



DIRECTIVE 2004/52/CE on Interoperability of Electronic Fee Collection Systems in Europe

Recommendations on enforcement (including cross-border enforcement) for the European Electronic Toll Service

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I - REMINDER OF THE EXPERT GROUP'S MANDATE.

I-1 : Expert Group 3's task.

The Electronic Fee Collection (EFC) Interoperability Directive¹ developed by the European Commission requires all EFC contract issuers to deliver a "European EFC service" and all infrastructure operators or toll/fees collection operators to accept subscribers to the service from 1st July 2009.

The toll motorways concessionaires represented within ASECAP (which is the sole body representing of operators collecting road tolls in Europe at present time) have raised questions regarding the enforcement of toll payments due as part of such a service. This is of particular importance at a European level as:

- the legal status of tolls collected for the infrastructure use are not the same including conditions of administration (needs of organisation, equipment, authorisations concerning enforcement, execution etc.)
- the legislation concerning toll violations is not the same across Europe;
- the number of violations is expected to increase dramatically over the next decade due to the projected increase in both domestic and international traffic and the evolution of technologies which enable open road tolling (which seems to be unavoidable).

In 2006, the European Commission is also expected to start work on a new Directive relating to the cross-border enforcement of road traffic violations. Based on the results of the VERA2 project, this new Directive is expected to focus on road safety priorities and will allow Member States to enforce penalties on drivers from other States who commit violations within their jurisdiction.

Although the European concessionaires strongly support this initiative, further work will still be required to define what constitutes a "toll violation" (or at least an EFC violation) at a European level and to define the principles of ETC enforcement which is a direct follow-up to the Interoperability Directive.

The European Commission is fully aware of the complexity of EFC enforcement. The Expert Group was established in order to take an initial view of the challenges and threats that face toll road operators at the current time and to make recommendations regarding enforcement of a European EFC service.

I-2 : Scope of the task.

The Expert Group has been charged with:

- proposing a definition for a European "EFC violation"
- examining the consequences of road traffic laws (Codes de la route) on the signing of networks and in particular, toll gates where the European EFC Service is accepted
- recommending minimum penalties for ETC violations and examining other types of enforcement measures that may be applicable (such as driving bans, impounding of vehicles, etc);

¹ Directive 2004/52/EC Of The European Parliament And Of The Council, 29 April 2004

- examining the respective roles of operators, issuers and police departments in the enforcement of penalties arising from ETC violations and proposing guidelines to assist in the prosecution of violators;
- proposing measures to ensure that an acceptable level of penalties arising from EFC violations can be enforced thereby guaranteeing each operator its revenues;
- liaising with the European Commission officers in charge of drafting and supporting the proposed Directive on cross-border enforcement;
- liaising with the early adopters of the eNFORCE network proposed by VERA2 with a view to ensuring that during its development and implementation, ETC operators' perspectives can be taken into account.

II - THE EXPERT GROUP'S TARGET ENVIRONMENT.

II-1 : Preamble.

By way of an introduction, it should be remembered that ETC is generally only one method of toll collection. It is typically used in combination with other forms of payment such as cash, credit cards and online payments.

Although adding complexity to the toll collection regime, the use of multiple payment mechanisms aims to guarantee that operators receive payments due to them by ensuring the robustness of payment mechanisms from a technical and financial perspective and through the use of control and enforcement measures to reduce both traditional and non-traditional fraud.

II-1.1. Traditional toll collection at toll gates.

In the majority of toll road operating countries, the traditional approach to ensuring that toll payments are made has been through the use of physical barriers. Each tollgate is manned by a toll collector and is equipped with lifting bars which is raised once full payment has been made. However, this approach does not prevent a variety of fraudulent acts from being committed (for example, toll ticket swapping, forged means of payment, etc). Equally, although the use of lifting bars prevents anyone who does not have any means of payment from immediately passing through the toll lane, it does not prevent abuse of methods used to deal with this type of non-payer (such as the use of an acknowledgement of debt) which often prove to be unworkable when it finally comes to the collection the toll payment.

II-1.2. The first generation of automation: automatic toll gates with cash cards or currency.

Between 1980 and 1990, advances in technology led to a progressive modernisation of toll collection systems. The increasing use of automatic tollgates meant that toll collectors were no longer required to operate the barriers. However, the introduction of this new generation of tollgates also resulted in new types of frauds. This led to the use of devices intended to ensure that users were making correct toll payments for the type of vehicle they are driving. These included devices which examine each vehicle before they entered the tollgate and while in the tollgate (for example, vehicle classification systems). Increasing use of magnetic cards also brought with it frauds relating to card forgery. However, certain frauds remained difficult to address such as the "petit train" ("small train" where a vehicle moves through the toll gate very close to the preceding vehicle so as not to be detected by the magnetic loops).

II-1.3. The second generation of automation: dedicated electronic toll collection gates

The arrival of dedicated short range communication (DSRC)-based electronic toll collection in the 1990's presented new opportunities for users to make toll payments without the need for any physical contact with a toll collector or roadside equipment and in theory therefore, without vehicles having to stop. In the majority of the toll road operating countries, the introduction of lanes

dedicated to DSRC-based EFC also presented new opportunities for evading the payment of tolls.

The most obvious opportunity for evasion arose due to the removal of lifting bars . As vehicles could now pass through a tollgate without stopping, new control and enforcement measures had to be taken. This led to dedicated ETC lanes being treated differently in different countries' national legislation. Portugal and France represent the two extremes of how this is dealt with in national legislation:

- In Portugal, the legislation in force and the policing powers entrusted to the operator have allowed the opening of EFC gates and the removal of all lifting bars. National legislation allows the recovery of toll payments from violators as long as they remain on Portuguese national territory. Recovering payments from violators outside Portugal is still difficult although this is less of a national priority as foreign violators only represent a small percentage of the total number of violators.
- In France, the absence of legislation and policing powers entrusted to the operator has meant that lifting bars are still used at dedicated ETC lanes forcing all users to slow down almost to stop regardless of whether they have paid the toll or not.

II-1.4. The third generation of automation: barrierless toll systems.

From the mid-1990's, EFC systems became a primary means of payment resulting in the removal of any physical barriers. It is important to note that in all cases except for Austria, ETC is still used in combination with other forms of toll payment² including:

- payment at toll booths next to the main roads (the typical situation in the case of the open road tolling in the USA) ;
- payment online, telephone or over the Internet, in the case of the Ring Road of Melbourne, or more recently the LKW-Maut-system in Germany.

The introduction of EFC systems which do not use physical barriers has required the introduction of a range of legal and operational agreements to ensure that violators can be identified and that payments can ultimately be recovered by operators.

Countries using such systems have introduced agreements necessary to address violators within their national territory. Nevertheless, within the framework of the Expert Group, both German and Austrian representatives have indicated that the current legal and judicial provisions do not allow them to effectively address foreign toll evaders once they have crossed the national borders and are outside the territory controlled by the national authorities.

II-1.5. Conclusion on the systems currently existing in Europe, and their security level.

In conclusion, the operator insures himself, as far as possible, to receive all toll payments due, by using toll collection systems adjusted to national legal framework and to enforcement and control mechanisms in hand. The migration towards EFC systems which do not use lifting bars is technically possible in all the

² This does not include the London Congestion Charge where no in-vehicle equipment is required. As the system is based solely on the reading of vehicle licence plates, it does not appear to be significant for the future of EFC at the European level.

countries but depends on the evolution of the legal framework and the effectiveness of control and enforcement mechanisms. However, the reality is that in some countries, it is not possible to remove the lifting bars as public authorities have not yet given operators the authority to implement the control and enforcement measures necessary to recover payments due.

