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THE EUROPEAN PARLIAMENT

THE COUNCIL

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THE COUNCIL amending Directive 1999/62/EC on the charging of
heavy goods vehicles for the use of certain infrastructures

In accordance with Article 294(8) of the Treaty on the Functioning of the European Union,
this document will not be the subject of approval by the Council;
it is intended solely for the information of delegates

DIRECTIVE 2011/.../EU
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

**amending Directive 1999/62/EC on the charging of heavy goods vehicles
for the use of certain infrastructures**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the Opinion of the European Economic and Social Committee¹,

Having regard to the Opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 255, 22.9.2010, p. 92.

² OJ C 120, 28.5.2009, p. 47.

³ Position of the European Parliament of 11 March 2009 (OJ C 87 E, 1.4.2010, p. 345) and position of the Council at first reading of 14 February 2011 (OJ C 77 E, 11.3.2011, p. 1). Position of the European Parliament of 7 June 2011 (not yet published in the Official Journal) and Council decision of

Whereas:

- (1) The promotion of sustainable transport is a key element of the common transport policy. To this end, the contribution of the transport sector to climate change and its negative impacts should be reduced, in particular congestion, which impedes mobility, and air and noise pollution, which create health and environmental damage. Moreover environmental protection requirements must be integrated into the definition and implementation of other Union policies, including the common transport policy.
- (2) The objective of reducing the negative impacts of transport should be achieved in such a way as to avoid disproportionate obstacles to the freedom of movement in the interest of sound economic growth, the proper functioning of the internal market and territorial cohesion.
- (3) To optimise the transport system accordingly, the common transport policy should use a variety of instruments to improve transport infrastructure and the use of technologies and to enable the more efficient management of transport demand through, in particular, the promotion of the renewal of the fleet, a more efficient use of infrastructures and co-modality. This calls for further recourse to the "user pays" principle and the development and the implementation of the "polluter pays" principle in the transport sector in all modes of transport.

- (4) Directive 1999/62/EC of the European Parliament and of the Council¹ called on the Commission to present a model for the assessment of all external costs arising from use of the transport infrastructure to serve as the basis for future calculations of infrastructure charges. That model was to be accompanied by an impact analysis of the internalisation of external costs for all modes of transport and a strategy for a stepwise implementation of the model and, if appropriate, by proposals for further revision of that Directive.
- (5) In order to move towards a sustainable transport policy, transport prices should better reflect the costs related to traffic-based air and noise pollution, climate change, and congestion caused by the actual use of all modes of transport, as a means of optimising the use of infrastructure, reducing local pollution, managing congestion and combating climate change at the least cost for the economy. This calls for a stepwise approach in all transport modes, taking into account their particular characteristics.
- (6) Transport modes have already started to internalise external costs and the relevant Union legislation either phases in such internalisation or at least does not prevent it. However, this process needs to be monitored and encouraged further for all modes of transport applying common principles while taking into account the specificity of each mode.

¹ OJ L 187, 20.7.1999, p. 42.

- (7) In the road transport sector, tolls calculated as distance-based charges for the use of infrastructure constitute a fair and efficient economic instrument to achieve a sustainable transport policy, since they relate directly to the use of infrastructure, the environmental performance of vehicles and the place and time of use of vehicles and can therefore be set at a level which reflects the cost of pollution and congestion caused by the actual use of vehicles. Moreover, tolls do not create any distortion of competition within the internal market since they are payable by all operators irrespective of their Member State of origin or establishment and in proportion to the intensity of use of the road network.
- (8) The impact analysis shows that applying tolls calculated on the basis of the cost of pollution, and, on congested roads, on the basis of the higher variation of toll rates during peak periods could have a positive effect on the transport system and contribute to the Union strategy on climate change. It could reduce congestion and local pollution by encouraging the use of cleaner vehicle technologies, optimising logistic behaviour and reducing empty returns. It could indirectly play an important role in reducing fuel consumption and contributing to combating climate change.
- (9) This Directive does not prevent Member States from applying national rules for charging other road users outside the scope of this Directive.

- (10) The costs of traffic-based air and noise pollution, such as health costs, including medical care, crop losses and other loss of production, and welfare costs, are borne within the territory of the Member State in which the transport takes place. The polluter pays principle will be implemented through the external-cost charging which will contribute to the reduction of external costs.
- (11) For the purpose of this Directive, the model devised by the Commission for calculating traffic-based air and noise pollution external costs provides reliable methods and a range of unit values which may already serve as a basis for the calculation of external-cost charges.
- (12) There are still uncertainties about the costs and benefits of the systems required to enforce differentiated charges on roads with low traffic. Until such uncertainties are dealt with, a flexible approach at Union level appears most appropriate. This flexible approach should leave Member States the option to decide whether and on which roads to introduce external-cost charges on the basis of the local and national characteristics of the network.
- (13) Time-based user charges constitute a useful system for already applying the "user pays" principle when a charging system based on distance travelled, which better reflects the actual use of infrastructure, is currently not implemented. Time-based user charges levied on a daily, weekly, monthly or annual basis should not discriminate against occasional users, since a high proportion of such users are likely to be non-national hauliers. A more detailed ratio between daily, weekly, monthly and annual rates should therefore be fixed for heavy goods vehicles.

