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EUROPEAN COMMISSION

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294 (6) of the Treaty on the Functioning of the European Union

concerning the

**Council's position at first reading on a proposal for a Directive of the European
Parliament and of the Council amending Directive 1999/62/EC on the charging of heavy
goods vehicles for the use of certain infrastructure**

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(Text with EEA relevance)

1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2008) 436 final – 2008/0147 COD): 08/07/2008

Date of the opinion of the European Economic and Social Committee: 16/12/2009

Date of the opinion of the European Parliament, first reading: 11/03/2009

Date of adoption of the Council's political agreement in view of a Council's position at first reading: 15/10/2010

Date of adoption of the position of the Council: 14/02/2011

2. OBJECTIVE OF THE COMMISSION PROPOSAL

In order to eliminate distortions of competition between transport undertakings and establish fair mechanisms for charging infrastructure costs to hauliers Directive 1999/62/EC sets maximum rates that Member States may charge to heavy goods vehicles for the use of certain transport infrastructure. In determining these rates, Member States may not take into account external costs such as air and noise pollution. The Commission's proposed amendments will allow such charges which, if introduced, will promote more efficient and cleaner freight transport. Chief among the other proposed changes is giving Member States greater flexibility in varying toll rates to promote greater use during non-peak times and ultimately reduce congestion. Lastly the additional revenue generated by external cost charging ought to be used to finance projects making transport sustainable.

3. COMMENTS ON THE COUNCIL'S POSITION AT FIRST READING

3.1 General comments on the Council's position at first reading

The primary objectives for the Commission proposal are to allow Member States to internalise the most relevant external costs in the charging of heavy goods vehicles, and to

extend the scope of the Directive outside of the trans-European network (TEN). These objectives have largely been achieved in the Council's position at first reading.

3.2 Detailed Commission comments on the Council's position at first reading

The key provisions in the Council's position, and the Commission's opinion of these provisions, are as follows:

Council's position	Commission Opinion
Extension of Directive's remit to cover non-TEN motorways (Art 2 and Art 7).	Falls short of the Commission's original proposal to extend scope to all roads but still represents significant progress
Member States allowed to internalise external costs such as noise and air pollution but not congestion (Art 7c (1)) They can however vary infrastructure charge during peak hours at constant revenue within limits wider than in the current Directive(Art 7f (3)).	The Commission's preference would have been to include congestion as an external cost like air and noise pollution. However, the wider differentiation of infrastructure charges represents an acceptable and practicable second best solution to reduce congestion.
Euro VI to be exempted from external costs for a period of 4 years after the coming into force of the Directive (Art 7c (3)).	In principle the Commission supports exempting less polluting vehicles from these charges but only for a fixed and limited period.
Member States may decide to exempt vehicles between 3.5-12 tonnes from tolls for other reasons than environment, congestion and administrative costs (Art 7 (5)).	The Commission's preference would have been for those derogations to be justified by objective and clearly identified reasons
Proposes that funds raised by internalising external costs <i>should</i> be earmarked for programmes that improve the sustainability of the transport system, but Member States retain ultimate discretion on how to spend these funds (Art 9(2)).	The Commission would have preferred that 'should' be replaced with 'shall', or at the very minimum that there be a requirement that Member States report on how such funds raised are being spent and express a firmer political intention to do it in the transport sector, notably on the trans-European network. The Commission would also have preferred not to delete the language of the current Directive on the use of the revenue of infrastructure charge.
The ability to amend most of the Annexes in the current Directive by means of delegated acts (ex-old comitology regulatory procedure) was removed from the proposal (Art 9b).	The Commission would prefer to retain the ability to amend these Annexes by means of delegated acts, in particular Annex III and the value for future Euro standards of the new Annex IIIb (of the Council's position).

It should be noted that the Council's position at first reading includes the following amendments of the European Parliament's first reading that were acceptable to the Commission: 30, 34, 36, 46, 50, and 69. Amendment 52 was also included in the Council's position. Other amendments have been reflected in parts in the Council's position such as amendment 58 on the adjustment to inflation or part of amendment 63.

Furthermore, amendment 43 was also accepted in part in the Council's position. This increases the variation in tolls allowed between peak and off-peak times from 100% above the minimum rate to 175% above the maximum permissible average rate. This approach gives in practice the possibility to implement similar incentives to avoid peak time as the Parliaments who requested a 500% variation but only above the minimum rate.

The following European Parliament substantive amendments which were acceptable to the Commission were *not* integrated in the Council's position (most important ones in bold, numbers in brackets indicate the relevant EP amendments):

- Amendment to Art 7a (1) deleting language which authorises Member States to apply only annual rates to vehicles registered in that Member State (31).
- Amendment to proposed Art 7b (2) which authorises Member States to levy a congestion charge which reflects the cost of congestion and requires them to draft action plans to combat congestion (33).
- Language which allows, in cases where drivers are not able to produce documentation in order to verify Euro class, that any additional cost as a result of this will be reimbursed if a driver can, at a later date, provide such proof (42).
- Amendment to Art 7g (2) requiring the Commission to inform the Parliament, and not only the Committee, as to whether a tolling arrangement is complying with the requirements of the Directive (44) and amendment to Art 7g (4) requiring the Commission to transmit to the European Parliament the decisions which are made available to the Committee mentioned under this Article (47).
- Additional sub-point to Art 7g (3) which requires Member States to detail how they intend to earmark funds raised from the internalisation of external costs (45).
- Amendment to Art 7i (5) relating to language on the use of the Galileo system. In particular using this system as an efficient means of collecting charges (53).
- Different language on the earmarking of external cost funds raised (55) and on the use to which Member States put funds raised from infrastructure charges (56).
- Amendment to Art 9 (2) requiring that at least 15% of funds raised from internalising of external costs be ring fenced for expenditure of TEN-T projects (57).
- Amendment to Art 11 (2) which would request the Commission to monitor the gradual abolition of time-based charging systems (61).

- Amendment to Art 11 (2) requiring the Commission to make a legislative proposal for further revising the Directive (second part of amendment 63).

The following European Parliament amendments which were *not* acceptable to the Commission were *not* integrated in the Council's position: 9, 12, 13, 25, 26, 27, 28, 29, 32, 37, 38, 39, 40, 48, 49, 54, 59, 60, 62, 64, 65, 66, 67 and 68.

Finally amendment 35 which introduced a new Art 7c which exempts vehicles complying with future EURO standards has been partly accepted by Council. The latter has however granted a longer exemption period for EURO VI vehicles and added an exemption period for EURO V vehicles.

4. CONCLUSION

The Council adopted its position at first reading by qualified majority following the political agreement reached on 15 October 2010. The Commission considers that the Council's position reflects the main objectives of its proposal and can therefore endorse it.