Moreover, the lack of cooperation between national legal systems and the absence of coordination between enforcement agencies means that as soon as a toll evader has left the tolled network or the national territory, it is practically impossible for the operator to recover payments due.

Although these problems exist in some respect regardless of the toll system used, they become more acute when systems without lifting bars are used.

Observation n° 1. The diverse nature of existing national legislation and the absence of real cooperation between the legal and police institutions means that an operator's requirement to recover all toll payments due is not helped by the removal of lifting bars (barriers in full lanes) or the use of virtual toll barriers (organised or random control areas) on tolled networks or within national territories.

Within the scope of European policies, legal and regulatory measures should be taken to maintain and improve financial security where lifting bars have been removed and/or where virtual toll barriers are used.

II-2 Operating mode of electronic toll collection according to the Interoperability Directive and the target mode adopted by the Expert Group.

II-2.1. Objectives laid down by the Interoperability Directive

The Interoperability Directive within the framework of which this Expert Group functioned does not set any precise requirements for the operation of EFC systems in the future and in particular, makes no direct reference to the removal of lifting bars. However, the following is indicated in its section 2.3: "It is recommended that the 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". This suggests a removal of the lifting bars at tollgates in the long term since satellite-based systems are essentially designed to be used without any roadside installations.

Moreover, the Directive indicates, in its section 2.5 : "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 systems. Lanes used for electronic toll collection may also be used for toll collection by other means, with due regard to safety".

This paragraph introduces the possibility that Member States can maintain existing systems with lifting bars (or even to establish new ones) provided that dedicated or mixed electronic toll lanes are also made available. However, the Directive does not impose any specific requirements on the use or otherwise of lifting bars in such lanes.

Therefore, while clearly stating a preference for toll systems which do not use lifting bars and hence a preference for technological forms of toll payment, the Directive also offers the opportunity to develop electronic toll collection within the framework of traditional systems which do use barriers.

II-2.2. Treatment of the fraud in the Interoperability Directive

Issues relating to the control and prevention of toll (electronic toll) evasion are addressed in the Interoperability Directive in a relatively marginal way. Its section 8 relates to fraud arising from the use of satellite-based systems: "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."

It would appear that the Directive's authors, the Parliament and the Council of Ministers anticipate that Member States will address the legal and judicial aspects as well as issues relating to the control and prevention of toll evasion. This is confirmed by the fact that, in the "Items required for the definition and the deployment of the European electronic toll collection service" indicated in Interoperability Directive's Annex, there is no mention of any 'items' in the legal chapter. However, in the chapter relating to the procedures, the need to define : "...the implementation of procedures for dealing with particular cases, such as

any type of malfunction. This relates in particular to cases where the toll operator and the customer come from different countries " is stated.

Although this article is generic in its nature, it is understood that the term "malfunction" does not cover toll evasion.

The Interoperability Directive does not state any clear objective regarding the operation of electronic toll collection systems nor does it seem to deal with the treatment of toll evasion at the European level. The Expert Group considers this is an obvious loophole considering the objectives of interoperability, transparency, and the principle of a single contract stated in the Directive.

II-2.3. Areas addressed by the Expert Group

Despite these two open issues, the Expert Group considers that the underlying intentions expressed by the Parliament and the Council of Ministers in approving the Interoperability Directive promote the use of interoperable systems without lifting bars which, in the long term, will allow electronic toll collection without stopping vehicles.

This is confirmed in Section 7-5 of Directive 1999/62 which indicates that " Tolls and user charges shall be applied and collected and their payment monitored in such a way as to cause as little hindrance as possible to the free flow of traffic and avoid any mandatory controls or checks at the Community's internal borders".

Observation n° 2. The Expert Group 3 agreed to develop recommendations within the framework of generalised "open road tolling" in Europe aimed at ensuring that whatever the legal status of toll collectors, toll payments are made or can be enforced.

These recommendations could of course be extended to ensure that payments are received when other forms of toll collection are used.

II-3. The legal and contractual environment of the "Electronic toll collection service" .

Before making recommendations in this area, it is necessary to define the future legal and contractual context of the "electronic toll collection service". This context is important in determining the different types of toll evasion and how they should ideally be dealt with.

At the moment, there is no definitive documentation on this subject. However, the results of projects such as CARDME IV, CESARE II, PISTA and the emerging results from the MEDIA project make it possible to address contractual issues in a realistic way. Nevertheless, the relevance of such results needs to be validated within the framework of the CESARE III project which as part of its remit, will consolidate the perspectives of the toll road operators and the new infrastructure toll collectors.

II-3.1. Terminology

Firstly, it is necessary to identify and define the primary entities involved in the contractual side of EFC interoperability. Four such entities have been identified. While these are not necessarily definitive at this stage, their precise definition should become increasingly clear in time.

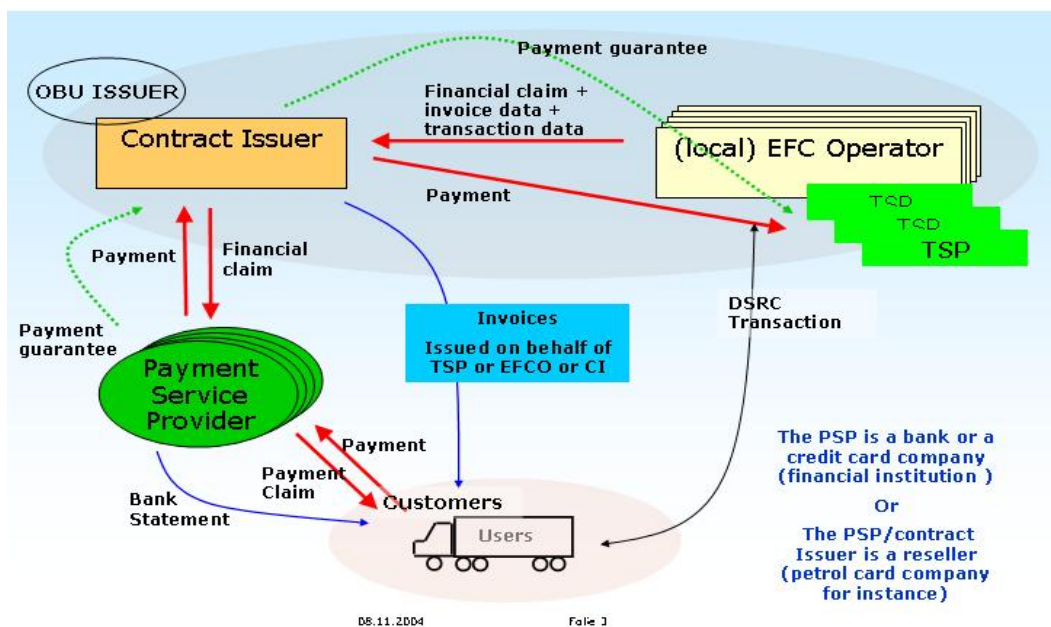
- TSP (Transport Service Provider). This is the entity which provides the service whose consideration is the toll fee and which is at the same time the recipient of the receipt of tolls paid. This covers :
 - = In toll road concession countries, this is typically the concessionaire company or its equivalent, which is the public service delegate authorised to collect tolls in order to finance this public service ;
 - = In the countries adopting a "pay per use" charge regime, the administrative organisation entrusted by law with levying the tax on the ultimate user, and who is entitled to assume all the responsibilities and the rights towards the ultimate user.
- EFCO (Electronic Fee Collection Operator). This is the entity which is entrusted by the TSP with collecting tolls and is responsible for respecting the provisions of the contract binding the EFCO and TSP. This varies according to the cases.
 - = In toll road concession countries, the EFCO is often the concessionaire company itself but it can also be a subsidiary company (BRISA / VIA VERDE), a sister company (AUTOSTRADE PER L'ITALIA acting in the name of other road operators) or an independent company (SAPN / ViaAutoroute in France).
 - = In the countries adopting a "pay per use" charge regime, the EFCO may be the company which is entrusted by contract to collect the toll for the public TSP (TOLLCOLLECT in Germany).
- CI (Contract Issuer). These are commercial entities which issue European toll collection contracts to users on the basis of a European Onboard Unit (OBU). On the basis of invoices transmitted by EFCO's, they collect the amount of tolls from their subscribers, and pay TSP's subject to payment provisions and contractual guarantees.

