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(Information)

COUNCIL

COMMON POSITION (EC) No 33/2005

of 6 September 2005

with a view to adopting Directive 2005/.../EC 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

(2005/C 275 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

Having regard to Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures ⁽¹⁾, and in particular Article 7 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾,

Whereas:

(1) Eliminating distortions of competition between transport undertakings in the Member States, the proper functioning of the internal market and improved competitiveness all depend on fair mechanisms being established

to charge hauliers for the cost of infrastructure use. A degree of harmonisation has already been achieved through Directive 1999/62/EC.

(2) A fairer system of charging for the use of road infrastructure is crucial in order to encourage sustainable transport in the Community. The objective of making optimum use of the existing road network and achieving a significant reduction in its negative impact should be achieved without imposing additional burdens on operators, in the interests of sound economic growth and the proper functioning of the internal market.

(3) The Commission announced its intention of proposing a directive on charging for the use of road infrastructure in the White Paper 'European transport policy for 2010: time to decide'. The European Parliament confirmed the need for infrastructure charging when it adopted the report on the conclusions of the White Paper on 12 February 2003. Following the Göteborg European Council of 15 June 2001, which drew particular attention to the issue of sustainable transport, the Copenhagen European Council of 12 and 13 December 2002 and the Brussels European Council of 20 and 21 March 2003 also welcomed the Commission's intention of presenting a new 'Eurovignette' Directive.

(4) For the purposes of setting tolls, Directive 1999/62/EC takes account of infrastructure construction, operating, maintenance and development costs. A specific provision is needed to ensure clarity regarding the construction costs that may be taken into account.

⁽¹⁾ OJ L 187, 20.7.1999, p. 42. Directive as amended by the 2003 Act of Accession.

⁽²⁾ OJ C 241, 28.9.2004, p. 58.

⁽³⁾ OJ C 109, 30.4.2004, p. 14.

⁽⁴⁾ Opinion of the European Parliament of 20 April 2004 (OJ C 104 E, 30.4.2004, p. 372) and Council Common Position of 6 September 2005 and Position of the European Parliament of ... (not yet published in the OJ).

- (5) International road transport operations are concentrated on the trans-European road transport network. Furthermore, the proper functioning of the internal market is vital to commercial transport. Consequently, the Community framework should apply to commercial transport on the trans-European road network as defined in Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network⁽¹⁾. Member States should, in accordance with the principle of subsidiarity, be free to apply tolls and/or user charges on roads other than those on the trans-European road network, in compliance with the Treaty.
- (6) For reasons of cost efficiency in the implementation of tolling systems, the entire infrastructure to which a toll relates may not necessarily be subject to access restrictions controlling tolls charged. Member States may choose to implement this Directive through the use of tolls at only a particular point on the infrastructure to which the toll relates.
- (7) Tolls should be based on the principle of recovery of infrastructure costs. In cases where such infrastructures have been co-financed through the general budget of the European Union, the contribution made from Community funds should not be recovered through tolls, unless there are specific provisions in the relevant Community instruments which take into account future toll receipts in establishing the amount of Community co-financing.
- (8) The fact that the user is able to take decisions which will influence the burden of tolls by choosing the least polluting vehicles and less congested periods or itineraries is an important component of a charging system. Member States should therefore be able to differentiate tolls according to a vehicle's emission category ('EURO' classification) and the level of damage it causes to roads, the place, the time and the amount of congestion. Such differentiation in the level of tolls should be proportionate to the objective pursued.
- (9) Aspects of commercial pricing for road infrastructure use not covered by this Directive should respect the rules of the Treaty.
- (10) This Directive does not affect the freedom for Member States which introduce a system of tolls and/or user charges for infrastructure to provide, without prejudice to Articles 87 and 88 of the Treaty, appropriate compensation for these charges. Such compensation should not lead to distortions of competition within the internal market and should be subject to the relevant provisions of Community law, in particular the minimum rates of vehicle taxes set out in Annex I to Directive 1999/62/EC and the provisions of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity⁽²⁾.
- (11) Where Member States levy tolls or user charges for use of roads in the trans-European road network, the roads subject to charging should be given appropriate priority in the maintenance schedules of Member States.
- (12) Particular attention should be devoted to mountain regions such as the Alps or the Pyrenees. The launch of major new infrastructure projects has often failed because the substantial financial resources they would require were not available. In such regions, users may therefore be required to pay a mark-up to finance essential projects of very high European value, including those involving another mode of transport in the same corridor. This amount should be linked to the financial needs of the project. It should also be linked to the basic level of the tolls in order to avoid artificially high charges in any one corridor, which could lead to traffic being diverted to other corridors, thereby causing local congestion problems and inefficient use of networks.
- (13) Fees should be non-discriminatory and their collection should not involve excessive formalities or create barriers at internal borders. Appropriate measures should therefore be taken to facilitate payment by occasional users, in particular where tolls and/or user charges are collected exclusively by means of a system that requires use of an electronic payment tool (on-board unit).
- (14) In order to ensure consistent, harmonised application of infrastructure charging systems, new tolling arrangements should calculate costs in accordance with a set of core principles or be set at a level which does not go beyond that which would result from the application of these principles. These requirements should not apply to existing arrangements unless they are substantially modified in the future. Such substantial modifications would include any significant change to the original terms and conditions of the tolling scheme through modification of a contract with the tolling system operator, but would exclude changes provided for in the original scheme. In

⁽¹⁾ OJ L 228, 9.9.1996, p. 1. Decision as last amended by Decision 884/2004/EC (OJ L 167, 30.4.2004, p. 1).

