



STATUTORY INSTRUMENTS.

S.I. No. 384 of 2014

EUROPEAN UNION (CHARGING OF HEAVY GOODS VEHICLES
FOR THE USE OF CERTAIN INFRASTRUCTURES) (AMENDMENT)
REGULATIONS 2014

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I, PASCHAL DONOHOE, Minister for Transport, Tourism and Sport, in exercise of powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive No. 2011/76/EU of the European Parliament and of the Council of 27 September 2011¹ hereby make the following Regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Charging of Heavy Goods Vehicles for the Use of Certain Infrastructures) (Amendment) Regulations 2014.

(2) These Regulations come into operation on the date of signature.

Amendment of the Principal Regulations

2. (1) The European Communities (Charging of Heavy Goods Vehicles for the Use of Certain Infrastructures) Regulations 2009 (S.I. No. 87 of 2009) (hereinafter referred to as “the Principal Regulations”) are amended as set out in paragraphs (2) to (18) below.

(2) Regulation 2 of the Principal Regulations is hereby replaced by the following:

“2. In these Regulations “the Eurovignette Directive” means Directive No. 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, as amended by Directive 2006/38/EC of the European Parliament and of the Council of 17 May 2006, Council Directive 2006/103/EC of 20 November 2006 and Directive 2011/76/EU of the European Parliament and of the Council of 27 September 2011.”

(3) All references in the Principal Regulations and in these Regulations to “the Commission” shall refer to “the European Commission” as defined in Article 13 of the Treaty on European Union.

(4) In Regulation 5, the reference to “Minister for Transport” is hereby replaced by “Minister for Tourism, Transport and Sport”.

(5) Regulation 7 of the Principal Regulations is hereby amended as follows:

(a) by the insertion of the following additional definitions:

¹O.J. L 269, 14.10.2011, p. 1.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 19th August, 2014.*

““cost of traffic-based air pollution” means the cost of the damage caused by the release of particulate matter and of ozone precursors, such as nitrogen oxide and volatile organic compounds, in the course of the operation of a vehicle;

“cost of traffic-based noise pollution” means the cost of the damage caused by the noise emitted by the vehicles or created by their interaction with the road surface;

“external-cost charge” means a charge levied for the purpose of recovering the costs incurred in the State that are related to traffic-based air pollution and/or to traffic-based noise pollution;

“motorway” means a road specially designed and built for motor traffic, which does not serve properties bordering on it, and which:

- (i) is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other either by a dividing strip not intended for traffic or, exceptionally, by other means;
- (ii) does not cross at grade with any road, railway or tramway track, bicycle path or footpath; and
- (iii) is specifically designated as a motorway;

“weighted average infrastructure charge” means the total revenue of an infrastructure charge over a given period divided by the number of vehicle kilometres travelled on the road sections subject to the charge during that period;

“weighted average external-cost charge” means the total revenue of an external-cost charge over a given period divided by the number of vehicle kilometres travelled on the road sections subject to the charge during that period;”

and

- (b) by the replacement of the existing definition of “infrastructure charge” with the following definition:

““infrastructure charge” means a charge levied for the purpose of recovering the construction, the maintenance, the operation and the development costs related to infrastructure incurred in the State;”

and

- (c) by the replacement of the existing definition of “toll” is hereby with the following definition:

““toll” means a specified amount payable for a vehicle based on the distance travelled on a given infrastructure and on the type of the vehicle comprising an infrastructure charge and/or an external-cost charge;”

and

- (d) by the replacement of the existing definition of “vehicle” is hereby with the following definition:

““vehicle” means a motor vehicle or articulated vehicle combination intended or used for the carriage by road of goods and having a maximum permissible laden weight of over 3.5 tonnes;”

- (e) by the repeal of the definition of “weighted average toll” and by the replacement of all references in the Principal Regulations to that term with references to the term “weighted average infrastructure charge.

- (6) Regulation 8 of the Principal Regulations is hereby replaced by the following Regulation:

“8. (1) Tolls and user charges may, with the approval of the Minister, be maintained or introduced on the trans-European road network, or on certain sections of that network, and on additional sections of the road network in the State comprising motorways that are not part of the trans-European road network, providing that such tolls and/or user charges comply with the conditions set out in Regulations 8a and Regulations 10 to 22.