- = In toll road concession countries, the CI is often the road concessionaire company itself; it may be the EFCO but new actors such as Service Payment Guarantors are expected to become more prevalent in the forthcoming months.
- = The situation is the same in countries using "pay per use".
- PSP (Payment Service Provider). These are financial entities guaranteeing the payment to Contract Issuer by the user. They may be banking institutions or guarantors.
- User. This is the driving customer of a Contract Issuer through a European contract.

In addition to these definitions relating to the contractual framework, it is useful for the sake of this report to define the following :

- OSR (Owner of Sovereign Rights). This is generally the State and can also take the name of :
 - = OSP (Owner of Sovereign Rights of Policy)
 - = OSJ (Owner of Sovereign Rights of Justice)
 - = Etc.

II-3.2. The contractual relational diagram



The above theoretical diagram extracted from MEDIA project deliverables illustrates the typical contractual links which are expected to exist in the interoperability scheme at the European level.

Its main purpose is to clearly distinguish the respective levels of responsibility and guarantees. In particular, it shows that if such a system is strictly respected, TSP's will ultimately have no direct relation with users concerning the handling of payment. Contract Issuers will provide a contractual interface with the users and will guarantee payment to TSP's through contracts providing for such levels of guarantee and the remuneration thereof via commissions.

Issues relating to the harmonisation of contracts between TSP's and CI's and between CI's and users still need to be addressed within the framework of CESARE III project.

II-3.3. Dealing with malfunctions and non-payments within the framework of this contractual diagram.

The Expert Group recommends that these kind of contractual relationships should make it possible to deal with violations arising from malfunctions or from non-payment without first having to resort to the judicial process.

Observation n° 3.

The contractual system must be able to deal with as many cases of non-payments as possible so as to avoid congesting judicial systems.

Establishment of a European ad-hoc contractual information system is essential to help prevent fraudulent use of on-board units (OBUs).

It is also essential that all actors in the system (CIs and TSPs as a minimum) establish European black lists.

Recommendation n° 1. The development of contractual relationships as envisaged by the Interoperability Directive includes the exchange of information between TSP's and CI's at an international level and allows each actor to have access to data relating to defaulting users. The terms and conditions for accessing this information should be the same in all Member States.

It is important to note that the scope of this report excludes issues relating to bad payers or insolvent users whose case will be dealt with under reciprocal guarantees within the contractual framework. This will be until such time as these users are considered to be excluded from the benefit of the European EFC Service Contract and therefore can be treated as users with invalid OBUs.

II-4. Expert Group scope: from violation to fraud.

Having defined terminology relating to contractual relationships, it is necessary to define terminology relating to the processes, functions and requirements involved in handling ETC violations and enforcement. It is important to note that the Expert Group has focused on functional rather than legal definitions. The concepts defined below must therefore be regarded as an "operational" view of how to address the issues concerned rather than as a formal legal view.

II-4.1. EFC violation

An ETC violation is defined as the act of circulating on a network without being in the possession of an OBU considered as valid in relation to the system if :

- this equipment is mandatory on the network or the lane being used ;
or
- pre payment by another means of payment was not made.

An EFC violation may be due to :

- the presence on board of an OBU whose usage has been stopped by the CI, or whose validity is not recognized by the TSP (1a) ;
- a malfunction of the system (1b) ;
- an oversight / omission on the part of a duly subscribed user holding a valid contract (1c) ;
- an unintentional / intentional mistake of a non-subscribed user (who is not signatory of any contract, or signatory of a non-European contract) (1d) ;

II-4.2. EFC fraud.

EFC fraud results from any act tending to avoid the electronic collection of fees using means prohibited by the rules or the laws applicable to the network concerned: it is an offence.

An EFC fraud can consist of :

- a violation (intentional or casual, repeated or not) or a violation which is not followed by a regularisation (2a) ;
- use of forged OBU's (forged units ; falsification of the data contained in the OBU, etc) (2b) ;
- prohibited behaviour, such as the "petit train" – (i.e. driving close to the vehicle in front or behind), or to mask the licence plate, or any other form of avoiding being recognised by the system (2c) ;
- the exchange of OBU's (2d) ;
- Etc (2e).

II-4.3. Is an EFC violation an offence by nature, that is to say a fraud within the meaning of this report ?

Although this seems like a theoretical question, it is an important issue to clarify from both a "commercial" and practical perspective.

The Expert Group's analysis shows that different countries and different charging applications address this issue differently. It appears that an ETC violation cannot be considered to be an offence (in other words, a user who does not pay a toll systematically incurs a statutory or penal sanction) everywhere in Europe.

However, any violation which is not followed by a regularisation (settlement of an outstanding debt within a prescribed period of time which may vary by country) is considered by the Expert Group to constitute an offence (i.e. a fraud within the context of this report).

The Expert Group consider that all offenders should have every opportunity to regularise their situation towards the TSP. This implies that each TSP should have a means of identifying an offender (if the latter's vehicle cannot be physically stopped).

Two specific cases can be identified:

- (1a) the offender has an OBU that is read by the system but is recognised as being invalid: the offender is then theoretically identifiable by via contractual relationships.
- (1b) (1c) (1d) the offender is not recognised by the system. The only means of recognition is to use information from the vehicle's licence plate to identify the registered owner.

Recommendation n° 2. TSP's should have the legal power to identify violators on a European scale in order to allow them the opportunity to regularise outstanding payments. TSPs should be allowed to do this without the need to initiate formal legal process. In order to do this, TSPs should have a mean of accessing vehicle licence plate databases.

II-4.4. From violation to EFC fraud : repeat offenders.

The issue of repeat offenders requires special attention. The way these offenders are dealt with will, in part, depend on how many times the user repeats the violation and the value of the penalties to be enforced on the offender. Common sense suggests that:

- Presuming the offender's good faith must be the first rule;
- The technical performance of the enforcement system and the use of tough sanctions on customary offender are necessary to ensure the credibility of the overall system.
-

In order to avoid congesting the judicial system, it is recommended that simple cases of violation (i.e. when good faith is assumed) are dealt with outside the judicial system even though they do not strictly comply with the contractual framework.

For this purpose, the Expert Group suggests that the following objectives need to be pursued in order to allow effective and efficient enforcement:

- to allow TSPs' or EFCOs' to have access to the right information and have the power of control
- to define the criteria which dictate when a violation becomes a fraud.

III – RECOVERING OUTSTANDING PAYMENTS, CONTROLLING AND PREVENTING VIOLATIONS AND FRAUDS WITHIN THE EUROPEAN FRAMEWORK.