- (14) In order to ensure that European hauliers receive clear price signals, which act as an incentive to optimise behaviour, efforts should be made in the medium term to bring about convergence in the methods which the Member States use to calculate external costs.
- (15) A clear and transparent implementation of the charging schemes could lead to a better functioning of the internal market. Therefore, inconsistent charging schemes should be avoided in order not to distort competition in international goods transport on the trans-European road network or on certain sections of that network, and on any additional sections of those interlinked networks or motorways which are not part of the trans-European road network. The same charging principles should, in particular, be applied to any section of the motorway network of a Member State.
- (16) Member States should have the option of charging the maximum level of the infrastructure costs and external costs permitted by this Directive through tolls, but should be able to choose to charge one or both of those costs at a lower level or not to charge them at all.
- (17) When determining the network on which to apply an external-cost charge, Member States should be able to choose not to levy external-cost charges on certain roads in order to improve access to, and the competitiveness of, peripheral, landlocked and island regions.

- (18) It should be possible to add to an infrastructure charge an external-cost element based on the cost of traffic-based air and noise pollution. The external-cost element included in tolls should be permitted to be added to the cost of use of infrastructure, provided that certain conditions are respected in the calculation of costs so as to avoid undue charging.
- (19) To better reflect the cost of traffic-based air and noise pollution, the external-cost charge should vary according to the type of roads, type of vehicles and, for noise, the time periods involved.
- (20) Congestion has a negative impact, in that for the road users in general, it means a loss of time and a waste of fuel. Differentiation of infrastructure charges offers a tool to manage congestion, provided that the differentiated tolls give a clear and meaningful price signal to road users to modify their behaviour and to avoid congested road sections during peak periods.
- (21) When a variation for the purpose of reducing congestion is applied on a certain road section, the variation should be devised and applied in a revenue-neutral way which grants significant financial advantages to hauliers who use the road section concerned during off-peak periods over those who use it during peak hours.

- (22) Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise¹ already provides a basis for developing and completing the set of Union measures concerning noise emitted by road vehicles and infrastructure by requiring competent authorities to draw up strategic noise maps for major roads and to draw up action plans to reduce noise where exposure levels can induce harmful effects on human health.
- (23) The smooth functioning of the internal market requires a Union framework in order to ensure that road charges set on the basis of the local cost of traffic-based air and noise pollution and on the basis of congestion are transparent, proportionate and non-discriminatory. That framework should include common charging principles, calculation methods, maximum levels and unit values of external costs based on acknowledged scientific methods, as well as procedures for notifying and reporting tolling schemes to the Commission.
- (24) If an authority is designated by a Member State to set the external-cost charge, it should have no vested interest in setting the amount at an undue level and should therefore be independent from the body which collects and manages toll revenue.

¹ OJ L 189, 18.7.2002, p. 12.

- (25) The corridor on which a mark-up is allowed can include parallel and directly competing mountainous road sections within a reasonable distance to which the traffic may be diverted as a result of the introduction of the mark-up. In cross-border projects, the application of this provision should be agreed upon by the Member States concerned and by the Commission.
- (26) In order to give precedence to the construction of the priority projects of European interest identified in Annex III to Decision No 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union guidelines for the development of the trans-European transport network¹, Member States which have the possibility of applying a mark-up should use that option before levying an external-cost charge. To avoid an undue charging of users, an external-cost charge should not be combined with a mark-up unless the external costs exceed the amount of the mark-up already levied. In such a case, it is thus appropriate that the amount of the mark-up should be deducted from the external-cost charge.
- (27) Discounts or reductions of the external-cost charge should not be permitted, as there would be a significant risk that they would unduly discriminate against certain categories of users.

¹ OJ L 204, 5.8.2010, p. 1.

- (28) Subject to the relevant provisions of the Treaty on the Functioning of the European Union on State Aid, incentive measures should be permitted for trips involving expensive modal transfers, such as road-sea-road, in the interest of territorial cohesion and the accessibility and competitiveness of peripheral, landlocked and island regions.
- (29) It should be possible to permit discounts or reductions of the infrastructure charge under certain circumstances for any category of users, such as frequent users or users of electronic toll systems.
- (30) Charging external costs through tolls will be more effective in influencing user decisions if they are aware of such costs. Therefore, those costs should be identified separately on a statement, on a bill or on an equivalent document provided by the toll operator. Furthermore, such a document would facilitate hauliers in passing on the cost of the external-cost charge to the shipper or to any other clients.

- (31) The use of electronic toll systems is desirable to avoid disruption of the free flow of traffic and to prevent adverse effects on the local environment caused by queues at toll barriers. It is therefore desirable to levy an external-cost charge by means of such systems, in compliance with Directive 2004/52/EC of the European Parliament and of the Council of 29 April 2004 on the interoperability of electronic road toll systems in the Community¹. With a view to facilitating the proper functioning of the internal market, the Commission should monitor progress made in the framework of Directive 2004/52/EC to implement within the agreed dates a genuine European Electronic Toll Service which limits the number of electronic toll devices in a given vehicle to one unit which is fully compatible with the electronic fee collection systems of all the Member States.
- (32) While decisions on national public expenditure, including the use of revenues generated under this Directive, are, in line with the principle of subsidiarity, a matter for Member States, the additional revenue generated from external-cost charges, or the equivalent in financial value of these revenues, in accordance with the transport policy objectives of this Directive, should be used to benefit the transport sector and to promote sustainable mobility in general. Such projects should therefore relate to, inter alia, facilitating efficient pricing, reducing road transport pollution at source, mitigating its effects, improving the CO₂ and energy performance of vehicles, developing alternative infrastructure for transport users, optimising logistics or improving road safety.

¹ OJ L 166, 30.4.2004, p. 124.