(2) Tolls may be levied at a particular point only on the infrastructure to which the toll relates.

(3) For the avoidance of doubt, these Regulations shall not apply to the imposition of tolls and/or user charges on roads not included in the trans-European network, provided that the imposition of tolls and/or user charges on such roads does not discriminate against international traffic and does not result in distortions of competition between operators.”

- (7) The following Regulation is hereby inserted after Regulation 8:

“8a. (1) The external-cost charge may be related to the cost of traffic-based air pollution. On road sections crossing areas with a population exposed to road traffic-based noise pollution, the external-cost charge may include the cost of traffic-based noise pollution.

(2) The external-cost charge shall vary and be set in accordance with the minimum requirements and the methods as specified in Part I of Schedule and shall respect the maximum values set out in Part II of Schedule 5.

(3) The costs taken into account shall relate to the network or the part of the network on which external-cost charges are levied and to the vehicles that are subject thereto.

(4) The external-cost charge related to traffic-based air pollution shall not apply to vehicles which comply with the most stringent EURO emission standards until four years after the dates of application laid down in the rules which introduced those standards.

(5) The amount of the external-cost charge shall be set by the Minister.”

(8) Regulation 10(3)(a) is amended by the insertion of the words “road safety due to traffic diversion” after the word “or”.

(9) Regulation 14 is hereby repealed and replaced with the following Regulation:

“14. Discounts or reductions to the infrastructure charge may be made available to operators on condition that:

- (a) the resulting charging structure is proportionate, made public and available to users on equal terms and does not lead to additional costs being passed on to other users in the form of higher tolls;
- (b) such discounts or reductions lead to actual savings in administrative costs; and
- (c) do not exceed 13% of the infrastructure charge paid by equivalent vehicles not eligible for the discount or reduction.”

(10) The second sentence of Regulation 16 shall be replaced by the following sentence:

“In particular, where tolls and/or user charges are collected exclusively by means of a system that requires the use of a vehicle on-board unit, the appropriate on-board units compliant with the requirements of Directive 2004/52/EC of the European Parliament and of the Council of 29 April 2004² on the interoperability of electronic road toll systems in the Community shall be made available to all users under reasonable administrative and economic arrangements.”

(11) Regulations 17 and 18 are hereby repealed and replaced by the following Regulations:

“17. User charges shall be proportionate to the duration of the use made of the infrastructure, shall be set at a level which is not higher than the maximum rates stipulated in Schedule 2 and shall be valid for a day, a week, a month or a year. The monthly rate shall be no more than 10 % of the

²O.J. L 166, 30.04.2004, p. 124.

annual rate, the weekly rate shall be no more than 5 % of the annual rate and the daily rate shall be no more than 2 % of the annual rate.

18. Annual rates of user charges only may be applied to vehicles registered in the State.”

(12) Regulation 19 is hereby repealed and replaced by the following Regulation:

“19. (1) Tolls shall be based on an infrastructure charge, which shall be based on the principle of the recovery of infrastructure costs. Specifically, the weighted average infrastructure charge shall be calculated by reference to the construction costs and the costs of operating, maintaining and developing the infrastructure network concerned. The weighted average infrastructure charge may also include a return on capital and/or a profit margin based on market conditions.

(2) The costs taken into account under paragraph (1) shall relate to the network, or the part of the network, on which infrastructure charges are levied and to the vehicles that are subject thereto.”

(13) Regulation 20 is hereby repealed and replaced by the following Regulation:

“20. (1) Without prejudice to the weighted average infrastructure charge referred to in Regulation 19(1), infrastructure charges may be varied for such purposes as combating environmental damage, tackling congestion, minimising infrastructure damage, optimising the use of the infrastructure concerned or promoting road safety, providing that such variation:

- (a) is proportionate to the objective pursued;
- (b) is transparent, made public and available to all users on equal terms;
- (c) is not designed to generate additional revenue, any unintended increase in revenue (leading to weighted average infrastructure charges which are not in accordance with Regulation 19) being counterbalanced through changes to the structure of the variation which must be implemented within two years of the end of the accounting year in which the additional revenue is generated; and
- (d) respects the maximum flexibility thresholds set out in (2) of this Regulation.

