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Subject: ***Preparation of the Council meeting (Transport, Telecommunications and Energy) on 30 and 31 March 2009***  
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 infrastructures ("Eurovignette") (LA)  
- *Progress report/Policy debate*

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***Introduction***

1. On 8 July 2008 the Commission adopted the above proposal for a Directive of the European Parliament and of the Council, which is intended to encourage Member States to implement differentiated charging to improve the efficiency and environmental performance of road freight transport. The purpose of this proposal is to adapt the road-transport charging framework so as to enable Member States to calculate and vary tolls on the basis of the external costs of road freight transport in terms of air pollution, noise pollution and congestion by introducing the "user pays" and "polluter pays" principles.

### *Discussions within the Council bodies*

2. Based on political debate at the TTE-Council on 8 December 2009 under the French Presidency, where there was a general consensus on the importance to gradually internalise the external costs of transport, including in the field of road freight transport, the Czech Presidency continued the examination of the above draft Directive.
3. Owing to the complexity of this dossier and the need for delegations to make a proper assessment of the measures put forward, a significant number of issues remain outstanding. Taking into consideration the position of the European Parliament the Czech Presidency has therefore drawn up compromise proposals to solve the outstanding technical issues and to address the key political points, in order to contribute to unblocking the situation.
4. With a view to giving further political guidance to the Council preparatory bodies to pave the way for a political agreement, the Presidency has decided to submit a progress report on the dossier at the TTE Council meeting of 30 March 2009. The intention of the Presidency is also to initiate at this TTE Council meeting, based on the three questions appearing below, a policy debate on some of the following outstanding issues.

### *Outstanding issues*

- **Scope** (Article 7)

The Commission proposal sought to extend the scope of the Directive in force beyond the trans-European transport network (TEN-T) to cover the entire national road network. Member States have expressed different opinions on this issue. Some are in favour of the Commission proposal in order to ensure legal clarity and transparency on charging systems, whereas others prefer to restrict it to the trans-European transport network for reasons of subsidiarity. The Presidency compromise remains closer to the existing Directive: it takes TEN-T roads into the scope and also any other additional sections of Member States' motorway networks which are not part of the trans-European network. In this context a definition of “motorway” stemming from original Eurovignette directive (1999/62) has been added.

The proposed compromise also preserves the spirit of the Directive in force by allowing Member States to apply, on any roads located in an urban area, including trans-European network roads crossing urban areas, regulatory charges specifically intended to reduce road congestion or combat effects on the environment.

- **External costs, particularly road congestion** (Article 7b(2), Article 11 paragraph 2 and Annex IIIb)

The Commission proposal foresees that Member States may charge for air pollution, noise and congestion. Member States have in principle welcomed the application of the polluter-pays principle in transport and found an agreement on charging for air pollution and noise. The framework proposed by the Presidency maintains the possibility for Member States to decide whether or not to apply external cost charges.

Diverging views have been expressed, as whether or not, to authorise Member States to charge for the cost of congestion and, if yes, under which conditions. Some Member States have expressed their fears that if applied, congestion charging may have a disproportionate impact on the direct price of transport. In addition these Member States fear that congestion charging could result in an unfair treatment of commercial road transport vis-a-vis other road user also responsible for congestion. Other Member States perceive congestion charging as the most important element of this proposal. They support the Commission and European Parliament view that congestion charging can help to optimise road capacities and at the same time reduce fuel consumption and CO<sub>2</sub>.

In order to bridge the gap between Member States who are in favour of the inclusion of congestion costs and those who are opposed, the Presidency suggests that congestion charging will be allowed **48 months** after the entry into force of this directive. This gradual approach seems to be appropriate also in the context of current global economic and financial crisis.

The Presidency text defines rules intended to ensure that the internalisation of congestion costs is not a means of generating additional income without any benefit for the road transport sector, but an instrument governed by strict rules that will contribute to the development of a sustainable transport system. The Presidency suggested a compromise imposing stricter conditions on Member States who want to charge for the cost of congestion. That compromise provides for:

- the establishment of an action plan which identifies, on the basis of a cost/benefit analysis, measures to enhance the capacity of the road sections concerned by building new infrastructure or by reducing the traffic (Article 7b(2));
- the Member State's regular assessment of the progress made on the road sections concerned on reducing congestion and enhancing infrastructure capacity (Article 7b(2));
- recognition of the principle that congestion may not give rise to a charge if that charge results in unfair treatment of commercial traffic compared to other road users causing congestion and in distortions of competition between operators (Article 7b(2));
- an obligation on the Member State to cease to apply the congestion charge on the road sections concerned where the measures taken do not result in the improvement of situation with respect to congestion (Article 7b(2));
- the obligation to obtain formal Commission authorisation before any implementation of such a system (Article 7g(4)).

In order to overcome concerns of some Member States related to the impact of the congestion charges on the road transport sector, the Presidency also suggests the following modifications of Annex IIIb:

- a reduction of the maximum chargeable congestion costs of vehicles in suburban roads and motorways during extreme peak period from **60** to **55** Euro cent per vehicle-kilometre (Table 3);
- indirect reduction of maximum chargeable congestion costs (and other external costs as well) by deleting the reference to date below the respective tables<sup>1</sup>;

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<sup>1</sup> In comparison with the Commission proposal these maximum values will be reduced due to fact that they will not include inflation from year 2000 until present.

