

REETS TEN

Activity 6: Return on experience

D 6.1

a. Report on return on experience on commercial matters



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Introduction

Activity 6 aims at disseminating the key results of the project to the external stakeholders in order to ensure a constant channel of communication with them. The experiences gained through the project main activities are shared with other organizations, consultancies, public authorities and experts who work specifically in the field of electronic tolling and interoperability. They will have the opportunity to interact with the project consortium and work package leaders providing their concrete feedbacks, inputs and analysis concerning the major findings of the project.

Activity 6.1 a, the Report on “return on experience on commercial matters”, provides a wide and comprehensive picture of all the legal, administrative and financial issues related to the implementation of the EETS. These “commercial matters” are deeply analyzed and some key recommendations are put forward to provide more clarity and certainty on these important issues. In particular the relations between ETS Providers and Toll Chargers have been carefully examined in order to provide the basis for future contractual agreements between the two parties.

2 Activity 1 Results and Benefits of the Analysis

2.1 Scope and Objectives

Art II.2.3 of EC Funding Decision defined the scope and objectives of Activity 1 as follows:

This Activity deals with the Contractual Framework and the Risk Management for Toll Chargers and EETS-Providers.

The work on the contractual framework will focus on the definition of a list of contractual items which have to be agreed between EETS-Provider and Toll Charger in bilateral negotiations. The objectives are to define a common understanding of the different contractual architectures and a common understanding of the contractual provisions and to properly identify and locate relevant information on contractual and procedural aspects. Only a model for remuneration will be defined. However, the detailed commercial conditions remain subject to negotiations and contractual commitments between the parties.

The project will evaluate how risks can be reduced or eliminated for the benefit of all the stakeholders in the EETS-environment, especially through the cooperation between the stakeholders. The work on risk management focuses on the definition of a list of risks accompanied with mitigating actions for the top priority risks. Furthermore it is highly desirable to achieve a common understanding of the global risk management plan mentioned in Article 3 of EETS Decision 2009/750/EC.

2.2 Findings and recommendations

2.2.1 Topic 1: Credit protection

- **Description of topic and the related barriers**

The credit protection is one of the most important contractual challenges for a TC-SP contract. Indeed, credit protection is required by the Toll Charger (pursuant to the Decision 2009/750/EC) but is a real issue to both the Toll Charger and the Service Provider:

- to the Service Provider, because of the cost and administrative burden of different credit protection tools and in particular of the bank guarantee;
- to the Toll Charger, because the "average monthly toll transaction amount" settled as a maximum by the Decision 2009/750/EC does not cover the Toll Charger's credit risk.

The cost of credit protection degrades the general EETS business model and the attractiveness of the Service.

- **Main findings, recommendations and proposed measures**

However the bank guarantee is the only credit protection toll mentioned by the Decision 2009/750/EC and in most of existing ETC service contractual documentations, Toll Chargers and Service Providers should be creative and refer, when feasible, to other credit protection tools such as, for instance:

- reducing the invoicing cycle,
- establishing a mutual guarantee fund,
- using cash collateral accounts.

Hence, during each contract negotiation, alternatives to bank guarantee at first demand should systematically be evaluated: TCs should also take into account the credit rating of the SPs and consider the combination of different alternatives. The bank guarantee should be regarded as one of the solutions and at least be kept as a fall-back solution in case the Toll Charger and the Service Provider do not reach an agreement or in case of conciliation by a Conciliation Body.

- **Benefits and cost effectiveness of the recommendations**

The benefit of these recommendations is to curb the costs for the Service Provider (and therefore for the Toll Charger and the Service User) and, at the same time, to offer to the Toll Charger, a correct protection for its credit risk.

Another benefit is to clearly identify an acceptable fall-back solution in case the bilateral contractual negotiations fail.

2.2.2 Topic 2: Toll Collection Assignment

- **Description of topic and the related barriers**

The Toll Collection Assignment is a key challenge for establishing contractual agreement. Toll Chargers and Service Providers are to share a real common understanding of the qualification of a Toll Charger-Service Provider contract in order to define the most appropriate contractual relationship. Toll Chargers and Service Providers should also be clearly aware of the precise “cause” of their bilateral contract, *i.e.* the reason why they conclude this bilateral agreement.

Toll Chargers and Service Providers have to sort out the issue of the qualification of the bilateral contract defining their relationship. Usual references to agency model or reseller model lead to a major misunderstanding and do not properly define the Toll Charger-Service Provider contract.

