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2017/0115 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures, as regards certain provisions on vehicle taxation

{SWD(2017) 180 final}
{SWD(2017) 181 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

An efficient and reliable transport system is essential for the smooth functioning of the internal market and is a key sector of the economy. While road transport plays the most important role in the inland transport system, it is a source of a number of socio-economic and environmental challenges (e.g. climate change, air pollution, noise, congestion). Distance-based road pricing can play a key role in incentivising cleaner, more efficient operations, and its coherent design is crucial to ensuring fair treatment of road users and sustainable infrastructure financing.

Directive 1999/62/EC[1] (the "Eurovignette Directive") provides a detailed legal framework for charging heavy goods vehicles (HGVs) for the use of certain roads. The Directive aims to eliminate distortions of competition between transport undertakings by a step-wise harmonisation of vehicle taxes and establishment of fair mechanisms for infrastructure charging. It sets minimum levels of vehicle taxes for HGVs and specifies the detailed rules of infrastructure charging, including the variation of charges according to the environmental performance of vehicles.

By nature, annual vehicle taxes are payments linked to the fact that the vehicle is registered on behalf of the taxpayer during a given period and, as such do not reflect any particular use of infrastructure. For similar reasons, vehicles taxes are not effective when it comes to incentivising cleaner and more efficient operations, or reducing congestion. Tolls, on the other hand, being directly linked to road-use, are considerably better fitted to achieve these objectives.

The application of vehicle taxes represents a cost the industry must so far bear in any event, even if tolls were to be levied by Member States. Therefore, vehicle taxes may act as an obstacle to the introduction of tolls.

Therefore, Member States should be afforded more scope to lower vehicle taxes, namely by way of a reduction of the minima set out in Directive 1999/62/EC. In order to minimise the risk of distortions of competition between transport operators established in different Member States, such reduction should be gradual.

The initiative contributes to the Regulatory Fitness Programme (REFIT) by lightening the burden associated with minimum HGV taxes.

• Consistency with existing policy provisions in the policy area

This proposal is presented together with another proposal, intended to address the shortcomings of Chapter III of Directive 1999/62/EC, related to tolls and user charges, so as to better fulfil certain objectives of that Directive. This latter proposal notably promotes the application of tolls, i.e. a form of road charging that is related to the distance travelled.

The same fundamental objective underlies the present proposal, to amend Chapter II of the Directive related to heavy goods vehicle taxes. The amendment proposed consists in a gradual reduction of the minima to zero, namely in 5 steps taken over 5 consecutive years and

1 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, OJ L 187, 20.7.1999, p. 42–50.

accounting each for 20% of the current minima. The intention is to provide for an incentive to move to distance-based road charging, i.e. the application of tolls.

- **Consistency with other Union policies**

The initiative is part of the Commission's effort to create an Energy Union, and of a series of proposals related to low-emission transport[2], including the revision of CO_2 emission Regulations for cars and vans, proposals for the certification and monitoring/reporting of CO_2 emissions from lorries and buses and related initiatives in the field of road transport, notably on the revision of the legislation on interoperable electronic tolling services and of the rules governing the internal market for road haulage and bus and coach services.

The proposed changes are in line with the goals set by the 2011 White Paper on transport[3] that called for moving towards full application of the 'polluter pays' principle and the 'user pays' principles in order to ensure more sustainable transport and infrastructure financing.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal bases for Directive 1999/62/EC are Articles 71 and 93 of the EC Treaty (now Articles 91 and 113).

The provisions of the Directive affected by this proposal pertain to heavy goods vehicle taxes, an area to which Article 113 TFEU applies.

As far as amendments of other provisions of the Directive are concerned, these fall under Article 91(1) TFEU and are addressed in the separate proposal referred to above.

- **Subsidiarity (for non-exclusive competence)**

The EU shares competence with Member States to regulate in the field of transport pursuant to Article 4(2)(g) TFEU, and in area of the internal market pursuant to Article 4(2)(a) TFEU. However, the gradual decrease of the existing minima fixed by the Union can only be operated by the Union itself

Without EU intervention, Member States would continue to be obliged to apply the minimum vehicle tax even if they have introduced or intend to introduce a more appropriate instrument to recover infrastructure costs, directly related to the individual use of infrastructure. This obligation would prevent them from compensating the freight transport sector, in the same proportion, by means of vehicle tax reductions, for potentially increased costs linked to the introduction of such instrument in respect of HGVs.

