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COMMUNICATION FROM THE COMMISSION

on the application of national road infrastructure charges levied on light private vehicles

(Text with EEA relevance)

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1. INTRODUCTION

The general objective of the European Union's Transport Policy presented in the White Paper on Transport¹ is *"to help establish a system that underpins European economic progress, enhances competitiveness and offers high-quality mobility services while using resources more efficiently"*. In practice, users of the transport system have, inter alia, to make better use of the infrastructure and reduce its negative impact on the environment. Correct pricing, applying the "user pays" and "polluter pays" principle, is one of the ways of making users of the transport network aware of the impact of their mobility choices. A modern road pricing system, aiming to contribute to the achievement of the goals of the White paper, is expected to:

- contribute to fair competition between modes of transport through fair and transparent mechanisms for charging infrastructure costs to users ("user-pays" principle);
- prevent any direct or indirect discrimination among users depending on their nationality or place of residence;
- promote the principles of sustainable development by applying harmonised, transparent mechanisms for charging external costs like emissions, noise, congestion, accidents, etc. which are usually borne by the entire society, to users ("polluter-pays" principle) and
- contribute to financing high quality infrastructure.

The White Paper outlines the Commission's intention to propose mandatory measures to achieve the internalisation of the main external costs of transport covering noise, local pollution and congestion in 2020 horizon. This requires, inter alia, restructuring road charges which is scheduled in two phases. In the first phase up to 2016, the phasing in of a mandatory infrastructure charge for heavy goods vehicles is envisaged. The mandatory infrastructure charge necessary for laying strong foundations for the subsequent internalisation of external costs, has to be harmonised across the EU regarding tariff structure, cost components, collection method and revenue earmarking. Furthermore, the compatibility with the EU Treaties of existing road charging schemes for cars has to be evaluated and the guidelines for the application of internalisation of external costs to all vehicles developed. In the second phase 2016 – 2020, the White Paper foresees full and mandatory internalisation of external

¹ White Paper on transport *"Roadmap to a Single European Transport Area – Towards a Competitive and Resource-Efficient Transport System"*, COM (2011)144

costs for heavy goods vehicles with the possibility to extend it to all vehicles, on top of the mandatory recovery of infrastructure (wear and tear) costs.

While there are EU secondary rules concerning road charges levied on heavy goods vehicles with total permissible mass of more than 3.5 tonnes², the only rules concerning the charging of light private vehicles³, light commercial vehicles with total permissible mass of no more than 3.5 tonnes, buses and coaches stem directly from the Treaty on the Functioning of the European Union. The Member States usually apply the same charging scheme with the same rates⁴ to light commercial vehicles used in transport for hire or reward, or for own account as for light private vehicles, since there is no significant difference between these types of vehicles as regards average infrastructure usage patterns and administrative costs of operating the scheme. Although the present Communication can be applied to light commercial vehicles, it does not pretend to cover all the possible issues related to the levy of road charges on commercial transport. The present Communication is not related to buses and coaches either. These vehicles are normally covered by the same charging schemes as for heavy goods vehicles.

The present Communication, as a part of the broader strategy on road charging outlined in the White Paper, aims to clarify the Commission's understanding of how the general principles of non-discrimination and proportionality of the Treaty are to be applied to a vignette system for light private vehicles. It also provides guidance on the application of such vignette system.

The Communication does not create new legislative rules. The binding interpretation of EU law is ultimately the role of the European Court of Justice (ECJ).

2. EXISTING CHARGING SYSTEMS

In the absence of any EU legislation in this field, the Member States are, in principle, free to put in place a system of national road infrastructure charges levied on light private vehicles (vignette system). They may namely lay down the rules which govern the functioning of such a system provided that these national measures respect the fundamental principles of the EU Treaties, in particular the principle of non-discrimination on the grounds of nationality and the principle of proportionality.