III-1. Building evidence of violation

In many countries, TSPs are not able to take a picture of a violator which is admissible as evidence for the purposes of EFC enforcement. This is particularly problematic for the enforcement of free flow EFC systems which is the hypothesis investigated in this report.

Several countries have introduced automated licence plate recognition for enforcement but it is far from being general and there are few application in EFC.

III-1.1. Electronic means for recognising licence plates

In the framework of " open road tolling ", the Expert Group recognised that electronic means for recording and recognising a vehicle's licence plate are the only efficient means to identify violators.

The use of such systems should have no detrimental impact on road safety or on the fluidity of traffic movement and supports the removal of lifting bars on any road networks.

Therefore, such systems offer considerable advantages for TSPs trying to ensure that data related to each violation is admissible as evidence and cannot be disputed.

These systems can be:

- fully automated which may require that they are certified by appropriate authorities so that they are effectively considered to be "representatives of the law";
- semi-automatic where the violation report itself is made by a member of the police, or a duly authorised TSP or EFCO agent .

In order to help reduce the administrative burden on police officers and judicial authorities, the Expert Group recommend that the processing of data recorded by electronic systems should be delegated to TSP and/or EFCO agents as much as possible.

Recommendation 3. The use of electronic systems for the detection and identification of violators using the recognition of a vehicle's licence plate (ie without the need to stop vehicles) should be encouraged.

III-1-2. Notification of a violation

If the above recommendations are to be useful in an operational context, it is also necessary for TSPs to be able to issue legally valid notifications to violators. Even though this is already allowed in the majority of national legislations, the Expert Group felt that it is was important to make a general recommendation on this issue.

Recommendation 4.: TSP agents should be authorised to draw up statements of violations and issue notifications to violators in respect of their non-payment of tolls.

III-2. Recovery of outstanding payments and enforcement

III-2.1. The recovery of outstanding payments

III-2.1.1. General case: recovering without stopping vehicles

The Expert Group recognises that procedures to recover outstanding payments which, in majority of the cases will need to be carried out without stopping a violator's vehicle, must be as effective as possible. These procedures will be described in the following paragraphs.

Observation 4. The Expert Group considers that all necessary legal measures or regulation should be taken to allow recovery of outstanding toll payments without requiring vehicles to be stopped.

III-2.1.2 Power of stopping vehicles

The most effective measure that can be taken to ensure that an offender pays the toll or, having committed a violation, pays any fines due, is to physically stop the offender on the TSP's network in the first instance or on another network if possible.

From a preventative point of view, this should preferably be implemented on each of the TSP's networks by duly accredited TSP employees (thus avoiding the need for a significant number of "highway patrols").

Recommendation n° 5. TSP's agents should be entrusted with the legal power to stop an offenders' vehicle on their own networks for the purpose of investigating a violation and, if necessary, implementing toll/fine recovery procedures.

However, this legal power should respect the principle of non-discrimination between people from different Member States, and thus, vehicles should not be stopped on the basis of their nationality.

III-2.2. The recovery of outstanding payments : TSP's coercive power.

The recovery of outstanding payments is a priority for all TSPs as they must ensure the economic stability of their operations.

Where a violation is established and a vehicle stopped, it is imperative that TSPs have the legal authority to recover the unpaid amount or at least, to require the offender to sign an acknowledgement of a debt. To do this, TSP's should be entrusted with some coercive powers – in particular the power to immobilise a vehicle for a specified period of time.

Recommendation n° 6. TSP's agents should be entrusted with the legal power to immobilise offenders' vehicles for a specified period of time for the purposes of allowing the offender to settle the outstanding toll.

III-2.3. The responsibility of the holder of the registration certificate.

If an offender's vehicle could not be stopped on the TSP's network, the Expert Group consider that TSPs should be able to identify the registered owner of a vehicle by being allowed access to vehicle registration data at both national and international levels. This is already possible in some countries such as Portugal. This will make it possible for TSP's to carry out enforcement actions on offenders who have not been stopped on the network.

To be effective, this will require that all national legislations stipulate the registered owner of the vehicle as being responsible for any violations or toll evasions unless they nominate another person as the driver at the time of the violation was committed.

Recommendation n° 7.

National legislations should be amended such that:

- **The registered owner or keeper of a vehicle (or the leasee in the case of a leased vehicle) is responsible for any violation or fraud committed using that vehicle unless**
- **The registered owner or keeper of a vehicle (or leasee) nominates another person as being the driver at the time the violation/fraud was committed and provides the TSP with full contact details for the nominated person within a specified period.**

Recommendation n° 8. TSP's should be given the authority to identify the registered owner of a vehicle by accessing national vehicle licence plate data without starting any formal legal proceedings. Conditions for having access to such information (for example, the time to get a response, quality of the information received and the cost of access) should be the same for all TSPs.

III-2.4. Distinction between simple violation, simple fraud, aggravated fraud.

If an offender does not settle all outstanding toll payments and/or fines within the time limit prescribed by the rules or laws applicable to the TSP network, the

classification of the offence changes from a violation to a fraud in the context of this report.

Two parallel procedures are then possible which can be carried out separately or in combination. The first procedure consists of taking measures allowed by law against the offender to recover unpaid toll amount. The second consists of prosecuting the offender and as a consequence, levying a fine or custodial sentence according to the applicable national laws.

Should recommendation n° 6 be implemented, each TSP would need the means of initiating both types of procedure without requiring the authority of public agencies. This is the case in certain countries today (France, for instance). This is the main reason that the Expert Group strongly recommends the implementation of recommendations number 6 and 7.

It is necessary to have a clear distinction between simple fraud and aggravated fraud. A distinction based on the ways of penalising the offender can be made:

- Simple fraud : the offender is liable to a fine in the form of a lump sum ("lump fine") . If the payment takes place within the prescribed time limit, no legal proceedings will be initiated.
- Aggravated fraud : the offender is subject to legal proceedings.

Recommendation n° 9. National legislations should be adapted so the transition criteria between violation, fraud and aggravated fraud are properly defined. The transition criteria should be defined at national and/or European level according to the number of violations committed by a violator and total financial amount outstanding. Each TSP should make an initial representation on appropriate transition criteria to their relevant legislative body.

III-2.5. Simple fraud : opening the field of compromise to TSP's.

The Expert Group considers that in order not to congest national and international police or judicial services, it is important that procedures relating to simple frauds should be dealt with directly by TSP's. These procedures can be carried out when vehicles are stopped on the network or by correspondence later on.

Therefore, it is recommended that some TSP's employees be given the authority to apply a lump fine accompanied by reasonable administrative costs to the offender.

Recommendation n° 10 : Some TSP's employees should be given the legal authority to apply a compromise penalty to offenders corresponding to the amount of unpaid toll plus reasonable administrative costs.

III-2.6. Penalisation of the aggravated fraud : the necessity for European harmonisation.

The procedures recommended above will make it possible for a greater number of cases to be dealt with directly by TSPs. This should considerably reduce the number of judicial proceedings at both national and European levels compared with the situation that would prevail if the procedures recommended above were not implemented.

Where a toll payment remains outstanding, the violator falls into the category of what this report terms aggravated fraud. In this case, the TSP will be compelled to prosecute the offender according to formal legal means.

The members of the Expert Group considers that :

- it is necessary that cross-border legal procedures concerning toll collection offences and EFC offences in particular, should be formally defined by European legislation rather than through bilateral or multilateral co-operation agreements;
- Member States should treat aggravated fraud in the same manner so that national legal action can be taken against violators committing such offences is equivalent.

