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Legislative Framework for the Introduction of a Public Road Toll in the Ukraine with a View to European Integration



Summary

In this study a solution is sought for the economic and legal introduction of the automated toll system (ATS) in Ukrainian urban transport. For the purposes of its management, it is necessary to determine the party or parties to control the duties and activities related to the operation of the system.

Relevance. European integration is reflected in all spheres of life of the Ukraine, including transport, which demands transition to more effective management methods.

Problems. The development of legal mechanisms for ensuring the free movement of financial flows for the breakeven operation of transport systems is one of government's important problems to be solved today in the Ukraine.

In this context, another problem is the establishment of a transparent and reliable payment mechanism for public transport for all categories of passengers and development of legal and financial security of its functioning.

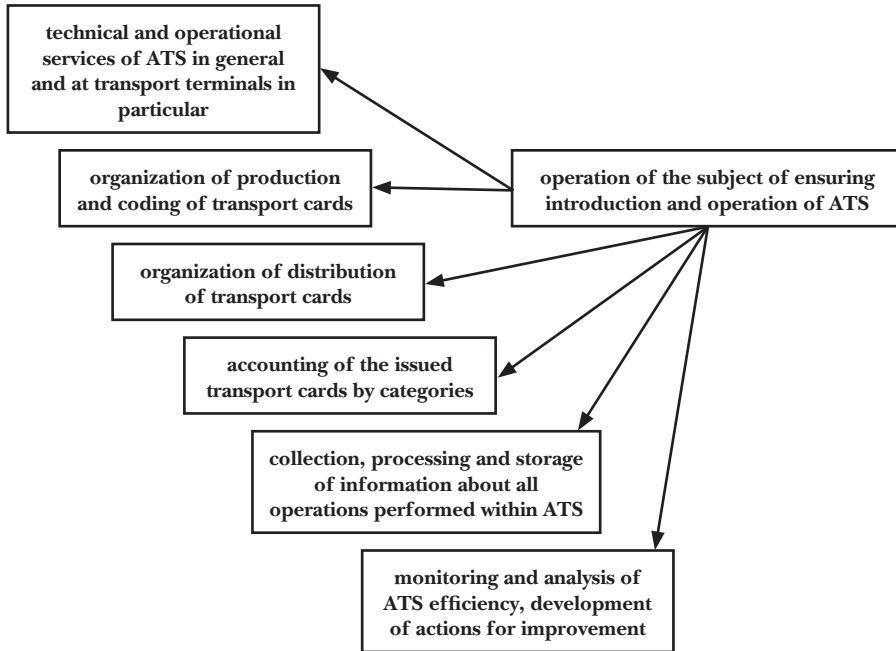
Basic material. According to the findings of the survey conducted by the author and covered in the previous publications, several pivotal conclusions could be drawn: the necessity to take the experience of European countries in this matter into account,

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the need of a unified system of payment for all regions of the country, the need of a transparent, cost-efficient and simple payment automation process.

For the purpose of introducing and operating an automated toll system, it is necessary to define the subject and the object of operation, which will include a variety of activities as indicated in the diagram (*Figure 1*).

Figure 1: Activities required for the introduction and operation of ATS



According to the experience gained in other countries, such operation systems are set up by the customer of transports. According to paragraph 3, part 2 of Art. 81 of the Civil Code of the Ukraine, the legal entity established by the administrative act of the President of Ukraine, a public authority, an authority of the Autonomous Republic of Crimea or a local council, is a legal entity under public law. Public legal entities are subject to the regulations applicable to civil relations in the effective Code unless otherwise provided by law.

On this basis, it can be concluded that if an ATS operator is established by a local authority on the basis of its administrative act, the operator must act as a public legal entity owned by the municipality.

The essential moment during the establishment of an ATS operator is the definition of financing resources for the introduction of such a system, the search for an investor ready to be involved in funding through the conclusion of the relevant contract, or the issue of bonds to attract financial resources (under guarantees of the local council) or at the expense of the local budget.

However, the establishment of an ATS operator in compliance with the relevant decision of a local authority (customer) does not only depend on the above. The ATS operator can also be established by several parties, including the local council (joint enterprise) under the current legislation, and in this case the local authority is not required to adopt a decision on the alienation of the corresponding municipal property.

One of founders of an ATS operator can act as the operator of the municipal part of the enterprise. Paragraph 33, part 1 of Art. 26 of the Law of the Ukraine “About local authorities” requires a decision by the competent local council to specify the municipal property contributed to any joint enterprise (thus enabling foreign investments).

The other founder of the ATS operator can act as an investor financing the introduction of such a system and its services. The involvement of the investor in the early, establishment stage of the ATS operator the introduction of corporate rights to share in the charter capital of such legal entity and the possibility of receiving a share of profit from its activities in the future, that will be the actual way of compensation of the investment sum granted by it.