- **Proportionality**

The proposed measure only contributes to achieving the objectives set, notably of a consistent application of the 'polluter pays' and 'user pays' principles, and does not go beyond what is necessary to this end.

The targeted amendment of Chapter II is necessary to enable Member States to gradually reduce heavy goods vehicle taxes.

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[2] COM(2016) 501 final: European Strategy for Low-Emission Mobility

[3] COM(2011) 144 final: Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system

- **Choice of the instrument**

Since the legal act to be amended is a Directive, the amending act should in principle take the same form.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Commission published its evaluation of Directive 1999/62/EC in 2013[4]. An external 'Evaluation of the implementation and effects of EU infrastructure charging policy since 1995' was published in January 2014[5]. These evaluations identified various problems linked to road charging of heavy goods vehicles under the current legislative framework. All of those problems are addressed by a parallel proposal for amending Chapter III of the Directive, whereas this initiative focuses only on facilitating the application of distance-based charging.

While 24 Member States have implemented some form of road charging and there has been a tendency to move towards network-wide distance-based tolling, this transition has been slow and there are persistent inconsistencies across the Union. The evaluation found great disparities in national road charging policies and concluded that the lack of harmonisation in the type of charges (time-based vignettes or distance-based tolls) and the type of charge-collecting technologies that are used results in additional administrative burden and costs both for public authorities and users.

In 2013, the Commission published a summary of measures, including vehicle taxes, which internalise or reduce transport externalities[6].

- **Stakeholder consultations**

Stakeholder consultations complied with the minimum standards for the consultation of interested parties set out in the Commission Communication of 11 December 2002 (COM(2002) 704 final).

Open and targeted consultation methods and various consultation tools were used.

1) A standard 12-week online open public consultation was organised via the website "Your Voice in Europe" on the basis of questionnaires.

The open public consultation (OPC) ran from 8 July to 5 October, with late contributions also accepted. The questionnaires were based on the issues identified by the evaluation, and included questions on the fairness of road pricing (taxes and charges).

The Commission received 135 responses to the questionnaires as well as 48 additional documents. The responses covered a variety of stakeholder groups, including transport undertakings (42%), consumers/citizens (14%), public authorities (13%), the construction industry (7%), public transport associations (4%), and tolling service/solution providers (4%).

4 Ex-post evaluation of Directive 1999/62/EC, as amended, on the charging of heavy goods vehicles for the use of certain infrastructures, SWD(2013) 1 final
5 http://ec.europa.eu/smart-regulation/evaluation/search/download.do?documentId=10296156
6 SWD(2013) 269 final, Report in accordance with Article 11 (4) of Directive 1999/62/EC

2) Targeted consultation with specific stakeholders and specialists took place throughout the impact assessment process and involved:

   a) a series of thematic seminars with stakeholders and Member States organised by the Commission during September and October 2015.

   b) A conference on the road initiatives on 19 April 2016.

   c) 21 interviews with stakeholders selected based on specific data needs carried out by the contractor preparing the impact assessment support study.

Summary of input received and use of results

The majority of respondents to the OPC were of the opinion that different taxes and charge systems can cause market distortion, therefore supporting EU harmonisation.

Some stakeholder opined that imposition of vehicle taxes, on the one hand, and charges for road use on the other amounted to a double burden. The stakeholders believed that EU-wide harmonisation of the rules on road charging would be an ideal solution, as it would create fair competition rather than favouring companies in countries where taxes are lower.

Many of the interviewed stakeholders also stressed that any increase in costs as a result of increased payments for road use should be compensated for by reductions in other transport-related taxes.

- **Collection and use of expertise**

The problem definition was based on evaluations partly using external expertise (Evaluation of the implementation and effects of EU infrastructure charging policy since 1995, Update of the Handbook on external costs of transport[7]), complemented by additional research.

In addition, a study looking at measures to internalise external costs in transport was carried out in 2012.[8]

An external contractor assisted with a support study for the Impact Assessment[9], which was concluded in April 2017.

