

ENFORCEMENT OF TOLL PAYMENT INFRINGEMENTS IN THE EUROPEAN UNION

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CONTENT

04

Executive Summary

06

Introduction

06

Discrimination among drivers
depending on their origin

08

The Case of Dartford
Crossing and M50

09

Free movement of people and
goods

11

The Case of Chile

12

Competitiveness of the toll
operators sector

13

The case of “No vull pagar”
(I do not want to pay)

14

Safety issues and the
CBE Directive

16

Proposal of a legal
framework

19

Conclusions

20

References

EXECUTIVE SUMMARY

Prosecuting traffic offences committed by non-resident drivers within European Member States (MS) is a difficult process for Toll Road Operators (from now on Operators) and the Administrations that the Operators represent, because of the bureaucratic processes and the direct and indirect costs involved, as well as for the Users of the public infrastructure. As we explain in this paper, the lack of a clear and simple process for cross border enforcement of all traffic offenses, and specifically of toll payment infringements, is a barrier to the fulfillment of the Internal Market promoted by the EU, because it implies unequal treatment of drivers and road operators, which at the same time has consequences in terms of free movement of vehicles, road safety and infrastructure funding.

According to the European Commission (EC), non-resident drivers account for a 5% of the total traffic in the European Union being three times more likely to commit traffic offences than resident drivers, which in relative terms means that foreign drivers tend to commit more traffic offences. A study from the Institute for Traffic and Safety (INTRAS)¹, recognizes that usually 15% of the drivers involved in road fatalities are foreigners. This different behavior when driving in your own country or in another MS reproduces in the free-flow toll payment even more extremely, as illustrated by the data presented in the cases of Dartford Crossing and M50, for example, where from 26% to 69% of foreign drivers fail to pay the toll that is 10 times more likely to violate the toll payment than a resident. Hence, Operators cannot treat a non-resident driver in the same way than a resident, in the absence of a procedure that allows for the prosecution of toll payment infringements across EU borders. Because these two cases take place in islands, where foreign drivers represent less than 5% of total traffic, Operators can manage to average down the total level of infringement. However, foreign drivers account for a significant

percentage of drivers in other continental toll domains. For example in Abertis AP7 north of Barcelona, 20% of total vehicles are foreign, 22.5% of which are HGV (rising to 30% in the summer months), which represents yearly more than 3M foreign vehicles driving into Spain through just that section. Traditionally the way to avoid toll payment infringements has been to put in place barriers in the tolls and/or enforcement gantries in the border and mobile enforcement equipment on the roads bringing the level of non-compliance to 0.1% levels.

Free-flow systems would be a preferred solution as they are a more efficient, safer and even more sustainable road charging system. For instance, studies of CO2 emissions give a potential savings of 0.8 million tons of CO2 in the Spanish toll network when moving from barrier to free-flow toll system. The lack of cross border enforcement represents a major barrier for the adoption of free-flow systems where there are already tolls with barrier, because exposes the Operator to a substantial toll evasion rates increase and revenue losses. The costs for enforcement have been calculated for the implementation of toll payments in the whole 14.000 kms Spanish high capacity network, with capital expenditure (CAPEX) costs ranging from 230M€ to 130M€ depending on the technology used, while the operational expenditure (OPEX) for enforcement personnel and gantry maintenance would be from 40M€ to 30M€. Abertis defends that the EC could favor interoperable free-flow road charging systems by implementing cross border enforcement procedures for the prosecution of toll offenses.

It is also important to note that the issue is not just civil, but also legal. Based on articles 86 and 325 of the Treaty of Function of the European Union (TFEU), financial interests within the EU are not being protected because of deficiencies of the current enforcement regime contemplating just a few traffic

offences to be potentially prosecuted across MS. Administrations and Operators cannot prosecute regionally offences committed by a third party that are not included in the Directive, and they have to contract collection agencies to intercede among Public Administrations. Differences at the national level, also imply unequal treatment of Operators and Service Providers, as some Toll Chargers can prosecute the fines, while others have to do it through the national Traffic Agency. This clearly denotes a lack of consistency and EU integration that should be tackled, as EU companies are not receiving the same treatment. Abertis considers that Operators should be able to prosecute traffic offences related to toll payment homogeneously in all MS.

The EC deployed in 2014 a Cross Border Enforcement Directive, known as CBE Directive, to reduce traffic offences and simplify sanctions procedures between MS. Its main objectives are twofold, increase road safety and reduce discrimination between resident and non-resident drivers. However, the Directive just includes eight specific traffic offences to be sanctioned in a cross-border basis, such as driving without seatbelt, or not stopping at a traffic light. CBE application has been heterogeneous among MS not providing optimal results as inequalities between resident and non-resident drivers still remain and offences prosecution can be conducted just in a few cases.

