



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

**ASECAP POSITION AND COMMENTS ON THE DRAFT  
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL AMENDING DIRECTIVE 1999/62/CE ON  
THE CHARGING OF HEAVY GOODS VEHICLES FOR THE  
USE OF CERTAIN INFRASTRUCTURES**

ASECAP is the unit of tolled motorways companies, tunnels and bridges in Europe.

The Association gathers and represents 114 European organisations (EU, enlarged EU, EEE) that manage around 22.6000 kilometres of toll roads, that is approximately 25 % overall length of the TERN.

ASECAP draws from this representation an expertise recognised in the field of the infrastructures financing, of their construction, exploitation and maintenance.

For this reason, it appears convenient to ASECAP to contribute to the debate on the future of the charging system of the use of the infrastructures and the revision of the Eurovignette Directive.

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Nowadays the concessions tolling system in Europe is subjected to the regulations of the directive 1999/62/CE of the European Parliament and the Council, of June 17, 1999, relating to the tax on the heavy good vehicles for the use of certain infrastructures; according to the Community law it constitutes a « concession of service »<sup>1</sup>.

As indicated when the EC White Paper<sup>2</sup> was issued, ASECAP shares with the European legislator the concern of developing the conditions for sustainable transport which are harmonious on the European territory. For this reason ASECAP completely approves the idea of the Commission to update the charging system for the use of the Community infrastructures; but ASECAP considers incomplete the proposal for the new charging system.

In order to improve the harmonisation within the EU of "the tax on the heavy good vehicles for the use of certain infrastructures" taking correctly into account the existing equitable charging systems, as well as the needs for financing the future TEN-T, ASECAP considers that the Directive amending the Eurovignette must better take into account the system of concession existing in the Union :

- The Directive should clearly distinguish toll of concession and the toll-fee : the first is a price for the use of the infrastructures paid to a concessionaire, the second is a tax collected by a State or by public bodies ;
- The methodology of the charging system suggested for toll-fee cannot apply with the existing concessions, which allow already the fair charging system aimed by the text ; it could not be appropriate for future concessions, where the principle of the freedom of proposal by the concessionaire in case of a tender, must be the rule.
- The Directive must clearly affirm the principle of assigning of the toll of the concession to the network covered by the concession, and the respect of the contract signed between the conceding body and the concessionaire.
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## **1 – THE TOLL OF CONCESSION : A TOOL NEGLECTED BY THE DIRECTIVE**

### **1.1 The existing system of the concessions in the Union**

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<sup>1</sup> Interpretative communication of the Commission on the concessions in the Community law of the 12.4.2000.

<sup>2</sup> See "ASECAP Position on the transport charging system" of June 2003 and "Opinion of the European motorway sector conceded relating to the White Paper of the European Commission devoted to the transport policy in the horizon 2010: "Time to decide" of 2001.

The existing tolling systems in Europe result from public-private partnerships (PPP) : the infrastructure is conceded by the public authority with a private statute partner which becomes entirely responsible about it, under the public authority monitoring. In such an organisation, the collected tolls are products, in the operating statement of the company.

Within this kind of PPP, the tolling system is based on the user-pays principle recommended by the White Paper and develops a necessarily double approach, at the same time of general and industrial interest.

From the point of view of the general interest, in agreement with the national legislator, the charging system puts now and already in the connection of any type of vehicle the principle of the pollutant-payer and internalise most of the external costs (noise, protection of the grounds and water) products by the user.

From the industrial point of view, toll is used to refund the loans contracted during the infrastructure construction<sup>3</sup>, knowing that **the construction of one kilometer of the motorway on average costs 5 M of Euros in the European Union**, and is used to finance maintenance and the exploitation.

Thus, does this equitable charging system profit to the European regional planning and the user, in the form :

- Of a motorway network financed by the user himself, set up in one period of time largely lower than that which would be necessary economically speaking ;
- Of a great quality infrastructure where maintenance and the renewal are completely covered by toll ;
- Of a network providing of the services added to the road such as road information, safety, electronic toll, etc, improving the road safety, the comfort of the user and decreasing the congestion.

ASECAP holds at the disposal of the Commission any useful information supporting these points to allow the drafting of the "report to the European Parliament and the Council on the implementation" of the Eurovignette directive "taking account of developments in technology and of the trend in traffic density" (art 11 of directive 1999/62).

ASECAP thus proposes that the revision of the Eurovignette directive does not damage this PPP and its capacity to stimulate the engagement of the private sector in the construction and the management of new sections of the motorways, bridges and tunnels.

## 1.2 Uncertainty on the future system of concession in the draft Directive

However, at the moment when the European Union prepares to lengthen the list of the TEN-T projects and to support their financing by the public and private sector, the draft Directive leaves in legal uncertainty the mode of the future systems of concession.

Indeed, the draft Directive regulates the situation of the system of the existing concessions by excluding it from the field of application of the proposal for a Directive (exclusion of the construction cost of the contracts of concessions already signed at the time of the calculation of weighted tolls - art 7.9 - and safeguarding of their "autonomy" relating to the assignment of the receipt -art 8 (a) 3 -).

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<sup>3</sup> The affection of tolls is divided into France for example in the following way: 41%: Financial expenses on investments; 17%: Exploitation and various (net of tax); 4%: Major repairss (net of tax); 22%: Taxes and taxes; 16%: VAT on tolls.

However the fact of taking into account by exclusion is hardly satisfactory, because it eludes all the legal and financial questions. In addition, it leaves on the side the mode of the future concessions decided by the States after the implementation of the directive, probably as from July 1, 2005, as well as the relations between the independent supervisory authority and the concessions (art 8 (a)).

ASECAP considers that this draft Directive, by not tackling the question of the future concessions, implicitly fixes them with the provisions of the text and, by doing that, ignores the nature of the concession in Europe.