- (33) In order to promote the interoperability of tolling arrangements, and subject to compliance with certain conditions, two or more Member States should be permitted to cooperate in introducing common systems of tolls.
- (34) The Commission should send in due time to the European Parliament and to the Council a comprehensive assessment of the experience acquired in the Member States which apply an external-cost charge and/or an infrastructure charge in accordance with this Directive.
- (35) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund¹ provides that the revenue generated by charges borne directly by users must be considered in the determination of the funding-gap in the case of a revenue-generating project. However, revenue generated by external-cost charges should not be considered in calculation of the funding-gap, since this revenue should be spent on projects aimed at reducing road transport pollution at the source, mitigating its effects, improving the CO₂ and energy performance of vehicles, and developing alternative infrastructure for transport users.

¹ OJ L 210, 31.7.2006, p. 25.

- (36) When implementing alternative scientific methods for calculating external-cost charges, Member States should be able to take into account the methods for calculating the values of monetary costs of externalities that are provided by the study "Handbook on estimation of external costs in the transport sector"¹, which gives an overview of the state of the art in the theory and practice of estimating external costs.
- (37) In mountain areas as described in the study "Mountain Areas in Europe: Analysis of mountain areas in EU Member States, acceding and other European countries" commissioned by the European Commission in 2004, higher external-cost charges should be permitted to the extent that objective scientific data prove that air and noise pollution cause greater damage in those mountain areas due to geographic circumstances and physical phenomena such as the gradient of roads, temperature inversions and the amphitheatre effect of valleys.

¹ http://ec.europa.eu/transport/costs/handbook/index_en.htm.

- (38) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers¹.
- (39) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of certain adaptations of the Annexes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

¹ OJ L 55, 28.2.2011, p. 13.

- (40) In accordance with point 34 of the Interinstitutional Agreement on better law-making¹, Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (41) Since the objective of this Directive, namely to encourage differentiated charging based on external costs as a means towards sustainable transport, cannot be sufficiently achieved by the Member States alone, and can therefore, by reason of the importance of the cross-border dimension of transport, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

¹ OJ C 321, 31.12.2003, p. 1.

Article 1

Directive 1999/62/EC is hereby amended as follows:

(1) Article 2 is amended as follows:

(a) the following point is inserted:

"(ad) 'motorway' means a road specially designed and built for motor traffic, which does not serve properties bordering on it, and which:

- (i) is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other either by a dividing strip not intended for traffic or, exceptionally, by other means;
- (ii) does not cross at grade with any road, railway or tramway track, bicycle path or footpath; and
- (iii) is specifically designated as a motorway;"

(b) points (b) and (ba) are replaced by the following:

"(b) 'toll' means a specified amount payable for a vehicle based on the distance travelled on a given infrastructure and on the type of the vehicle comprising an infrastructure charge and/or an external-cost charge;

(ba) 'infrastructure charge' means a charge levied for the purpose of recovering the construction, the maintenance, the operation and the development costs related to infrastructure incurred in a Member State;"

(c) the following points are inserted:

"(bb) 'external-cost charge' means a charge levied for the purpose of recovering the costs incurred in a Member State related to traffic-based air pollution and/or traffic-based noise pollution;

(bc) 'cost of traffic-based air pollution' means the cost of the damage caused by the release of particulate matter and of ozone precursors, such as nitrogen oxide and volatile organic compounds, in the course of the operation of a vehicle;

(bd) 'cost of traffic-based noise pollution' means the cost of the damage caused by the noise emitted by the vehicles or created by their interaction with the road surface;

- (be) 'weighted average infrastructure charge' means the total revenue of an infrastructure charge over a given period divided by the number of vehicle kilometres travelled on the road sections subject to the charge during that period;
- (bf) 'weighted average external-cost charge' means the total revenue of an external-cost charge over a given period divided by the number of vehicle kilometres travelled on the road sections subject to the charge during that period;"
- (d) point (d) is replaced by the following:
- "(d) 'vehicle' means a motor vehicle or articulated vehicle combination intended or used for the carriage by road of goods and having a maximum permissible laden weight of over 3,5 tonnes;"

(2) Articles 7, 7a and 7b are replaced by the following:

"Article 7

1. Without prejudice to Article 9 paragraph 1a, Member States may maintain or introduce tolls and/or user charges on the trans-European road network or on certain sections of that network, and on any other additional sections of their network of motorways which are not part of the trans-European road network under the conditions laid down in paragraphs 2, 3, 4 and 5 of this Article and in Articles 7a to 7k. This shall be without prejudice to the right of Member States, in compliance with the Treaty on the Functioning of the European Union, to apply tolls and/or user charges on other roads, provided that the imposition of tolls and/or user charges on such other roads does not discriminate against international traffic and does not result in the distortion of competition between operators.
2. Member States shall not impose both tolls and user charges on any given category of vehicle for the use of a single road section. However, a Member State which imposes a user charge on its network may also impose tolls for the use of bridges, tunnels and mountain passes.
3. Tolls and user charges shall not discriminate, directly or indirectly, on the grounds of the nationality of the haulier, the Member State or the third country of establishment of the haulier or of registration of the vehicle, or the origin or destination of the transport operation.

4. Member States may provide for reduced toll rates or user charges, or exemptions from the obligation to pay tolls or user charges for vehicles exempted from the requirement to install and use recording equipment under Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording in road transport*, and in cases covered by, and subject to the conditions set out in, Article 6(2)(a) and (b) of this Directive.
5. A Member State may choose to apply tolls and/or user charges only to vehicles having a maximum permissible laden weight of not less than 12 tonnes if it considers that an extension to vehicles of less than 12 tonnes would, amongst others:
 - (a) create significant adverse effects on the free flow of traffic, the environment, noise levels, congestion, health, or road safety due to traffic diversion;
 - (b) involve administrative costs of more than 30 % of the additional revenue which would have been generated by that extension.

Member States choosing to apply tolls and/or user charges only to vehicles having a maximum permissible laden weight of not less than 12 tonnes shall inform the Commission of their decision and on the reasons therefor.