As the investor cofounder of the ATS operator can be a credit organization, i.e. a bank. The involvement of such a subject in the creation of an ATS operator has several advantages over other business entities: (a) the possibility of obtaining a genuine financial partner for the introduction of an ATS operator with a minimum expenditure to the debit of the local budget; (b) the possibility to carry out money transfer transactions through such financial institution as the participant of the payment system.

If a bank (a financial institution licensed to make money transfers and a member of the payment system) is involved to operate the ATS, it concludes an agreement for the transfer of means in favour of third parties as a basis for the independent performance of money transfer operations.

This does not contradict Ukrainian legislation and reflects the general concept underlying the introduction of ATS's and the approach according to which the operator can be either a public legal entity, a private legal entity or a combination of the two. In our opinion, the determination of the legal status of the ATS operator, the requirements vis-a-vis the applicants, the order of their selection, and the conclusion of the contract with the ATS operator can be reasonably referred to the competence of local authority, who will take the local normative legal action to regulate the functioning of the ATS at the settlement where there is a public transport.

The introduction of the ATS in urban public transport requires equipment – transport terminals and other conditions, and its use should be defined in the agreement concluded between the transport services organiser and the customer of such services. Such an agreement may include the conditions of funding the purchase and installation of transport terminals and vehicles (rolling stock). Given the fact that the decision on the introduction of the ATS in land transport is taken by the municipal government, and funds are allocated from the local budget for its implementation, we can offer several models for financing the installation of transport terminals, such as:

1) The conclusion of direct supply contracts or purchase and sale contracts between the transport department of the local council and the manufacturer of the transport terminals need to include the subject of the contract and the conditions of installation and maintenance. The acquired terminals will be owned by local authority, and they will be used by the transport companies that have concluded an agreement on the organization of transport services under the legal title of rental. In such a case, the conditions and use of terminals must be regulated in the transport company's contract, including payment terms and the order of returning terminals to the owner;

2) A purchase and sale contract is signed between a transport company and the manufacturer of transport terminals. The customer reimburses the transport company for the costs of their purchase and installation according to the conditions defined in the contract for the provision of transport services. The payment conditions can also vary from direct money transfer to the account of the transport company as a full or partial advance payment, to payment following the purchase of terminals. Due to the fact that the actual purchase of transport terminals is carried out at the expense of the local budget, the local council must retain their ownership rights.

3) A lease contract must be signed between the ATS operator, the transport company and the manufacturer of transport terminals with the ATS operator acting as purchaser of the terminals who pays them and passes them to the transport company for use against subsequent payment of lease fees. In this model, following payment of the overall costs of the transport terminals in the form of lease fees, their ownership title is transferred to the transport company.

It is necessary to pay attention to the fact that if purchase and sale contracts are concluded and the transport terminals are delivered directly to the local council, it is necessary to comply with the requirements of the Ukrainian Act "About implementation of government procurements". Art. 2 of this Act stipulates that it is applicable to all customers and all purchases of goods, works and services that are fully or partially carried out by public funds, provided that the cost of a subject of procurement of goods and services is equal or exceeds 100,000 hryvnias, or the cost of works exceeds 300,000 hryvnias.

Thus according to paragraph 4, part 1 of Art. 1 of the specified Act, public funds except funds under the state budget of the Ukraine, the budget of the Autonomous Republic of Crimea and local budgets, funds of National Bank of the Ukraine, the state trust funds etc., are subject to public procurement procedures, including the means of transport, the establishments or organizations formed in accordance with the established procedure by public authorities, authorities of the Autonomous Republic of Crimea, local public administrations or local councils, funds of the state and local funds.

Exemptions from mandatory compliance with the public procurement procedures are specified in part 3 of Art. 2 of the Ukraine's Act "About implementation of government procurements".

These include cases of when the conclusion of contracts for the organization of transport, transport or other contracts aimed at their implementation or related to the use of ATS is not required.

For this reason, government procurement procedures can be applied during the introduction and functioning of ATS if the provisions of part 3, Art. 2 of the Ukrainian Act “About implementation of government procurements” is included in the corresponding content.

Another case of legal registration includes the purchase and operation of transport terminals and implementation performed at the expense of the transport companies. In order to install the terminals in the various means of transport (rolling stock) involved in the transport of passengers, the transport company must obtain a legal status at its own expense (to enter into the legal framework), which is a precondition for the obligatory equipment of transport companies that operate turnstiles for access to the ATS, and must comply with regulations governing the duties of transport companies related to receiving payment for transport services through the ASOP system only. They must include such conditions in the tender documentation, and with the corresponding conditions in the contract concluded with a transport company. If the transport terminals are installed at the transport companies’ own expense, the ownership of these terminals belong to the transport company.

Conclusions. It can be concluded that the problem of theoretical justification and practical recommendations about the creation of a special-purpose enterprise to introduce ATS and the question of financing the installation of the technical equipment in a rolling stock during introduction require the following of a logical algorithm for the implementation of a legal framework.

It should be noted that only the directions were considered by the author.

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