⁽²⁾ OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

the case of concession contracts, substantial modification could be implemented pursuant to a public procurement process. In order to achieve transparency without creating obstacles to the functioning of the market economy and public private partnerships, Member States should also communicate to the Commission, so that the latter is in a position to give an opinion, the unit values and other parameters they intend to apply to calculate the various cost elements of the charges or, in the case of concession contracts, the relevant contract and base case. Opinions adopted by the Commission before new tolling arrangements are introduced in Member States are entirely without prejudice to the Commission's obligation under the Treaty to ensure that Community law is applied.

(15) Further technical progress is still needed to develop the system of charging for the use of road infrastructure. There should be a procedure allowing the Commission to adapt the requirements of Directive 1992/62/EC to technical progress following consultation with Member States for this purpose.

(16) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁾.

(17) Since the objective of this Directive, namely to harmonise the conditions applicable to tolls and user charges for the use of road infrastructure, cannot be satisfactorily achieved by the Member States acting alone and can therefore, by reason of its European dimension and with a view to safeguarding the internal market for transport, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

(18) Directive 1999/62/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

1. Article 2 shall be amended as follows:

(a) point (a) shall be replaced by the following:

'(a) "trans-European road network" means the road network defined in section 2 of Annex I to Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network (*) as illustrated by maps. The maps refer to the corresponding sections mentioned in the operative part of and/or in Annex II to that Decision;

(*) OJ L 228, 9.9.1996, p. 1. Decision as last amended by Decision No 884/2004/EC (OJ L 167, 30.4.2004, p. 1).;

(b) the following points shall be inserted:

'(aa) "construction costs" means the costs related to construction, including, where appropriate, the financing costs, of:

— new infrastructure or new infrastructure improvements (including significant structural repairs); or

— infrastructure or infrastructure improvements (including significant structural repairs) completed no more than 30 years before ... (*), where tolling arrangements are already in place on ... (*), or completed no more than 30 years before the establishment of any new tolling arrangements introduced after... (*); costs regarding infrastructure or infrastructure improvements completed before these time limits may also be considered as construction costs where:

(i) a Member State has established a tolling system which provides for the recovery of these costs by means of a contract with a tolling system operator, or other legal acts having equivalent effect, which enter into force before... (*), or

(ii) a Member State can demonstrate that the case for building the infrastructure in question depended on its having a design lifetime in excess of 30 years.

(*) 24 months following the date of entry into force of this Directive.

In any event, the proportion of the construction costs to be taken into account shall not exceed the proportion of the current design lifetime period of infrastructure components still to run on ... (*) or on the date when the new tolling arrangements are introduced, where this is a later date.

Costs of infrastructure or infrastructure improvements may include any specific expenses on infrastructure designed to reduce nuisance related to noise or to improve road safety and actual payments made by the infrastructure operator corresponding to objective environmental elements such as protection against soil contamination;

- (ab) "financing costs" means interest on borrowings and/or return on any equity funding contributed by shareholders;
- (ac) "significant structural repairs" means structural repairs excluding those repairs no longer of any current benefit to road users, e.g. where the repair work has been replaced by further road resurfacing or other construction work;

(c) point (b) shall be replaced by the following:

'(b) "toll" means a specified amount payable for a vehicle travelling a given distance on the infrastructures referred to in Article 7(1); the amount shall be based on the distance travelled and the type of vehicle;'

(d) the following point shall be inserted:

'(ba) "weighted average toll" means the total revenue raised through tolls over a given period divided by the number of vehicle kilometres travelled on a given network subject to tolling during that period, both the revenue and the vehicle kilometres being calculated for the vehicles to which tolls apply;'

(e) points (c), (d), (e) and (f) shall be replaced by the following:

'(c) "user charge" means a specified amount payment of which confers the right for a vehicle to use for a given period the infrastructures referred to in Article 7(1);

(d) "vehicle" means a motor vehicle or articulated vehicle combination intended or used exclusively for the carriage by road of goods and having a maximum permissible laden weight of over 3,5 tonnes;

(e) vehicle of the "EURO 0", "EURO I", "EURO II", "EURO III", "EURO IV", "EURO V", "EEV" category means a vehicle that complies with the emission limits set out in Annex 0;

(f) "type of vehicle" means a category into which a vehicle falls according to the number of its axles, its dimensions or weight, or other vehicle classification factors reflecting road damage, e.g. the road damage classification system set out in Annex IV, provided that the classification system used is based on vehicle characteristics which either appear in the vehicle documentation used in all Member States or are visually apparent.;

(f) the following points shall be added:

'(g) "concession contract" means a "public works concession" or a "service concession" as defined in Article 1 of 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 (*);

(h) "concession toll" means a toll levied by a concessionaire under a concession contract.