(2) Subject to the conditions of paragraph (1), infrastructure charges may be varied according to—

- (a) EURO emission class of the vehicle as set out in Schedule 1, including the level of PM and NO_x, provided that no infrastructure charge is more than 100% above the same charge charged

for equivalent vehicles meeting the strictest emission standards;
and/or

(b) the time of day, type of day or season,

and provided that:

- (i) no infrastructure charge is more than 175% above the weighted average infrastructure charge;
- (ii) the peak periods during which the higher infra-structure charges are levied for the purpose of reducing congestion do not exceed five hours per day;
- (iii) the variation is devised and applied in a transparent and revenue neutral way on a road section affected by congestion by offering reduced charges for hauliers who travel during off-peak periods and increased charges for hauliers who travel during peak hours on the same road section; and
- (iv) the variation is communicated to the Commission for its prior approval and is not implemented until that approval has been obtained.

(3) (a) Toll rates may, for specific projects of high European interest identified in Annex III to Decision No 661/2010/EU of the European Parliament and of the Council of 7 July 2010, be varied in order to secure the commercial viability of such projects where they are exposed to direct competition with other modes of vehicle transport. The resulting charging structure shall be linear, proportionate, made public, and available to all users on equal terms and shall not lead to additional costs being passed on to other users in the form of higher tolls.

(b) The Minister shall seek the approval of the Commission prior to the implementation of any variation made under this Regulation.”

(14) Regulation 21 is hereby repealed and replaced by the following Regulation:

“21. Without prejudice to Regulation 31, in exceptional cases concerning infrastructure in mountainous regions and after informing the Commission, a mark-up may be added to the infrastructure charge levied on specific road sections—

(1) Which are the subject of acute congestion affecting the free movement of vehicles; or

(2) The use of which by vehicles is the cause of significant environmental damage, on the condition that:-

- (a) the revenue generated from the mark-up is invested in priority projects of European interest identified in Annex III to Decision No 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union guidelines for the development of the trans-European transport network³, which contribute directly to the alleviation of the congestion or environmental damage and which are located in the same corridor as the road section on which the mark-up is applied;
- (b) the mark-up does not exceed 15 % of the weighted average infrastructure charge calculated in accordance with Regulation 19, except where the revenue generated is invested in cross-border sections of priority projects of European interest involving infrastructure in mountainous regions, in which case the mark-up may not exceed 25 %;
- (c) the application of the mark-up does not result in unfair treatment of commercial traffic compared to other road users;
- (d) a description of the exact location of the mark-up and proof of a decision to finance the construction of priority projects referred to in indent (a) are submitted to the Commission in advance of the application of the mark-up; and
- (e) the period for which the mark-up is to apply is defined and limited in advance and is consistent, in terms of the expected revenue to be raised, with the financial plans and cost-benefit analysis for the projects co-financed with the revenue from the mark-up.

(3) The application of a mark-up referred to in this Regulation to any new cross-border projects shall be subject to the agreement of all the Member States involved in that project.”

(15) Regulation 28 is hereby repealed and replaced with the following Regulation:

“Without prejudice to Articles 107 and 108 of the Treaty on the Functioning of the European Union, appropriate compensation may be provided for charges introduced under a system of tolls and/or user charges for infrastructure.”

(16) The references in Regulation 29(1) and (2) to “user charges”, “the common user-charge rates”, “the common user charge” and “the user charge” shall be replaced, respectively, with references to “user charges and tolls”, “the common user-charge and/or toll rates”, “the common user charge and/or toll” and “the user charge and/or toll”.

(17) The following paragraph shall be added to Regulation 29:

³O.J. L 204, 5.8.2010, p. 1.

“(3) In any case where this Regulation is applied, the Commission shall be informed in advance of the proposed cooperation, and of the system’s subsequent operation and possible amendment”.

(18) The Schedule set out in the Annex to these Regulations, which gives effect to the provisions contained in Annex IIIa and Annex IIIb to Eurovignette Directive, shall be inserted as a new Schedule 5 to the Principal Regulations.

