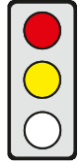


## KEY ISSUES

**Objective of the Regulation:** The imposition of road-use charges is to be further harmonised EU wide.

**Affected parties:** Drivers of cars, lorries, vans and buses, transport companies, toll operators



**Pro:** The waiver of a duty to impose road-use charges is appropriate.

**Contra:** (1) Rules on the imposition of road-use charges for cars are in breach of the principle of subsidiarity.

(2) The blanket abolition of vignette charges by the EU is unjustified because the advantages and disadvantages of toll and vignette charges depend on their design.

(3) The current scaling of infrastructure charges for heavy duty vehicles according to EURO classes should not be abolished. It results in a vehicle fleet with lower emissions.

The important passages in the text are indicated by a line at the side.

## CONTENT

### Title

**Proposal COM(2017) 275** of 31 May 2017 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**

### Brief Summary

#### ► Context and objectives

- In many Member States, the condition of road infrastructure is deteriorating due to a decrease in public spending on maintenance. This has negative consequences such as longer journey times, more accidents, higher levels of air pollution - such as carbon monoxide, nitrogen monoxide, black carbon - and increased noise pollution. (p. 2)
- Road-use charges can create incentives for “cleaner, more efficient operations” and counteract problems such as climate change, air pollution, noise and congestion (p. 2).
- The Road Charging Directive [1999/62/EC] currently only regulates the imposition of road-use charges for lorries over 3.5 t. The charges can take account of air pollution and the cost of congestion but not CO<sub>2</sub> emissions.
- The proposed amendment of the Road Charging Directive will
  - include other vehicle types in addition to lorries over 3.5 t (p. 3),
  - aim to achieve progress in the application of the user pays principle (“those using the roads must pay”) and the polluter pays principle (“those causing pollution must pay”), mainly by taking account of CO<sub>2</sub> emissions when setting road-use charges (p. 3),
  - continue to refrain from obliging the Member States to introduce road-use charges in the future (p. 5).

#### ► Scope

- In future, the Road Charging Directive will apply to all heavy and light duty vehicles (amended Art. 1).
- “Heavy duty vehicles” (HDVs) are lorries and buses over 3.5 t (Art. 2 new No. 16).
  - “Light duty vehicles” (LDV) are cars as well as minibuses and vans up to 3.5 t (new Art. 2 No. 19).

#### ► Road-use charges: Vignettes and Tolls

- “Vignette charges” (also known as “user charges”) are time-dependent road-use charges which provide an entitlement to road use for a specific period of time (Art. 2 new No. 14).
- “Toll charges” are distance-based road-use charges which depend on the route travelled and the vehicle type (new Art. 2 No. 6). They consist of (new Art. 2 No. 6)
  - an “infrastructure charge” - to cover the construction, maintenance and operating costs (Art. 2, new No. 7),
  - possibly an “external-cost charge” to cover the costs of air and noise pollution,
  - possibly a “congestion charge” - to cover the surface area used.

#### ► Exemptions for HDVs

- Until the end of 2019, Member States can exempt HDVs below 12 t from the charges where they
  - would have “significant adverse effects” on “the environment, noise levels, congestion, health, or road safety due to traffic diversion” (new Art. 7 (8) (a), or
  - would lead to administrative costs of more than 30% of the additional revenue (new Art. 7 (8) (b)).