The problem identified in this paper is that resident drivers not complying with the toll can be effectively fined at national level, but when prosecuting non-resident drivers from other

MS, toll payment infringements increases, while enforcement rate highly diminishes. The examples cited are clear evidences of unequal treatment among drivers and operators, which does not facilitate the implementation of free-flow systems that could improve the mobility in the EU Internal Market. Abertis believes that an interoperable toll payment solution would be possible, if the right enforcement procedures are in place. The EC aims to achieve ease of movement within MS while supporting the implementation of the user-pay and polluter-pay, but having impunity when failing to pay a toll clearly goes against the effectiveness of these objectives.

In conclusion, Abertis advocates for the integration of various provisions on cross-border enforcement of unpaid tolls, in the context of the renewal of the "Eurovignette" and "Interoperability" Directives, completely in accordance to Directives' objectives. We propose to integrate various provisions, which follows the overall objective of the revision of the two Directives mentioned, namely (i) to promote the deployment of free-flow systems at EU level; (ii) to promote the application of the "user pays" and "polluter pays" principles; and (iii) to ensure fair competition amongst road operators. In essence, the proposal consists of two key elements; a mechanism enabling toll chargers and/or toll collectors to access the registers of vehicles of other Member States in order to identify toll offenders; and a specific enforcement procedure enabling toll chargers and/or toll collectors to recover unpaid toll charges and appropriate penalties from foreign toll evaders; and facilitating the prosecution of such offenders.

INTRODUCTION

Abertis, as a toll road operator aims to give a holistic overview of the current legislation situation within the European Union on traffic offences prosecution and its consequences, providing evidences to demonstrate that the heterogeneous framework currently being implemented is not optimal neither to achieve CBE goals, nor to move to a further European market integration or effectively implement the “*user-pays*” and “*polluter-pays*” principles.

Prosecuting traffic offences committed by non-resident drivers within MS has been a difficult process for Toll Road Operators, the

Administrations that operators represent, as well as for the Users of the public infrastructure, because of the bureaucratic processes and the direct and indirect costs involved. As we explain in this paper, the lack of a clear and simple process for cross border enforcement of all traffic offenses, and specifically of toll payment infringements, is a barrier to the fulfillment of the Internal Market, because it implies a prolonged unequal treatment of drivers and road operators, which at the same time has consequences in terms of free movement of vehicles, road safety and funding of road infrastructures.

DISCRIMINATION AMONG DRIVERS DEPENDING ON THEIR ORIGIN

According to European Commission, non-resident drivers account for a 5% of the total traffic in the European Union and for around 15% of speeding offences. Non-resident drivers also tend to be three times more likely to commit traffic offences than resident drivers. In cases such as in France, where transit and tourism are high, speeding offences committed by non-residents can reach 25% of the total number of offences and usually these figures go up to 40–50% during very busy periods of the year. However, most non-resident drivers² go

unpunished, with countries unable to pursue drivers once they return to their home country. While their potential damage is very significant, these offences are not always investigated and prosecuted by the relevant national authorities, as law enforcement resources are limited and many bureaucratic processes and costs are involved (such as the lack of the requisite information to proceed (e.g. the number of the vehicle registration) or high bureaucratic costs that might not be justified by the size of the fine). As a result, national law enforcement efforts

remain often fragmented in this area and the cross-border enforcement of these offences usually escapes the attention of the national authorities. Moreover, inequalities among resident and non-resident drivers rise, as the firsts can be effectively fined while the latest not.

This different behavior when driving in your own country or in another MS reproduces in the toll payment even more extremely, as illustrated by the data presented in this paper from Dartford Crossing and M50, where from 26% to 69% of foreign drivers fail to pay the toll that is 10 times more likely to violate the toll payment than a resident. This implies high costs for the Operator because they need to manage, validate and prosecute the non-complying vehicles, even though in some cases the written-off incomes can be compensated by the granting authority or by the level of fines reimbursed. Moreover, it has costs for the Administration, because it has to invest in enforcement facilities, agents, and procedures targeted specifically to foreigners. It has also costs for the national users, as they have to compensate for the loss of income that finances the infrastructure through higher tolls or taxes, and it implies an unequal treatment. Even the violators get their share of costs, as they are penalized with higher fines than would be necessary if the system would encourage and facilitate the payment of tolls when driving a foreign car. Moreover, the lack of clear procedures to prosecute foreign drivers gives leeway for brokerage and clearing of fines, and the facto fails to ensure that charges, including delay penalties, do not discriminate between domestic and drivers from other MS that wanted to pay their fines on time. The only winners in this situation are the Collections Agents that manage the prosecution of the penalties because they get paid for managing the procedures and get the fines paid.