Recommendation n° 11. Further European legislation should make provision for the cooperation of national justice departments in matters relating to the treatment of toll collection offences. National laws should also be modified to ensure that anyone committing aggravated fraud should be liable to equivalent penalties in all Member States.

III-2.7. Black lists of offenders at national or European level.

It is also important to recognise that regardless of any modifications made to legal and cross-border procedures, any significant increase in the number of fraudulent users could block judicial systems and as a consequence, jeopardise the future of toll collection systems in Europe.

Cooperation cannot therefore be limited to enforcement measures taken after a violation has taken place. Preventative measures, such as the creation of databases of known repeat offenders which are accessible to TSP's therefore enabling them to intervene while the offender is on their network, should also be taken. If this is not possible within the framework of the contractual framework as discussed in section II-3.3 and recommendation n°1, it is necessary to examine how to address this issue in other ways.

Ideally, it would be advisable to keep such black lists as up-to-date as possible and constantly available for consultation by TSP's. The Expert Group also recognise that creating and maintaining such lists at a European level may raise significant legal and data protection issues which will need to be addressed.

Although the Expert Group considers detailed analysis of this issue to be outside their remit, they wanted to raise it as an outstanding issue which needs to be addressed.

Recommendation n° 12. Member States should examine whether authority can be given to TSPs to create databases known as "black lists" of users who are known as repeating offenders and whether these databases can be available for consultation by all TSPs.

APPENDICES

ANNEX A. Expert Group Members

The European Commission appointed the members of the Expert Group

Name	Company/organisation
Jean Mesqui (Leader)	ASFA (France)
Hector Aguirre	ASETA (Spain)
Roberto Arditi	SINA (Italy)
Gildas Baudez	Carte Blanche Conseil (France)
Susana Ferraz	ViaVerde (Portugal)
Jan Malenstein	KPLD (NL)
Martin Mirk	ASFINAG (Austria)
Guenter Raffel	BAG (Germany)
Colin Wilson	IBI Group (UK)

ANNEX B. Definition of TC violation and status of offences

(EFC is not considered as specific) (Examples of national road codes or legal texts in eight countries)

B.1 Italy

TYPE	ID	CONTENT	SANCTION
Road Code	<u>Road Code</u> Art. 176: Behaviour while driving on the highways and on the main extra urban roads	11. On the motorways where toll is due, when stated and signalled, the drivers have to stop at the special barriers, eventually queuing up according to the indications given by signals or by staff instruction and they have to pay the toll according to the formalities and the rates in compliance with the regulations.	
		16. For the user of toll highway without his/her title of transit, or for the driver using the control systems in an improper way in comparison to the title in his/her possession, the toll to be paid is computed from the most distant entrance station according to the class of his/her vehicle. The possibility of proving the proper station of entrance is given to the user.	
	On highways, <u>if payment of toll is missed</u> , wrong position of parking in case of block, abandonment of vehicles, travel of heavy goods vehicles on the overtaking lane (with 3 lanes)	17. <u>Whoever</u> transits without staying in correspondence with the toll stations, creating danger for the circulation, as well as for individual and collective safety, or <u>performs any action with the purpose to elude all or part of toll payment, will pay an administrative sanction, except in the case when the fact constitutes a crime.</u>	Fine : EUR 68,25 2 points less in the driving licence

B.2 Spain

Traffic Law	Article 53.1	“ All vehicles wanting to pay with EFC must be equipped with the technical means allowing to process the transaction normally”.	
Toll Roads Law	Article 29.3	“ In Toll Roads equipped with EFC systems, in order to have evidence of a violation, any technical or mechanical image recording system identifying vehicles, previously certified by the Administration, can be used. Such images will represent sufficient evidence in the claim filed by duly authorised Concessionaire's personnel, in the corresponding fining procedure”.	
EFC traffic signs	<u>Obligation Sign</u> : R-418 (Dedicated EFC lanes for the exclusive use of vehicles equipped with a valid OBU)		
	<u>Information Sign</u> : S-32 (Lanes in which, in addition to EFC, other payment means are accepted)		
Legal issues pending		1. Procedure for the appointment of “ <u>duly authorised, personnel</u> ” of the Spanish Concessionaires that will legally be empowered with a police officer status when filing violation reports	
		2. Obtaining approval and certification of image capturing systems.	
		3. Achieving Toll Operators access´ to offender vehicles license plates databases and paying the concessionaires the due toll amount It is essential to recover the unpaid toll amount before starting any kind of judicial or administrative proceedings.	Notes: Fine Article 65 Traffic Law : “ The actions or defaults against the Traffic Law provisions will be considered as administrative offences and will be penalized ...”. The offender is responsible for a minor offence. Article 67 Traffic Law : Penalty up to EUR 91.

B.3 Portugal

TYPE	ID	CONTENT	SANCTION
Portugal Legislation	Brisa notifications are ruled by Decree-Laws:		
Decree-Law 130/93 – 22/04/93 defines a set of rules that allows the application of the regimen of fines	Article 4	Nr 1 – The non payment of toll tariff implies the sending of a notification to the owner, acquirer with property reserve, usufructuary or lessee with a contract of financial rental location of the vehicle, identifying the driver	
		Nr 2 – The owner, acquirer with property reserve, usufructuary or lessee with a contract of financial rental location is obliged to identify the driver except if the abusive use of the vehicle has been proved.	
		Nr 3 – The detainer (or leaseholder) is obliged, in the same terms, to proceed to the identification of the driver	
		Nr 4 – If the identification isn't made, he is responsible for the payment of the fines to apply, consonant the cases, to the owner, acquirer with property reserve, usufructuary or lessee with a contract of financial location	
	Article 6	Nr 4 – The responsible for the payment of the notification can make it voluntarily	
Decree-Law 294/97 (24/10/97)	Article 4 Remission of the Decree-Law n° 130/93	The disposals of the Decree-Law n° 130/93, should be considered made for the equivalent disposals of Base I and Base XVIII of Decree-Law 294/97	
	Base XVIII	Nr 1 – The non payment of toll tariff is punished with a fine, which minimum value will be equal to ten times the amount of toll fee,	but never less than 24,94EUR, and the maximum should be equal to five times the value of fine by the minimum
		Nr 2 - when it isn't possible to know the	

		travelled distance, toll tariff should be equal to the fee of the most distant travel possible, in relation to the exit toll.	
		Nr 4 – The non payment of toll tariff implies a court notification	Open system: Fee – equal to toll tariff Fine – is ten times the amount of fee but never less than 24,94 EUR
		Nr 5 – Toll collectors are put up to the level of a public servant and therefore they have authority to assign a process notification into court.	Closed System: Fee – is calculated on the basis of the most distant travel possible to make in relation to the exit toll . Fine - is ten times the amount of fee but never less than 24,94 EUR
		Nr 6 – The violation detection can be made by technical device through image capture of the vehicle which has committed the violation	Notes: Fine has two values: Minimum – applied when the violator pays voluntarily - which is ten times the amount of fee but never less than 24,94 EUR maximum – applied by court This case happens when the violator doesn't pay and the process is sent to court - which is five times the value of fine by the minimum 60% of the fine amount (minimum or maximum) paid back to the government
		Nr 7 – The technical devices used on image capture must be previously approved by DGV according to the rode code	

B.4 France

Road Code (Regulatory section – Decrees issued by the State Council)	Article R421-9	Unless a special authorisation has been provided, all drivers using tolled highways must pay the due amount corresponding to the covered highway section and calculated according to the category of the vehicle he/she is driving	
		If, for whatever reason, a driver refuses to pay the due amount at the tollbooth, he/she will be issued a fine as foreseen for second class fines.	
	Article R130-8	In compliance with article L. 130-7 and following the prefect authorisation, on oath agents of operating companies concessionairese for highways or road networks open to public road traffic and subject to toll payment, are allowed to state violations with respect to articles R. 412-17 et R. 421-9.	
	Article R412-17	Unless a special authorisation has been provided, all drivers using highways or road networks open to public road traffic and subject to toll payment, must pay the due amount corresponding to the covered highway section and calculated according to the category the vehicle he/she is driving.	
		If, for whatever reason, a driver refuses to pay the due amount at the tollbooth, he/she will be issued a fine as foreseen for second class fines.	