- As from 2020, no further exceptions will be permitted for buses (new Art. 7 (9)).
- ▶ **Vignette charges for LDVs and HDVs: Gradual abolition**
  - As regards vignette charges for HDVs, Member States will (new Art. 7 (6))
    - no longer be able to introduce new charges as from 2018,
    - only be able to keep them until the end of 2023.
  - As regards vignette charges for LDVs, Member States will (new Art. 7 (7))
    - no longer be able to bring in new ones as from entry into force of the amendments to the Directive,
    - only be able to keep them until the end of 2027.
  - This gradual abolition of vignette charges helps to achieve “progress with the application of the polluter pays and user pays principles” (p. 11). This is justified by the fact that vignette charges “do not accurately reflect infrastructure costs” and “are not effective when it comes to incentivising cleaner and more efficient operations” (Recital 4).
- ▶ **Vignette charges for cars: Non-discriminatory design**
  - In order to avoid discrimination mostly against foreign occasional road users [p.2; see also COM(2012) 199, [cepPolicyBrief 28/2012](#)], car vignette charges must be staggered (new Art. 7a (3)).
  - Car vignettes must be offered at least in the following categories: for one year; for one and/or two weeks at a price of no more than 18% or 30% of the annual rate respectively; for ten days at a price of no more than 8% of the annual rate.
  - Until a “substantial amendment” of the vignette charges, but in any case until the end of 2023, rates can remain above the highest rates if they were adopted before 31 May 2017 (new Art. 7a (3)).
  - For other validity periods, charges must be established according to the principle of equal treatment taking account of other rates and “use patterns” (new Art. 7a (3)).
  - On introduction of a vignette charge, Member States are no longer permitted to provide for “compensation” - e.g. by a corresponding reduction in car tax - (amended Art. 7k).
- ▶ **Vignette charges for LDVs: Aimed at air pollution**
  - Until the end of 2021, vignette charges for LDVs can be based on the “environmental performance” provisions of Member States (new Art. 7ga (1)).
  - As from 2022, at least the annual vignette charges for LDVs with lower pollution levels must benefit from reduced charge rates (new Art. 7ga (2) in conjunction with Annex VII). This discount is, however, only available to those LDVs with CO<sub>2</sub> emissions below the new car fleet targets ([Regulation (EC) No. 443/2009] and [Regulation (EU) No. 510/2011]).
- ▶ **Toll charges for LDVs: Aimed at air pollution**
  - Until the end of 2021, toll charges for LDVs can be based on the “environmental performance” provisions of Member States (new Art. 7ga (1)).
  - As from 2022, toll charges for LDVs with lower pollution levels must benefit from reduced charge rates (new Art. 7ga (2) in conjunction with Annex VII). This discount is, however, only available to those LDVs with CO<sub>2</sub> emissions below the new car fleet targets ([Regulation (EC) No. 443/2009] and [Regulation (EU) No. 510/2011]).
- ▶ **Toll charges for HDVs: Infrastructure charges aimed at CO<sub>2</sub> emissions**
  - Under current law, infrastructure charges for lorries over 3.5 t must be staggered according to “EURO emission class” which is based on their level of air pollution (Art. 7g in conjunction with Annex 0).
  - This provision will be extended to include buses in 2020 (new Art. 7 (9)).
  - The staggering of infrastructure charges for HDVs according to EURO emissions class will be discontinued at the end of 2020 (amended Art. 7g (2)).
  - The Commission will adopt a delegated act to define the “reference values” of CO<sub>2</sub> emissions for HDVs and “appropriate” CO<sub>2</sub> emission classes. Within one year after their entry into force, Member States must assess infrastructure charges according to these classes (amended Art. 7 (4)).
- ▶ **Toll charges for LDVs and HDVs: Charges for air and noise pollution**
  - Toll charges may contain a fee for air and/or noise pollution (amended Art. 7c (1) in conjunction with Annex III).
  - From 2021, toll charges for HDVs must contain a charge for air and noise pollution for at least the following roads (new Art. 7c (5)):
    - sections of the trans-European road network [COM(2011) 650; see [cepPolicyBrief](#)] and
    - motorways with “above average” air pollution and noise levels.
- ▶ **Toll charges for LDVs and HDVs: Congestion charges**
  - Member States can introduce congestion charges on their entire road network (new Art. 7da (1)).
  - They must be assessed on the basis of vehicle length (new Art. 7da (3) in conjunction with Annex V).
  - They can only be imposed (new Art. 7da (1))
    - on road sections which are “regularly” congested and
    - during periods when they are “typically” congested.

## Statement on subsidiarity by the Commission

In view of the impact of road transport on the cross-border climate problem and on the potential unequal treatment of foreign occasional road users, the proposed changes to the Road Charging Directive are justified. (see p. 2 et seq.)