(*) OJ L 134, 30.4.2004, p. 114. Directive as last amended by Commission Regulation (EC) No 1874/2004 (OJ L 326, 29.10.2004, p. 17).;

2. Article 7 is hereby amended as follows:

(a) paragraphs 1, 2, 3 and 4 shall be replaced by the following:

'1. Member States may maintain or introduce tolls and/or user charges on the trans-European road network, or on parts of that network, only under the conditions set out in paragraphs 2 to 12. This shall be without prejudice to the right of Member States to apply tolls and/or user charges on roads not included in the trans-European road network or to other types of motor vehicle not covered by the definition of "vehicle" on the trans-European road network, in compliance with the Treaty.

2. A Member State may choose to maintain or introduce tolls and/or user charges applicable only to vehicles having a maximum permissible laden weight of not less than 12 tonnes. Where a Member State chooses to apply tolls and/or user charges to vehicles below this weight limit, the provisions of this Directive shall apply.

(*) 24 months following the date of entry into force of this Directive.

3. Tolls and user charges may not both be imposed at the same time on any given category of vehicle for the use of a single road section. However, Member States may also impose tolls on networks where user charges are levied for the use of bridges, tunnels and mountain passes.

4. Tolls and user charges may not discriminate, directly or indirectly, on the grounds of nationality of the haulier, the country or place of establishment of the haulier or of registration of the vehicle, or the origin or destination of the transport operation.;

(b) the following paragraphs shall be inserted:

'4a. 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 equipment in road transport (*), and in the cases covered by, and subject to the conditions contained in, Article 6(2)(a) and (b) of this Directive.

4b. As charging structures involving discounts or reductions in tolls for frequent users may lead to actual savings in administrative costs for the infrastructure operator, Member States may provide for such discounts or reductions on condition that:

- they fulfil the conditions set out in paragraph 10(a),
- they comply with the Treaty, in particular Articles 12, 49, 86 and 87 thereof,
- they do not distort competition in the internal market,
- the resulting charging structure is linear, proportionate, available to all users on equal terms and does not lead to additional costs being passed on to other users in the form of higher tolls.

Such discounts or reductions shall in no case exceed 13 % of the toll paid by equivalent vehicles not eligible for the discount or reduction.

4c. All discount and reduction schemes shall be communicated to the Commission, which shall verify compliance with the conditions set out in paragraphs 4a and 4b and shall approve them in accordance with the procedure referred to in Article 9c(2).;

(*) OJ L 370, 31.12.1985, p. 8. Regulation as last amended by Commission Regulation (EC) No 432/2004 (OJ L 71, 10.3.2004, p. 3).;

(c) paragraph 6 shall be replaced by the following:

'6. The arrangements for the collection of tolls and/or 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 and/or user charges exclusively by means of a system that requires the use of a vehicle on-board unit, it shall make available the appropriate on-board units under reasonable administrative and economic arrangements.;

(d) the second and third subparagraphs of paragraph 7 shall be deleted;

(e) paragraphs 9 and 10 shall be replaced by the following:

'9. Tolls shall be based on the principle of the recovery of infrastructure costs only. Specifically the weighted average tolls shall be related to the construction costs and the costs of operating, maintaining and developing the infrastructure network concerned. The weighted average tolls may also include a return on capital or profit margin based on market conditions.

10. (a) Without prejudice to the weighted average tolls referred to in paragraph 9, Member States may vary the toll rates for purposes such as combating environmental damage, tackling congestion, minimising infrastructure damage, optimising the use of the infrastructure concerned or promoting road safety, provided that such variation:

- is proportionate to the objective pursued,
- is transparent and non-discriminatory particularly regarding the nationality of the haulier, the country or place of establishment of the haulier or of registration of the vehicle, and the origin or destination of the transport operation,
- is not designed to generate additional tolling revenue, any unintended increase in revenue (leading to weighted average tolls which are not in accordance with paragraph 9) being counterbalanced through changes to the structure of the variation which must be implemented within two years of the end of the accounting year in which the additional revenue is generated,
- respects the maximum flexibility thresholds set out in point (b).

(b) Subject to the conditions of point (a), toll rates may be varied according to:

— EURO emission class as set out in Annex 0, provided that no toll is more than 100 % above the toll charged for equivalent vehicles meeting the strictest emission standards; and/or

— the time of day, type of day or season, provided that:

(i) no toll is more than 100 % above the toll charged during the cheapest period of the day, type of day or season; or

(ii) where the cheapest period is zero-rated, the penalty for the most expensive time of day, type of day or season is no more than 50 % of the level of toll that would otherwise be applicable to the vehicle in question.

(c) Subject to the conditions of point (a), toll rates may in exceptional cases for specific projects of high European interest be subject to other forms of variation in order to secure the commercial viability of such projects, when they are exposed to direct competition with other modes of transport for vehicles. The resulting charging structure shall be linear, proportionate, openly published, 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 the conditions of this point prior to the implementation of the charging structure in question.;

(f) the following paragraphs shall be added:

'11. In exceptional cases concerning infrastructure in mountainous regions and after informing the Commission, a mark-up may be added to the tolls of specific road sections:

(a) which are the subject of acute congestion affecting the free movement of vehicles, or

(b) the use of which by vehicles is the cause of significant environmental damage,

on condition that:

— the revenue generated from the mark-up is invested in priority projects of European interest identified

in Annex III to Decision No 884/2004/EC, which contribute directly to the alleviation of the congestion or environmental damage in question and which are located in the same corridor as the road section on which the mark-up is applied,

— the mark-up, which may be applied to tolls varied in accordance with paragraph 10, does not exceed 15 % of the weighted average toll calculated in accordance with paragraph 9 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 %,

— the application of the mark-up does not result in unfair treatment of commercial traffic compared to other road users,

— financial plans for the infrastructure on which the mark-up is applied and a cost/benefit analysis for the new infrastructure project are submitted to the Commission in advance of the mark-up's application,

— 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 submitted.