Several cases referred to the Commission have shown, however, that these principles are not always adhered to. In accordance with the principle of subsidiarity, the Commission is not considering putting forward any proposals for legislation in this respect. On the other hand, it feels the time has come to set out and clarify EU law as currently applicable pursuant to the TFUE and the case law of the ECJ. It is for the Commission, in accordance with its duties and responsibilities under article 17 of the Treaty on the European Union to ensure that these principles are enforced for the benefit of Europe and of its citizens.

By publishing this Communication, the Commission is conducting an exercise in transparency and clarification of the EU rules which it is required to enforce. It is proposing to all Member

² Directive 1999/62/EC on charging of heavy goods vehicles for the use of certain infrastructures, as amended; known as the "Eurovignette" Directive

³ Passenger cars, motorcycles and other motor vehicles with total permissible mass of no more than 3.5 tonnes predominantly used for private purposes

⁴ The only exception is Romania which applies different vignette rates to light goods vehicles.

States concerned a reference instrument that spells out the framework in which a vignette system would guarantee the respect of fundamental principles of EU law.

Until now, seven EU Member States have taken the advantage of the freedom to put in place a vignette system for light private vehicles⁵. The current levies applied on light private vehicles reflect a wide variety of approaches between Member States. Some countries rely on a mix of different taxation instruments (fuel and vehicle taxes). In others, the mix of instruments is more diverse and includes road user charges to recover infrastructure costs from motorists using motorways. User charges take the form of time-based charges (vignettes) often levied on the full primary network, or distance-based charges (tolls) levied on individual road sections frequently equipped by toll barriers.

National vignettes are paid by light private vehicles in return for the right to use the main road network for a certain period. Nevertheless, the numerous complaints that the Commission keeps receiving show that the implementation of vignette systems for light private vehicles, if not designed carefully, may raise practical problems by creating hindrance to the free flow of traffic, especially in cross-border regions, and lead to inadequate enforcement practices. It may also lead to risks of potential discrimination of occasional users, mainly motorists coming from other Member States, who may not be offered shorter-term vignettes or may be offered shorter-term vignettes at an equivalent daily rate substantially higher than the rate applied to annual vignettes which are mainly used by resident users. This may be seen as disproportionate.

The application of the vignette systems varies between Member States and these variations may give rise to potential shortcomings. On the other hand, tolling systems for light private vehicles do not entail the same problems as vignette systems, as tolls are distance-based charges, directly linked to the use of infrastructure and therefore less likely to be discriminatory. Moreover, electronic tolling systems allow for the free-flow of traffic, without users having to stop at toll barriers.

After a careful analysis of the vignette systems applied to light private vehicles in the EU⁶, the Commission has decided to produce the present Communication to assist those Member States which intend to introduce a new vignette system for light private vehicles or which wish to further develop existing systems, in line with the EU principles.

3. EU TREATY PRINCIPLES

The basic rules under EU law that are particularly relevant are the principle of non-discrimination on the grounds of nationality and the principle of proportionality.

3.1. Non-discrimination on grounds of nationality

Although there is no EU legislation that specifies rules for charging private vehicles, Member States have to respect the provisions of the Treaty on the Functioning of the European Union,

⁵ Vignette systems for light passenger vehicles are currently applied in seven EU Member States - Austria, Bulgaria, Czech Republic, Hungary, Slovakia, Slovenia and Romania. Other Member States (e.g. Belgium) are planning to implement such systems

⁶ See also the Study "*Assessment of Vignette Systems for Private Vehicles applied in Member States*" (Booz & Co 2010) and "*Study on Impacts of application of the Vignette systems to Private Vehicles*" (Booz & Co 2012) http://ec.europa.eu/transport/road/road_charging/charging_private_vehicles_en.htm

when introducing vignettes for such vehicles. Any discrimination of EU citizens on grounds of nationality is prohibited by Article 18 of the Treaty which provides that: "*Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination*". In accordance with ECJ case-law⁷, Article 18 of the Treaty also prohibits unequal treatment which is not explicitly tied to nationality but which, by the application of other criteria of differentiation, leads in fact to the same result (indirect discrimination on grounds of nationality). Since the Treaty does not contain any special provisions concerning private transport, any vignette system for light private vehicles should accordingly be assessed in the light of Article 18 of the Treaty.