Collective citation

3. These Regulations, along with the Principal Regulations, may collectively be referred to as the European Union (Charging of Heavy Goods Vehicles for the Use of Certain Infrastructures) Regulations 2009—2014.

ANNEX

“SCHEDULE 5

PART A

MINIMUM REQUIREMENTS FOR LEVYING AN EXTERNAL-COST CHARGE

This Part sets out the minimum requirements for levying an external-cost charge and for calculating the maximum weighted average external-cost charge.

1. The parts of the road network concerned

The Minister shall specify precisely the part or parts of their road network which are to be subject to an external-cost charge.

Where the Minister chooses to levy an external-cost charge on only a part or parts of the road network falling within the scope of this Directive, the part or parts shall be chosen after an assessment establishing that:

- vehicles’ use of the roads where the external-cost charge is applied generates environmental damage higher than that generated on average on other parts of the road network falling within the scope of the Directive that are not subject to an external-cost charge, or
- the imposition of an external-cost charge on other parts of the road network falling within the scope of the Directive might have adverse effects on the environment or road safety, or levying and collecting an external-cost charge on them would entail disproportionate cost.

2. The vehicles, roads and time period covered

The Minister shall notify the Commission of the classification of vehicles according to which the toll shall vary. He or she shall also notify the Commission of the location of roads subject to higher external-cost charges (called hereafter “suburban roads (including motorways)”), and of roads subject to lower external-cost charges (called hereafter “interurban roads (including motorways)”).

Where applicable, the Minister shall also notify the Commission of the exact time periods corresponding to the night period during which a higher external noise-cost charge may be imposed to reflect greater noise nuisances.

The classification of roads as suburban roads (including motorways) and interurban roads (including motorways), and the definition of time periods shall be based on objective criteria related to the level of exposure of the roads and their vicinities to pollution such as population density, and the yearly number of pollution peaks measured in accordance with this Directive. The criteria used shall be included in the notification.

3. Amount of the charge

For each vehicle class, type of road and time period, the Minister shall determine a single specific amount. The resulting charging structure, including the start time and the end time of each night period where the external-cost charge includes the cost of noise pollution, shall be transparent, made public and available to all users on equal terms. The publication should occur in a timely manner before implementation. All parameters, data and other information necessary to understand how the various external-cost elements are calculated shall be made public.

When setting the charges, the Minister shall be guided by the principle of efficient pricing that is a price close to the social marginal cost of the usage of the vehicle charged.

The charge shall also be set after having considered the risk of traffic diversion together with any adverse effects on road safety, the environment and congestion, and any solutions to mitigate these risks.

The Minister shall monitor the effectiveness of the charging scheme in reducing environmental damage arising from road transport. He or she shall every two years adjust, if appropriate, the charging structure and the specific amount of the charge set for a given class of vehicle, type of road and period of time to the changes in transport supply and demand.

4. External-cost elements

4.1. Cost of traffic-based air pollution

If the Minister chooses to include all or part of the cost of traffic-based air pollution in the external-cost charge, the Minister shall calculate the chargeable cost of traffic-based air pollution by applying the following formula or by taking the unit values in Table 1 of Part B if the latter are lower:

$$PCV_{ij} = \frac{1}{4} \sum_k EF_{ik} \cdot \dot{U}_{PCjk}$$

where:

- PCV_{ij} = air pollution cost of vehicle class i on road type j (euro/vehicle.kilometre)
- EF_{ik} = emission factor of pollutant k and vehicle class i (gram/vehicle.kilometre)
- PC_{jk} = monetary cost of pollutant k for type of road j (euro/gram)

The emission factors shall be the same as those used by the Minister to draft the national emissions inventories provided for in Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants⁴ (which requires use of the

⁴O.J. L 309, 27.11.2001, p. 22.

EMEP/CORINAIR Emission Inventory Guidebook)⁵. The monetary cost of pollutants shall be estimated by the Minister respecting the state of the article

The Minister may apply scientifically proven alternative methods to calculate the value of air pollution costs using data from air pollutant measurement and the local value of the monetary cost of air pollutants, provided that the results do not exceed the unit values referred to in Table 1 of Part B for any class of vehicles.