B.5 Austria

TYPE	ID	CONTENT	SANCTION
EU	EU directive 1999/62/EC on charging of heavy goods vehicles for the use of certain infrastructures "Euro-Vignette directive"		
National laws and decrees	Legal act concerning toll on federal roads		
BStMG 2002 („Bundesstraßen-Mautgesetz“)	Excerpts of the "Bundesstraßen-Mautgesetz" 2002	<u>Determines / confirms:</u> <ul style="list-style-type: none"> - the tolled network - the vehicle classes and their parameters - exemptions from toll duty - general basis for calculation of toll rates (dependencies) - Authorisation for MoTrans to fix rates in a decree - Enforcement to be done by ASFINAG 	
	Part 1: The Mandatory Toll §§ 1 – 5	§ 3 – Tollcreditor is ASFINAG § 4 – Tolldebtor is the driver of the vehicle and the registered owner of the vehicle. Each of the debtors are to be liable for the whole debt § 5 – Permanent Exemptions are for example: army vehicles, vehicles on behalf of PfP-SOFA, vehicles with blue headlight; Temporary Exemptions are for example: vehicles in aid humanitarian scope	
	Part 2: Distance – related toll (Trucks/Buses) §§ 6 – 9	§ 6 – Vehicles with a MGWW of more than 3.5 t § 8 – The drivers obligations e.g. checking that the GO-Box is in working order before, during, and at the end of every trip on the toll road network and report any dysfunction or faults immediately § 9/1 – ASFINAG has to make a proposal for Toll Rates, which are decreed by the Ministry of Traffic § 9/2 – The toll per kilometer varies depending on the number of axles on the vehicle or combination of vehicles § 9/7 – Toll Rates have to conform to Art. 7/9+10 of the	

		EU Directive 1999/62/EG.	
	Part 3: Time Related Toll §§ 10 – 13	Time Related Toll applies to all vehicles with a MGWV up to 3.5 t – Toll sticker (“Vignette”)	
	Part 4: Tolling Regulation §§ 14 – 16	§ 14/1 – ASFINAG has to detail all general provisions for the toll payment	
	Part 5: Toll enforcement officers and Substitute toll §§ 17 – 19	§ 17 – Toll enforcement officers (Nomination, Sworn into the job, requirements, their duties, ...) § 18 – The powers of the Toll enforcement officers (powers of authority entitled to enforce administrative acts, to control, to take substitute toll and to request provision of a provisional security deposit, initiation of administrative penal proceedings, ...)	§ 19 – Substitute toll (maximum frame 300 EUR, Apprehension by toll enforcement officers or retroactive summons procedure , ...)
	Part 6: Sanction §§ 20 – 25	§ 20/1+2 – A person who drives a vehicle (that is liable to the toll) on the Austrian toll road network without correctly paying have to pay a fine between Euro 400 and 4000. Only the driver of a vehicle is punishable. § 21 – Obligation of the driver to stop his vehicle in case of instruction by the toll enforcement officers § 23 – The registered owner of a car is beside the driver also liable for the fine - payment of the driver. § 24 – 80 percent of all fines are entitled to ASFINAG	Frame of the fine: between Euro 400 and 4000 (due to an administrative penal proceeding) § 20/3 – If the substitute toll (Euro 110 or 220) was paid, the fine will be remitted. Drivers who do not stop her vehicles when instructed to so by a toll enforcement officer are fined up to 4000 EUR (administrative penal proceeding)
	Part 7: Public authorities and administrative penal proceedings §§ 26 – 30	§ 27 – Provision of a provisional security deposit (up to a value of 1200 EUR) in apprehension by toll enforcement officers § 30 – ASFINAG get all information from the central vehicle registration (MGWV, Name and address of the registered owner of the vehicle)	Provision of a provisional security deposit (up to a value of 1200 EUR) in apprehension by toll enforcement officers § 28 – Preventive measures: Break of the trip by taking suitable preventive measures (e.g. confiscation of vehicle documents and keys, clamping of the vehicle, parking it in a suitable place and other similar measures).
Tolling Regulation for motorways and express-	In accordance with section 14(1) BStMG 2002	ASFINAG is obliged to draw up Tolling Regulations containing provisions governing the use of motorways and expressways	Substitute toll is not a fine - Complete non-payment of the toll – 220 EUR (including 20 % VAT)

<p>ways in Austria</p>		<p>on which tolls are levied. The present Tolling Regulations have to specify, among other terms, the following themes :</p> <ul style="list-style-type: none"> - Determine exact network of roads subject to the toll - Signing (image capture of the vehicle) - Toll rates (the base toll per kilometer of EUR 0.130 – excluding 20 % VAT- for vehicles with two axles; number of axles, ...) - Registering with and unregistering from the toll system (e.g. Distribution channels, Data storage, Provisions relating to the GO-Box, Interoperability, ...) - Itemised toll information bills - Retroactive toll payment and toll billing - The drivers obligations (Correct installation of the GO-Box, Correct operation of the GO-Box, exact description of the drivers duties, ...) - Toll enforcement officers and their powers, their vehicles and their identification cards (images) - Substitute Toll and methods of payment - Competence and customer service 	<ul style="list-style-type: none"> - Partial payment of the toll - use of the wrong category – 110 EUR (including 20% VAT) <p>Non-imposition of a penalty, if the substitute toll was paid.</p>
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B.6 United Kingdom

<p>Offences regarding toll collection are usually defined by requirements of separate Acts of Parliament (toll orders) for each tolled road, network or crossing. Some example clauses relating to key tolling issues at different tolled roads, networks or crossings in the UK are indicated below:</p>			
<p>Severn Bridges Act 1992</p>	<p>Part II, Clause 14</p>	<p>(4) A person who without reasonable excuse — (a) refuses or fails to pay a toll for which he is liable, or (b) attempts to evade payment of such a toll shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p>	
<p>Greater London Act 1999</p>	<p>Schedule 23 – Road User Charging</p>	<p>25. (1) A person who, with intent to avoid payment of a charge imposed by a charging scheme or with intent to avoid being identified as having failed to pay such a charge,- (a) interferes with any equipment used for or in connection with charging under a charging scheme, (b) causes or permits the registration plate of a motor vehicle to be obscured, or (c) makes or uses any false document, is guilty of an offence.</p>	<p>(2) A person guilty of an offence under subparagraph (1) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both.</p>
	<p>Typically a civil offence</p>		<p>Court procedures Recovery of debts through court-appointed bailiffs if necessary No statutory police involvement</p>
<p>Transport Act 2000</p>		<p>The Act provides that non-payment of a road user charge will be a civil matter rather than a criminal offence, and outstanding charges will be recoverable as a civil debt.</p>	
<p>New Roads and Streetworks Act 1991</p>	<p>Part I, clause 15(4)</p>	<p>Where there remains unpaid — (a) a toll which a person is liable to pay by virtue of a toll order, or (b) a prescribed charge which he is liable to pay by virtue of subsection (3), the person authorised to charge tolls may recover from the person liable</p>	<ul style="list-style-type: none"> ● Five levels to the standard scale for fines as defined in section 75 of the Criminal Justice Act 1982. ● A court may impose a fine up to the

		the amount of the toll or charge together with a reasonable sum to cover administrative expenses.	maximum for the prescribed level. <ul style="list-style-type: none">● 2000 Levels were: level 1 = £200(Eur 290) level 2 = £500(Eur 725) level 3 = £1,000 (Eur 1450) level 4 = £2,500 (Eur 3630) level 5 = £5,000 (Eur 7255)
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B.7 The Netherlands