## Policy Context

In order to comply with obligations under the UN Climate Change Agreement concluded in Paris (see [cepPolicyBrief 13/2016](#)), the transport sector will also make a contribution to CO<sub>2</sub> reduction. In its “Strategy for Low-Emission Mobility” [COM(2016) 501; see [cepPolicyBrief 30/2016](#)] the Commission calls for “increased” imposition of distance-based toll charges. In order to reduce possible pressure on the road haulage sector when switching to toll charges [see this [cepPolicyBrief](#)], the Commission wants to reduce the minimum rates of vehicle tax for lorries to zero incrementally over five years [COM(2017) 276, Annex I].

## Legislative Procedure

31 May 2017	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

## Options for Influencing the Political Process

Directorates General:	Transport
Committees of the European Parliament:	Transport (leading), Rapporteur: Christine Revault D'Allones Bonnefoy (S&D Group, FR) and Deirdre Clune (EVP Group, EI)
Committees of the German Bundestag:	Transport (leading)
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

## Formalities

Competence:	Art. 91 TFEU (Transport)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Procedure:	Art. 294 TFEU (ordinary legislative procedure)

# ASSESSMENT

## Economic Impact Assessment

**Extending the scope of the Road Charging Directive to include all HDVs may prevent distortions of competition** – in the road haulage sector and also between buses and rail transport.

**The waiver of a duty to impose road-use charges is appropriate.** Although there are good reasons, in view of the increasing volume of traffic, to provide incentives for reducing air pollution, noise, congestion and CO<sub>2</sub> emissions, the proposed application of the user-pays and polluter-pays principles does not necessarily have to involve road-use charges **because other instruments exist to facilitate the “pricing”** – i.e. cost apportionment – **of environmental and climate damage**, such as staggered motor vehicle tax based on air pollution levels in combination with the pricing of actual CO<sub>2</sub> output by way of a CO<sub>2</sub> tax, or emissions trading (ETS; see [cepCompass EU Climate and Energy Policy](#), p.10 et seq.). These, however, only cover domestic commercial vehicles, whereas road-use charges also include foreign ones. The choice of instrument should therefore, as the Commission proposes, remain with the Member States.

**The proposal for a Directive pays insufficient attention to the problem of traffic diversion.** If road-use charges are only imposed on certain roads, there is a risk, particularly in the case of cars, that the traffic will divert from the safest roads - motorways and dual-carriageways - which have the least number of road accident fatalities and injuries per kilometre driven, onto more hazardous roads which also pass closer to residential areas and result in air pollution and noise in those areas. This is not true in the case of the alternative instruments mentioned which also correspond to the user-pays and polluter-pays principles. The Commission also fails to explain why it thinks the problem of traffic diversion will cease to exist as regards lorries below 12 t as from the end of 2019, if the possibility - granted due to the impending risk if diverted traffic - of exemption from road-use charges for HDVs is going to expire.

**The blanket abolition of vignette charges by the EU cannot be justified** by the fact that it will allow “progress with the application of the polluter pays and user pays principles” **because the advantages and disadvantages of toll and vignette charges depend on their actual design.** Route-based road-use charges in fact correspond better to these principles because vignette charges “do not accurately reflect infrastructure costs” and are less effective when it comes to “incentivising cleaner and more efficient operations”, but that is precisely why toll charges give rise to a greater degree of undesirable traffic diversion than vignette charges, particularly in the case of HDVs. Vignette charges are also less costly and are easier to make compliant with data protection requirements (see [cepInput 02/2017](#)). Even better than a toll when it comes to applying the polluter-pays principle, is the inclusion of transport in emissions trading or the imposition of fuel tax because a

toll has no effect on the manner of driving. Member States should continue to have the right, taking account of national circumstances, to decide whether to keep vignette charges.