Article 7a

1. User charges shall be proportionate to the duration of the use made of the infrastructure, not exceeding the values stipulated in Annex II, and shall be valid for a day, a week, a month or a year. The monthly rate shall be no more than 10 % of the annual rate, the weekly rate shall be no more than 5 % of the annual rate and the daily rate shall be no more than 2 % of the annual rate.

A Member State may apply only annual rates for vehicles registered in that Member State.

2. Member States shall set user charges, including administrative costs, for all vehicle categories, at a level which is no higher than the maximum rates laid down in Annex II.

Article 7b

1. The infrastructure charge shall be based on the principle of the recovery of infrastructure costs. The weighted average infrastructure charge shall be related to the construction costs and the costs of operating, maintaining and developing the infrastructure network concerned. The weighted average infrastructure charge may also include a return on capital and/or a profit margin based on market conditions.

2. The costs taken into account shall relate to the network or the part of the network on which infrastructure charges are levied and to the vehicles that are subject thereto. Member States may choose to recover only a percentage of those costs.

Article 7c

1. The external-cost charge may be related to the cost of traffic-based air pollution. On road sections crossing areas with a population exposed to road traffic-based noise pollution, the external-cost charge may include the cost of traffic-based noise pollution.

The external-cost charge shall vary and be set in accordance with the minimum requirements and the methods as specified in Annex IIIa and shall respect the maximum values set out in Annex IIIb.

2. The costs taken into account shall relate to the network or the part of the network on which external-cost charges are levied and to the vehicles that are subject thereto. Member States may choose to recover only a percentage of those costs.
3. The external-cost charge related to traffic-based air pollution shall not apply to vehicles which comply with the most stringent EURO emission standards until four years after the dates of application laid down in the rules which introduced those standards.

4. The amount of the external-cost charge shall be set by the Member State concerned. If a Member State designates an authority for this purpose, the authority shall be legally and financially independent from the organisation in charge of managing or collecting part or all of the charge.

Article 7d

By one year after the adoption of future and more stringent EURO emission standards, the European Parliament and the Council shall, in accordance with the ordinary legislative procedure, determine the corresponding maximum values in Annex IIIb.

Article 7e

1. Member States shall calculate the maximum level of infrastructure charge using a methodology based on the core calculation principles set out in Annex III.
2. For concession tolls, the maximum level of the infrastructure charge shall be equivalent to, or less than, the level that would have resulted from the use of a methodology based on the core calculation principles set out in Annex III. The assessment of such equivalence shall be made on the basis of a reasonably long reference period appropriate to the nature of the concession contract.

3. Tolling arrangements which were already in place on 10 June 2008 or for which tenders or responses to invitations to negotiate under the negotiated procedure were received pursuant to a public procurement process before 10 June 2008 shall not be subject to the obligations set out in paragraphs 1 and 2 for as long as those arrangements remain in force and provided that they are not substantially amended.

Article 7f

1. In exceptional cases concerning infrastructure in mountainous regions, and after informing the Commission, a mark-up may be added to the infrastructure charge levied on specific road sections which are subject to acute congestion, or the use of which by vehicles is the cause of significant environmental damage, on condition that:
 - (a) the revenue generated from the mark-up is invested in financing the construction of priority projects of European interest, identified in Annex III to Decision No 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union guidelines for the development of the trans-European transport network**, which contribute directly to the alleviation of the congestion or environmental damage and which are located in the same corridor as the road section on which the mark-up is applied;

- (b) the mark-up does not exceed 15 % of the weighted average infrastructure charge calculated in accordance with Article 7b(1) and Article 7e, except where the revenue generated is invested in cross-border sections of priority projects of European interest involving infrastructure in mountainous regions, in which case the mark-up may not exceed 25 %;
- (c) the application of the mark-up does not result in unfair treatment of commercial traffic compared to other road users;
- (d) a description of the exact location of the mark-up and proof of a decision to finance the construction of priority projects referred to in point (a) are submitted to the Commission in advance of the application of the mark-up; and
- (e) the period for which the mark-up is to apply is defined and limited in advance and is consistent, in terms of the expected revenue to be raised, with the financial plans and cost-benefit analysis for the projects co-financed with the revenue from the mark-up.

The first subparagraph shall apply to new cross-border projects subject to the agreement of all Member States involved in that project.

2. A mark-up may be applied to an infrastructure charge which has been varied in accordance with Article 7g.
3. After receiving the required information from a Member State intending to apply a mark-up, the Commission shall make this information available to the members of the Committee referred to in Article 9c. If the Commission considers that the planned mark-up does not meet the conditions set out in paragraph 1, or if it considers that the planned mark-up will have significant adverse effects on the economic development of peripheral regions, it may reject or request amendment of the plans for charges submitted by the Member State concerned. These implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 9c(2).
4. On road sections where the criteria for applying a mark-up pursuant to paragraph 1 are met, the Member States may not levy an external-cost charge unless a mark-up is applied.
5. The amount of the mark-up shall be deducted from the amount of the external-cost charge calculated in accordance with Article 7c, except for vehicles of EURO emission classes 0, I and II from ...*, and III from 2015 onwards. All these revenues generated by the simultaneous application of the mark-up and the external cost charges shall be invested in financing the construction of priority projects of European interest identified in Annex III to Decision No 661/2010/EU.

* OJ: Please insert the date of entry into force of this Directive.

Article 7g

1. Member States shall vary the infrastructure charge according to the EURO emission class of the vehicle in such a way that no infrastructure charge is more than 100 % above the same charge for equivalent vehicles meeting the strictest emission standards. Existing concession contracts are exempted from this requirement until the contract is renewed.