3.2. Proportionality

Any vignette system applied by a Member State would operate to the detriment of nationals of the other Member States, if it penalised non-resident drivers who use its road network only on an occasional basis, by failing to provide a charge for short-term usage or transit of the road infrastructure.

A national measure that is equally applicable to nationals or residents and non-nationals or non-residents may also constitute a discriminatory measure (indirect discrimination). Such discrimination might nevertheless be justified by an overriding reason of general interest e.g. the improvement of traffic flows and/or reduction of environmental costs/damage. However, it has to be emphasised that such measures should constitute a *proportionate* means of achieving the objectives of general interest, meaning in particular that the objective pursued by the measure cannot be achieved by other measures that are less onerous. In other words, the measures adopted in order to implement such objectives must satisfy the proportionality test. A useful indication can be drawn from the situation ECJ analysed in its judgment of case *Cura Anlagen*⁸, in which the Court held that even if there was no doubt that a consumption tax may be intended to serve the general interest of discouraging the purchase or possession of vehicles with heavy fuel consumption, the Court considered that such a tax was contrary to the principle of proportionality in so far as the aim which it pursues might be achieved by introducing a tax proportionate to the duration of the registration of the vehicle in the State where it is used.

The Commission analysed in 1996 a proposal for a vignette system envisaged by Austria. In its opinion⁹, the Commission concluded that in addition to initially envisaged yearly and bi-monthly vignettes, at least a weekly vignette should also be offered in order not to discriminate tourists and non-residents who are typical occasional users. Subsequently, most other Member States followed the Austrian model with their vignette schemes with the exception of Slovenia which introduced a very different vignette scheme in 2008. The Slovenian scheme proved to have some shortcomings that led to the opening of an infringement procedure in October 2008. The Commission was of the opinion that the Slovenian vignette system, as originally introduced, was likely to operate to the detriment of nationals of Member States other than Slovenia as it only made available annual and half-year vignettes for passenger cars and motorcycles for use of its motorway networks. The

⁷ C-398/92 *Mund & Fester v. Hatrex International Transport*, 1994 ECR 467, especially paragraph 14

⁸ Judgment of the Court of 21 March 2002, Case C-451/99, *Cura Anlagen GmbH v Auto Service Leasing GmbH (ASL)*, ECR 2002 Page I-03193.

⁹ K(96) 2166 of 30 July 1996

Commission assessed that this was indirect discrimination on grounds of nationality. Slovenia consequently introduced weekly and monthly vignettes in July 2009 in addition to the annual vignettes for passenger cars. Therefore, the Commission's initial concerns that the system was indirectly discriminatory towards nationals of other Member States using the Slovenian motorway network only occasionally were addressed and the infringement case closed accordingly.

On the basis of the existing ECJ case-law and the two cases mentioned above, the Commission considers that a vignette system could for example provide for three or more types of vignettes – "weekly" (7 – 14 days), "monthly" (30 – 60 days) and "annual" (one calendar year), in order to be considered non-discriminatory. Currently, all Member States which apply a vignette system to light private vehicles provide these three types of vignettes, including short-term vignettes which are valid for a period varying between 7 and 10 days.

4. GUIDANCE ON THE APPLICATION OF NATIONAL VIGNETTE SYSTEMS

On the basis of the received complaints and analytical studies, the Commission proposes the present guidance on the following points:

- the availability of proportionately-priced vignettes;
- proper access to information;
- the collection of fees and their payment;
- an appropriate enforcement practice;

which might be considered as relevant for non-discriminatory application of vignette systems for light private vehicles. The guidance is not based on any ECJ case-law and constitutes the Commission's reflections on existing queries related to the application of the vignette systems.

