

**ROLLING PENNIES ON THE ROAD?
EU LAW CONFORMITY OF ROAD CHARGES FOR LIGHT VEHICLES**

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The EU law conformity of road charges has received some recent attention following the German government's plans for implementation of an infrastructure charge for vehicles below 3,5 tons on motorways and through-roads. The peculiarity of those plans lies in their double nature, combining the introduction of a charge for Univ.-Profall users with a rebate on the level of motor vehicles taxes for German-registered vehicles. This contribution uses the occasion of the German case to look at the provisions and principles of EU law applicable to road charges for light vehicles and undertake an assessment of the current developments.

Keywords: Road tax, road charges, light vehicles, combined fee and rebate mechanism, motor vehicles tax, transport, measures of equivalent effect to customs duties, indirect taxation, free movement of goods and services, discrimination, Article 92 TFEU, Article 30 TFEU, Article 110 TFEU, Article 34 TFEU, Article 18 TFEU.

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I. INTRODUCTION

General traffic in Germany does not currently have to pay for road use. However, since 2013, a debate has been raging back and forth in Germany about the introduction of road charges¹ for light vehicles (below 3,5 tons).

Germany is an EU Member State that prides itself of a strong and innovative automobile industry and, for example, still has no general speed limit imposed on motorways. Road taxes for individual traffic were long seen as a political taboo there. That changed in the run-up to the 2013 general election, when the conservative government's Bavarian junior partner in the coalition decided to run a campaign to graze off voters on the right-hand edge of its spectrum. Playing outright on xenophobic resentment, the regional party called for foreigners to start paying for the use of notoriously clogged German motorways.

Although that demand immediately raised concerns over its compatibility with European law and the major coalition partner was reluctant at first, the introduction of general usage charges for light traffic set was eventually enshrined in the acting government's 2013 Coalition Pact,² however under the condition that it would not pose an extra burden on domestic vehicle owners. Consequently, the Coalition Pact speaks of the introduction of a 'car toll'³ to ensure that holders of passenger cars not registered in Germany contribute to the financing of the motorway network without taxing domestically registered vehicles higher than today' and 'with the proviso that no German vehicle owner is more heavily burdened than today'.⁴

¹ The term charges is used here to comprise all forms of direct charges levied for the use of roads, ie tolls for passage of certain roads, distance or time based usage fees, congestion or environmental charges and the like. Unlike taxes (eg a motor vehicles tax), the revenue of these charges is usually purpose-bound and does not flow toward the general budget. The German model is best described as a (time based) usage fee. For a terminological distinction, also Art 2(b) of the Eurovignette Directive (n 25).

² Heike Münzing, *Zur Einführung einer Pkw-Maut in Deutschland*, NZV 2014, 197, 197.

³ For terminological distinction see n 1.

⁴ Both citations own translation from Coalition Treaty 2013, *Deutschlands Zukunft gestalten*, available at www.cdu.de/koalitionsvertrag (accessed 19 May 2015), 8: , '...

Since then, the responsible ministry had tried to devise a law capable of bridging a seemingly impossible gap: imposing a road charge that would have no burdening effect on domestic car owners while nonetheless not appearing discriminatory by European law standards.

The German government's immediate sparring partner was, of course, the European Commission, where the proposals were scrutinized at various stages.⁵ In June 2015, the Commission decided to open infringement proceedings against Germany.⁶ The Commission's main concerns appertain to indirect discrimination based on nationality. One yardstick of measurement in connection to this issue will be the principles laid down in a 2012 Commission Communication⁷ on road infrastructure charges for private vehicles.