A Member State may nevertheless derogate from the requirement of varying the infrastructure charge if:

- (i) this would seriously undermine the coherence of the tolling systems in its territory;
- (ii) it would not be technically practicable to introduce such differentiation in the tolling system concerned;
- (iii) this would lead to diversion of the most polluting vehicles with negative impacts on road safety and public health; or
- (iv) the toll includes an external-cost charge.

Any such derogations or exemptions shall be notified to the Commission.

2. Where, in the event of a check, a driver or, if appropriate, the haulier, is unable to produce the vehicle documents necessary to ascertain the EURO emission class of the vehicle, Member States may apply tolls up to the highest level chargeable.
3. The infrastructure charge may also be varied for the purpose of reducing congestion, minimising infrastructure damage and optimising the use of the infrastructure concerned or promoting road safety, on condition that:
 - (a) the variation is transparent, made public and available to all users on equal terms;
 - (b) the variation is applied according to the time of day, type of day or season;
 - (c) no infrastructure charge is more than 175 % above the maximum level of the weighted average infrastructure charge as referred to in Article 7b;
 - (d) the peak periods during which the higher infrastructure charges are levied for the purpose of reducing congestion do not exceed five hours per day;

- (e) the variation is devised and applied in a transparent and revenue neutral way on a road section affected by congestion by offering reduced toll rates for hauliers who travel during off-peak periods and increased toll rates for hauliers who travel during peak hours on the same road section; and
 - (f) a Member State wishing to introduce such variation or changing an existing one informs the Commission thereof and provides it with the information necessary to ensure that the conditions are fulfilled. Based on the information provided, the Commission shall make public and regularly update a list containing the periods and corresponding rates during which the variation is applied.
4. The variations referred to in paragraphs 1 and 3 are not designed to generate additional toll revenue. Any unintended increase in revenue shall be counterbalanced by changes to the structure of the variation which must be implemented within two years from the end of the accounting year in which the additional revenue is generated.

Article 7h

1. At least six months before the implementation of a new infrastructure charge tolling arrangement, Member States shall send to the Commission:
 - (a) for tolling arrangements other than those involving concession tolls:
 - the unit values and other parameters used in calculating the various infrastructure cost elements, and
 - clear information on the vehicles covered by the tolling arrangements, the geographic extent of the network, or part of the network, used for each cost calculation, and the percentage of costs that are intended to be recovered;

- (b) for tolling arrangements involving concession tolls:
- the concession contracts or significant changes to such contracts,
 - the base case on which the grantor has founded the notice of concession, as referred to in Annex VII B to Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts***; this base case shall include the estimated costs as defined in Article 7b(1) envisaged under the concession, the forecast traffic, broken down by type of vehicle, the levels of toll envisaged and the geographic extent of the network covered by the concession contract.
2. Within six months of receiving all the necessary information in accordance with paragraph 1, the Commission shall give an opinion as to whether the obligations of Article 7e are complied with. The opinions of the Commission shall be made available to the Committee referred to in Article 9c.

3. Before the implementation of a new external-cost charge tolling arrangement, Member States shall send the Commission:
- (a) precise information locating the road sections where the external-cost charge is to be levied and describing the class of vehicles, type of roads and the exact time periods according to which the external-cost charge will vary;
 - (b) the envisaged weighted average external-cost charge and the envisaged total revenue;
 - (c) if appropriate, the name of the authority designated in accordance with Article 7c(4) to set the amount of the charge, and of its representative;
 - (d) the parameters, data and information necessary to demonstrate how the calculation method set out in Annex IIIa will be applied.

4. The Commission shall take a decision as to whether the obligations of Articles 7b, 7c, 7j or 9(2) are complied with by:
 - (a) six months after the submission of the file referred to in paragraph 3; or
 - (b) where applicable, an additional three months after receipt of additional information pursuant to paragraph 3 requested by the Commission.

The Member State concerned shall adapt the proposed external-cost charge in order to be in conformity with the decision. The decision of the Commission shall be made available to the Committee referred to in Article 9c, to the European Parliament and to the Council.

Article 7i

1. Member States shall not provide for discounts or reductions for any users in relation to the external-cost charge element of a toll.
2. Member States may provide for discounts or reductions to the infrastructure charge on condition that:
 - (a) the resulting charging structure is proportionate, made public and available to users on equal terms and does not lead to additional costs being passed on to other users in the form of higher tolls;

- (b) such discounts or reductions lead to actual savings in administrative costs; and
 - (c) do not exceed 13 % of the infrastructure charge paid by equivalent vehicles not eligible for the discount or reduction.
3. Subject to the conditions provided for in Article 7g(3)(b) and in Article 7g(4), toll rates may, in exceptional cases, namely for specific projects of high European interest identified in Annex III to Decision No 661/2010/EU, be subject to other forms of variation in order to secure the commercial viability of such projects where they are exposed to direct competition with other modes of vehicle transport. The resulting charging structure shall be linear, proportionate, made public, and available to all users on equal terms and shall not lead to additional costs being passed on to other users in the form of higher tolls. The Commission shall verify compliance with those conditions prior to the implementation of the charging structure in question.

Article 7j

1. Tolls and user charges shall be applied and collected and their payment monitored in such a way as to cause as little hindrance as possible to the free flow of traffic and to avoid any mandatory controls or checks at the Union's internal borders. To this end, Member States shall cooperate in establishing methods for enabling hauliers to pay tolls and user charges 24 hours a day, at least at major sales outlets, using common means of payment, inside and outside the Member States in which they are applied. Member States shall provide adequate facilities at the points of payment for tolls and user charges so as to maintain normal road safety standards.