Application of this provision to new cross-border projects shall be subject to the agreement of the Member States concerned.

When the Commission receives the financial plans from a Member State intending to apply a mark-up, it shall make this information available to the members of the Committee referred to in Article 9c(1). Should the Commission consider that the planned mark-up does not meet the conditions set out in this paragraph, 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 modification of the plans for charges submitted by the Member State concerned, in accordance with the procedure referred to in Article 9c(2).

12. Where a driver is unable to produce the vehicle documents necessary to ascertain the information referred to in the first indent of paragraph 10(b), and the type of vehicle in the event of a check, Member States may apply tolls up to the highest level chargeable.;

3. the following Article shall be inserted:

'Article 7a

1. In determining the levels of weighted average tolls to be charged on the infrastructure network concerned or a clearly defined part of such a network, Member States shall take into account the various costs set out in Article 7(9). The costs taken into account shall relate to the network or part of the network on which tolls are levied and to the vehicles that are subject to the tolling. Member States may choose not to recover these costs through toll revenue or to recover only a percentage of the costs.

2. Toll tolls shall be determined in accordance with Article 7 and paragraph 1 of this Article.

3. For new tolling arrangements other than those involving concession tolls put in place by Member States after ... (*), Member States shall calculate costs using a methodology based on the core calculation principles set out in Annex III.

For new concession tolls put in place after ... (*), the maximum level of tolls 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 an equivalence shall be made on the basis of a reasonably long reference period appropriate to the nature of a concession contract.

Tolling arrangements already in place on ... (*) or for which tenders or responses to invitations to negotiate under the negotiated procedure have been received pursuant to a public procurement process before ... (*) shall not be subject to the obligations set out in this paragraph, for as long as these arrangements remain in force and provided that they are not substantially modified.

4. Member States shall communicate to the Commission at least four months before the implementation of a new tolling arrangement:

(a) for tolling arrangements other than those involving concession tolls:

- the unit values and other parameters they use in calculating the various cost elements, and
- clear information on the vehicles covered by their tolling regime and the geographic extent of the network, or part of the network, used for each cost calculation and the percentage of costs that they are seeking to recover;

(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; this base case shall include the estimated costs as defined in Article 7(9) envisaged under the concession, the forecasted traffic divided into types of vehicle, the levels of tolls envisaged and the geographic extent of the network covered by the concession contract.

5. For the cases subject to the obligations in paragraph 3 the Commission shall, within four months of receiving the information in accordance with paragraph 4, give an opinion as to whether these obligations appear to have been fulfilled.

The opinions of the Commission shall be made available to the Committee referred to in Article 9c(1).

6. Where a Member State wishes to apply the provisions contained in Article 7(11) in respect of tolling arrangements already in place on ... (*), the Member State concerned shall provide information that demonstrates that the weighted average toll being applied to the infrastructure concerned complies with Articles 2(aa), 7(9) and 7(10).;

4. Article 8(2)(b) shall be replaced by the following:

'(b) payment of the common user charge shall give access to the network as defined by the participating Member States in accordance with Article 7(1);'

5. the following Article shall be inserted:

'Article 8a

Each Member State shall monitor the system of tolls and/or user charges to ensure that it functions in a transparent and non-discriminatory manner.;

6. Article 9 shall be amended as follows:

(a) the following point shall be added to paragraph 1:

'(d) insurance taxes.;

(b) paragraph 2 shall be replaced by the following:

'2. In keeping with the principle of subsidiarity, Member States shall determine the use to be made of revenue from charges for the use of road infrastructure. To enable the transport network to be developed as a whole, revenue from charges should be used to benefit the transport sector and optimise the entire transport system.;

(*) 24 months following the date of entry into force of this Directive.

7. the following Articles shall be inserted:

'Article 9a

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 must be effective, proportionate and dissuasive.

Article 9b

The Commission shall facilitate dialogue and exchange of technical know-how between Member States in relation to the implementation of this Directive and in particular Annex III. The Commission shall update and clarify Annexes 0, III and IV in the light of technical progress and Annexes I and II in the light of inflation, in accordance with the procedure referred to in Article 9c(3).

Article 9c

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Council Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. Where reference is made to this paragraph, Article 5 and 7 of Council Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

4. The Committee shall adopt its rules of procedure.;

8. Article 11 shall be replaced by the following:

'Article 11

No later than ... (*), the Commission shall present a report to the European Parliament and to the Council on the implementation and effects of this Directive, taking account of developments in technology and the trend in traffic density, and evaluating its impact on the internal market, including on island, landlocked and peripheral regions of the Community, levels of investment in the sector and its contribution to the objectives of a sustainable transport policy.