A strong common understanding of the toll collection assignment is a key-condition to the conclusion of bilateral contracts both conforming to the requirements of the Directive 2011/4/EC and the Decision 2009/750/EC and fully taking into account the special characteristics of each concerned ETC context, *i.e.*:

- the diversity of actors from the side of the Toll Chargers (governmental entity, governmental agency, private concessionaire, ...) or from the side of the Service providers (turn-key ETC supplier or operator, financial institution, oil company, ETC service provider, ...);
- the diversity of charging schemes according to the kind of infrastructures (linear roads), localised (like tunnels, bridges, ferries) or areas (urban charging);
- the diversity of charging schemes according to the technology (DSRC multilane free flow, DSRC with barriers, GNSS multilane free flow, combinations of these systems interfaced with the tachograph);
- the diversity of services (mandatory or not, to be applied to all users or to groups of users only, etc.).

- **Main findings, recommendations and proposed measures**

Analyzing existing schemes and from the experience of key-players involved in the REETS project, there are multiple reasons for the Toll Charger and the Service Provider to conclude a bilateral contractual agreement.

But all these reasons have to be considered through the very specific perspective of the triangular relationship between the Toll Charger, the Service Provider and the Service User.

- to the SP, the TC assigns the toll collection and the invoicing process;
- to the SU, the TC provides a toll infrastructure service;
- to the SU, the SP provides an OBE as an electronic payment mean (for toll¹);
- to the TC, the SP provides a guarantee to secure the payment of tolls.

Indeed, the toll collection assignment is a much more sophisticated *sui generis* contract and the cause of the TC-SP contract is the object of the SP-SU contract. In other terms, the TC assigns the toll collection to the SP exclusively in consideration of the provision of an OBE by the SP to the SU.

- **Benefits and cost effectiveness of the recommendations**

Building a common understanding of the toll collection assignment allow the parties to define appropriate and successful partnerships in various ETC contexts.

¹ The OBE may also be used by the SU for the payment of other services (such as HGVs dedicated and secured parks)

2.2.3 Topic 3: Registration

- **Description of topic and the related barriers**

This topic refers to the obligation set by the Decision 2009/750/EC: a Service Provider is to register with its national Member State to benefit from the status of EETS Provider and, therefore, to benefit from the right to have a contract with a TC.

As the Decision 2009/750/EC also states that the EETS Provider is to offer a full coverage of all Toll Domains within the 24+6-month delay, the obligation for a Service provider to register is considered to be a main barrier to the implementation of the EETS.

More precisely, the main barrier relies in the following question: in case the criteria to be registered or to keep registered are not or are no more fulfilled, what happens to existing partnerships? Do Toll Chargers and Service providers have to end their contracts when the Service provider does not conform to the condition of registration?

- **Main findings, recommendations and proposed measures**

The recommendations of WP1 are:

- to improve a clear understanding of:
 - criteria to be registered (article 3 of Decision 20089/750/EC);
 - rights and obligations of registered Service providers (article 4 of Decision 20089/750/EC).
- To amend the Application Guide and stick to a pragmatic approach:
 - if we except the Application Guide, there is not any provision referring to a de-registration process neither in the Decision 2009/750/EC, not in any national transposition law;
 - in fact, no stakeholder would benefit from a de-registration process.

- **Benefits and cost effectiveness of the recommendations**

The benefit of these recommendations is to continue successful partnerships conforming to the basic requirements of the Directive 2004/52/EC and the Decision 2009/750/EC even in case the Service provider does not or does no more conform to the formal requirements (registration and full coverage of all toll domains).

2.2.4 Topic 4: Remuneration

- **Description of topic and the related barriers**

Remuneration is a key ingredient to the commercial relationship, which is embedded in the TC-SP contract.

Remuneration should reflect the tasks and services exchanged between SPs and TCs. For the success of EETS, it is necessary to find those common elements across all toll domains, which will eventually fit in a recommended framework that can be used to establish Remuneration in a fair and transparent way, thus helping to reduce the negotiation cycle.

In this context, it is important to define:

- What are the key roles and tasks for each actor, pertaining to EETS?
- Who should pay Remuneration to whom and for what services rendered?
- What is the best way to define the level of Remuneration – as percentage of toll amounts, fixed fee, or a combination of fixed and variable elements?

Failing to agree on the level of remuneration between SP and TC can be detrimental to the successful implementation of EETS.

- **Main findings, recommendations and proposed measures**

Compared to current national non-interoperable systems, (R)EETS shifts existing or brings new responsibilities for both SP's and TCs, These should be recognized with regard to the remuneration, which, in the context of (R)EETS, will have to be contractually agreed by the parties, in recognition for the services they render.

Annex 1 of the Decision 2009/750/EC includes a reference to the fact that “Commercial conditions, which shall be agreed upon by bilateral negotiations between the Toll Charger and the EETS Provider”, should be reflected in the Toll Domain Statement. Most of existing ETC service contractual documentations include a Clause on Remuneration, however there is no clear relation to the services being exchanged.

To best reflect the allocation of responsibilities and the changing role of the SP in an (R)EETS environment, a value chain approach, which covers the end-to-end process from TC to SP to the User, has been recommended. It is also advisable to avoid implementing complex remuneration schemes, which may call for heavy administration and accounting.

