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THE EUROPEAN UNION**

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REPORT

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Subject: 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)
– Progress report

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. The Working Party on Land Transport has examined the above draft Directive on a number of occasions. The annexes to the proposal, which include very technical provisions, were also discussed by a working party of experts organised by the Commission before being examined by the Working Party. In addition, the impact assessment relating to this proposal has been examined in detail by the Working Party.
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. The French Presidency has therefore drawn up a compromise, reflecting the key political points, in order to contribute to unblocking the situation. However, at the Coreper meeting on 4 December, several delegations, while commending the Presidency's significant efforts and the progress made on this dossier, felt that they would not be able to support a general approach on the proposal at the TTE Council meeting on 8 and 9 December.
4. Accordingly, further to Coreper's discussions on 4 December 2008, the Presidency has decided to submit a progress report on the dossier at the TTE Council meeting on 8 and 9 December 2008.

Progress report

5. Further to the in-depth discussions held within the Working Party, the French Presidency has amended several provisions of the Commission proposal to take account of delegations' requests; this has made it possible to reach broad consensus on most articles, including in particular:
 - definitions (Article 1);
 - rates of user charges, and in particular the relative rates for daily, weekly, monthly and annual vignettes (Article 7a);

- as regards variations in charges, greater flexibility in the variation of the infrastructure charge to take account of congestion in particular (Article 7f(3)(c));
- approval of any arrangements for internalising external costs via a Commission decision (Article 7g(4));
- discounts and reductions, with the possibility of providing for reductions in the infrastructure charge for frequent users (Article 7h);
- an encouragement to Member States to use electronic tolling systems for the purposes of internalising external cost charges (Article 7i(4));
- the voluntary nature of this Directive (Article 7(1)).

However, some of the proposal's major issues remain outstanding; they include the following in particular:

Outstanding issues

- **Legal basis**

Although the Council Legal Service has confirmed the legal basis chosen (Article 71 of the EC Treaty) in writing, some delegations have stated that they had difficulties accepting it¹. These delegations consider that Article 93 of the EC Treaty should be included as a legal basis since some of the proposal's provisions have to do with taxation.

¹ 15554/08 + COR 1.

- **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. The Presidency compromise remains closer to the existing Directive: it takes TEN-T roads into the scope and also roads on which international freight transport accounts for a significant proportion of traffic. The compromise also preserves the spirit of the Directive in force by allowing Member States to apply, on roads within built-up areas, regulatory charges specifically intended to reduce road congestion or combat effects on the environment.

Several delegations maintain reservations on this matter. Some delegations would prefer to keep the provision of the current Directive. Conversely, other delegations support the Commission proposal.

- **External costs, particularly road congestion (Article 7b(2))**

Broad consensus was reached on acceptance of the principle of the internalisation of external costs caused by road freight transport, in particular as regards air and noise pollution.

The framework proposed by the Presidency leaves Member States free to decide whether or not to apply external cost charges. However, to prevent any discrimination on the internal market in the application of such charges, and in particular as regards the cost of road congestion, the new Presidency compromise 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. That compromise provides, *inter alia*, for:

the establishment of a plan of action specifying the measures that will be implemented to reduce road congestion on the road sections concerned by reducing the volume of traffic or the construction of new infrastructure, with an estimate of the costs involved and a timetable for implementation (Article 7b(2) and Article 7c(4));

- 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 introduces a manifest difference of treatment between commercial traffic and other road users (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 ultimately reduce congestion (Article 7b(2));
- the obligation to obtain formal Commission authorisation before any implementation of such a system (Article 7g(4)).

Finally, as part of the proposed compromise, the Presidency also suggests a reduction in the ceiling values used to determine the road congestion charge (Annex IIIb).

Several delegations expressed hesitation regarding the internalisation of external costs caused by road congestion, stressing the major costs or possible discrimination which it could create with respect to other road users. Some delegations opposed the inclusion of congestion as a chargeable external cost on the grounds of the peripheral geographic location of their Member States. However, two delegations proposed widening the Commission proposal to include other external costs.

- **Earmarking of charges** (Article 7c(4))

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. In view of the reservations expressed by several Member States, the Presidency proposes deleting that obligation and replacing it with a mere encouragement. However, for reasons essentially legal or political, certain delegations are maintaining their reservations on this matter.

- **Methods of calculating external costs** (Annex IIIa and IIIb)

To guarantee smooth operation of the internal market, the Commission proposed common charging principles, methods of calculation and unit values for external costs based on recognised scientific methods.

In accordance with the Member States' requests, the Presidency has clarified the text so as to make it possible for the Member States to use their own calculation formulæ provided, however, that the values calculated comply with the ceilings clearly stated in a specified annex (Annex IIIb). In addition, the Presidency compromise provides that only the calculation formulæ in the annexes may be amended by comitology; the maximum amounts of the external cost charges may be amended only by co-decision (Article 9b).

Several delegations submitted alternative proposals calling for greater flexibility and expressed their reservations regarding the Presidency's proposals. Those delegations wanted in particular to be able to study the implications, especially the economic implications, of applying the calculation formulæ in question. Certain delegations also reported that they lacked the technological means to implement the calculation methods. For all these reasons, they needed more time and were not in a position at this stage to support the Presidency's compromise proposals.

- **Other matters**

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 general approach on the proposal.

Conclusions:

6. The Presidency invites Council to examine this progress report.