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

Member States shall forward the necessary information to the Commission no later than ... (**);

9. the table in Annex II indicating the amount of annual charges shall be replaced by the following:

	'maximum three axles	minimum four axles
EURO 0 and EURO I	1 020	1 648
EURO II and EURO III	904	1 488
EURO IV, EURO V and EEV	797	1 329'

10. the last sentence of Annex II shall be replaced by the following:

'The daily user charge is equal for all vehicle categories and amounts to EUR 11.:'

11. Annex 0, the text of which appears in Annex I to this Directive, shall be inserted;
12. Annex III, the text of which appears in Annex II to this Directive, shall be added;
13. Annex IV, the text of which appears in Annex III to this Directive, shall be added.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ... (**). They shall forthwith inform the Commission thereof.

When Member States adopt such measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field covered by this Directive, together with a table showing how the provisions of this Directive correspond to the national provisions adopted.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

...

...

(*) 5 years following the date of entry into force of this Directive.

(**) 54 months following the date of entry into force of this Directive.

(***) 24 months following the date of entry into force of this Directive.

ANNEX I

ANNEX O

EMISSION LIMITS

1. "EURO 0" vehicle

Mass of carbon monoxide (CO) g/kWh	Mass of hydrocarbons (HC) g/kWh	Mass of nitrogen oxides (NOx) g/kWh
12,3	2,6	15,8

2. "EURO I"/"EURO II" vehicles

	Mass of carbon monoxide (CO) g/kWh	Mass of hydrocarbons (HC) g/kWh	Mass of nitrogen oxides (NOx) g/kWh	Mass of particulates (PT) g/kWh
'EURO I' vehicle	4,9	1,23	9,0	0,4 ⁽¹⁾
'EURO II' vehicle	4,0	1,1	7,0	0,15

⁽¹⁾ A coefficient of 1,7 is applied to the particulate emission limit value in the case of engines with a power rating of 85 kW or less.

3. "EURO III"/"EURO IV"/"EURO V"/"EEV" vehicles

The specific masses of carbon monoxide, total hydrocarbons, nitrogen oxides and particulates, determined by the ESC test and the exhaust gas opacity, determined by the ELR test, must not exceed the following values ⁽¹⁾:

	Mass of carbon monoxides (CO) g/kWh	Mass of hydrocarbons (HC) g/kWh	Mass of nitrogen oxides (NOx) g/kWh	Mass of particulates (PT) g/kWh	Exhaust gas m ⁻¹
'EURO III' vehicle	2,1	0,66	5,0	0,10 ⁽²⁾	0,8
'EURO IV' vehicle	1,5	0,46	3,5	0,02	0,5
'EURO V' vehicle	1,5	0,46	2,0	0,02	0,5
'EEV' vehicle	1,5	0,25	2,0	0,02	0,15

⁽¹⁾ A test cycle consists of a sequence of test points, each point being defined by a speed and a torque which the engine must respect in steady state (ESC test) or transient operating conditions (ETC and ELR tests).

⁽²⁾ 0,13 for engines whose unit cylinder capacity is less than 0,7 dm³ and the nominal speed is in excess of 3 000 min⁻¹.

4. Future emission classes of vehicles as defined in Directive 88/77/EEC and subsequent amendments may be considered.

ANNEX II

ANNEX III

CORE PRINCIPLES FOR THE ALLOCATION OF COSTS AND CALCULATION OF TOLLS

This Annex stipulates the core principles for the calculation of weighted average tolls to reflect Article 7(9). The obligation to relate tolls to costs shall be without prejudice to the freedom of Member States to choose, in accordance with Article 7a(1), not to recover the costs in full through toll revenue, or to the freedom, in accordance with Article 7(10), to vary the amounts of specific tolls away from the average ⁽¹⁾.

The application of these principles shall be fully consistent with other existing obligations under Community law, in particular the requirement for concession contracts to be awarded in accordance with Council Directive 2004/18/EC and other Community instruments in the field of public procurement.

Where a Member State engages in negotiations with one or more third parties with a view to establishing a concession contract regarding the construction or operation of a part of its infrastructure, or in view of this purpose engages in a similar arrangement based on national legislation or an agreement entered into by the government of a Member State, compliance with these principles shall be judged on the basis of the outcome of these negotiations.

1. Definition of the Network and of vehicles covered

- Where a single tolling regime is not to be applied to the whole TEN road network, a Member State shall specify precisely the part or parts of the network which are to be subject to a tolling regime as well as the system its uses to classify vehicles for the purposes of toll variation. Member States shall also specify whether they are extending the scope of the vehicles covered by their tolling regime below the 12-tonne threshold.
- Where a Member State chooses to adopt different policies regarding cost recovery for different parts of its network (as permitted under Article 7a(1)), each clearly defined part of the network shall be subject to a separate calculation of costs. A Member State may choose to split its network up into a number of clearly defined parts so as to establish separate concession arrangements or similar for each part.