4.1. Availability of proportionately-priced vignettes

An objection could be made as a matter of EU law that the price of a short-term vignette is set at such a high level relative to a long-term (annual) vignette that it effectively penalises non-resident drivers and could thus be indirectly discriminatory. In order to help identify at what point a significant disproportion can be said to exist, the price of vignettes may also be considered on an average daily basis, that is, the price of the vignette divided by the number of days it offers access to the vignette system. The lower is the ratio between average daily price for short-term and long-term vignettes, the closer is the per diem value of a short-term vignette to that of a long-term one, leading to a price that does not discriminate indirectly against occasional users¹⁰. The table in Annex gives the information about current vignette rates available in the Member States which apply a vignette system for light private vehicles.

The Commission however acknowledges that some difference between average daily price for long-term and short-term vignettes could be justified mainly by the following:

¹⁰ For example, the average daily price of the shortest period vignette (10 day vignette) for Austria is 0.8 € (i.e. 8 € divided by 10 days); the average daily price of the longest period vignette (annual vignette) for Austria is 0.21 € (i.e. 77.80 € divided by 365 days). Consequently, the ratio between average daily price for short-term and long-term vignettes is $0.8/0.21 = 3.8$. See also Table 5-4 on page 24 in the study "Assessment of Vignette Systems for Private Vehicles applied in Member States" (Booz & Co 2010)

- the administrative costs of operating the vignette system and processing each transaction, which also include the cost of production, provision of user information, actual distribution and sale of the vignettes and enforcement of the scheme. A vignette system should at least generate sufficient revenue to cover these costs. If several categories of vignettes are put into place, it is reasonable, as a consequence, to adapt administrative costs accordingly;
- the difference in usage of the vignette charged road network. It seems to be reasonable to consider the prices for vignettes as a form of proxy for infrastructure usage based on the average amount of road use over the period of different vignettes. Whilst longer period vignettes reflect greater total usage, it is not a linear relationship. For example, a purchaser of an annual vignette who is a commuter may use the vignette as often as 500 times a year, for relatively short trips, if using a motorway for the commute (twice a day 250 times a year). However, a purchaser of an annual vignette for regular leisure trips may use the network for far fewer trips than the commuter, but for longer distances.

The Commission therefore suggests that a vignette system, in order to be proportionate, offer a short-term vignette at a price proportionate to the annual vignette, taking into account differences in administrative costs for each type of vignette (or flat administrative costs) in combination with average infrastructure usage related to each type of vignette¹¹.

The Commission in its opinion of 1996 to Austria acknowledged that the handling of short-term vignettes might have generated additional administrative costs. At the same time, it was underlined that economies of scale would have allowed that short-term vignettes do not need to be disproportionately expensive. Given an envisaged price for an annual vignette of 42 ECU for vehicles below 3.5 tonnes, it was concluded that the price for the weekly vignette had to be set at below 6 ECU to comply with the requirement of proportionality. By taking into account the occurring administrative costs, the price for the newly introduced Austrian 10 day vignette was thus set at a value corresponding to approximately 5 ECU.

Furthermore, rules concerning the price proportionality between short-term and long-term vignettes for heavy goods vehicles already exist in Article 7a(1) of Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures¹² (the "Eurovignette" Directive) which provides that *"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, week, 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..."* Given that the vignette systems for both heavy goods vehicles and light private vehicles are largely managed in the same way and that there is practically no difference in the product, selling methods and enforcement, one can assume that consequently there should be no significant difference in administrative costs. Although there might be a difference in average infrastructure usage patterns, Member States might consider it appropriate to apply the same charging principles when setting vignette rates for private vehicles as for heavy goods vehicles.