The Netherlands and Austria, the Member States potentially most affected by a foreigner-only charge among Germany's neighbours, announced that they were contemplating considering independent infringement actions against Germany in case the Commission failed to take up the case.⁸ Both sides, Germany and the opposing Member States, have produced expert opinions on the legality of the package and submitted them to the Commission.⁹

The road charges package gained parliamentary consent in spring 2015 and was initially set to take effect as of 1 January 2016. Due to the opening of infringement proceedings, however, the entry into force was temporarily suspended to await their outcome.¹⁰

This contribution explores the EU law framework for road charges in detail. It uses the occasion of the German case to look at the provisions and principles of EU law applicable to road charges for light vehicles and undertake an assessment of current developments. The German case has, of course, received some scholarly attention in German writing.¹¹ However,

europarechtskonforme PKW-Maut, mit der wir Halter von nicht in Deutschland zugelassenen PKW an der Finanzierung zusätzlicher Ausgaben für das Autobahnnetz beteiligen wollen, ohne im Inland zugelassene Fahrzeuge höher als heute zu belasten', and 29: , '...mit der Maßgabe, dass kein Fahrzeughalter in Deutschland stärker belastet wird als heute'.

⁵ Eg Com Press Release of 2 December 2014, SPEECH/14/2280.

⁶ Com Press Release of 18 June 2015, IP/15/5200.

⁷ Communication on the application of national road infrastructure charges on light private vehicles, COM(2012) 199 fin.

⁸ Eg derstandard.at online version of 12 May 2015, Wien sucht Verbündete gegen deutsche Maut.

⁹ For Germany, Rechtsgutachten by Christian Hillgruber of 17 October 2014 (and reply to Commission concerns on 13 December 2014), available at <http://www.bmvi.de> (accessed 19 May 2015); for Austria, hntv.de online version of 15 May 2015, Österreich macht mobil gegen Pkw-Maut.

¹⁰ BR.de online version of 18 June 2015, Dobrindt verschiebt Maut-Start.

¹¹ Münzing (n 2); Friedemann Kainer and Sarah Ponterlitschek, 'Einführung von nationalen Straßenbenutzungsgebühren für Pkw', ZRP 2013, 198; Daniel Engel and

English contributions on the issue, taking on a broader perspective, are sparse.

II. THE GERMAN FEE AND TAX REBATE MECHANISM

The legislative package brought about in Germany comprises two linked measures. Its first leg introduces a road usage fee¹² for passenger cars (categories M and MiG) on motorways and federal through-roads.¹³ As the package's second leg, the general passenger car fee is flanked by changes to the motor vehicles tax¹⁴ with a view to offsetting its financial burden for holders of automobiles registered in Germany.¹⁵

The time-based fee for the use of motorways and federal through-roads applies generally to all light vehicles in classes M and MiG (up to eight seats, including eg mobile homes), but not to motorcycles.¹⁶ Foreign and domestic vehicles are caught alike, but foreign vehicles pay for motorway use only and may use through-roads free of charge.¹⁷ The fee is to be collected through an electronic permit (vignette) that must be purchased beforehand.¹⁸ For vehicles registered in Germany, the fee is to be automatically assessed and collected by the motor vehicle authority, which already keeps the vehicle registration register.¹⁹ German vehicle owners will thus have no additional paperwork to do.

The amount of the fee is calculated according to motor power and emissions and is set at a yearly maximum of 130 Euros,²⁰ with the expected average around 80 Euros.²¹ Short-term permits will be available for 10 days and two months and set at three progressive levels corresponding to motor power and emissions level (5/10/15 Euros and 16/22/30 Euros respectively).²²

Jan Singbartl, 'Die Einführung einer Pkw-Maut zulasten von EU-Ausländern – europarechtskonform?', *vr* 2014, 289; Stefan Korte and Matti Gurreck, 'Die europarechtliche Zulässigkeit der sog. Pkw-Maut', *EuR* 2014, 422; Lukas Beck, 'Autobahnmaut und Europarecht', *NZV* 2014, 289; Christian Maaß, 'Die PKW-Maut ist erst der Anfang', *ZUR* 2014, 449; Matthias Zabel, 'Die geplante Infrastrukturabgabe (Pkw-Maut) im Lichte von Art 92 AEUV', *NVwZ* 2015, 186; Volker Boehme-Neßler, 'Pkw-Maut für Ausländer?', *NVwZ* 2014, 97.

