



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

04.06.2020

**COMMENTS ON THE REVISED PRESIDENCY COMPROMISE TEXT
DATED MAY 29TH 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 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 to 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].
- (c) for existing concession contract, any modification of contract authorized under article 43 of Directive 2014/23/EU is not considered as a substantial amendment.

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

Notice: paragraph 1 of Article 7g is now included in the exemption which is essential 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

Justification : generally and due to the complexity and the absence of an impact study on the consequences of this text, a technical safeguard clause should be introduced to limit the risks of additional costs linked to new provisions introduced.

Whereas 24

The assessment of whether a concession contract is substantially amended in accordance with this Directive should be without prejudice to the assessment under Article 43 of Directive 2014/23/UE of whether such a contract is modified in a manner that requires a new concession award procedure.

Article 2.29

“substantially amended tolling or charging arrangement” means a tolling or charging arrangement, where the amendment of rates is expected to increase revenues in excess of 10 % in comparison to the previous accounting year, excluding the effect of increase of traffic and after correcting for inflation measured by changes in the EU-wide Harmonized Index of Consumer Prices and excluding energy and unprocessed food as published by the commission.

Amendment: Deletion of Whereas 24 and sentence to be added to Article 2.29 **“In the case of concession contract “substantially amended” should refer to the Directive 2014/23/EU”**

Justification: concerning the toll systems based on concession contracts, definition is unclear is on how to assess a contract modification. It is proposed to refer to the already consolidated EU criteria included in art. 43 of the Directive 2014/23/EU 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 which would affect legal solidity of the both texts contrary of what is stated in the purely indicative Whereas 24. Last but not least, the increase of toll revenue (eg due to price increase) may be accompanied by a corresponding increase in liabilities and therefore the increase in toll revenue may not be sufficient to serve the changes required by this Directive, therefore the reference to art. 43 of the Directive 2014/23/EU is the only appropriate and consistent way to deal with current contracts.

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. Complexity would be reduced if CO₂ emission class (not CO₂ emissions) on the date of first registration is included in registration paper of vehicles together with date of registration or date of reclassification to 1st CO₂ emission class.

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 from 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.

Annex

Article 2

Directive 1999/37/EC is amended as follows:

Under point 5 of Chapter II of Annex I:

Keep the following sentence : *[(Y.2V.10) CO₂ emission class of heavy duty vehicles determined at the moment of first registration, in accordance with Article 7g-a(1a) of Directive 1999/62/EC.]*

Under point 6 of Chapter II of Annex I, **maintain the following is deleted:**

'(V.7) CO₂ (in g/km),'

Justification : From operational point of view, if CO₂ emission class is included in registration paper of vehicle it will facilitate the implementation of variation of charges according to CO₂ emission classes, defined in Article 7g-a and will enhance the capacity of preventing mistakes or fraud when defining and applying vehicles' emission class in tolling systems.

Whereas 26: The possibility of adding a mark-up to the infrastructure charge levied on specific road sections which are regularly congested, or the use of which by vehicles causes significant environmental damage, is no more limited to within mountainous areas but is extended to any part of the national network.

Amendment: Whereas 26

Mark-ups added to the infrastructure charge could also provide a useful contribution to addressing problems related to significant environmental damage or congestion caused by the use of certain roads, ~~not only within mountainous areas. The current restriction of mark-ups to such areas should therefore be removed.~~ In order to avoid double charging of users, mark-ups should be excluded on road sections on which a congestion charge is applied. In this respect *and in order to avoid adverse effects on the economic development of peripheral regions*, the Commission shall adopt Implementing Acts in accordance with the examination procedure.

Justification:

This extension may lead to fragmentation and ungoverned application of mark-ups at local level, and thus should be avoided returning to the previous (i.e.: only in mountain areas) wording.



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.

Art. 7ca3

Amendment: From **[OJ: add the date of entry into force + four years]**, Member States shall apply an external-cost charge for traffic-based **air or noise pollution**, to heavy duty vehicles on ~~at least the a part of the tolled~~ network referred to in Article 7(1) where environmental damage generated by heavy duty vehicles is the most significant ~~and where a toll is levied~~.

Justification : the obligation of introducing external cost charges should be applied on the whole national network not only on tolled network.

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.

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



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...”

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.

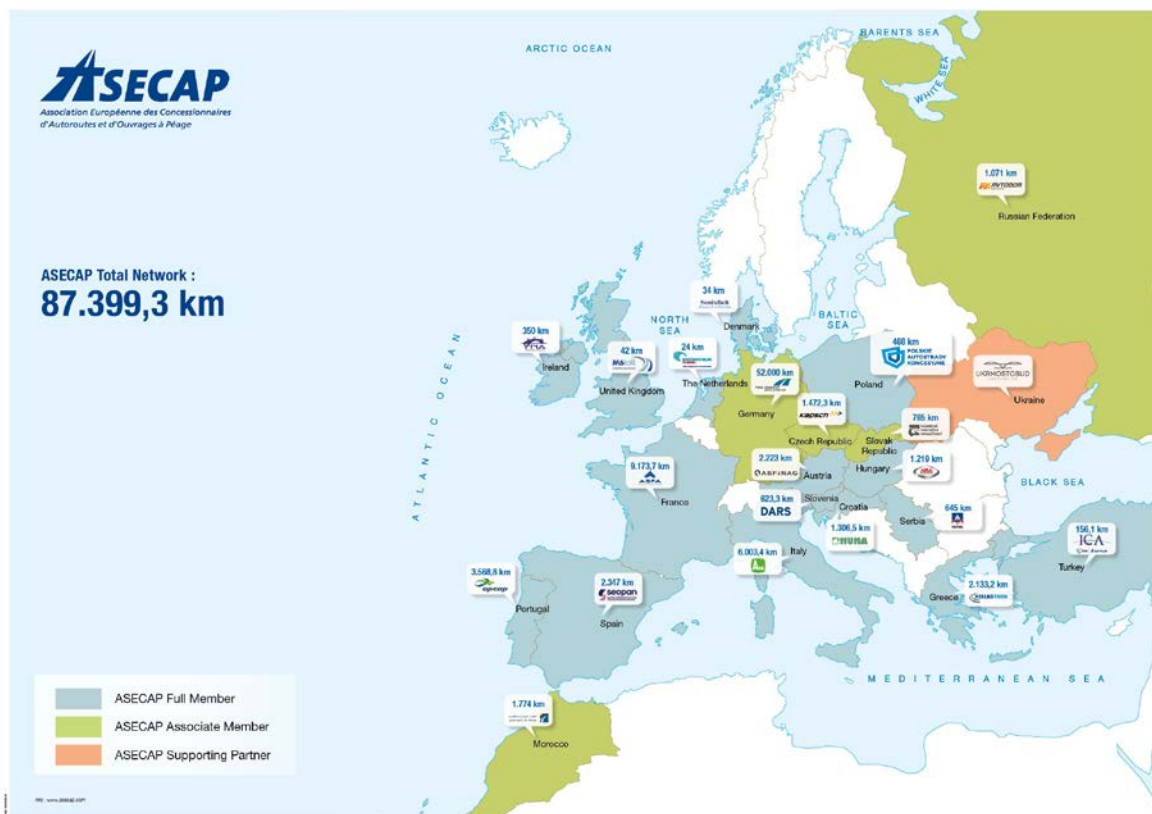


About ASECAP:

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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