- **Impact assessment**

The initiative is supported by an Impact Assessment, which has received a positive opinion, with reservations, from the Regulatory Scrutiny Board. The comments have been taken into account in the revised impact assessment, with the adaptations explained in Annex I of the impact assessment report. Four policy options were considered, reflecting an increasing level of regulatory intervention, subsequent options (PO1 to PO4) building on each other. The measures related to taxation were analysed in conjunction with those related to road charging.

[7] Ricardo-AEA et al (2014), Update of the Handbook on External Costs of Transport: http://ec.europa.eu/transport/themes/sustainable/studies/sustainable_en

[8] CE Delft et al., 2012, "An inventory of measures for internalising external costs in transport", http://ec.europa.eu/transport/themes/sustainable/studies/sustainable_en

[9] Ricardo et al. (2017), Support Study for the Impact Assessment Accompanying the Revision of Directive 1999/62/EC.

The first policy option (PO1) includes legislative changes to update only some provisions of the Directive and the extension of its scope to buses and coaches, as well as to vans, minibuses and passenger cars in order to address all identified problems. The changes related to updating the requirements of Chapter III of the Directive (tolls and user charges). Chapter II would not have been affected.

PO2 includes the phasing out of time-based charges for heavy duty vehicles with a view to address the problems related to CO_2 and pollutant emissions through wider uptake of distance-based charging.

PO3 (with variants a and b) includes additional measures for light vehicles, addressing interurban congestion (PO3a and 3b) as well as CO_2 and pollutant emissions from all vehicles (PO3b only).

Finally, the PO4 would make external cost charging mandatory for heavy duty vehicles and gradually phase out, for all vehicles, the possibility to resort to time-based charging, so that only distance-based charging would remain available.

The second, third and fourth options also included the possibility to reduce the annual vehicle tax for heavy goods vehicles below the current minimum levels set by the Directive in case distance-based charging is applied to them in the given Member State. The impact assessment found that, depending on the choices made by Member States also in connection with the uptake of distance-based road charging, the possibility to reduce the vehicle tax could decrease the burden on hauliers by about €2 billion (compared to roughly €3 billion currently paid in HGV taxes).

The impact assessment, assuming a replacement of current time-based charging schemes by distance-based ones in PO2 to 4 (the alternative for Member States being not to charge), clearly showed that PO4 was the most effective but would bring its benefits at the highest costs. PO1 could only contribute to achieving the objectives in a very limited way although at practically no cost. PO2 and PO3 were more balanced in their economic, social and environmental impacts and would achieve those results at a reasonable cost.

The impact assessment identified PO3b, the variant including the variation of charges for light vehicles according to their CO_2 and pollutant emissions, as the preferred option, possibly complemented with the requirement of external cost charging on at least part of the network for heavy duty vehicles and the phasing-out of time-based charging for light vehicles over a sufficiently long period. These are the measures retained in this proposal, which is thus situated between PO3b and PO4, but closer to PO4.

PO3b and PO4 would reduce congestion costs by 2.5-6% or €9-22 billion by 2030, provide additional toll revenues of €10-63 billion/year and help increase the investment in roads by 25-260% compared to the baseline.

They would significantly reduce the amount of CO_2, NOx and particulate matter emissions from road transport. This would lead to a positive impact on public health, proportionate to the reduction in air pollution, and result in €370 million to €1.56 billion costs savings for air pollution and accidents by 2030, expressed as present value.

PO3b and PO4 would allow generating between 62,000 and 152,000 new jobs in case just 30% of the additional toll revenues were reinvested in road maintenance. In addition, all options would contribute to the equal treatment of EU citizens by halving the price of short term vignettes.

PO3a and 3b would increase transport costs for freight by 1.1%, while costs for passenger transport would remain unchanged. In PO4, the costs for passenger and freight transport could increase by up to 1.3-2.0 percent, depending on the actual uptake of distance-based charging by Member States (potentially including those that currently do not charge certain vehicle categories). Authorities would have to support the cost of deployment of new tolling systems or expanding existing ones, which would amount, for the Member States concerned altogether, to €2-3.7 billion until 2030. Extension of road charging to new parts of the network and new user groups would increase the compliance costs for road users by €198 to €850 million/year from 2025 onwards.

Impacts on SMEs, including the entire road haulage sector would be limited since road charges only represent a small percentage of overall transport costs. Any cost increase is either passed on to clients or could be compensated by tax reductions made possible via the amendment of Chapter II of the Directive.