¹² For terminological distinction see n 1.

¹³ 'Infrastrukturabgabe für die Benutzung von Bundesfernstraßen'; Entwurf eines Gesetzes zur Einführung einer Infrastrukturabgabe für die Benutzung von Bundesstraßen (InfrastrukturabgabenG), BTDRs. 18/3990, final version BTDRs 18/4455.

¹⁴ 'Kraftfahrzeugsteuer'; for terminological distinction see n 1.

¹⁵ Entwurf eines Zweiten Verkehrssteueränderungsgesetzes, BTDRs. 18/3991, final version BTDRs 18/4448.

¹⁶ § 1(1) InfrastrukturabgabenG (n 13).

¹⁷ § 1(2) InfrastrukturabgabenG (n 13).

¹⁸ § 5(1) InfrastrukturabgabenG (n 13).

¹⁹ § 6 InfrastrukturabgabenG (n 13).

²⁰ Anlage zu § 8 InfrastrukturabgabenG (n 13).

²¹ BTDRs 18/3990 (n 13), 30, sets the average at 74 euros, subsequent estimates are higher.

²² BTDRs. 18/4455 (n 13), 14.

The second leg of the mechanism corresponds to the first and undertakes to lower the motor vehicles tax for domestically registered vehicles. In fact, the provision introduced in the motor vehicles tax law is an exact (negative) copy of the one that details out the fee levels in the road usage fee law.²³ By virtue of that flanking second leg, German vehicle owners receive a vehicles tax rebate for the exact amount of their fee burden. For them therefore, the economic effect of the usage fee will be neutral.

The measures apply exclusively to light vehicles, ie passenger cars and small transport vehicles. Heavy goods vehicles (HGV; above 3,5 tons) are already subject to a (distance based) motorway usage fee in Germany. That fee was introduced in 2005²⁴ in line with the Eurovignette Directive.²⁵ That Directive stipulates that HGVs may be billed for the cost of constructing, operating and developing infrastructure and to that end defines common rules on distance-based tolls and time-based user charges (vignettes) for HGVs for the use of certain infrastructure only.²⁶ It is not applicable to fees for light vehicle traffic as the ones now envisaged in Germany.

III. LIGHT VEHICLE CHARGES UNDER EU LAW

The Commission's 2012 Communication underlines the principle that, given the absence of harmonization in the field, Member States are in principle free to implement road charges for light vehicles.²⁷ Nonetheless, according to the Communication, such charges may not run counter the principles of non-discrimination on grounds of nationality (Article 18 TFEU) and proportionality. This will be examined here.

Article 18 and the proportionality principle, however, apply only subsidiarily, when more specific provisions fail to bite. In that regard, a fee and rebate mechanism like the one envisaged in Germany might run counter to a number of such more specific EU law provisions. Immediately relevant here is the TFEU's Roads and Transport Chapter, ie Articles 90 et seq. and secondary law. Potential conflicts may however also arise in the area of the fundamental freedoms (particularly²⁸ as regards free movement of goods under Article 34 TFEU) and the provisions on customs duties (Article 30 TFEU) and indirect taxation (Article 110 TFEU). The applicability and substance of those provisions regarding road usage charges will thus be examined here first.

²³ BT Drs. 18/3991 (n 15), Art 1 no 7 (changes to § 9 (6) to (8)).

²⁴ Bundesfernstraßenmautgesetz, BGBl 2011 I S 1378; LKW-Maut-Verordnung, BGBl 2003 I S 1003.

²⁵ Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures, [1999] OJ L 187/42.

²⁶ For more see Detlev Boeing, Matthias Kotthaus, Tim Maxian Rusche, Art 91, para 94 ff, in Eberhard Grabitz, Meinhard Hilf, Martin Nettesheim (eds), *Das Recht der europäischen Union – Kommentar*, 47th supp 2012.

²⁷ Communication 2012 (n 7), 3.