Non-discrimination between EU citizens is one of the main objectives of the EU Commission. The lack of cross border

enforcement represents a major barrier for the equal treatment of resident and non-resident drivers in free-flow systems, as shown in the case of Dartford Crossing and M50. This risk is also true in other sections of the TEN-T high capacity road network with existing tolls with barriers, because foreign drivers represent a high percentage of the road traffic. In some toll domains, foreign drivers account for a significant percentage of drivers. For example in Abertis managed AP7 section north of Barcelona (Spain), 20% of total vehicles are foreign, 22.5% of which are HGV (rising to 30% in the summer months), which represents yearly more than 3M foreign vehicles driving into Spain through just that section. Prosecuting traffic offences is currently within the exclusive competence of Member States and no Union authority exists in this area. From our point of view, the enforcement of all toll violators is essential for the extension of the user-pays polluter-pays principles. In the absence of a procedure that allows for the prosecution of toll payment infringements across EU borders, it is very difficult for an Operator to treat a non-resident driver in the same way than a resident.



The lack of cross border enforcement represents a major barrier for the equal treatment of resident and non-resident drivers.

THE CASE OF DARTFORD CROSSING AND M50

These cases with free-flow tolls, where Abertis has a management contract, illustrate the problem with enforcing toll payment to foreign drivers.

In the Dartford Crossing case 864.438 non-resident vehicles crossed the bridge during the first four months of 2015. 26% of them failed to pay the toll, which is almost a quarter of a million toll violations. Overall, almost 14 million vehicles have used the crossing during the chargeable hours of the automated toll in the period from November 2014 to March 2015. Of the total transits, 357.162 have been fined for non-payment, which represents 2.5% of the total drivers. This makes foreign drivers approximately 10 times more likely to violate the toll payment. Moreover, while English drivers that fail to pay the toll are easily fined facing fines that can go up to £105, non-resident drivers almost certainly escape from paying because they cannot be effectively prosecuted, thus concluding in a clear discrimination among drivers.

In the M50 case the level of infringement is very high for foreign drivers, especially when

the number plate is of Northern Ireland origin with a non-complying level of almost 70%, other non national drivers have also a high level of infringement up to 50%, while the average for the M50 total traffic is "only" 5%, according to 2013/14. Another problem in the M50 is the cost of prosecuting violators that accounts to 5% of the total administrative costs of the toll road managing contract, which adds to the bill of managing them through the non-registered procedures. Moreover, there is the cost of managing non-registered drivers, which proportionally is much higher among foreign drivers, while the total foreign traffic account for only 5% of the total traffic, they represent 33% of the non-registered drivers. A multiplier of 10 in the level of infringement both in Dartford Crossing and the M50 (not considering the Northern Ireland level because there are also cultural/historical disputes) is definitely much higher than in other road traffic violations. This figure is clearly a consequence of a lack of cross-border enforcement procedures that makes foreign drivers perceive that they can get away without paying the toll in free-flow systems.



FREE MOVEMENT OF PEOPLE AND GOODS

The European Union has as main principles for its internal market functioning freedom of movement of people, goods, services and capitals. Good transport infrastructures and connections between European Member States therefore become essential to achieve three of these four main liberties. Transport sector is a key activity for the European Union, accounting for almost 5% of the total EU GDP and generating more than 11 million jobs³. In addition, road transport accounts for almost 46% of the total transport in Europe, if based on tonne-kilometers. The importance of the transport sector is just one among other reasons why the EU⁴ is trying to deploy strong policies aimed to promote efficient, safe and sustainable road transport. Infrastructures, generally, are high quality along the EU. However, congestion or pollution are two main topics with rising importance. New Intelligent Transport Systems (ITS) are appearing continuously to achieve these goals and there are many evidences that MS are tending to use more electronic tolling systems⁵.

Traditionally to avoid the cost of toll payment violation, toll road operators had to put in place barriers in the tolls and/or enforcement gantries in the border and mobile enforcement equipment on the roads. This clearly represents a cost for the implementation of pay-per-use systems, which has not stopped the implementation of HGV charges in many EU countries, as these administrative costs have been compensated by the income generated by toll payment. Free-flow systems for toll roads appear to be the best option for Users and Administrations (see the Case of Chile), with lower implementation costs and driving a better path to EU goals in terms of freedom of movement of vehicles and implementation of user pays/polluter pays principles or the reduction of Green House Gases (GHG) emissions.