Not yet specific legal text but three laws must be mentioned			
Law on motoring taxes	Article 80 creates the possibility of levy tolls by institution of other laws and regulations	The base for the Dutch charging for the use of certain roads during certain hours and pay per kilometer (24h/24-7d/7) is mentioned as the law on accessibility and mobility.	
Law on accessibility and mobility (4/07/2002)	It provides regulations to levy mobility fares (not called tolling)	The fare is dependant on specific automotive environmental and safety parameters.	No sanctions defined.
	Art. 26	Specific rules of legislation and the fares will be provided by additional law making on national, provincial and local level.	Additional law making will institute the penalties, this has not happened yet.
	Art 42 enforcement	Executed by the taxing enforcement agency of the Ministry of Finance and by the generic enforcement officers and agencies as mentioned in the Law of penal prosecution and procedures	These officers are authorised to inspect a motor vehicle. The driver and/or the registered keeper of the vehicle are obliged to give their necessary cooperation.
	Art 50 This law will become effective on the date to be determined by a Royal letter, not yet published.		
Law on taxation of heavy vehicles (29/11/1995) (EUROVIG NET)	Approve and transpose EU treaty to tax the use of the heavy motor-vehicles and EU guide line 93/89EEG	Taxation measures not a regulation on tolling. It applies to lorries from 12 tons. Tax has to be paid in advance and certificate acquired at the Ministry of Transport or at the Customs. Tariff is fixed from 750 to 1550 euros per year	For not having respected environmental parameters, the law specifies a max fine of 4 537 euros
	Art. 18 enforcement	Executed by the same enforcement agencies as listed at the law on accessibility and mobility. Also the Traffic Inspectorate of the Ministry of Transport is a qualified enforcement agency according to this law.	These enforcement officers are authorised to stop a motor vehicle.
		The driver is obliged to hand over the certificate for inspection on first demand	
		All police forces are allowed to enforce this taxation law but this is not a common practice.	
	Tolling Only few locations in the Dutch road network	All locations still operate lifting bars. No electronic tolling are existing.	

	are toll levied : bridges and tunnels operated by private agencies. Westerschelde tunnel is member of ASECAP.		
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B.8 Germany

<p>EU</p>	<p>directive 1999/62/EC</p>	<p>on charging of heavy goods vehicles for the use of certain infrastructure</p>	
<p>National law</p>	<p>Autobahn-Maut-Gesetz replacing Autobahngebührengesetz (=Eurovignette)</p>	<p>Competent authority = BAG (Federal Office for goods transport)</p> <p>BAG has instructed and authorized Toll Collect (TC) (= private company) to build up and to operate the Maut-system and to organize the handling of the payments (controlled by BAG)</p> <p>All incoming money comes to hand of Federal Republic of Germany TC is receiving a remuneration.</p> <p>the tolled network (almost every highway = Bundesautobahn) Possibility to include further sections of roads (=Bundesstraßen) for certain reasons</p> <p>tolled vehicles and combinations in the meaning of directive 1999/62/EC Art. 2 b) (= 12 t MGWV and more) only few exceptions</p> <p>Tolldebtor is</p> <ul style="list-style-type: none"> - registered owner of vehicle - Person use the vehicle e.g. transport enterprise - the driver of the vehicle <p>Each of the debtors is to be liable for the whole debt but Maut is only to pay once.</p> <p>Debited sum of Maut is depending on</p> <ul style="list-style-type: none"> - used distance in km - used vehicle classified by - number of axes and - <i>pollutant (Nox) emissions</i> <p>Duty is fulfilled if accounting transaction is made <u>before</u> or (using an OBU) during the ride. Transaction is made by OBU (on board unit) / internet / call-center / terminals</p> <p>All ways of transaction are equivalent (OBU not mandatory)</p>	

		<p>but booking has to be done before using the tolled highway.</p> <p>Duty to make a transaction is set by public law. Payment towards BAG unless a contractual relationship exists between user and TC (contract is given by every way of booking)</p>	
		<p>If Maut isn't duly paid (no payment or wrong payment (e.g. classification, route etc.))</p>	<p>Two consequences :</p>
		<p>Subsequent charging is executed by</p> <ul style="list-style-type: none"> - BAG and - Toll collect (thereof given sovereign rights by law) 	<p>1. Subsequent charging of Maut</p> <p>Maut is made valid (administrative act) in concretely resulted height if debtor gives full particulars</p> <p>If he doesn't give the facts Maut is made valid on the basis of 500 Km driven</p> <p>In case of complaint juridical decision has to be done by an administrative court</p>
		<p>Fine procedure is executed by BAG (as well as against German and foreign violators)</p>	<p>2. Fine a penalty is imposed in a fine procedure against the person in charge (the person which was instructed to make sure that the transaction should be conducted)</p> <p>Height of the fine depending on the mode of offence (intentional or negligent)</p> <p>enterpriser/mercantist 300 EUR / 150 EUR driver 150 EUR / 75 EUR</p> <p>In case of repeated offenders the fine is higher.</p> <p>Maximum fine up to 20.000 EUR (multitude of violations which were founded out by check ups in enterprises)</p> <p>In case of complaint</p>

			juridical decision has to be done by criminal court
		Enforcement :	
		monitoring of compliance by BAG	About 500 control - officers with 275 cars (controls on the highways)
			34 inspection – officers to make check-ups in (German) enterprises
		Control officers using special equipment to make sure only to stop cars if they are potentially violators (no actual transaction) (online-query in database)	
		Officers having the sovereign rights to enforce administrative acts, to control including the right to stop vehicles, to take substitute toll and to request a provisional security deposit, initiation of administrative penal proceedings, ...)	
2 decrees	Mauthöhe-Verordnung	Amount of the Maut per Km dependent on the vehicle classes and the parameters	
	and Maut-Verordnung	Description of the proceedings	