## **2 - THE REVISED STRUCTURE OF CHARGING SYSTEM OF THE DRAFT DIRECTIVE: A METHODOLOGY NOT WELL ADAPTED TO THE SYSTEM OF THE CONCESSIONS**

ASECAP considers that the charging methodology suggested by the draft Directive is not compatible with the economic and financial criteria of the system of concessions.

### **2.1 Taking into account of the duration of the financial balance of the concessions in Europe**

The charging practised by the concessionaire and checked by the national public authority includes "the costs of constructing, operating, maintaining and developing the infrastructure network concerned"<sup>4</sup> but also the financial expenses related to the remuneration of the mobilized own capital stocks.

**These costs are distributed over the duration of the concession which varies in Europe between 30 and 70 years.**

Also, to limit the charge of the construction costs at the 15 last years as from the date of the entry into force of the new directive (art 2. B) constitutes an obstacle with the financial management of the debt of the dealer (for example the Øresund bridge between Denmark and Sweden set up in 2000 should be released from its refundings in 2035).

### **2.2 Taking into account of the toll assignment of concessions in Europe**

**ASECAP considers that the proposal for a Directive should clearly affirm the principle according to which the concession toll assignment must be used for the network covered by the concession.**

From elsewhere, according to the Court of Justice of the European Communities, the toll revenue assignment in a system of concession should be a benefit only for the road sector<sup>5</sup>.

In the countries which do not practise the concession, the fee is directly collected by the State (Swiss, Germany until September 1, 2003 (?) ) and has a tax or special taxation character. Poured directly on the national budget, it can be assigned to any type of infrastructures financing, as much as the damping of the motorways is already dealt with by the taxpayers. The draft Directive in the State applies without problem to this situation.

On the contrary, in the countries which practise the concession, toll has access for object to refund the investments by calling upon the users and not with the taxpayers: it is thus not possible to use without limits the toll product to other objects. ASECAP does not accept the possibility of an

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<sup>4</sup> Article 7.9 of directive 1999/62.

<sup>5</sup> See the interpretation directive 1999/62 by the CJCE on September 20, 2000, C-205/1998, point 140

assignment "for the benefit of the transport sector as a whole" (art 9.2) and the possibility of an increase of 25% of toll allowing a cross financing (art 7.11).

In a system of concession, ASECAP recalls to the European legislator that in absence of the backing system, the financial balance of the motorway future news sections must be carried out and that all the toll resources are consequently necessary (without speaking about the need for longer durations for concession and/or public subsidies).

For this reason ASECAP wishes that "the autonomy of the private concessionaires" in the tolls assignment mentioned in the text (art 8 (a) 3), and who results from freedom from the contract signed between the conceding body and the concessionaire, is clearly posed in principle.

Moreover, in his reflexions on the means of supporting the transfert of certain kinds of goods on other modes, the European legislator must consider that the majority of the transits done for freights lie between 60 and 90 km. This makes more difficult the effective use of the alternative modes of transport to the road transport and requires that the other means of transport notably improve their productivity and their competitiveness, fault of constituting in the contrary case an undue subsidy.

### **2.3 Taking into account of the concessions trade system in Europe**

The system of concession is imperatively based on the possibility for the private partner of taking into account the competition between modes of transport (parallel road, train, ferry) and of developing a marketing policy aiming at causing on the infrastructure; however, the charging formula considered, attaches any possibility for the concessionaire of practising such a charging.

Does the limitation of the reductions on toll with the savings made on the administrative costs (art 8 B) is equivalent, according to the ASECAP members, to put a term at the freedom of concessionaire marketing policy (example: offers of the subscriptions of electronic fee collection allowing an economy on toll); as well the costs of construction do not take into account work for the improvement of the infrastructure (art 2.a ter).

### **2.4 Taking into account of the concessionaire local character of the concessions system**

Taking into account the concessionaire autonomy and determining local parameters, the structure of toll charging and their application in the concessions to the whole of vehicles (LV, HL, two wheels), ASECAP considers necessary to soften the charging methodology suggested in appendix III of the text.

2.4.1 In connection with the tariff modulation regulation allowing a more rational use of the infrastructures (art 7.10), ASECAP proposes that the new directive specifies that the measure retained for these weightings is calculated for each conceded network and not for the whole conceded network.

2.4.2 Then ASECAP underlines the problem arising from the harmonised methodology of charging applied to the heavy good vehicles and proposed in appendix III. This one, indeed, lacks of parameters common to national methodologies (i.e. number of the axles, length and height of the vehicle, weight) and is not sufficiently adaptable to the local situations met on the European territory (the toll charging of the bridge Øresund in Denmark distinguishes for example between three lengths from HL).

2.4.3 Finally ASECAP underlines that the integration made by the Directive, of the accidents and traffic costs not covered by any insurance (appendix III item 2, art 7.9 and art 7 (a)) into the charging regime, would not be constitutive of the toll structure retained by the concession, but it would be a tax on the State which would be added to it.

This charging system does not put into question the efforts of the motorway sector concerning road safety, which make on average the motorway four times safer than the national road<sup>6</sup>.

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<sup>6</sup> This result corresponds to a continuous engagement of the concessionaire companies in particular translated by :

- the installation of a department of accidents detailed analysis ;
- prevention measures: organisation, during the year, of several safety campaigns related to the conceded motorway network ; checking operations of the tires pressure on the motorways surfaces; information improvement and the drivers guidance ;
- the participation of the ASECAP members in the E-Safety European program and attention given to all the technological developments likely to further decrease the traffic accidents.

It has to be used that in spite of intrinsic qualities of the motorway infrastructures, the accidents remain mainly caused by an inappropriate behaviour of the drivers.

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