There are several studies analyzing the impact of toll roads in traffic congestion when looking at GHG, finding that congestion pricing can reduce traffic delays, fuel consumption and vehicle emissions in general. When referring to free-flow systems of tolls, it is meant not to have any physical barrier along the route that makes the driver stop to comply with the payment for using a tolled infrastructure. Not stopping reduces travel times and helps to reduce GHG emissions. A study⁶ carried out in the Spanish highways looked at the different emissions depending of the toll system in place. It showed that the energy consumption as well as CO₂ emissions in a free-flow scenario is only 7.4% of that in systems with stop-&-go barriers. According to this study, around 1000 tons of CO₂ could have been saved annually by changing the



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toll system, from traditional toll to free flow, giving an emission saving rate of 2.809 g CO₂/veh-km, which is roughly a potential savings in the Spanish toll network of 0.8 million of tones. Hence, free-flow systems might help to reduce GHG and promote a more efficient, safer and sustainable road transport. However, free-flow correct implementation along the EU might be complex. Implementing free flow tolling systems (that is, removing the current physical barriers) without the adequate cross-border enforcement of toll payments would expose the operator to substantial toll evasion and revenue losses.

Road infrastructure used by non-resident drivers is mostly funded by residents, either through taxes or through tolls, which discriminates residents versus non-residents in the funding of the road network. Moreover, the costs and bureaucratic procedures to get the fines paid are an obstacle both for the Administration and the Toll charger when considering the implementation of an interoperable free-flow system. A more efficient exchange of data would ease applying the “*user pays*” and “*polluter pays*” principles, which helps to fund road maintenance and safety levels. The cross border exchange of data could also help the development of an interoperable solution for the free-flow payment of toll roads, improving the free movement of people and goods in the EU internal market.

Abertis knows by firsthand experience that in some cases there might be drivers that will not stop to pay the toll being both, foreigners or resident drivers. The level of infringement vary largely between systems free-flow or with barriers, in the former the level of compliance is around 95% while the latter has compliance rates above 99%. Even though overall figures represent a low level of infringements, the economic loss is very big, and it is especially pernicious in the case of foreign drivers as their tendency to violate the toll is approximately 10 times higher (see

the *Dartford Crossing and M50* cases), and also requires costly enforcement in place. There are several costs for enforcement, investment costs in gantries and vehicles, and operational costs of the gantries and vehicles. The number and size depends on the distances, territory to be covered and its borders with other countries. For instance, a comparative analysis⁷ assessing the implementation costs of a free-flow tolling system for the currently toll free Spanish High Capacity Road Network of 14.000kms shows enforcement costs for the two main technologies used in the EU, DSRC and Satellite. The capital expenditure (CAPEX) costs for enforcement would range from 230M€ to 130 M€, while the operational expenditure (OPEX) for enforcement personnel and gantry maintenance would be of 40 M€ to 30M€ depending on the technology used. This is based on enforcement gantries costs of 300,000€, mobile enforcement units of 100,000€ each, and maintenance costs of 30.000€ per year per person and gantry. Moreover, the prosecution of the infringements also comes at a cost, even though that cost can be recovered with the high fines issued and cashed by the Administration or the Operator. According to Abertis experience in managing free-flow systems around the world, the cost in terms of issuing letters, calls, and other administrative costs, such as verifying and identifying the owner of the car number plate, represents as much as 5% of free flow administrative cost. These costs and the recovery rates, through fines reimbursement, vary among countries and also depend in the cross-border agreements. Hence clear procedures for prosecuting effectively foreign drivers would lower enforcement costs both for the Administrations and the Operators.

To conclude, the absence of a system of EU enforcement of toll payments is one of the main barriers to electronic toll payment interoperability across the EU. Removing tolling barriers would necessarily imply the establishment of a prosecuting procedure

EU wide that guarantees toll payment, without differentiating by nationality of the driver committing the offence. These costs, however, are a major barrier for the adoption of free-flow systems in countries where there are already tolls with barriers, especially in the TEN-T

network where foreign drivers represent a high percentage of the road traffic. Hence, Abertis defends that the EC should favor the free-flow movement of vehicles by implementing cross border enforcement procedures that allow the prosecution of toll offenses.

THE CASE OF CHILE

Chile has a long history of toll roads, and offers very innovative solutions, both in the PPP contracts and in the technical development of tolls. In terms of enforcement, generally it has an urban network of toll roads with free-flow systems, while the intercity network has been implemented with barriers, because the density of traffic was very different. However, recently in some intercity highways (i.e. Ruta 68) due to an increase of traffic, the Administration has also agreed with the concessionaires to implement "nonstop and go" functioning through electronic payments in dedicated lanes. Tolls can also be paid when overdue within a maximum of 20 days, when the user has previously acquired a "Pase Diario Postpago" (PostPaid Daily Pass).