2. The arrangements for collecting tolls and user charges shall not, financially or otherwise, place non-regular users of the road network at an unjustified disadvantage. In particular, where a Member State collects tolls or user charges exclusively by means of a system that requires the use of a vehicle on-board unit, it shall ensure that appropriate on-board units compliant with the requirements of Directive 2004/52/EC of the European Parliament and of the Council of 29 April 2004 on the interoperability of electronic road toll systems in the Community**** can be obtained by all users under reasonable administrative and economic arrangements.

3. If a Member State levies a toll on a vehicle, the total amount of the toll, the amount of the infrastructure charge and/or the amount of the external-cost charge shall be indicated in a receipt provided to the haulier, as far as possible by electronic means.
4. Where economically feasible, Member States shall levy and collect external-cost charges by means of an electronic system which complies with the requirements of Article 2(1) of Directive 2004/52/EC. The Commission shall promote cooperation between Member States that may prove necessary to ensure the interoperability of electronic toll collection systems at European level.

Article 7k

Without prejudice to Articles 107 and 108 of the Treaty on the Functioning of the European Union, this Directive does not affect the freedom of Member States which introduce a system of tolls and/or user charges for infrastructure to provide appropriate compensation for those charges.

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- * OJ L 370, 31.12.1985, p. 8.
 - ** OJ L 204, 5.8.2010, p. 1.
 - *** OJ L 134, 30.4.2004, p. 114.
 - **** OJ L 166, 30.4.2004, p. 124."

(3) After Article 8a, the following Article is added:

"Article 8b

1. Two or more Member States may cooperate in introducing a common system for tolls applicable to their combined territories as a whole. In such a case, those Member States shall ensure that the Commission is informed about such cooperation and the system's subsequent operation and possible amendment.
2. The common toll system shall be subject to the conditions set out in Articles 7 to 7k. Other Member States may join the common system."

(4) In Article 9, paragraphs 1a and 2 are replaced by the following:

- "1a. This Directive shall not prevent the non-discriminatory application by Member States of regulatory charges specifically designed to reduce traffic congestion or combat environmental impacts, including poor air quality, on any roads located in an urban area, including trans-European network roads crossing urban areas.

2. Member States shall determine the use of revenues generated by this Directive. To enable the transport network to be developed as a whole, revenues generated from infrastructure and external costs charges, or the equivalent in financial value of these revenues, should be used to benefit the transport sector, and optimise the entire transport system. In particular, revenues generated from external cost charges, or the equivalent in financial value of these revenues, should be used to make transport more sustainable, including one or more of the following:
- (a) facilitating efficient pricing;
 - (b) reducing road transport pollution at source;
 - (c) mitigating the effects of road transport pollution at source;
 - (d) improving the CO₂ and energy performance of vehicles;
 - (e) developing alternative infrastructure for transport users and/or expanding current capacity;
 - (f) supporting the trans-European transport network;

- (g) optimising logistics;
- (h) improving road safety; and
- (i) providing secure parking places.

This paragraph shall be deemed to be applied by Member States, if they have in place and implement fiscal and financial support policies which leverage financial support to the trans-European network and which have an equivalent value of at least 15 % of the revenues generated from infrastructure and external cost charges in each Member State."

- (5) Articles 9b and 9c are replaced by the following:

"Article 9b

The Commission shall facilitate dialogue and the exchange of technical know-how between Member States in relation to the implementation of this Directive and in particular the Annexes.

Article 9c

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers*.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 9d

The Commission shall adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union as regards:

- the adaptation of Annex 0 to the Union acquis;
- the adaptation of the formulas of sections 4.1 and 4.2 of Annex IIIa to scientific and technical progress.

The procedures set out in Articles 9e, 9f and 9g shall apply to the delegated acts referred to in this Article.

Article 9e

1. The power to adopt the delegated acts referred to in Article 9d shall be conferred on the Commission for an indeterminate period of time.
2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and the Council.
3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 9f and 9g.

Article 9f

1. The delegation of power referred to in Article 9d may be revoked by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation and possible reasons for a revocation.
3. The decision of revocation shall put an end to the delegation of the power specified in that decision and shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Article 9g

1. The European Parliament or the Council may object to a delegated act within a period of two months from the date of notification.

At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the *Official Journal of the European Union* and shall enter into force at the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

* OJ L 55, 28.2.2011, p. 13."

- (6) In Article 10(1), the words "European Communities" are replaced by the words "European Union".

(7) After Article 10, the following Article is inserted:

"Article 10a

1. The amounts in euro as laid down in Annex II and the amounts in cent as laid down in Tables 1 and 2 in Annex IIIb shall be reviewed every two years starting on 1 January of ...*, in order to take account of changes in the EU-wide Harmonised Index of Consumer Prices excluding energy and unprocessed food (as published by the Commission (Eurostat)).

The amounts shall be adapted automatically, by increasing the base amount in euro or cent by the percentage change in that index. The resulting amounts shall be rounded up to the nearest euro with regard to Annex II, rounded up to the nearest tenth of a cent with regard to Table 1 in Annex IIIb and rounded up to the nearest hundredth of a cent with regard to Table 2 in Annex IIIb.

2. The Commission shall publish in the *Official Journal of the European Union* the adapted amounts referred to in paragraph 1. Those adapted amounts shall enter into force on the first day of the month following publication."

* OJ: Please insert: The second year following the date of entry into force of this Directive.