¹¹ An example of the methodology for the calculation of proportionate vignette prices is described in *"Study on Impacts of application of the Vignette systems to Private Vehicles"* (Booz & Co 2012)

¹² OJ L 187, 20.7.1999, p. 42, as amended by Directive 2006/38/EC (OJ L 157, 9.6.2006, p. 8) and Directive 2011/76/EU (OJ L 269, 14.10.2011, p. 1)

4.2. Proper access to information

In order to avoid possible discrimination of non-resident occasional users, it is important that the latter are supplied with sufficient information about the requirement to buy a vignette in advance of accessing the road network subject to charges. The information concerning the requirement to buy a vignette might thus be made available in tourist publicity material, on easily accessible websites and any other spots which the Member States may deem appropriate. In order to be helpful, this information would explain this requirement, if need be in the languages of neighbouring Member States and other main European languages, and present different options for purchase of the relevant vignette.

Road signage is also an important element providing the necessary information before the user enters the charged network, increasing the transparency of the system. The signage should ideally be, in addition to the national language(s), also in the language of the bordering Member State(s) and in one or more widely used European languages. It would indicate the price, means of payment and directions to the nearest retail outlet for purchase, as well as information on penalties. This should be part of an overall policy that focuses on encouraging motorists to purchase vignettes, rather than subsequently catching and fining violators of the system.

Similarly, in order to better inform motorists seeking to purchase vignettes, information at retail outlets or self-serve kiosks would indicate:

- which types of vehicles are liable to purchase a vignette;
- the roads for which vignettes are compulsory ;
- vignette options and prices;
- how to purchase vignettes;
- how to seek further information;
- applicable penalties.

In order to avoid any confusion over the definition of a week or a month, the signage would state clearly for how many calendar days each vignette product is valid. Where a vignette sticker is supplied, the expiry date of the vignette would be stated on that sticker to ensure that the user knows exactly which days it is valid for.

4.3. Collection of fees and their payment

It is important that non-resident occasional road users be provided with a wide range of options to pay for a vignette in order to avoid discrimination. As regards vignette stickers, retail outlets and self-service kiosks would be located near the roads that are to be charged, including relevant border crossings. Most retail outlets would be accessible as long as possible on a daily basis. Widely used debit and credit cards would be acceptable, as well as cash in euro/the national currency and neighbouring Member State's currency.

The application of an electronic vignette system does not require stickers to prove compliance and enables occasional users to pre-pay for a vignette before starting a trip, without the need

to divert a trip via a retail outlet before entering a vignette charged route¹³. Options to purchase by phone (via SMS or calls) or through the internet would offer added value for users because there are no limits by location or opening hours for purchase.

For users transiting more than one Member State with a vignette system, there would be a value added in having a vignette that covers more Member States. An example can be the "Eurovignette" for heavy goods vehicles¹⁴ which offers this level of interoperability, since it gives the access to the road infrastructure of five EU Member States. A similar product for the light private vehicles could be particularly convenient for international users, especially between neighbouring Member States with high volumes of international traffic.

4.4. Appropriate enforcement practice

Enforcement of rules on the vignette systems falls within the exclusive competence of the Member States. However these rules should be non-discriminatory and proportionate to the infringements committed, and enable citizens to effectively implement their procedural rights. In particular, enforcement practices which could give rise to indirect discrimination against non-resident occasional users must be avoided.

Enforcement should not be based primarily on maximising the number of offenders apprehended, but on promoting understanding of the system to encourage user compliance with the system. Enforcement officers should therefore be given enough discretion to direct users to buy a vignette immediately so as to avoid a penalty, if it is reasonable to believe that a mistake was made. This can help ensure that efforts on enforcement are focused on frequent offenders and not mainly on non-residents, who are often first time offenders. If checkpoints, cameras and their signage, as well as other means of enforcement, were clearly visible, this might encourage compliance by users with the system and significantly lower actual enforcement activity.

