



*Association Européenne des Concessionnaires
d'Autoroutes et d'Ouvrages à Péage*

20.04.2020

**COMMENTS ON THE REVISED PRESIDENCY COMPROMISE TEXT
DATED APRIL 6TH 2020
PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL AMENDING DIRECTIVE 1999/62/EC ON THE
CHARGING OF HEAVY GOODS VEHICLES FOR THE USE OF CERTAIN
INFRASTRUCTURES**

This Directive is of paramount importance for the European toll industry. ASECAP wants to express its position regarding the following three main concerns:

- a. Impact on existing toll concessions
- b. CO2 modulation
- c. Need of a common approach to promote the unique European market
- d. Earmark

a. Impact on existing toll concessions

Toll concession contracts are performed between the concessionaire and the awarding administration based on a financial and economic plan (FEP). This plan includes the vehicle classification system and the toll tariffs scheme that the concessionaire will apply during the entire life of the concession. When signing a toll concession contract, the parties are assuming the obligation to maintain the economic balance of the concession, according to the approved conditions and the agreed share of risks.

Generally, the concessionaire assumes the risks related to the finance, construction, operation (traffic) of the motorway. Additional risks, especially the ones coming from legislative changes, are not supposed to be assumed by the concessionaire. Thus, a change on the legislation, that supposes a break in the economic balance of the concession, must be compensated according to the different existing mechanisms considered in the law. Based on that, ASECAP would like to provide the below specific inputs in the proposal of Eurovignette directive revision:

Article 1.4

Amendment in article 1.4 - "Member States may choose not to apply paragraph 5 3 of Article 7ca, *paragraphs 1* and 2 of Article 7g and Article 7g-a to tolls and user charges on road infrastructures covered by concession contracts, until the contract is renewed ~~or the tolling or charging arrangement is substantially amended~~ *according the disposals of the directive 2014/23/EU of the European Parliament and of the Council*, and where

- (a) the contract was signed before [OJ: add the date of entry into force of the amending Directive]; or
- (b) the tenders or responses to invitations to negotiate under the negotiated procedure were received pursuant to a public procurement process before [OJ: add the date of entry into force of the amending Directive].

Justification : For compliancy and alignment of the application of certain provisions related to concession contract reference to Directive 2014/23/EU should be stated.

Notice: paragraph 1 of Article 7g should also be included in the exemption as some existing contract of urban highways for instance are including provisions regarding temporal modulations not compatible with this text.

Article 1.5

Amendment: Include a new paragraph 5 in article 1 "... *Members States shall implement the correspondent measures to guarantee that the impact of the Directive in the concession contracts signed before [OJ: add the date of entry into force of the amending Directive] is neutral ...* "

Justification: The implementation of the different articles of the Directive may impact existing concessions contracts in the way they classified and calculate the tolls (investments on new lane equipment and processes) but also on the amounts of the revenues foreseen in their economic and financial plan. The new regulation should not alter the balance of existing concessions and any impact must be compensated.



Article 1.6

Amendment: include a new paragraph 6 in article 1 Member states may choose not to apply article 7ca 3., paragraphs 1 and 2 of article 7g and article 7g-a to tolls and user charges on road infrastructures where any of the following applies:

- i) it would seriously undermine the coherence of the tolling systems in its territory;
- ii) it would not be technically practicable to introduce such differentiation in the tolling system concerned;
- iii) it would lead to diversion of the most polluting vehicles with negative impacts on road safety and public health;
- iv) The new regulation should not alter the balance of existing concessions and any impact must be compensated

Article 2.29

Amendment: Add the following sentence at the end: *"In the case of toll systems based on concession contracts, any modification of contract authorized under article 43 of Directive 2014/23/UE is not considered as a substantial amendment."* **Justification:** concerning the toll systems based on concession contracts, it is proposed to refer to the already consolidated EU criteria included in art. 43 of the Directive 2014/23/UE referring to the award of concession contracts, which explain and describes the cases related to substantial modification of concessions. The EU legislator indeed, by making reference to the Court of Justice jurisprudence on the matter, adopts the principle stating that concessions - being long duration contracts which involve also complex technical and financial aspects – must have, respecting certain conditions and limits, a certain flexibility. This approach would have also the advantage of highlighting the coherence of the EU legislation in this field, while on the contrary there would be different definition of "substantial modification" in two EU Directives.

b. CO2 modulation

Article 2.26c

These new articles have been introduced in order to define CO₂ emission class and the price adjustments according to the environmental performance of vehicles as well as its age. These measures would require, for technical reasons, to reserve access only to subscribed / preregistered / identifiable users allowing an initial control of the characteristics of the vehicle for the benefit of tariff modulation. In the current EETS Directive, it is not possible to charge class according to CO₂ emission combined with the age of vehicle. The process proposed will oblige the toll charger company to double check the emission level and the age of the vehicle to establish the tariff. However at present time the European standards (EN 14906) in force, registered in the SET Directive adopted last year, it is not possible to encode the age of the vehicle in the ETC on board unit. Therefore, the proposed modulations with the current description is simply not applicable due to the complexity of the definitions as well as their implementations

Article 7g-a

Amendment: Member States shall apply a variation of infrastructure external cost charges and user charges for heavy duty vehicles in accordance with this Article.