Chile has implemented these systems by accompanying legislation that requires the payment of overdue tolls in order to renovate the yearly vehicle excise driving license, as driving without proper ETC system is considered a serious offence. If a vehicle passes by a portico of electronic toll collection without the TAG enabled device and the concessionaire checks that the user has not purchased a Postpaid Pass an infringement process starts. After a period that goes from 30 to 45 days since the toll violation, the company reports a list of suspected offenders to the Ministry of Public Works. Later it will go to the appropriate Court of Local police, who will apply the respective fine. If the offender does not pay the fine, it will be recorded in the Register of Traffic Fines Unpaid Civil Registry, in which case the owner of that TAG may not be able to renew the vehicle driving license. These actions have meant relatively low levels of violations in the free-flow toll roads of 7%, and to negligible levels in the tolls with barriers.

Currently, the Administration is negotiating with Abertis the evolution from barriers to a free-flow system nationwide. This has implication in terms of investment in the infrastructure (technology evolution), regulatory issues (enforcement), and contractual (PPP renegotiation). The costs analysis performed by Abertis, where it is a main Toll Operator, shows potential for a win-win situation, both for the Administration, the Operator and the Society as a whole, but there has to be an agreement on the distribution of costs and benefits of such a measure among the different agents involved.

COMPETITIVENESS OF THE TOLL OPERATORS SECTOR

Furthermore, it is also important to note that the issue is not just civil (unequal treatment of resident and non-resident drivers), but also legal (see different legal treatment of Toll Operators). For instance, based on article 86 and 325 of the TFEU, financial interests within the EU are not being protected because of deficiencies of the current enforcement regime which only contemplates few traffic offences to be potentially prosecuted in a cross border basis. Administrations, institutions or enterprises cannot prosecute regionally offences committed by a third party that do not are included in the Directive. In some cases, some of these actors have to contract private companies to intercede among Public Administrations, in other cases the Toll Chargers themselves can prosecute the fines. This clearly denotes a lack of consistency and coordination between Member States and its political integration.

As regards to national cases, some national regulations contemplate offences when failing to pay the toll as a traffic offence that must be correctly prosecuted by the toll road manager and effectively collected in both cases, either when dealing with national drivers or foreign drivers. In this situation, national prosecution can be effectively conducted, while regional prosecution becomes more difficult. As a consequence, national law enforcement efforts remain often fragmented and the cross-border dimension of these offences usually escape the attention of the national authorities, thus appearing a gap between national and EU enforcement efforts. On the other hand, there are also many MS that do not regulate on this issue,

and where the toll road manager of that state clearly faces disadvantages in front of the first case. In the first case, the toll road manager is having regulation advantages and more favorable schemes within the European Union than the second one, having clear effects on concessionaires' competition and constituting an unfair competition case within the EU.



In the first case, the toll road manager is having regulations advantages and more favorable schemes within the European Union than the second one, having clear effects on concessionaires' competition and constituting an unfair competition case within the EU.

Finally, it is important to note that it is not just about unfair competition among operators, but that it also has consequences, on the effective implementation of free-flow systems and in addition, it will also impact European interoperability for road charging systems where, without an homogenized landscape, operators and service providers will continue betting for their preferred

charging depending on the national systems which will be most likely different among other MS.

In the past Abertis has defended at a national level that the non-payment of tolls by the users should be an infraction in each MS where we are operating. For instance in Spain until the year 2012 the law did not provide expressly as an administrative infringement this behavior (see “*No vull*

pagar” case). In this paper, we defend an EU wide regulation, which could be based on the fact that road signs located in the tollbooths and entrances to the highways forces to comply with the obligation to pay the toll that allows the use of an infrastructure. In conclusion, we advocate for a homogenized EU legal framework able to solve regulation disparities and to contemplate the violation of toll payment as traffic offence that could be effectively prosecuted across EU border.

THE CASE OF “NO VULL PAGAR” (I DO NOT WANT TO PAY)

In April 2012, also in Spain, as an answer to a political issue, some drivers decided not to pay the tolls imposed for using a toll infrastructure (The campaign was called “I do not want to pay” “*No vull pagar*”). As a result, in less than a year more than 10.800 vehicles passed through the tollbooths in the motorway AP-7 in Catalonia without paying the toll.

The Catalanian Tribunals did different interpretations of the law. In some cases the judges interpreted that the non-payment of tolls was specified as an administrative infringement but in others the judges said that those situations were not expressly specified in the Law. Even the Director of the Catalanian Traffic Service had to express to the media that those actuaciones were punishable infringements. The infringement was included in the Spanish legislation (Law 17/2012, December 27th) and in the motorways regulation Law (Law 8/1972). In the specific case of the “no vull pagar” campaign, whereby drivers would stop at the

toll booth and indicate their unwillingness to pay, a serious offence may also be constituted as it may be interpreted as infringing rules designed to ensure the security and fluidity of traffic. A serious offence is punished by a fine of 200€.

