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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	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 position of the Council on the adoption of a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 1999/62/EC, 1999/37/EC and (EU) 2019/520, as regards the charging of vehicles for the use of certain infrastructures

Delegations will find attached document COM(2021) 693 final.

Encl.: COM(2021) 693 final



Brussels, 16.11.2021
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TO THE EUROPEAN PARLIAMENT**

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

concerning the

**position of the Council on the adoption of a DIRECTIVE OF THE EUROPEAN
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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council 1 June 2017.
(document COM(2017) 275 final – 2017/0114 COD):

Date of the opinion of the European Economic and Social Committee: 18 October 2017.

Date of the opinion of the European Committee of the Regions: 1 February 2018.

Date of the position of the European Parliament, first reading: 25 October 2018.

Date of transmission of the amended proposal: Non applicable

Date of adoption of the position of the Council: 9 November 2021.

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The Commission proposed a revision of Directive 1999/62/EC (“Eurovignette”) on 31 May 2017, as part of the first Mobility Package (“Europe on the Move”). This amendment addresses the road charging aspects of that directive.

The objective of the initiative is to make progress in the application of the 'polluter pays' and 'user pays' principles, thereby promoting financially and environmentally sustainable and socially equitable road transport. This includes the aim to

- contribute to the implementation of Paris Agreement and to the achievement of EU’s climate goals through a reduction of CO₂ emissions from road transport;
- reduce the risk of discrimination vis-à-vis occasional, mostly foreign users, in particular of passenger cars; and to
- address specific shortcomings of the existing legislation, i.e. a better fulfilment of its objectives, notably via simpler application of external cost charging that currently requires a cumbersome process of justification and notification, and the introduction of a new option of congestion charging.

3. COMMENTS ON THE POSITION OF THE COUNCIL

3.1. Type of charging (tolls and/or vignettes)

(a) Heavy duty vehicles (HDVs)

While the Commission proposed to phase out time-based charging (i.e. user charges commonly known as vignettes) after 6 years, according to the Council position

- Vignettes for HDVs shall be phased out on the core trans-European transport network (TEN-T) within 8 years
- With up to two additional years for common systems of user charges (i.e. the Eurovignette Treaty¹)
- Except in duly justified cases (related to costs/benefits linked to traffic/population density or the risk of traffic diversion).

In addition, the possibility to apply a ‘combined charging system’ would allow Member States already having tolls in place to introduce vignettes, i.e. impose user charges on roads or vehicles categories that are not currently tolled, under certain conditions.

The Commission would have preferred to phase out vignettes on the entire TEN-T network for all HDVs. Also, the scope of application of the combined charging system could be reflected more precisely in the relevant legal provision. At the same time, such provision must be read in the context of the Directive and its recitals, and its application is limited by the tolling systems already in place today. In view of the relatively limited impact on infrastructure and external costs of smaller HDVs (that are not currently tolled in a few Member States), and in view of the safeguards available (i.e. prior notification of the Commission) in case of justified exceptions and the introduction of combined charging systems, the Commission can accept the compromise.

(b) Light vehicles

The Commission also proposed to phase out vignettes for light vehicles. However, the co-legislators agree on the possibility for Member States to maintain and introduce vignettes for those vehicles (private cars, light commercial vehicles and minibuses).

As regards the proportionality of vignette prices, the Commission proposed somewhat lower limits for short-term vignettes than the ones provided for in the Council position. At the same time, the Council position now requires Member States to make available **daily vignettes** that represent a significant step towards more proportionate pricing for light vehicles. In addition, review clauses on the rules applicable to light vehicles at large and specifically on the treatment of light commercial vehicles (LCVs) are included, as requested by the European Parliament.

More proportionate pricing is in line with the Commission proposal.

¹ Denmark, Luxembourg, Sweden and The Netherlands still apply this common system of user charges for heavy goods vehicles: <https://www.eurovignettes.eu/>

3.2. Variation of charges based on environmental performance

(a) Heavy duty vehicles

The Commission proposed to replace the variation based on Euro emission class by a **mandatory variation based on CO₂ emissions** of HDVs (with air pollutants to be addressed by external cost charging, cf. section 3.3). In the absence of a baseline at the time of the proposal, the Commission proposed to develop the details in delegated acts.

In its first reading position, the European Parliament largely followed the proposal and only made limited amendments related to the treatment of zero-emission operations, which are in line with the Council position. Council developed the details of variation based on CO₂ emissions for HDVs building on the CO₂ standards adopted in 2019². In parallel, Council extended the obligation to vary charges also to vignettes (user charges).

In view of the recent proposal on an emission trading system for road transport³, the Council position includes a review/evaluation clause to address any real and perceived risk of duplication in carbon pricing.

The Commission supports the methodology for varying charges based on CO₂ emissions developed in the Council text together with a review clause.

(b) Light vehicles

The Commission proposed to vary road charges also for light vehicles based on their environmental performance, i.e. taking into account both CO₂ and pollutant emissions. The co-legislators agree that the variation of charges for passenger cars should be optional.

According to the Council position, Member States will be required, where technically practicable, to vary tolls and the annual user charge for vans (a subset of LCVs) and minibuses according to the environmental performance of the vehicle, from 2026. The scheme provided in Article 7gb and Annex VII, based on the latest emission standards, would be indicative. Member States that choose to apply a different scheme (e.g. in terms of emission performance criteria, the extent of variation, or possibly including other criteria) would have to justify their choice and notify the Commission. However, Member States may choose to apply reductions to zero-emission vehicles only, without varying the charges for other vehicles and without notifying the Commission.