Amendment: Paragraph ~~"From that date, Member States shall discontinue the variation according to the EURO emission class provided for in Article 7g with regard to the heavy duty vehicle in question."~~ **should not be deleted.**

Justification: it will be more appropriate that the modulation detailed in 7g-a which define exemption related to existing contract where applied are related only to external cost and not including the infrastructure cost.



c. Need of a common approach to promote the unique European market.

The aim of this Directive is to take a step forward towards the general deployment of “user pays” and “polluter pays” principle. A stronger position shall be assumed by European institutions to actively recommend Member States to follow to use those principles and to introduce tolls and user charges.

Article 7

Amendment: “... Without prejudice to Article 9 paragraph 1a, Member States **should** ~~may~~ maintain or introduce tolls and/or user charges on the trans-European road network or on certain sections of that network, and on any other additional sections of their network of motorways which are not part of the trans-European road network under the conditions laid down in paragraphs 2,3,4 and 5 of this Article and in Articles 7a to 7k...”

Justification:

The proposal maintains the possibility of introducing tolls and/or user charges as an option for Member States. This voluntary nature fragments the European internal market and prevents efficiency and fairness in obtaining and allocating resources. The European Union should be more ambitious and decidedly promote the implementation of “user pays” and “polluter pays” principles; there is a real need for investment in road maintenance and there are also the challenges of reducing CO₂ emissions and combat air pollution and congestion. At least regarding the trans-European road network, the European Union should give a step forward. For the completion of this trans-European road network, the European Union has provided co-financing through different funds and programmes, so it is reasonable to think that the European Union should ensure that this network can be properly maintained over time and road charging is a tool for that.

Even though tolls and user charges cannot be easily imposed by this revision of the Directive due to the subsidiarity principle, “user pays” and “polluter pays” principles are broadly recommended by many institutions¹ to improve our mobility, road safety and achieve our sustainable goals. The Directive should state a strong recommendation to Member States to introduce tolls/user charges.

Article 2.10

Amendment: “... ‘congestion charge’ means a charge which is levied on vehicles for the purpose of recovering the congestion costs incurred in a Member State **and reducing congestion**; ...”

Justification: Reducing congestion is a fundamental goal of the EU policy and congestion charging is an efficient tool to address it. The original wording of the EC proposal, COM (2017) 275, must be maintained.

d. Earmark

Tolls and user charges shall not be considered as fiscal instruments to generate public revenues. They shall be clearly earmarked to transport infrastructure and transport systems.

Article 9.2

Amendment: “... Member States shall determine the use of revenues generated by this Directive. To enable the transport network to be developed as a whole, revenues generated from infrastructure and external costs charges, or the equivalent in financial value of these revenues, **should** ~~shall~~ be used to benefit the transport sector, and optimize the entire transport system. In particular, revenues generated from external cost charges, or the equivalent in financial value of these revenues, should be used to make transport more sustainable, including one or more of the following...”

¹ OCDE; United Nations; European Economic and Social committee; White Paper 2011 -Roadmap to a Single European transport Area



Justification: The purpose of the implementation of tolls and user charges should be to address problems and challenges related to transport (guarantee road network maintenance, fight pollution, congestion, generate revenues for infrastructure investments...), not a mere tax collection system to increase Member States budgets. Therefore, it is essential the earmarking of the revenues generated in order to address these challenges in transport infrastructure and transport system. The allocation of incomes resulting from the infrastructure charge to the maintenance of road networks and the optimization of the entire transport system must be guaranteed, and the external-cost charge should be assigned to the transition to low-emission mobility.

Article 9.3

Amendment: the following paragraph 3 should be added: “**....3. Revenues generated from congestion charges, or the equivalent in financial value of these revenues, shall be used to address the problem of congestion, in particular by: (a) supporting collective transport infrastructure and services; (b) eliminating bottlenecks on the trans-European transport network; (c) developing alternative infrastructure for transport users.; ...**”

Justification: Based on the European Commission proposal COM (2019) 275, this paragraph 3 must be inserted. If the congestion charge is foreseen in the Directive (article 2.10), it is logic that the Directive tackles it. The earmarking of the revenues as proposed, must be guarantee.



About ASECAP:

ASECAP is the European Association of Operators of Toll Road Infrastructures, whose members' networks today span 87.399,30 km of motorways, bridges and tunnels across 22 countries.

ASECAP's purpose is to defend and develop the system of motorways and road infrastructures in Europe applying tolls as a means to ensure the financing of their construction, maintenance and operation.

ASECAP members are operating the safest category of roads in Europe. A motorway is an infrastructure specially designed and built according to the highest quality and technological standards, in order to guarantee to all drivers 24/7 the best safety conditions, high levels of service and driving comfort in all weather conditions.



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