In any case, the behavior of users who refuse to pay the toll is not confined only to the fact of non-payment itself, but also, collaterally, the behavior of those users causes unjustified traffic disruption, increasing congestion, delays affecting the security and traffic flows with risky situations. Trying to avoid paying at the toll booth induces unsafe behavior that can cause injuries to other drivers, employees from the tolls run over, damages to vehicles or assets, as drivers usually do it through driving excessively close to the previous vehicle that pays the toll. For instance data registered in one of the tollbooth located in Vallcarca, during the “no vull pagar” episode of 2012 there were 24 cases of risky behavior toward Abertis employees.

SAFETY ISSUES AND THE CBE DIRECTIVE

The EU has a strong objective to achieve, which is reducing traffic victims, thus increasing road safety. For this purpose, CBE Directive was developed in 2015 to improve road safety through increased consciousness of punishment when committing traffic offences (for both, resident and non-resident drivers). This tried to abolish the impunity of foreign drivers which currently creates a feeling of unfairness with regard to resident drivers and considerably reduces the public acceptance of enforcement. However, the Directive just includes eight specific traffic offences to be cross-border enforced based on safety issues, such as driving without seatbelt, or not stopping at a traffic light. Abertis believes that road safety behavior does not only depend to the ones included, but with many more factors affecting both direct and indirectly the issue and increasing its complexity.



It seems to be that in the long term, better enforcement of sanctions should have a positive impact on the number of fatalities and accidents as long as road users continue to perceive that the cross-border enforcement of sanctions for road traffic rules is effective.

It is important to note that CBE Directive does not harmonize either the nature of the offence nor the penalties for the offence or the prosecution systems. It only aims to identify the offender that has committed the traffic offence. The logic behind has to be with improving road safety through increased consciousness of punishment when committing traffic offences, which will also abolish the impunity of foreign drivers which currently creates a feeling of unfairness with regard to resident drivers and considerably reduces the public acceptance of enforcement.

First impressions on CBE Directive reflect that it has effectively contributed to impose more fines to foreign drivers (50 up to 80%⁸ of traffic offences of those included in the CBE are now fined) and that its better impact has been on those MS that introduced automatic checking equipment. However, the Directive has not been homogeneously transposed, which directly makes very difficult to analyze the impact of the Directive in terms of reducing accidents and fatalities in the short term. It seems to be that in the long term, better enforcement of sanctions should have a positive impact on the number of fatalities and accidents as long as road users continue to perceive that the cross-border enforcement of sanctions for road traffic rules is effective. However, we still believe that under the current regulation situation a more clear enforcement and homogenized scheme of the existing traffic rules throughout the EU would nudge drivers to behave in a more responsible and safe manner.

Nevertheless, from an Abertis perspective increasing road safety and reducing discrimination between resident and non-resident drivers is more complex and requires further coordination to effectively control all types of traffic offences to achieve zero road victims. Considering just a few types of traffic offences does not lead to a complete non-discrimination scheme between drivers from different origins, as discrimination continues to appear in other issues nor does provide a full safety environment. Because there are other traffic offenses that can conduct to dangerous behaviors (see *The Case of "No Vull Pagar"*). Moreover, it might not lead to increase drivers' consciousness (and therefore, safety) as a heterogeneous framework is being implemented. It is important to take into consideration that drivers will improve its behavior while driving when there are clear consequences from committing traffic offences, and this cannot be fully achieved with a limited list of offenses or with a heterogeneous implementation scheme.

Abertis has safety as one of its main strategic and operational targets therefore we are very committed to improve the records in our network. A study⁹ from the Institute for Traffic and Safety (INTRAS), recognizes that usually 15% of the drivers involved in road fatalities are foreigners. This figure is as of high importance if considering road safety and we believe includes many more traffic offences than those ones being covered by CBE Directive. The capacity by the administrations or the infrastructures operators to prosecute them becomes then crucial. Another evidence of further traffic offences that are not being contemplated and also risky are traffic fatalities involving tollbooths personnel or working road personnel. Just in France, last year (2015) these accidents accounted for 121, which is 20% more than in 2014¹⁰, involving risky behaviors, such as being on the phone, but also when trying to avoid toll payment by

driving extremely close to the vehicle in front.



A homogenized EU legal framework needs to be further developed to effectively achieve the CBE goals.