Although the Commission would have preferred a similar rule for all LCVs, it can support the compromise as the principle of the variation of charges reflecting the cost of road use is in line with the Commission proposal.

3.3. External cost charging

The Commission proposed to simplify external cost charging (with directly usable reference values) and to make it mandatory for HDVs, at least on those parts of the network where the external cost of air pollution and/or noise is higher than average. The final Council position

² Regulation (EU) 2019/1242 of the European Parliament and of the Council of 20 June 2019 setting CO₂ emission performance standards for new heavy-duty vehicles and amending Regulations (EC) No 595/2009 and (EU) 2018/956 of the European Parliament and of the Council and Council Directive 96/53/EC, OJ L 198, 25.7.2019, p. 202–240

³ Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC, Decision (EU) 2015/1814 and Regulation (EU) 2015/757 [COM(2021) 551 final]

extended the scope of this obligation by making it applicable on the entire tolled network at the latest four years after the entry into force of the amending directive.

Member States will have to apply external cost charging for pollution as a rule except in specific duly justified cases, which is a welcome increase in ambition compared to the Commission proposal.

The Council added the option to charge also for the cost of CO₂ emissions as an alternative to (or to be used in combination with) the variation of the infrastructure charge for HDVs based on CO₂ emissions (cf. section 3.2). While this represents another clear increase in ambition, it will lead to duplication of carbon pricing where the applicable national fuel tax already includes a CO₂ component, and if road transport fuels are included in emission trading as proposed by the Commission in July. As mentioned in section 3.2, review clauses should provide safeguards to minimise such risk. One such review clause obliges the Commission to adjust the amounts chargeable for CO₂ emissions taking into account the effective carbon price applicable to road transport fuels in the EU. The Commission considers that the safeguards are sufficient and supports the possibility to charge for the cost of CO₂ emissions as long as that is not fully covered by a more suitable instrument, such as emission trading or fuel taxation.

3.4. Congestion charging

The Council position on the option of congestion charging is largely in line with the Commission proposal: Member States may introduce a congestion charge on any section of their road network that is subject to congestion, and the charge shall apply in a non-discriminatory manner to all vehicle categories. The Council replaced the maximum chargeable costs by reference values that may be exceeded under specific conditions, subject to notification to the Commission. It also added one exception in line with the position of the European Parliament, i.e. Member States may exempt, partially or fully, minibuses, buses and coaches. The Commission can support these changes.

3.5. Mark-up

As proposed by the Commission, mark-ups could be applied in any sensitive area (not only in mountainous regions), and the revenue generated from the mark-up has to be invested in financing the development of transport services, or in the construction or maintenance of transport infrastructure of the core trans-European network.

According to the Council position, a mark-up could exceed the current maximum of 25%, but only if all involved Member States agree, in which case it could be up to 50%. This is not in conflict with the Commission proposal either.

3.6. Use of revenues and reporting

As proposed by the Commission, the Council position requires that, in addition to earmarking of revenues from mark-ups, Member States use at least the financial resources equivalent to the revenues from any optional congestion charge for reducing the problem of congestion or for the benefit of sustainable transport.

On reporting, Council could not agree with the requirement of an evaluation of the quality of the tolled road network proposed by the Commission. On other aspects, the positions of Council and the European Parliament have been well-aligned, covering the various charges,

variations per vehicle category, as well as the revenues collected, their use, and the evolution of the environmental performance of vehicles using toll roads.

The Commission supports these improvements.

3.7. Exemptions

Council wants to maintain a possibility to exempt existing concession contracts from the obligation to vary charges or apply external cost charging, which the Commission can accept. New, renewed or substantially amended concessions would not be exempted. For this purpose, the definition of a substantially amended tolling arrangement was developed based on the Commission proposal.

The possibility to exempt vehicles below 12 tonnes would be removed, as proposed by the Commission, at the latest after 5 years.

The Council position allows exempting

- vehicles below 7.5 tonnes used for craft purposes
- vehicles used by disabled persons
- historical vehicles

While the Commission's policy has been to limit the number of exemptions, the ones that are maintained are unlikely to cause any significant distortion and would not have a meaningful impact on the environmental objectives of the proposal. This is because they would only relate to a relatively small segment of goods vehicles below 7.5 tonnes used for craft purposes, historical vehicles, and vehicles used by disabled persons, all of which run negligible distances compared to other vehicles, especially on toll roads. The Commission can therefore accept these exemptions.

4. CONCLUSION

Despite somewhat decreasing the level of ambition on certain aspects (phasing out of time-based charges, variation of charges for light vehicles, exemptions), the Council position increases the ambition on a number of other equally important points. These are:

- Strengthening the provision on CO₂-based charging, notably by extending it to any remaining vignette systems
- Mandatory external cost charging for pollution on the entire tolled network
- An option to charge for the external cost of CO₂ emissions
- More flexible application of congestion charging and mark-ups
- Daily vignettes for the occasional users of light vehicles.

As such, the Council position represents significant progress in fairer and more efficient road pricing and thus in the implementation of the 'polluter pays' and 'user pays' principles. This amendment of the Eurovignette Directive is a key element of the European Green Deal and the Commission supports it.