Users need to perceive that there is a lower risk and cost in purchasing a vignette compared to being caught evading it. Notably, non-resident occasional users receiving penalties would be given clear information in one or more widely used European language about options to pay and how to appeal the penalty if it is considered to be mistaken or unreasonable. It would be advisable that:

- the laws and regulations defining the vignette, offences, penalties and procedures would be published, in accordance with national procedures, and if possible the key provisions summarised for the sake of transparency;
- enforcement is focused on locations where non-compliance with rules is relatively high, not simply on border locations, so that both residents and non-residents are treated equally (inspections should ideally be carried out when vehicles leave a Member State).

¹³ It would also avoid vignette stickers being affixed on the front windscreen of motor vehicles (next to the A-pillar) that might reduce the driver's field of vision with negative impact on the safety of vulnerable road users, e. g. pedestrians.

¹⁴ Common vignette system of five Member States (Belgium, the Netherlands, Luxembourg, Denmark and Sweden) established by *Agreement on the collection of charges for the use of certain roads by heavy goods vehicles of 4 February 1994*.

Co-ordination and co-operation among Member States would help substantially in ensuring that fines can be enforced across borders.

Penalties also need to be proportionate - the sanction should be proportionate to the seriousness of the infringement committed. Rules concerning penalties for heavy goods vehicles already exist in Article 9a of the abovementioned "Eurovignette" Directive which provides that "*Member States shall establish appropriate controls and determine the system of penalties applicable to infringements of the national provisions adopted under this Directive. They shall take all necessary measures to ensure that they are implemented. The penalties established shall be effective, proportionate and dissuasive*". Member States are encouraged to apply the same principles for light private vehicles.

5. CONCLUSION

In order to provide for a non-discriminatory vignette system for light private vehicles, the Commission suggests that Member States establish vignette systems that offer, in addition to annual and monthly vignettes, a weekly (or shorter period) vignette.

Furthermore, it would be advisable that:

- short-term and long-term vignettes are provided at a proportionate price;
- non-resident occasional users have proper access to information concerning vehicles subject to charging, road infrastructure subject to charging, types of vignettes, their validity and the rates, sales points and penalties applied;
- non-resident occasional road users are provided with a wide range of options to pay for a vignette;
- enforcement is focussed on locations where the likeliness of non-compliance with rules is relatively high and not mainly at border locations on non-residents who are often first time offenders, so that both residents and non-residents are treated equally;
- penalties are proportionate to other traffic offenses and reasonably reflect the sanction element.

As vignette systems mainly implement the "user-pays" principle¹⁵, the Commission advocates a transparent use of their revenue which would ideally be applied only on roads for which a proper maintenance programme exists, in order to offer users a minimum level of service in return of their payment.

The Commission invites Member States which have a vignette system for light private vehicles, or intend to introduce such a system, to assess their systems in the light of this Communication.

In the light of the experience, the Commission may consider an initiative to further clarify the rules applicable to road charges applied to light private vehicles.

¹⁵ There is no Member State applying differentiation of vignette rates according to environmental standards of light private vehicles. Moreover, vignettes do not seem to be the appropriate tool to combat congestion which is often related to very specific time and place.

Annex

Road user charges (vignettes) for vehicles ≤ 3.5 t in the EU¹⁶

2012

Austria		
week (10 days)	2 months	year
8 €	23.40 €	77.80 €
Bulgaria		
week (7 days)	month	year
5 €	13 €	34 €
Czech Republic		
week (10 days)	month	year
12.40 €	17.60 €	59.90 €
Hungary (electronic vignette system)		
week (10 days)	month	year
10.30 €	16.60 €	148.90 €
Slovakia		
week (10 days)	month	year
10 €	14 €	50 €
Slovenia		

¹⁶ Table does not contain the vignette rates for motorcycles and light trailers.

week (7 days)	month	year	
15 €	30 €	95 €	
Romania			
(electronic vignette system)			
Light private vehicles and light commercial vehicles used for passenger transport			
week (7 days)	month	3 months	year
3 €	7 €	13 €	28 €
Light commercial vehicles used for transport of goods			
week (7 days)	month	3 months	year
6 €	16 €	36 €	96 €

Currency exchange rates of 27 February 2012