(8) Article 11 is replaced by the following:

"Article 11

1. By ...*, and every four years thereafter, Member States which levy an external-cost charge and/or an infrastructure charge shall draw up a report on tolls, including concession tolls, levied on their territory and shall forward it to the Commission which shall make it available to the other Member States. That report may exclude tolling arrangements that were already in place on 10 June 2008 and which do not include external-cost charges, as long as those arrangements remain in force and provided that they are not substantially amended. That report shall comprise information on:
 - (a) the weighted average external-cost charge and the specific amounts levied for each combination of class of vehicle, type of road and period of time;
 - (b) the variation of infrastructure charges according to the type of vehicles and time;

* OJ: Please insert date: 36 months after the entry into force of this Directive.

- (c) the weighted average infrastructure cost charge and total revenue raised through the infrastructure charge;
 - (d) the total revenue raised through external cost charges; and
 - (e) the actions taken pursuant to Article 9(2).
2. By ...^{*}, the Commission, assisted by the Committee referred to in Article 9c, shall present a report to the European Parliament and the Council on the implementation and effects of this Directive, in particular as regards the effectiveness of the provisions on the recovery of the costs related to traffic-based pollution, and on the inclusion of vehicles of more than 3,5 and less than 12 tonnes. The report shall also analyse, based on continuous monitoring, and assess, amongst others:
- (a) the effectiveness of the measures foreseen in this Directive in order to tackle negative impacts caused by road transport taking also into account, in particular, the impact on geographically isolated and peripheral Member States;
 - (b) the effect of the implementation of this Directive to direct users toward the most environmentally friendly and efficient transport solutions and shall include information on the introduction of distance-based charges;

^{*} OJ: Please insert date: 48 months after the entry into force of this Directive.

- (c) the implementation and effect of the variation of infrastructure charges as referred to in Article 7g on the reduction of local air pollution and congestion. The report shall also evaluate whether the maximum variation and peak period as referred to in Article 7g are sufficient to enable a proper functioning of the variation mechanism;
- (d) scientific progress in estimating external costs of transport for the purpose of internalising them; and
- (e) progress towards applying charges to road users and ways of gradually harmonising the charging systems that are applied to commercial vehicles.

The report shall also evaluate the use of electronic systems to levy and collect infrastructure and external-cost charges and their degree of interoperability pursuant to Directive 2004/52/EC.

3. The report shall be accompanied, if appropriate, by a proposal to the European Parliament and the Council for further revision of this Directive.

4. By ...*, the Commission shall present a report that summarises the other measures, such as regulatory policies, taken to internalise or reduce the external costs related to environment, noise and health from all transport modes, including the legal basis and maximum values used.

In order to ensure fair intermodal competition while gradually charging the external costs of all transport modes, it shall include a timetable of the measures which remain to be taken to address other modes or vehicles and/or the external-cost elements not taken into account yet, taking into account progress in revising Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity*.

* OJ L 283, 31.10.2003, p. 51."

* OJ: Please insert date: 12 months after the entry into force of this Directive.

(9) Annex III is amended as follows:

(a) the first paragraph is replaced by the following:

"This Annex stipulates the core principles for the calculation of weighted average infrastructure charge to reflect Article 7b(1). The obligation to relate infrastructure charges to costs shall be without prejudice to the freedom of Member States to choose, in accordance with Article 7b(2), not to recover the costs in full through infrastructure charges revenue, or to the freedom, in accordance with Article 7f, to vary the amounts of specific infrastructure charges away from the average.";

(b) in the second paragraph, the word "Community" is replaced by the word "Union";

(c) in point (1), second indent, the words "Article 7a(1)" are replaced by the words "Article 7b(2)".

(10) After Annex III, the text set out in the Annex to this Directive is inserted.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...*. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

The obligations for transposition and implementation of this Directive shall not apply to Member States as long as neither tolls nor user charges are implemented within their territory.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

* OJ: Please insert date: 24 months after the entry into force of this Directive.

Article 3

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament

The President

For the Council

The President

ANNEX

"ANNEX IIIa

MINIMUM REQUIREMENTS FOR LEVYING AN EXTERNAL-COST CHARGE

This Annex sets out the minimum requirements for levying an external-cost charge and for calculating the maximum weighted average external-cost charge.

1. The parts of the road network concerned

The Member State shall specify precisely the part or parts of their road network which are to be subject to an external-cost charge.

Where a Member State chooses to levy an external-cost charge on only a part or parts of the road network falling within the scope of this Directive, the part or parts shall be chosen after an assessment establishing that:

- vehicles' use of the roads where the external-cost charge is applied generates environmental damage higher than that generated on average on other parts of the road network falling within the scope of this Directive that are not subject to an external-cost charge, or
- the imposition of an external-cost charge on other parts of the road network falling within the scope of this Directive might have adverse effects on the environment or road safety, or levying and collecting an external-cost charge on them would entail disproportionate cost.

2. The vehicles, roads and time period covered

The Member State shall notify the Commission of the classification of vehicles according to which the toll shall vary. It shall also notify the Commission of the location of roads subject to higher external-cost charges (called hereafter "suburban roads (including motorways)"), and of roads subject to lower external-cost charges (called hereafter "interurban roads (including motorways)").

Where applicable, it shall also notify the Commission of the exact time periods corresponding to the night period during which a higher external noise-cost charge may be imposed to reflect greater noise nuisances.

The classification of roads as suburban roads (including motorways) and interurban roads (including motorways), and the definition of time periods shall be based on objective criteria related to the level of exposure of the roads and their vicinities to pollution such as population density, and the yearly number of pollution peaks measured in accordance with this Directive. The criteria used shall be included in the notification.

3. Amount of the charge

For each vehicle class, type of road and time period, the Member State or, if appropriate, an independent authority shall determine a single specific amount. The resulting charging structure, including the start time and the end time of each night period where the external-cost charge includes the cost of noise pollution, shall be transparent, made public and available to all users on equal terms. The publication should occur in a timely manner before implementation. All parameters, data and other information necessary to understand how the various external-cost elements are calculated shall be made public.