2. Infrastructure costs**2.1. Investment costs**

- Investment costs shall include the costs of construction (including financing costs) and the costs of developing the infrastructure plus, where appropriate, a return on the capital investment or profit margin. Costs of land acquisition, planning, design, supervision of construction contracts and project management, and of archaeological and ground investigations, as well as other relevant incidental costs, shall also be included.
- The recovery of construction costs shall be based on either the design lifetime of the infrastructure or such other amortisation period (not being less than 20 years) as may be considered appropriate for reasons of financing through a concession contract or otherwise. The length of the amortisation period may be a key variable in negotiations regarding the establishment of concession contracts, particularly if the Member State concerned wishes, as part of the contract, to set a ceiling regarding the weighted average toll applicable.
- Without prejudice to the calculation of investment costs, the recovery of costs may
 - be apportioned evenly over the amortisation period or weighted to the early, middle or later years, provided that such weighting is carried out in a transparent manner,
 - provide for indexation of tolls over the amortisation period.
- All historic costs shall be based on the amounts paid. Costs which are still to be incurred will be based on reasonable cost forecasts.

⁽¹⁾ These provisions, together with the flexibility offered in the way costs are recovered over time (see the third indent of point 2.1), give considerable margin to fix tolls at levels which are acceptable to users and adapted to the specific transport policy objectives of the Member State.

- Government investment may be assumed to be financed borrowings. The rate of interest to be applied to historical costs shall be the rates that applied to government borrowings over that period.
- Costs shall be apportioned to heavy goods vehicles (HGVs) on an objective and transparent basis taking account of the proportion of HGV traffic to be carried on the network and the associated costs. The vehicle kilometres travelled by HGVs may for this purpose be adjusted by objectively justified “equivalence factors” such as those set out in point 4 ⁽¹⁾.
- Provision for estimated return on capital or profit margin shall be reasonable in the light of market conditions and may be varied for the purpose of providing performance incentives for a contracted third party with regard to quality of service requirements. Return on capital may be evaluated using economic indicators such as IRR (internal rate of return on investment) or WACC (weighted average cost of capital).

2.2. Annual maintenance costs and structural repair costs

- These costs shall include both the annual costs of maintaining the network and the periodic costs relating to repair, reinforcement and resurfacing, with a view to ensuring that the level of operational functionality of the network is maintained over time.
- Such costs shall be apportioned between HGV and other traffic on the basis of actual and forecast shares of vehicle kilometres and may be adjusted by objectively justified equivalence factors such as those set out in point 4.

3. Operating, management and tolling costs

These costs shall include all costs incurred by the infrastructure operator which are not covered under Section 2 and which relate to the implementation, operation and management of the infrastructure and of the tolling system. They shall include in particular:

- the costs of constructing, establishing and maintaining toll booths and other payment systems,
- the day to day costs of operating, administering and enforcing the toll collection system,
- administrative fees and charges relating to concession contracts.
- management, administrative and service costs relating to the operation of the infrastructure.

The costs may include a return on capital or profit margin reflecting the degree of risk transferred.

Such costs shall be apportioned on a fair and transparent basis between all vehicle classes that are subject to the tolling system.

4. HGV share of traffic, equivalence factors and correction mechanism

- The calculation of tolls shall be based on actual or forecast HGV shares of vehicle kilometres adjusted, if desired, by equivalence factors, to make due allowance for the increased costs of constructing and repairing infrastructure for use by heavy goods vehicles.
- The following table gives a set of indicative equivalence factors. Where a Member State uses equivalence factors with ratios differing from those in the table, they shall be based on objectively justifiable criteria and shall be made public.

⁽¹⁾ The application of equivalence factors by Member States may take account of road construction developed on a phased basis or using a long life cycle approach.

Vehicle class ⁽¹⁾	Equivalence factors		
	Structural repair ⁽²⁾	Investments	Annual maintenance
Between 3,5t and 7,5t, Class 0	1	1	1
> 7,5 t, Class I	1,96	1	1
> 7,5 t, Class II	3,47	1	1
> 7,5 t, Class III	5,72	1	1

⁽¹⁾ See Annex IV for the determination of the vehicle class.

⁽²⁾ The vehicle classes correspond to axle weights of 5,5, 6,5, 7,5 and 8,5 tonnes respectively.'

- Tolling regimes which are based on forecast traffic levels shall provide for a correction mechanism whereby tolls are adjusted periodically to correct any under or over-recovery of costs due to forecasting errors.

ANNEX III

ANNEX IV

INDICATIVE VEHICLE CLASS DETERMINATION

The vehicle classes are defined by the table below.

Vehicles are classed in subcategories 0, I, II and III according to the damage they cause to the road surface, in ascending order (Class III is thus the category causing most damage to road infrastructure). The damage increases exponentially with the increase in axle weight.

All motor vehicles and vehicle combinations of a maximum permissible laden weight below 7,5 tonnes belong to damage class 0.

Motor vehicles

Driving axles with air suspension or recognised equivalent ⁽¹⁾		Other driving axle suspension systems		Damage class
Number of axles and maximum permissible gross laden weight (in tonnes)		Number of axles and maximum permissible gross laden weight (in tonnes)		
Not less than	Less than	Not less than	Less than	
<i>Two axles</i>				
7,5	12	7,5	12	I
12	13	12	13	
13	14	13	14	
14	15	14	15	
15	18	15	18	
<i>Three axles</i>				
15	17	15	17	
17	19	17	19	
19	21	19	21	
21	23	21	23	
23	25			
25	26			II
		23	25	
		25	26	
<i>Four axles</i>				
23	25	23	25	I
25	27	25	27	
27	29			
		27	29	II
		29	31	
		31	32	
29	31			
31	32			

⁽¹⁾ Suspension recognised as equivalent according to the definition in Annex II to Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic (OJ L 235, 17.9.1996, p. 59). Directive as last amended by Directive 2002/7/EC of the European Parliament and of the Council (OJ L 67, 9.3.2002, p. 47).