- **Benefits and cost effectiveness of the recommendations**

The key benefit of these recommendations is to help SPs and TCs establish a common understanding of tasks and services, involved in EETS and thus enable them to reach agreement on the level of Remuneration, faster.

In turn, a fair and transparent Remuneration will guarantee a sound business case for those, who are prepared to invest in EETS.

Another benefit is to offer some practical advice on how to best define and implement a Remuneration scheme, always in compliance with national law and the rules of open market competition.

2.2.5 Topic 5: Risk Management

- **Description of topic and the related barriers**

In deliverable D 1.2 the members of the WP 1 have addressed how risks can be reduced or eliminated for the benefit of all the stakeholders in the EETS-environment, especially through the cooperation between the stakeholders. According to Art 3 of the Decision 2009/750/EC of the definition of the EETS Provider needs to maintain a global risk management plan, which is audited at least every two years.

The work on risk management focuses on the definition of a list of risks accompanied with mitigating actions for the top priority risks. Of particular importance is Chapter 3 of this deliverable as it contains recommendations about a "global risk management plan", in Chapter 4 the definition of a list of risks accompanied with mitigating actions for the top priority risks have been outlined in detail.

- **Main findings, recommendations and proposed measures**

One main finding is that the management plan should identify the main risks facing the EETS business such as:

1. business interruption (failure in the information processing chain ...);
2. cash flow/liquidity risk;
3. economic slowdown;
4. increasing competition
5. damage to reputation;
6. failure to reach or maintain full EETS domains coverage;
7. difficulty to reach required quality-of-service levels;

8. third party liability;
9. Regulatory/legislative changes.

The management plan is to detail the mitigation measures envisaged to face these risks. According to the Art 3 in the Risk Management Plan the risks are mainly considered from the perspective of the EETS provider impacts. Nevertheless the Toll Charger impacts should also be considered and / or the impacts on the service as a whole.

It is recommended to check whether the business plan of the EETS Provider duly considers the risks of the EC Application Guide and to check whether the risk management plan business plan of the company duly considers following risks of the EC Application Guide. Further, it is recommended to check whether the risk management plan & business plan of the company duly considers the REETS/EETS specific risks listed in D 1.2.

EETS is a complex business due to type of stakeholders (public & private) and the level of a toll is to be considered as an important income of Member States (MS) households. A financial & technical high quality needs to be ensured in each specific area of EETS (see chapter 4.3 of D 1.2).

List of specific areas of the EETS business environment where risk occurs:

- Service Provider and OBE certification
- Service Provider registration
- Contractual negotiation and conclusion
- Suitability for Use Tests
- Change management
- System monitoring
- Service Components
 - User registration
 - OBU personalization and distribution to user
 - Usage date collection, toll declaration
 - Production of toll statement

It is recommended to regularly update EETS specific risks in the Risk Management Plan of all stakeholders involved at least once per year. This should be monitored possibly on EU level to ensure coordinated updates of all toll domains

The most casual risk which can occur and effect one or more, or even all toll domains are linked to external & internal criminal attacks. It is recommended that each EETS risk management plan includes a specific section which details the countermeasures of the company to this type of risk. Particular attention should be given to the financial procedures.

- **Benefits and cost effectiveness of the recommendations**

The key benefit of these recommendations is to help SPs and TCs establish a common understanding of risks and suitable mitigation actions when involved in (R)EETS business and thus enable them to reach agreement in the bilateral contract.

Another benefit is to offer some practical advice on how to best set-up and implement a global risk management plan which takes into account the specific requirements of (R)EETS business.

Finally the (R)EETS means EU wide collection of toll fee (private – with VAT), tax or duty (both public fee without VAT) which has a high importance for national budget and household planning. Therefore any risk which can occur in technical systems, operational procedures and through stakeholders involved has an immediate effect on national - and/or EU level. The allocation of tasks to SP and to TC needs therefore both be covered by Risk Management Plan to foresee full monitoring of electronic toll collection schemes.

2.3 Conclusions

As a general comment on Activity 1, it should be highlighted that beyond just the findings and recommendations, the REETS project has offered Toll Chargers and Service Providers a unique opportunity to exchange views and experiences and to share ideas on how to tackle the problem of the implementation of EETS independently of usual bilateral negotiations.

Coming back to recommendations and findings, Activity 1 demonstrates that despite a great diversity of ETC contexts, and maybe highlighted by this diversity, the bilateral relationship between TC and SP covers recurrent major common topics.

Moreover its architecture and the way this bilateral relationship is part the overall context of electronic toll collection are very similar in any electronic toll context.

This observation is indicative of generally accepted ETC contractual standards, identified and clarified within this Activity 1 in order to offer to ETC players valuable basis for improving a common under-standing of ETC challenges, to support TCs and SPs in defining their partnerships and curb the costs and hence to help with the implementation of the EETS throughout Euro