When setting the charges, the Member State or, if appropriate, an independent authority shall be guided by the principle of efficient pricing that is a price close to the social marginal cost of the usage of the vehicle charged.

The charge shall also be set after having considered the risk of traffic diversion together with any adverse effects on road safety, the environment and congestion, and any solutions to mitigate these risks.

The Member State or, if appropriate, an independent authority, shall monitor the effectiveness of the charging scheme in reducing environmental damage arising from road transport. It shall every two years adjust, if appropriate, the charging structure and the specific amount of the charge set for a given class of vehicle, type of road and period of time to the changes in transport supply and demand.

4. External-cost elements

4.1. Cost of traffic-based air pollution

When a Member State chooses to include all or part of the cost of traffic-based air pollution in the external-cost charge, the Member State or, if appropriate, an independent authority shall calculate the chargeable cost of traffic-based air pollution by applying the following formula or by taking the unit values in Table 1 of Annex IIIb if the latter are lower:

$$PCV_{ij} = \sum_k EF_{ik} \times PC_{jk}$$

where:

- PCV_{ij} = air pollution cost of vehicle class i on road type j (euro/vehicle.kilometre)
- EF_{ik} = emission factor of pollutant k and vehicle class i (gram/vehicle.kilometre)
- PC_{jk} = monetary cost of pollutant k for type of road j (euro/gram)

The emission factors shall be the same as those used by the Member State to draft the national emissions inventories provided for in Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants¹ (which requires use of the EMEP/CORINAIR Emission Inventory Guidebook²). The monetary cost of pollutants shall be estimated by the Member State or, if appropriate, an independent authority, respecting the state of the art.

¹ OJ L 309, 27.11.2001, p. 22.

² Methodology of the European Environmental Agency
<http://reports.eea.europa.eu/EMEPCORINAIR5/>.

The Member State or, if appropriate, an independent authority may apply scientifically proven alternative methods to calculate the value of air pollution costs using data from air pollutant measurement and the local value of the monetary cost of air pollutants, provided that the results do not exceed the unit values referred to in Table 1 of Annex IIIb for any class of vehicles.

4.2. Cost of traffic-based noise pollution

When a Member State chooses to include all or part of the cost of traffic-based noise pollution in the external-cost charge, the Member State or, if appropriate, an independent authority shall calculate the chargeable cost of traffic-based noise pollution by applying the following formulae or by taking the unit values in Table 2 of Annex IIIb if the latter are lower:

$$\text{NCV}_j (\text{daily}) = e \times \sum_k \text{NC}_{jk} \times \text{POP}_k / \text{WADT}$$

$$\text{NCV}_j (\text{day}) = a \times \text{NCV}_j$$

$$\text{NCV}_j (\text{night}) = b \times \text{NCV}_j$$

where:

- NCV_j = noise cost of one heavy goods vehicle on road type j (euro/vehicle.kilometre)
- NC_{jk} = noise cost per person exposed on road type j to noise level k (euro/person)
- POP_k = population exposed to daily noise level k per kilometre (person/kilometre)

- WADT = weighted average daily traffic (passenger car equivalent)
- a and b are weighting factors determined by the Member State in such a way that the resulting weighted average noise charge per vehicle kilometre does not exceed NCV_j (daily).

The traffic-based noise pollution relates to the impact on noise levels measured close to the point of exposure and behind anti-noise barriers, if any.

The population exposed to noise level k shall be taken from the strategic noise maps drafted under Article 7 of Directive 2002/49/EC of the European Parliament and the Council of 25 June 2002 relating to the assessment and management of environmental noise¹.

The cost per person exposed to noise level k shall be estimated by the Member State or, if appropriate, an independent authority, respecting the state of the art.

The weighted average daily traffic shall assume an equivalence factor "e" of no more than 4 between heavy goods vehicles and passenger cars.

¹ OJ L 189, 18.7.2002, p. 12.

The Member State or, if appropriate, an independent authority may apply scientifically proven alternative methods to calculate the value of noise costs provided that the results do not exceed the unit values referred to in Table 2 of Annex IIIb.

The Member State or, if appropriate, an independent authority, may establish differentiated noise charges to reward the use of quieter vehicles provided it does not result in discrimination against foreign vehicles. If differentiated noise charges are introduced, the charges for the noisiest category of vehicles may not exceed the unit values referred to in Table 2 of Annex IIIb and four times the noise charge for the quietest vehicle.

ANNEX IIIb

MAXIMUM WEIGHTED AVERAGE EXTERNAL-COST CHARGE

This Annex sets out the parameters to be used to calculate the maximum weighted average external-cost charge.

1. Maximum cost of traffic-based air pollution:

Table 1: Maximum chargeable air pollution cost

cent/vehicle.kilometre	Suburban roads (including motorways)	Interurban roads (including motorways)
EURO 0	16	12
EURO I	11	8
EURO II	9	7
EURO III	7	6
EURO IV	4	3
EURO V	0	0
after 31 December 2013	3	2
EURO VI	0	0
after 31 December 2017	2	1
Less polluting than EURO VI	0	0

The values of Table 1 may be multiplied by a factor of up to 2 in mountain areas to the extent that it is justified by the gradient of roads, altitude and/or temperature inversions.

2. Maximum cost of traffic-based noise pollution

Table 2: Maximum chargeable noise cost

cent/vehicle.kilometre	Day	Night
Suburban roads (including motorways)	1,1	2
Interurban roads (including motorways)	0,2	0,3

The values in Table 2 may be multiplied by a factor of up to 2 in mountain areas to the extent that it is justified by the gradient of roads, temperature inversions and/or amphitheatre effect of valleys."