- **Regulatory fitness and simplification**

The proposal would allow Member States to gradually reduce annual taxes applied to heavy goods vehicles having a maximum permissible laden weight above 12 tonnes. This change, together with the proposed phasing out of time-based charging, could ensure smooth transition from a system of flat rate taxes and charges to a more progressive, proportionate and adaptable system of use-based charging.

The reduction in vehicle tax paid for the use of HGVs by hauliers (which are all SMEs, and in most cases micro-enterprises) could serve as a compensation for potentially increasing road charges related to the application of distance-based schemes.

As such, the initiative could have some positive impact on the competitiveness of the haulage industry by reducing the cost of ownership for operators in Member States, which decide to lower the vehicle tax. If after a transitional period a Member State choses to set the tax at 0 EUR, this would also reduce regulatory and administrative burden.

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

4. BUDGETARY IMPLICATIONS

The proposal has no budgetary implications for the Union.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The impact assessment report lists a set of 7 core indicators that will be used for monitoring the progress related to the main policy objectives: the evolution of CO_2 emissions from heavy duty vehicles; the state of tolled road infrastructure; the proportionality and coverage of social costs by road charges; and the level of congestion on the inter-urban network in the EU.

In order to assess the impact of the legislation, it would be necessary to make a thorough evaluation once all the changes have been phased in. Five years after the new framework becomes applicable in its entirety would be the appropriate timeframe for such an evaluation. The effects of intermediate steps could be evaluated earlier.

- **Explanatory documents (for directives)**

Considering the scope of the proposal, the fact that it only amends Directive 1999/62/EC, which all Member States have transposed in full, it does not seem justified or proportional to require explanatory documents.

- **Detailed explanation of the specific provisions of the proposal**

The proposal contains the following elements:

Chapter II – Title

The title of Chapter II is adjusted to reflect that only heavy goods vehicles are concerned by the provisions of the chapter following the extension of the scope of the Directive, pursuant to the parallel amendment of the other provisions of the Directive.

Article 3 – Scope of vehicle taxes

The first sentence in paragraph 1 is modified to correctly refer to Article 1(a) of the modified Directive regarding its scope.

Annex I

It is proposed to subdivide Annex I into a number of successive tables, reflecting the gradual decrease of the minimum rates over five years. The first table corresponds to the current terms of Annex I, whereas the five other tables contain corresponding figures, each time lowered by 20% vis-à-vis the current rates, where applicable.[10]

[10] Naturally, it is not proposed to amend minima currently set at 0 EUR.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament[11],

Having regard to the opinion of the European Economic and Social Committee[12],

Acting in accordance with a special legislative procedure,

Whereas:

(1) In its White Paper of 28 March 2011[13] the Commission set out a goal to move towards the full application of the 'polluter pays' and 'user pays' principles, to generate revenue and ensure financing for future transport investments.

(2) By nature, annual vehicle taxes are unrequited payments linked to the fact that the vehicle is registered on behalf of the taxpayer during a given period and, as such do not reflect any particular use of infrastructure. For similar reasons, vehicles taxes are not effective when it comes to incentivising cleaner and more efficient operations, or reducing congestion.

(3) Tolls being directly linked to road-use, they are considerably better fitted to achieve these objectives. In accordance with Article 7k of Directive 1999/62/EC, Member States which introduce tolls may provide appropriate compensation to national hauliers.

(4) The application of vehicle taxes represents a cost the industry must so far bear in any event, even if tolls were to be levied by Member States. Therefore, vehicle taxes may act as an obstacle to the introduction of tolls.

(5) Therefore, Member States should be afforded more scope to lower vehicle taxes, namely by way of a reduction of the minima set out in Directive 1999/62/EC. In order to minimise the risk of distortions of competition between transport operators established in different Member States, such reduction should be gradual.

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

11 OJ C […], […], p. […].
12 OJ C […], […], p. […].
13 White Paper of 28 March 2011 ‘Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system' (COM(2011) 144 final).

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 1999/62/EC is amended as follows:

(1) The title of Chapter II is replaced by the following:

"Vehicle taxation of heavy goods vehicles";

(2) in Article 3(1), the introductory wording is replaced by the following:

"The vehicle taxes referred to in point (a) of Article 1 are as follows";

(3) Annex I is amended as set out in the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by […] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article […]

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President