Vehicle combinations (articulated vehicles and road trains)

Driving axles with air suspension or recognised as equivalent		Other driving axle suspension systems		Damage class
Number of axles and maximum permissible gross laden weight (in tonnes)		Number of axles and maximum permissible gross laden weight (in tonnes)		
Not less than	Less than	Not less than	Less than	
<i>2 + 1 axles</i>				
7,5	12	7,5	12	I
12	14	12	14	
14	16	14	16	
16	18	16	18	
18	20	18	20	
20	22	20	22	
22	23	22	23	
23	25	23	25	
25	28	25	28	
<i>2 + 2 axles</i>				
23	25	23	25	
25	26	25	26	
26	28	26	28	
28	29	28	29	
29	31	29	31	II
31	33	31	33	
33	36	33	36	III
36	38			
<i>2 + 3 axles</i>				
36	38	36	38	
38	40			
		38	40	III
<i>3 + 2 axles</i>				
36	38	36	38	
38	40			
		38	40	III
		40	44	
40	44			
<i>3 + 3 axles</i>				
36	38	36	38	I
38	40			
		38	40	II
40	44	40	44'	

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

The Commission adopted its proposal on 23 July 2003.

On 20 April 2004, the European Parliament adopted its opinion in first reading.

On 6 September 2005 the Council adopted its common position in accordance with Article 251 of the Treaty.

In carrying out its work, the Council also took account of the opinion of the European Economic and Social Committee ⁽¹⁾ and of the Committee of the Regions ⁽²⁾.

II. ANALYSIS OF THE COMMON POSITION

It was at its fourth attempt, on 21 April 2005, that the Council was finally able to reach a political agreement to pave the way for adoption of its common position, thereby closing an internal negotiating process which had been ongoing for more than 18 months. The difficulty in reaching this agreement is a reflection of the differing interests and attitudes of Member States depending both on their geographic position (at the centre or the periphery of the internal market), and other factors, such as the state of development of their existing road network and their preferred method for financing infrastructure projects.

The negotiations took place in a policy context shaped by the Commission's 2001 White Paper on European transport policy for 2010 ⁽³⁾, which highlighted the crucial role of effective charging for transport infrastructure as a tool to rebalance the growth of the different transport modes, and thus address the increasing problems of congestion and environmental damage.

1. *Addressing key policy objectives*

In its common position the Council has focused on achieving specific added-value improvements to the existing Directive, so that the new legal framework will reflect the needs of a modern, 21st century transport policy for the Community. In particular, the common position:

- addresses the problems of *congestion and environmental damage*
- provides a means to raise additional *financing* for investment into *alternative infrastructure* (modal shift)
- gives greater *transparency and objectivity in the setting of tolls*, coupled with additional 'tools' to allow the Commission to better monitor compliance
- adapts the legal framework to the *public private partnership* model of financing infrastructure construction.

Changes corresponding to these four objectives are set out below.

⁽¹⁾ OJ C 241, 28/09/2004, p. 58.

⁽²⁾ OJ C 109, 30/04/2004 p. 14.

⁽³⁾ COM(2001) 370, 12/9/2001

(i) *Tackling congestion and environmental damage*

Toll variation (Article 7(10))

The ability to vary tolls according to EURO class and time of day is the principal mechanism envisaged for dealing with congestion and environmental damage. The Council took inspiration from the European Parliament (amendment 29) in introducing the possibility to vary tolls at weekends or on bank holidays. But the variation permitted by the Council text goes well beyond that of amendment 29. A key difference is that the Parliament favours an overall limit, so that the highest tolls cannot be more than double the lowest. By contrast, for variation linked to road damage (e.g. weight, number of axles), the Council does not limit variation at all, and for emission class and time variation the 100 % limits are cumulative. The effect of this is that a heavy, polluting lorry travelling at a busy time of day could end up paying perhaps four times more than a lighter, cleaner vehicle travelling at a quieter time. This effect is further enhanced by the introduction of a possibility for 'zero rating' at certain times of day.

The safeguard to avoid abuse of these new possibilities is the introduction of a clear and unequivocal requirement for variation schemes to be revenue neutral, and for any unintentional excess revenue to be compensated for by reduced tolls in future years. This principle of revenue neutrality is also found in Parliament's amendment 12.

The second element of the common position relevant to environmental and congestion issues is the 'mark-up' discussed in the next section.

(ii) *Financing for alternative infrastructure*

The mark-up (Article 7(11))

The Council has accepted the Commission proposal for it to be possible, in exceptional cases, to impose a mark-up on tolls in mountainous areas on roads subject to congestion or environmental damage. For cross-border cases the level of 25 % is also retained, 15 % being the maximum for non-cross-border cases. The suggestion of the Parliament (amendment 30) to extend the mark-up to polluted urban zones was not taken on board. The requirement for revenue from the mark-up to be used for cross-financing a TEN priority project in the same transport corridor is retained and reinforced in the common position text.

The mark-up is significant because it represents additional net revenue (over and above the costs of building the road being used) which is specifically earmarked for the funding of alternative (in most cases rail) infrastructure.