4.2. Cost of traffic-based noise pollution

If the Minister chooses to include all or part of the cost of traffic-based noise pollution in the external-cost charge, the Minister shall calculate the chargeable cost of traffic-based noise pollution by applying the following formulae or by taking the unit values in Table 2 of Part if the latter are lower:

$$NCV_j \delta_{\text{daily}} \frac{1}{4} e \ddot{U} \Sigma_k NC_{jk} \ddot{U} POP_k = WADT NCV_j \delta_{\text{day}} \frac{1}{4} a \ddot{U} NCV_j$$

$$NCV_j \delta_{\text{night}} \frac{1}{4} b \ddot{U} NCV_j$$

where:

- NCV_j = noise cost of one heavy goods vehicle on road type j (euro/vehicle.kilometre)
- NC_{jk} = noise cost per person exposed on road type j to noise level k (euro/person)
- POP_k = population exposed to daily noise level k per kilometre (person/kilometre)
- $WADT$ = weighted average daily traffic (passenger car equivalent)
- a and b are weighting factors determined by the Member State in such a way that the resulting weighted average noise charge per vehicle kilometre does not exceed NCV_j (daily).

The traffic-based noise pollution relates to the impact on noise levels measured close to the point of exposure and behind anti-noise barriers, if any.

The population exposed to noise level k shall be taken from the strategic noise maps drafted under Article 7 of Directive 2002/49/EC of the European Parliament and the Council of 25 June 2002 relating to the assessment and management of environmental noise)⁶.

The cost per person exposed to noise level k shall be estimated by the Member State or, if appropriate, an independent authority, respecting the state of the article

⁵Methodology of the European Environment Agency:
<http://reports.eea.europa.eu/EMEPCORINAIR5/>

⁶O.J. L 189, 18.7.2002, p. 12.

The weighted average daily traffic shall assume an equivalence factor “e” of no more than 4 between heavy goods vehicles and passenger cars.

The Member State or, if appropriate, an independent authority may apply scientifically proven alternative methods to calculate the value of noise costs provided that the results do not exceed the unit values referred to in Table 2 of Part B.

The Member State or, if appropriate, an independent authority, may establish differentiated noise charges to reward the use of quieter vehicles provided it does not result in discrimination against foreign vehicles. If differentiated noise charges are introduced, the charges for the noisiest category of vehicles may not exceed the unit values referred to in Table 2 of Part B and four times the noise charge for the quietest vehicle.

PART B

MAXIMUM WEIGHTED AVERAGE EXTERNAL-COST CHARGE

This Part sets out the parameters to be used to calculate the maximum weighted average external-cost charge.

1. Maximum cost of traffic-based air pollution:

Table 1: Maximum chargeable air pollution cost

cent/vehicle.kilometre	Suburban roads (including motorways)	Interurban roads (including motorways)
EURO 0	16	12
EURO I	11	8
EURO II	9	7
EURO III	7	6
EURO IV	4	3
EURO V	0	0
after 31 December 2013	3	2
EURO VI	0	0
after 31 December 2017	2	1
Less polluting than EURO VI	0	0

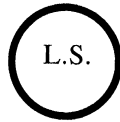
The values of Table 1 may be multiplied by a factor of up to 2 in mountain areas to the extent that it is justified by the gradient of roads, altitude and/or temperature inversions.

2. Maximum cost of traffic-based noise pollution

Table 2: Maximum chargeable noise cost

cent/vehicle.kilometre	Day	Night
Suburban roads (including motorways)	1.1	2
Interurban roads (including motorways)	0.2	0.3

The values in Table 2 may be multiplied by a factor of up to 2 in mountain areas to the extent that it is justified by the gradient of roads, temperature inversions and/or amphitheatre effect of valleys.



Given under my Official Seal
7 August 2014.

PASCHAL DONOHOE T.D.,
Minister for Transport, Tourism and Sport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of these Regulations is to amend the European Communities (Charging of Heavy Goods Vehicles for the Use of Certain Infrastructures) Regulations 2009 (S.I. No. 87 of 2009) for the purpose of giving effect to Directive No. 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, as further amended by Directive No. 2011/76/EU of the European Parliament and of the Council of 27 September 2011.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
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