As stated before, Abertis believe that road safety should not be limited to the eight traffic offences included in the CBE Directive, but also to many other road factors, that converts the issue in a complex topic to solve. Not solving inequalities between foreign and resident drivers fully will not help to reduce to zero traffic accidents, and consequently, not to achieve the road safety EC objectives by 2050. Therefore, we believe, a homogenized EU legal framework needs to be further developed to effectively achieve the CBE goals. We strongly believe that if the Directive was effectively implemented across the EU and consistently for all traffic offences the CBE impact would be much more positive.

PROPOSAL OF A LEGAL FRAMEWORK

Based on all the information gathered we can conclude that even having different enforcement models for toll payment failure offences among EU member states, each of them establish a national procedure to sanction toll offences that in general seem to work effectively. However, when looking at cross-border toll payment offences enforcement, significant short-comings remain.

This is notably fostered by two main factors; the first one is a lack of access to registration data enabling the identification of foreign offenders in their country of registration; on the other hand, there is also a lack of appropriate enforcement processes enabling the recovery of unpaid tolls, penalties and the pursuit of offenders abroad.

To address this problem, we propose to integrate various provisions on cross-border enforcement of unpaid tolls, in the context of the renewal of the "Eurovignette" and "Interoperability" Directives. This proposal follows the overall objective of the revision of the two Directives mentioned, namely (i) to promote the deployment of free-flow systems at EU level; (ii) to promote the application of the "user pays" and "polluter pays" principles; and (iii) to ensure fair competition amongst road operators. Although the Interoperability Directive does not directly provide a framework for toll enforcement, articles 2.3 and 2.5 promote the adoption of free-flow systems; while recital 8 in the preamble to the Directive acknowledges that "these innovative systems could raise problems concerning the reliability of checks

and with regard to fraud prevention". As such, a new recital could be added in the revised Directive, as well as a new Article, providing for a harmonized system for the EU cross-border enforcement of unpaid toll charges.

These new provisions would directly support the deployment of a fair and efficient electronic toll system and would create the necessary conditions to achieve interoperability of electronic tolls in Europe. Revised EETS legal framework could therefore form the basis for cross border toll enforcement provisions which directly support the aim of promoting free-flow toll systems. Electronic toll collection would be directly supported by the existence of an appropriate legal framework with effective control and enforcement mechanisms.

Finally, these provisions are completely in line with the current EU legal framework and the existing tools which would facilitate its deployment.

In essence, the proposal consists of the following key elements:

- **A mechanism enabling toll chargers (whether a state authority or a concessionaire) and/or toll collectors (i.e., a company operating the motorway and collecting the toll on behalf of the state authority or concessionaire) to access the registers of vehicles of other Member States in order to identify**

toll offenders. In particular:

a. Toll chargers and/or toll collectors to be expressly given the power to access the national register of vehicles through a streamlined procedure and free of charge.

b. Toll chargers and/or toll collectors to be able to ask their national registry for information on foreign offenders. The national registry, in turn, would ask a national contact point in the Member State of registration of the offender, for access to data relating to vehicles and owners of vehicles.

c. Member States to be equipped with certified automatic or semi-automatic control devices with automatic license plate recognition. Pictures taken by such devices to have probative value. Privacy laws to be adapted so as to allow one of such "recognition" technology.

d. The registered owner of the vehicle to be held responsible for failure to pay the toll unless another relevant person is identified.

● **A specific enforcement procedure enabling toll chargers and/or toll collectors to recover unpaid toll charges and appropriate penalties from foreign toll evaders; and facilitating the prosecution of such offenders. This could include:**

a. As discussed at (a) and (b) above, a right of access to information (name, address, etc.) identifying the foreign offender. The creation of a database listing repeat offenders, which could then be used by the toll charger and/or toll collector for enforcement purposes. This would

have to be done in compliance with data protection rules and offering adequate level of protection to data subjects. This, depending upon the specifics, would need to be based either on the Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, the Directive 2016/680, and on the free movement of such data and/or the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.

b. A settlement procedure enabling the sending of a payment notice by the toll charger and/or toll collector along with a reasonable administrative fee. Basis on international examples, we would expect that a proportionate administrative fee for nonpayment might fall in a range of €100-€150 per offence. That is the toll charger and/or toll collector to be entrusted with the legal power to stop an offenders' vehicle for the purpose of investigating a violation and, if necessary, enforcing immediate toll/fine recovery procedures.

c. If the payment is not contested, the settlement procedure will be followed by a streamlined debt-collection procedure involving the cooperation of the national authorities and courts. The proceedings could be brought under the European Small Claims Procedure, which relates to claims having a value below €2,000 and is characterised by a written, simplified procedure.

d. The enforcement procedure under (b) above would make the registered owner of the vehicle, prima facie,

liable for the offence and would specify the evidence required to establish an offence (e.g. agents' report plus camera based records) which evidence would amount to a rebuttable presumption of the offence. All national enforcement mechanisms would recognize a harmonized body of evidence and the same evidential standard and burden of proof. If the alleged offender contests the payment notice, he will be able to make representations to the toll charger/toll collector in order to disprove the offence that could be approved or not.