(iii) *Transparent and objective toll levels, supervised by the Commission*

'Construction costs' definition (Article 2(aa))

The common position includes this new definition, proposed by the Commission as a means of defining the historic costs which can be taken into account when calculating toll levels. The Council's text takes on board the suggestion of the Parliament (amendment 21) to permit only a portion of these costs, but uses design lifetime, rather than the extent of amortisation, as the reference for this apportioning. (Amortisation is more difficult to apply as concept if infrastructure construction is not funded through borrowing).

Allowable costs (Article 7(9))

The common position takes up the Commission proposal to develop in more detail the costs on which tolls may be based. Elements of Parliament's amendment 28, such as the deletion of uninsured accident costs, inclusion of a return on capital and clarification that these are maximum levels (this clarification is found in Article 7a(1) of the Council's text) are taken on board.

Frequent user discounts (Article 7(4b) and (4c))

Article 8b proposed by the Commission has been deleted and replaced by the above provisions containing a percentage limit for frequent user discounts. This is a significant contribution to ensuring much greater clarity and objectivity on the level of discounts permitted under Community law.

Methodology/Calculation principles (Annex III)

The short methodology proposed by the Commission has been expanded and developed into a set of comprehensive principles for cost calculation and allocation. They are binding on all future tolling systems introduced, although in an indirect manner for concession-based systems. The Commission can update and clarify these principles through comitology.

Supervision of the system (Article 7a)

Whilst accepting the Parliament's suggestion to delete the provisions seeking to establish independent infrastructure supervision authorities in Member States (amendments 18 and 38), the role of the Commission to oversee the system and verify compliance of new tolling arrangements with the rules in place is further developed in Article 7a.

(iv) Compatibility with public private partnerships (PPP)

Specific arrangements for concession contracts

Given that concession-based public-private partnerships are becoming the most common means of financing and building new infrastructure, the Council has introduced a number of elements into the common position text seeking to ensure that the Directive is adapted to the realities of PPP. These changes, which are effectively the Council's response to the concern expressed in Parliament's amendments 9, 33 and 52, are:

- special treatment for contracts in the 'construction costs' definition in Article 2(aa),
- the possibility for tolls to include a profit margin in Article 7(9),
- 'indirect application' to concession contracts of the supervision system set out in Article 7a.

2. Other significant issues

Hypothecation/Earmarking of toll revenue (Article 9(2))

The Council accepted in its entirety the delicate compromise suggested by the European Parliament on this question in amendment 48. Strict earmarking of revenue from the mark-up (Article 7(11)) for reinvestment in the appropriate TEN project is maintained.

External environmental costs

After examining Parliament's amendments 2, 17, 25, 28, 41 and 50, the Council chose to follow the proposal of the Commission and to maintain the current system based on the recovery of infrastructure costs.

Scope (Article 7(1) and (2))

The Commission proposal would require Member States to apply an 'all or nothing' tolling system, applying to all TEN routes and all vehicles down to 3,5 tonnes. The Council considered that such a scope would create a major disincentive to the introduction of tolling systems in many Member States, where public acceptance of tolling cannot be assumed. As such, the Commission proposal could seriously undermine the central objective of moving towards a system where the users contribute more to the costs of the transport infrastructure they use. The Council has instead opted for a framework whereby the Community rules apply whenever there is tolling on a TEN route of a vehicle of 3,5 tonnes and above, but Member States retain the ability to decide which parts of their TEN network is tolled and whether to limit tolling to heavier vehicles.

In other places in the Directive the Council has sought to limit the flexibility suggested by the Commission for Member States to charge very high tolls on certain routes (for example routes with a high proportion of transit traffic). For example, Article 7(10)(c) proposed by the Commission, which authorised varying tolls for particular roads in the network, has been deleted.

Compensation to road users

Like the European Parliament (see amendment 36), the Council was concerned that the means favoured by the Commission's proposal to compensate hauliers for any new costs caused by tolling schemes, namely reductions in vehicle taxation, might have a discriminatory effect. The Council also saw no reason to 'undo' the harmonisation of vehicle taxation achieved by the existing Directive. Article 7b as proposed by the Commission is therefore deleted from the Council's text and replaced by recital 10 which refers also to other means of providing compensation such as reductions in fuel taxation, thus picking up on the idea found in Parliament's amendment 13.

3. European Parliament Amendments

The response of the Council to amendments 2, 9, 12, 13, 17, 18, 21, 25, 28, 29, 30, 33, 36, 38, 41, 48, 50 and 52 is set out above in relation to the key issues.

In addition the Council has accepted, in whole, in part or in principle, amendments 3, 4, 10, 22, 24, 34, 39, 42 and 43.

III. CONCLUSION

The intensive and sustained efforts made within the Council to reach agreement on this common position reflect the acute awareness of the importance of this subject to the Community's wider transport policy. The common position establishes a legal framework for charging which is clearer and easier to implement in a transparent, objective and fair way, but which at the same time gives new possibilities for tolls to be legitimately used as a tool to address the environmental and congestion problems that the Community faces. The text achieves real, identifiable and tangible improvements to the 1999 Directive, carefully balancing the need to move towards a sustainable transport policy with the importance of a properly functioning internal market.
