to the square root of its cash flow received or paid under this present Agreement in the calendar year before the calendar year of the meeting, each Party casting at



least one vote. The cash flow is calculated in euro at the exchange rate applicable at the end of the relevant calendar year.

- 11.3 Decisions and recommendations may only be adopted if the relevant decision or recommendation was set out on the agenda of the meeting. All Parties may propose issues for the agenda until two months before the meeting.
- 11.4 All decisions and recommendations must be supported by a majority of the votes exercised by the Toll Chargers that are represented at the meeting. All decisions, except the decisions provided in Article 6.2 of this present agreement, must also be supported by a majority of the votes exercised by the EETS Providers that are represented at the meeting. The decisions adopted by the General Assembly may also entail modifications of the Annexes, but any other deviation from this present Agreement requires a written statement which is signed by all Parties.
- 11.5 If any Party so requests, the voting shall be in writing and confidential.
- 11.6 The General Assembly has the authority to appoint and dismiss the Secretary. For any period during which the Secretary is unable to fulfil his tasks, the General Assembly will appoint a substitute Secretary.
- 11.7 The Secretary will chair the General Assembly. He will convoke the meeting of the General Assembly every year in May. The invitation will be distributed at least one month in advance of the meeting and will state the agenda and the number of votes attributed to each Party. For this purpose the Parties shall notify the Secretary in February of each year of the cash flow they have received or paid under this present agreement in the past calendar year. Such notification shall be accompanied by a statement from an Auditor confirming the correctness of the statement.
- 11.8 The co-operation between the Parties will not constitute a legal entity capable of obtaining rights and assuming liabilities. As a result thereof, it is agreed between the Parties that all rights and assets related to the EETS (and not solely related to a Toll Domain) including trademarks and other intellectual property rights, software, equipment, contractual rights and other assets shall be taken care of, managed and maintained by a single Party who has accepted such role with or without compensation from the other Parties.

## 12 Adhesion





- 12.1 Adhesion to this Agreement as a Toll Charger is open to all entities that are required to do so by operation of law in the Member States of the European Economic Area and to public or private legal entities charging Toll for vehicles in a Toll Domain outside the European Economic Area.
- 12.2 Adhesion to this Agreement as an EETS Provider is open to all entities that meet the professional and financial criteria included in Annex B as modified from time to time by the General Assembly. The criteria must remain non-discriminatory and may not go beyond the purpose to provide reasonable confidence that the entity wishing to adhere to this Agreement as an EETS Provider will be capable of fulfilling its obligations under this Agreement.
- 12.3 The Secretary will determine whether an applicant meets the relevant criteria set out in article 12.1 and 12.2. If the Secretary determines that the applicant meets the relevant criteria, he will notify the Parties thereof. The applicant will be invited by the Secretary to sign a Toll Charger Adhesion Certificate or an EETS Provider Adhesion Certificate, as the case may be, six weeks after the aforementioned notification, unless a Party challenges the adhesion within that period on the basis that the criteria for adhesion have not been met. Adhesion will take effect upon the signing by the applicant at the Secretary's invitation of the Toll Charger Adhesion Certificate or an EETS Provider Adhesion Certificate, as the case may be.
- 12.4 If the Secretary denies or a Party challenges the adhesion, the dispute resolution procedure set out in article 14.4 applies. For this purpose the entity requesting adhesion must submit to the dispute resolution procedure in writing.

### **13 Termination**

- 13.1 Each EETS Provider and each Toll Charger charging Toll for vehicles in a Toll Domain outside the European Economic Area may withdraw from this Agreement at all times with immediate effect. A Toll Charger charging Toll for vehicles in a Toll Domain within the European Economic Area may only, and shall, do so if he is no longer legally required to be a party to this Agreement by operation of law in the Member States of the European Union.
- 13.2 This Agreement may be terminated by the General Assembly in relation to a Party if that Party no longer meets the current criteria for adhesion.

### **14 Miscellaneous**

- 14.1 All communication between the Parties shall be in writing and in the English language.
- 14.2 No Party may transfer its position as a Party to this Agreement to a third party or assign its rights resulting from this Agreement to a third party without the prior written consent of the General Assembly.



14.3 This present Agreements is governed by the laws of [ ].

14.4 Each Party may exercise its rights resulting from this Agreement independently. All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules.