ANNEX C VERA 2 articles which are EFC specific or EFC referenced

- 1.1.b;** *"Offences arising from the non-payment of fees, tolls or taxes and its associated penalties charged for the use of a road, tunnel, bridge or crossing, committed by non-residents".*
- 1.2;** *"This Directive shall apply to the Member States of the European Union, the EFTA countries and to States and countries that adhered to this Directive according to Article 11".*
- 2;** *"Administrative decision refers to decisions rendered in some States by administrative authorities empowered to impose the penalties prescribed by law for certain classes of offences".*
- 3;** *"Documents, drawn up by enforcement, judicial and administrative authorities of the State of Offence that are commonly used in that State to provide and support proof of violation and offender, shall have the same legal status in the State of Residence as if they had been drawn up by similar authorities of the State of Residence, and vice versa".*
- 4.2;** *"Article 4.1 shall equally apply to the enforcement of the non-payment of fees, tolls or taxes and its associated financial penalties charged for the use of a road, tunnel, bridge or crossing as defined in Article. 1.1 (b), insofar as law of the State of Offence has instituted ".*
- 4.3;** *"When enforcing and prosecuting an offence according to the terms of Article 4.1, the State of Offence shall notify that person in his/her own language at his/her address in any State where he/she resides or is registered, is a citizen or has income or property (hereinafter known as the State of Residence). The State of Offence shall also provide proper information on the opportunity to present his/her defence or to raise appeal to a decision of the Court or Public administrative body".*
- 4.5;** *"When a judgment or administrative decision has become final and enforceable in the State of Offence after the offender has been given proper notice and has been properly informed on the opportunity to present his/her defence or to raise appeal to a decision of the Court or Public administrative body, the State of Offence shall act according to the EU Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties¹⁵ (hereinafter known as the Framework Decision) to have the financial penalty enforced by the State of residence".*
- 5.1;** *"Where applicable and instituted by law in the State of Offence, the natural or legal person, identified as the registered keeper or owner of the vehicle shall be regarded as the offender and treated according to Art 4".*
- 7;** *"Each State as mentioned in Article 1.2, shall give their full assistance to any State of Offence that, for enforcement purposes, forwards a request for:*
- a. The data of a vehicle that has been identified in relation to a violation in the requesting State of Offence but that is registered outside that State, if action is taken according to Article 4.*
 - b. The name and address of the registered owner or keeper of a vehicle that has been identified in relation to a violation in the requesting State of Offence that is registered in another State if action is taken according to Article 4.*
 - c. The name and address of an offender, who resides, is a citizen or has income or property outside the State of Offence, if action is taken towards such a person according to Article 4.*
 - d. The details of the driver,s license of persons as mentioned in Article 7.1 (c).*
- 2.** *To enable this in a way that it supports efficient processing and to promote effective enforcement, a EU approved electronic interface to generate and to send data requests will be applied for this.*
- 3.** *The States as mentioned in Article 1.2 shall grant each other access to the data requested in article 7.1 (a), (b), (c) and (d), preferably by means of prior authorisation.*
- 9.2:** *"The facility, defined in Article 8.1 and 8.2, shall also be used by operators and agencies that operate charging facilities for the use of a road, tunnel, bridge or crossing, insofar as it will concern acts of non-payment by non-residents of fees due and its associated penalties".*

10.3; *"If it concerns a violation as defined in Article 1.1 (d) the value of the fee to be paid shall be returned to the operator of the tolled facility unless agreed otherwise between operators. All other monies shall be dealt with in accordance with Article 10.1".*

12: *"Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within two years after this Directive has entered into force. They shall immediately forward to the Commission the text of those provisions, together with a table correlating those provisions with this Directive".*

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall lay down the methods of making such reference.

Also take note of **whereas (8)** as this specifically is a reference to EFC:

"It is recognised that enforcement of non residents of a Member State in the area of Electronic Fee Collection and Electronic Tolling will require a Pan European solution urgently as laid down in a Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee, and the Committee of the Regions on a Strategy towards Deployment in Europe of Interoperable Electronic fee Collection Systems for Road Transport".

ANNEX D Glossary of terms

Term	Meaning
Contract Issuer (CI)	The organisation which issues the service rights to the customer, administers customer and vehicle data, is responsible to make the OBUs available to the customer, organises payment to the EFC Operators.
Customer	Haulier who has signed the contract with the Contract Issuer
EFC Operator	The organisation entitled to collect the toll, operating the Electronic Fee Collection infrastructure.
Free flow	Charging system which enables the traffic to pass freely without stopping, whether channelled into single lanes, or under normal traffic conditions.
Toll gate	Generic term for location where toll is perceived or controlled. It can be toll plaza or organised or random areas (under fixed porticoes or in the beam of mobile detectors) where vehicles or OBU are identified.
Toll plaza	Area dedicated to toll collection at entrance or exit, or in the middle of toll sections.
Barrierless toll	All systems using not any physical means for stopping vehicles submitted to tolling.
Lifting bar	Device able to close the toll lane, which channels the traffic, and allowing the PSP to stop the vehicle of a driver who has not paid the toll. Who breaks the barrier is supposed to intentionally refuse to pay.
Monolane	Charging system which channels traffic in one lane. Charging and enforcement of each lane may be dedicated (to EFC or lorries for example).
Multilane	Charging system, which does not channel traffic. Charging and enforcement are undertaken across all lanes of the road.
OBU	On-Board Unit used for tolling
OBU Issuer	Organisation which acquires and issues qualified OBUs
Payment Service Provider (PSP)	The organisation which collects the money from the customer, handles the payment of services, (e.g. credit or petrol card companies, banks)
Sovereign competence	Rights given by the status of fee. If toll is public tax, all rules and procedures applicable to this type of fee are appropriate.
Substitute toll	It is not a penalty but a fixed amount of money, which can be paid in the event of improper payment of the toll.
Tolled network	Part of the road network submitted by law or contract to tolling.
Transport Service Provider (TSP)	The organisation which provides a transport service to the user (i.e. the road operator)
User	The driver of the vehicle. He is the person who directly "uses" the service and directly interacts with the OBU. Driving through the tolling stations, he has to understand the various signals that the OBU and the tolling stations are sending to him. He has to make settings in the OBU when he changes his trailer, when he enters or leaves a country, and so on. = Driver
VERA 2	European project ended in 2004, which has addressed the practicalities of cross-border enforcement in Europe.
eNFORCE	Concept of European Enforcement Network proposed by VERA2. It comprises : 1) a network of agencies and organisations 2) a data exchange service to facilitate crossborder enforcement procedures

ANNEX E : Roles assumed by different bodies in the compared countries (for the time being)

Country	TSP	EFCO	CI	PSP	OSR
Austria	ASFINAG	EUROPPASS (on behalf of ASFINAG)	EUROPPASS (on behalf of ASFINAG)	Petrol- /Fleetcard and Credit Card Companies	Republic of Austria
France	All tolled motorways and infrastructures Concessionaires	All tolled motorways and infrastructures Concessionaires	All tolled motorways and infrastructures Concessionaires and other bodies to come		Ministries Of Public affairs Defense
Germany	BAG	Toll Collect GmbH	Toll Collect GmbH	Financial institutions /Credit- and Petrolcard companies	BAG (in special parts also TC)
Italy	26 motorway and tunnel operators associated to AISCAT	all concessionaires companies	Autostrade per l'Italia		
The Netherlands	Westershelde tunnel Prins Willem Alexanderbridge and the Kiltunnel.				
Portugal	BRISA	Via Verde	Via Verde		
Spain	ACESA, AUMAR, AVASA, IBERPISTAS EUROPISTAS and up to the full 29 ASETA members	ACESA, AUMAR, AVASA, IBERPISTAS EUROPISTAS and up to the full 29 ASETA members	Financial institutions and petrol cards companies	Financial institutions and petrol cards companies	
U. K.	Bridge operators				

ANNEX F : Advantages and disadvantages of enforcement means

	effectivity	acceptability credibility	expenses	Road-safety	free flow-traffic	Difficulties to execute measures
barriers	Very high	nearly perfect	low	high	Not fulfilled	minimum
stopping cars	Low number of stopped cars	Minimum of risk to be caught	High material and personal expenses	high risk (to stop cars much higher than stopping lorries)	restricted	Only few
Licence plate-number recognition	High	Very high	Considerable investments but little cost of maintainance	nearly perfect	Fulfilled	Very high unless „VERA 2 – procedures and exchange of informations

ANNEX G : Positioning of enforcement means for EFC