The mandatory imposition of charges for air pollution and noise with regard to HDVs as from 2021, on road sections with above-average environmental damage, does provide an incentive to buy low-emission vehicles, but, in some cases, it also leads to the environmental damage simply being shifted onto alternative routes due to traffic diversion. Similar incentives can also be achieved by way of staggered motor vehicle tax or vignettes which would make complicated tariff structures for tolls unnecessary.

**The current staggering of infrastructure charges for heavy duty vehicles according to EURO classes – i.e. according to the level of air pollution – as from 2021 should not be abolished.** Although it is inconsistent with the overall philosophy because air pollution has nothing to do with wear and tear on infrastructure, **it does result in a low emission vehicle fleet** due to cost-driven purchasing incentives. **This incentivisation will only be partially replaced by** other measures such as the **planned charge for air pollution** on sections with above-average environmental damage.

**The planned staggering of the infrastructure charge for HDVs based on CO<sub>2</sub> emissions is** equally inconsistent with the overall philosophy, as well as being **imprecise and giving rise to complex tariff structures. CO<sub>2</sub> can be saved more effectively by** an instrument like **emissions trading** – or if necessary CO<sub>2</sub> taxes –, that is based on actual consumption and encourages fuel efficient driving which produces less CO<sub>2</sub>. If such an instrument is introduced, the fact that the infrastructure charge focuses on CO<sub>2</sub> emissions will give rise to an unnecessary overlapping of instruments and thus the risk of double taxation.

Although toll charges for LDVs are in principle to be based on pollutants, implementation is inconsistent and insufficient because this only applies to LDVs whose CO<sub>2</sub> output is subject to the new car fleet targets. Emissions of air pollutants by all other LDVs are not therefore subject to tiered pricing.

## Legal Assessment

### Legislative Competency

Unproblematic. As cross-border transport is affected, the EU can adopt rules for a “common transport policy” (Art. 90, Art. 91 (1) (a) TFEU). This also includes the rules on collecting road-use charges.

### Subsidiarity.

Based on the free movement of goods (Art. 28 et seq. TFEU) and the free movement of services (Art. 56 et seq. TFEU) within the internal market, legislation on collecting road-use charges at EU level is necessary for lorries and vans, due to the substantial amount of cross-border freight transport, and for buses and coaches, due to the significant level of cross-border passenger transport, particularly in order to avoid distortions of competition.

The risk of distortions of competition does not exist in relation to cars however. The Commission had previously therefore always expressly emphasised that “in accordance with the principle of subsidiarity” it was not considering putting forward any proposals for legislation on collecting national road-use charges for cars [COM(2012) 199, p.3; see [cepPolicyBrief 28/2012](#)]. The proposed **rules on the imposition of road-use charges for cars are therefore in breach of the principle of subsidiarity.**

This does not apply insofar as they only codify the primary law ban on discrimination against foreigners (Art. 18 TFEU) regarding the design of vignette charges. Express binding EU rules on non-discrimination, including for cars, create legal certainty.

### Impact on German Law

The provision of the German Infrastructure Charges Act (InfrAG) of 2017, allowing infrastructure charges for cars in the form of a time-based vignette, will only be possible until the end of 2027. Thereafter, an infrastructure charge is only likely to be possible in the form of a route-based toll charge.

## Conclusion

Extending the scope of the Road Charging Directive may prevent distortions of competition. The waiver of a duty to impose road-use charges is appropriate because other instruments exist for the purpose of pricing environmental and climate damage. The proposal for a Directive pays insufficient attention to the problem of traffic diversion. The blanket abolition of vignette charges by the EU is unjustified because the advantages and disadvantages of toll and vignette charges depend on their design. The current scaling of infrastructure charges for HDVs according to EURO classes should not be abolished. It results in a vehicle fleet with lower emissions. This incentivisation will only be partially replaced by the planned charge for air pollution. The planned scaling of the infrastructure charge based on CO<sub>2</sub> emissions is imprecise and gives rise to complex tariff structures. CO<sub>2</sub> can be saved more effectively by way of emissions trading. Rules on the imposition of road-use charges for cars are in breach of the principle of subsidiarity.