## **B. List of Parties**

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[to be written and intended to contain:

- the names of the adhering Toll chargers (in A.1) and EETS providers (in A.2)
- the address at which the parties have chosen their place of business which regard to this contract
- a possible identifier assigned to the party under this contract.
- Provisions for the publication of other official details (e.g. on a website)]

EXPLANATORY NOTE: The list only contains the data that is required to identify a party under the operation of the contract. All data that may be changed by a party at his own discretion (like a telephone number, an url for web-site, an email address, address information of subcontractors etc.) will in stead be published elsewhere, e.g. on an official web-site of the contracting parties.

## **C. Adhesion provisions**

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[to be written and intended to contain:

- Adhesion criteria  
The criteria for acceptance of new parties to the common contractual framework
- An adhesion certificate form  
to be used for the statement of a new party, a Toll Charger or EETS provider, that wishes to join the contractual framework.]



## **D. The DSRC interface**

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### Annex C of the common EETS agreement on The DSRC Interface

#### *Scope*

C.1. This annex specifies the requirement for interoperability of onboard and off-board equipment when using a DSC interface.

C.2 This annex forms an integral part of the common EETS agreement.

#### *Terms and definitions*

C.3 In addition to the terms defined in the common EETS agreement the following terms and definitions apply for this annex.

C.3.1 DSRC interface

An interface between the onboard and off-board equipment using DSRC.

#### *Compliance*

C.4 The DSRC interface complies with directive 2004/52/EC and the Commission Decisions pursuant to this directive.

EXPLANATORY NOTE: There are as yet, summer 2006, no Commission Decisions pursuant to directive 2004/52/EC with respect to the DSRC interface.

C.5 One or more providers may agree with one or more toll charger to deviate from the requirements in this annex as long as this causes no loss to other parties.

#### *Requirements for a valid claim for Toll fee*

C.6 A toll declaration providing a toll charger with a valid claim for the Toll fee consists of:

1. the response of the get\_stamped request in the presentation phase as specified in annex B of prEN ISO 14906:2004 together with,
2. if applicable, the response of the get\_stamped request in the optional presentation phase for foreign OBEs as specified in annex B of prEN ISO 14906:2004



*Other agreed requirements*

C.8 Void (there are as yet no agreed requirements)

EXPLANATORY NOTE: The specification of the DRSC interface in the draft Commission Decision of April 12, 2006 do not require additional requirements.



## **E. Communication over a cellular network**

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Annex D  
of  
the common EETS agreement  
on  
communication over a cellular network

*Scope*

D.1. This annex specifies the requirement for interoperability of onboard and off-board equipment when using the onboard equipment uses a cellular network.

D.2 This annex forms an integral part of the common EETS agreement.

*Terms and definitions*

D.3 In addition to the terms defines in the common EETS agreement the following terms and definitions apply for this annex.

D.3.1 Communication over a cellular network

communication between onboard and off-board equipment where the onboard equipment communicates via a cellular network

*Compliance*

D.4 Communication over a cellular network complies with directive 2004/52/EC and the Commission Decisions pursuant to this directive.

EXPLANATORY NOTE: As yet there are no Commission Decisions pertaining to the communication over a cellular network.

D.5 One or more providers may agree with one or more toll charger to deviate from the requirements in this annex as long as this causes no loss to other parties.

D.6 An Explanatory note is this annex is only informative, not normative.

*Requirements for a valid claim for Toll fee*

D.7 To be defined

*Other agreed requirements*



## D.8 Void (there are as yet no agreed requirements)

EXPLANATORY NOTE: As yet there are no agreed formal or de facto standards to comply with.



## **F. Additional OBE requirements**

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[to be written and intended to contain:

- Any additional (non-interoperability) requirements for onboard equipment, e.g. additional security requirements.]

## **G. Service User management**

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[to be written and intended to contain provisions related to:

- the contents of the customer contract,
- the blacklisting of OBE and
- customer support (including the handling of complaints).

This also includes both the service and the protocol requirements for the exchange of information between computing equipment of the toll charger and computing equipment of the EETS provider.]

## **H. Invoicing and payment**

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[to be written and intended to contain provisions about the invoicing and payment of toll and fees.

This also includes both the service and the protocol requirements for the exchange of information between computing equipment of the toll charger and computing equipment of the EETS provider.]

## **I. Other common Service Definitions**

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[to be written and intended to contain provisions for remaining services (like e.g. commonly agreed road side services as a common sign to signal automatic EETS lanes)]

## **J. Certification**

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[to be written and intended to contain provisions regarding the certification of implementations (equipments, software, devices etc)]