- e. In the case of uncontested claims, the debt-collection procedure could be streamlined in order to facilitate enforcement. A national competent authority in EU country A will be able to certify a civil enforcement debt (i.e., an enforceable document acknowledging the debt comprising the unpaid toll and administration fee) for enforcement in EU country B without the need for further legal action to establish the offence in country B. Our proposal is that the uncontested claim would be recognised as a European enforcement order for uncontested claims. A competent authority would be designated in each executing

Member State (i.e., country B in the example) to recognise the debt which has been transmitted without any further formality being required to establish the debt and to take all the necessary measures for its recovery (via bailiffs, huissiers etc, depending on the specifics of the jurisdiction).

- f. As an additional deterrent measure under our proposal, Member States licensing authorities (drivers' licences and/or vehicle registration) would create databases of toll offenders who have not paid their tolls (including fees and fines). Such serial offence data could be used both nationally and cross-border as an additional enforcement measure. The renewal of a driving license and/or the annual vehicle registration to be made dependent on the payment of all unpaid tolls/charges and penalties (wherever incurred in the EU) subject to a de minimis threshold. In this regard our proposal is to mirror the system in place in three US States (namely Maine, New Hampshire, and Massachusetts), and Chile, which make the payment of outstanding tolls mandatory and a precondition to the renewal of a driving license and/or the annual vehicle registration if a given number of unpaid tolls has been reached.

This proposal, we believe, will collaborate to solve the current lack of cross-border enforcement sanctioning legislation EU-wide and best match EU principles deployment.

CONCLUSIONS

This Paper explains how the lack of a clear and simple process for cross border enforcement of all traffic offenses, and specifically of toll payment infringements, is a barrier to the fulfillment of the Internal Market promoted by the EU. Mainly, it implies unequal treatment of drivers and toll road operators, which at the same time has consequences in terms of free movement of vehicles, road safety and infrastructure funding.

This paper states the importance of widening the enforcement of toll payment violations for the implementation of interoperable free-flow systems and for a more sustainable consecution of free-movement of vehicles and an effective Single Market. In addition, European interoperability implementation for road charging systems within the EU is also weakened as road operators do not implement the same tolling method and differences between charging systems remain. Foreign drivers continue to account for an important percentage of total traffic of European Member States and in relative terms, tend to commit more traffic offences. Moreover, not solving inequalities between non-resident and resident drivers at a full level will not help to reduce to zero traffic offences, and consequently, achieve full road safety. Last, but not least, it is important to solve and create a homogenous regulation framework for Toll operators in different MS. As analyzed in the cases of UK, Ireland (see the *Case of Dartford and M50*) and Spain (see the *Case of "No vull pagar"*) differ when contemplating toll payment violations in their national regulations, which limits the implementation of user-pays and polluter-pays principles, while other non-EU countries (see the *Case of Chile*) show that an interoperable free-flow toll payment solution is possible when the right

enforcement procedures are in place.

Concluding, CBE Directive remains a good path to avoid foreign impunity, however, a revision of its coverage should be considered if goals are effectively intended to be achieved. Therefore, we advocate for a homogenized EU legal framework that contemplates the violation of toll payment as traffic offence that could be effectively prosecuted across EU border. Abertis advocates for the integration of various provisions on cross-border enforcement of unpaid tolls, in the context of the renewal of the "Eurovignette" and "Interoperability" Directives, completely in accordance to Directives' objectives. We propose to integrate various provisions, which follows the overall objective of the revision of the two Directives mentioned, namely (i) to promote the deployment of free-flow systems at EU level; (ii) to promote the application of the "user pays" and "polluter pays" principles; and (iii) to ensure fair competition amongst road operators. In essence, the proposal consists of two key elements; A mechanism enabling toll chargers and/or toll collectors to access the registers of vehicles of other Member States in order to identify toll offenders; and a specific enforcement procedure enabling toll chargers and/or toll collectors to recover unpaid toll charges and appropriate penalties from foreign toll evaders; and facilitating the prosecution of such offenders.

This proposal, we believe, will effectively collaborate to achieve EU goals such as non-discrimination among drivers of different origins. It will also help promote the user-pays/polluter-pays principles in complete accordance with the EU regulatory framework and its existing tools.

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