- fixing the maximum duration of the peak and extreme peak period per day to **8 hours** and the maximum duration of extreme peak period per day to **5 hours**.

Finally, as part of the proposed compromise, the Presidency proposes that the Commission should assess in its report "the effect of the application of infrastructure charge and in particular variation of toll as referred to in Article 7f on the reduction of congestion and on the enhancement of the capacity on road sections subject to congestion".

- **Action plan** (Article 7b(2), Article 11 paragraph 2 and Annex IIIb)

The Commission proposal did not foresee an action plan, but an authorisation by the Commission prior to the establishment of an external cost charging scheme by a Member State.

As regards the action plan, the Presidency foresees that only in the case of the application of a congestion charge the establishment of such a plan is necessary. In order to eliminate the concerns of some Member States for the fact that by approving the action plan, the Commission could also determine the Member States' infrastructure policy, the Presidency proposes to clarify that the Commission's assessment of the compliance with the provisions on external costs charging (Article 7b) does not cover the evaluation of the content of the action plan.

The Presidency also suggests the possibility for Member States to derogate from the obligation to establish the action plan. Member States may do so, if a decision is taken to apply on its own competence a charge with an equivalent effect to vehicles falling outside the scope of this Directive but which are causing congestion.

- **Earmarking** (Article 9)

The Commission proposal provides that the income generated by a charge for external costs must be earmarked for various measures contributing to the sustainability of transport. Discussions in the Council and in the European Parliament highlighted the crucial and controversial character of this proposal. As regards the Council a vast majority of delegations is strictly against any form of earmarking of revenues generated by tolls. On the contrary, the European Parliament is strongly in favour of earmarking, in order to ensure that toll revenues will be used to improve the transport system. The Presidency considers that the obligation for Member States, in Article 9, to determine the use of the revenue generated by an external cost charge is linked to the obligation of Member States, in Article 7b, to set an action plan in case the congestion charge would be levied. In this context, the Presidency proposes to strengthen this link by suggesting that the information provided by Member States about the use of the revenue from the congestion charge shall be included in the action plan. This measure aims at improving the transparency as regards the use of the revenue generated by the congestion charge as well as its public acceptance, while not obliging Member States to earmark revenues.

Related to this discussion some Member States have expressed difficulties with the proposed legal base (Article 71 of the EC Treaty), although the Council Legal Service has confirmed the chosen legal basis in writing (see document 15554/08). These delegations consider Article 93 of the EC Treaty should be added, since some provisions of the proposed directive have to do with tax provisions.

- **Peripheral areas**

In addition to lower maximal values of external cost charges, the Presidency inserted two recitals to explicitly recognise the specificities and needs of peripheral areas. The first clarifies that Member States may decide to exempt certain roads as regards external cost charging for the purpose of improving the competitiveness of peripheral, landlocked or island areas. The second highlights that the conditions, including the maximal values set up in the directive, aim at maintaining the territorial cohesion.

- **Other matters**

Further to the in-depth discussions held within the Council preparatory bodies and following requests by Member States, several provisions of the Commission proposal have been amended and provisionally agreed upon. The Council preparatory bodies have not yet had the opportunity to examine all of the proposal's recitals. So far the Working Party has specifically examined only the recitals directly linked to certain articles of the proposal. Other less important questions or scrutiny reservations concerning other provisions of the draft Directive still remain and will have to be resolved before the Council can adopt a political agreement/common position on the proposal.

### *Work within the European Parliament*

5. On 11 March 2009 the European Parliament voted in plenary by adopting the following key amendments:

Member States may charge for air and noise pollution as well as for congestion. As regards the latter, Member States may calculate them by using their own methods, whereas for the costs of air and noise pollution a common methodology is foreseen. The revenues stemming from the aforementioned externalities shall be earmarked, in particular for reducing the damage caused. In this context, the European Parliament also proposes that the revenues from infrastructure charges shall be used mainly to benefit the road transport sector and to optimise the road transport system.

Concerning the mark-up the European Parliament foresees the possibility that such toll mark-up may be added to the infrastructure charge levied also in conurbations and not only in mountainous regions. The revenues generated from such mark-up shall be invested in financing projects designed to promote sustainable mobility in the same corridor as the road section on which this mark-up is applied. Moreover, the European Parliament proposes that such a mark-up can be added to the toll, even in the case when an external cost charge is applied.

**Conclusions:**

6. The Presidency invites Council to examine this progress report and to reply to the following questions during the ministerial debate:

**Questions for the ministers:**

- 1) *In the context of the current economic and financial crisis, do Member States confirm their agreement and readiness to gradually apply the polluter pay principle in transport and to review the Directive 1999/62/EC accordingly?*
- 2) *Can Member States support the current approach of the Presidency as regards congestion charges? Do Member States consider that postponing the implementation of congestion charges as proposed by the Presidency may further help to find generally balanced compromise?*
- 3) *In case of an agreement in principle on the possibility to charge for congestion, do Member States consider the changes made by the Presidency in Annex IIIb of the proposal (see aforementioned point "External costs, particularly road congestion") as a step in the right direction towards a generally balanced compromise? What further changes in this respect are needed?*

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