

Directive 2006/38/EC of the European Parliament and of the Council
of 17 May 2006 amending Directive 1999/62/EC on the charging
of heavy goods vehicles for the use of certain infrastructures

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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⁽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, based on the ‘user pays’ principle and the ability to apply the ‘polluter pays’ principle, for instance through the variation of tolls to take account of the environmental performance of vehicles, 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 in such a way as to avoid double taxation and without imposing additional burdens on operators, in the interests of sound economic growth and the proper functioning of the internal market, including outlying regions.
- (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 its resolution⁽⁵⁾ on the conclusions of the White Paper on 12 February 2003. Following the Göteborg European Council of 15 and 16 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) In paragraph 29 of the Presidency conclusions of its meeting in Göteborg, the European Council stated that a sustainable transport policy should tackle rising volumes of traffic and levels of congestion, noise and pollution and encourage the use of environment-friendly modes of transport as well as the full internalisation of social and environmental costs.
- (5) 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.
- (6) 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⁽⁶⁾. 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. Where Member States choose to maintain or introduce tolls and/or user charges only on parts of the trans-European road network in their territory and not on others, for reasons such as their isolation or low levels of congestion or pollution or where essential for the introduction of a new tolling arrangement, the choice of the parts of the network subject to tolls or charges should not discriminate against international traffic and should not result in distortions of competition between operators. The same requirements should apply to cases where a Member State maintains or introduces tolls and/or user charges on roads not forming part of the trans-European road network, for example on parallel roads, with a view to managing traffic flows.
- (7) Where a Member State chooses to extend tolls and/or user charges beyond the trans-European road network, for example to include parallel roads to which traffic may be diverted from the trans-European road network and/or which are in direct competition with certain parts of that network, it should ensure coordination with the authorities responsible for these roads.
- (8) 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. This should not discriminate against non-local traffic.
- (9) Toll 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

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take into account future toll receipts in establishing the amount of Community co-financing.

- (10) 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.
- (11) Aspects of commercial pricing for road infrastructure use not covered by this Directive should respect the rules of the Treaty.
- (12) This Directive does not affect the freedom of 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⁽⁷⁾.
- (13) 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. Revenues from tolls or user charges should be used for the maintenance of the infrastructure concerned and for the transport sector as a whole, in the interest of the balanced and sustainable development of transport networks.
- (14) 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.
- (15) 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).
- (16) In order to prevent traffic being diverted because of different regimes between Member States and third countries, the Commission should try to ensure that, when negotiating

international agreements, no measures are taken by third countries, such as a transit right trading system, that might have a discriminatory effect on transit traffic.

- (17) In order to ensure consistent, harmonised application of the infrastructure charging system, new tolling arrangements should calculate costs in accordance with the set of core principles set out in Annex II 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 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 must also communicate to the Commission, so that the Commission 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 the introduction of new tolling arrangements in Member States are entirely without prejudice to the Commission's obligation under the Treaty to ensure that Community law is applied.
- (18) So as to enable an informed and objective decision to be taken in the future regarding the possible application of the 'polluters pays' principle for all modes of transport, by means of the internalisation of external costs, uniform calculation principles should be developed, based on scientifically recognised data. Any future decision on this question should take full account of the tax burden already borne by road haulage companies, including vehicle taxes and fuel excise duties.
- (19) The Commission should begin work on developing a generally applicable, transparent and comprehensible model for the assessment of external costs for all modes of transport to serve as the basis for future calculations of infrastructure charges. In carrying out this work, the Commission should examine all possible options regarding the composition of the external costs to be taken into account, having regard to the elements listed in its 2001 White Paper 'European Transport Policy for 2010', carefully assessing the impact that internalisation of the various cost options would have. The European Parliament and the Council will examine diligently any such proposal of the Commission for further revision of Directive 1999/62/EC.
- (20) 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 1999/62/EC to technical progress following consultation with Member States for this purpose.
- (21) 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⁽⁸⁾.

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- (22) 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.
- (23) Directive 1999/62/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

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- (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. 371](#)), Council Common Position of 6 September 2005 ([OJ C 275 E, 8.11.2005, p. 1](#)) and Position of the European Parliament of 15 December 2005 (not yet published in the Official Journal). Council Decision of 27 March 2006.
- (5) [OJ C 43 E 19.2.2004, p. 250](#).
- (6) [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](#)).
- (7) [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](#)).
- (8) [OJ L 184, 17.7.1999, p. 23](#).