²⁸ For an assessment under Art 45 TFEU see Kainer and Ponterlitschek (n 11), 200; Engel and Singbartl (n 11), 289 ff.

It is important to point out in that context that many of the Treaty provisions potentially applicable to a road fee mechanism are mutually exclusive. This is, as will be shown in greater detail when those norms are discussed, particularly so as regards the prohibitions of customs duties and discriminatory indirect taxes (Articles 30 and 110 TFEU) vis-à-vis each other as well as vis-à-vis the prohibition of restrictions on goods (Article 34 TFEU). Which of these norms is applicable, however, depends on how one looks at the facts at hand, i.e. what the actual effects of the measure under scrutiny are deemed to be. As is not uncommon in legal disputes, the facts lend themselves to different assessments of their effects. Depending on that assessment, one or the other provision will apply. For the German fee and rebate mechanism in particular, the assessment of the effects of the measure is actually a key issue in the dispute (particularly: are there combined or separate effects for the two legs of the measure and are those effects the result of a customs- or tax-like measure or are they some other form of restriction affecting goods?).

Against that background, this contribution takes the widest possible approach when looking at Treaty norms that, depending on the assessment of the effects of the measure, might potentially apply. Accordingly, all of the aforementioned provisions, i.e. Articles 30, 34 and 110 TFEU, will be examined here notwithstanding that in the end, only one of them can apply. This also explains why Article 34 is discussed towards the end of the paper as one final and admittedly remote possibility, although that provision does usually not apply to measures involving charges or taxes (but instead yields to the more specific norms of Articles 30 and 110):²⁹ If none of those more specific norms is deemed to apply because the effects of the mechanism are deemed not to fall under the customs or tax provisions, ie if there were no visible customs or tax effects, maybe the measure has other, non-fee related prohibitive effects that might be assessed under Article 34.³⁰

1. Compatibility With the Transport Chapter: Art 92 TFEU

The central focus for assessing the legality of road usage fees lies on the TFEU's traffic Chapter and, there in particular, on Article 92's standstill obligation. Article 92 provides that in the absence of harmonization (under Article 91 TFEU) 'no Member State may ... make ... provisions governing the subject on 1 January 1958 ... less favorable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State.'

²⁹ Consistent jurisprudence, eg Case C-313/05 *Brzeziński* ECLI:EU:C:2007:33, para 50; Case C-228/98 *Dounias* ECLI:EU:C:2000:65 para 39; Case C-383/01 *De Danske Bilimportører* ECLI:EU:C:2003:352 para 32.

³⁰ Potentially less restrictive (applicability of Article 34 to charges where there are excessive effects on goods) older case-law Case C-47/88 *Commission/Denmark* ECLI:EU:C:1990:449, paras 12 ff; Case 31/67 *Stier* ECLI:EU:C:1968:23, 241.

Article 92 is thus two-sided. First, as generally in EU law, where harmonization (or EU-led liberalization) has occurred, the conditions stipulated therein prevail. Second, in the absence of harmonization, ie regarding usage charges for light vehicles, a combination of non-discrimination and standstill applies: foreign and domestic users of traffic systems may be subjected to historic, perpetuate differing conditions of use.³¹ The prohibition contained in that second regulatory side of Article 92 is therefore less stringent than the general non-discrimination clause of Article 18 TFEU, since those kinds of less favorable treatment that were in place already at the standstill date in 1958, remain possible.³²

A. Secondary Law

The main pieces of harmonization in the area of road charges are the Eurovignette Directive 1999/62/EC³³ and Council Decision 65/271³⁴ on competition in transport.

a. The Eurovignette Directive

Relevance of the Eurovignette Directive in the current context is easily dismissed: it concerns only road pricing for HGVs, ie vehicles for the carriage of goods by road above 3,5 tons.³⁵ The fee imposed by Germany applies to small (eight seats or less) vehicles for passenger transport only, irrespective of weight (although most will be below 3,5 tons).³⁶ Although the Directive thus sets maximum levels for road usage charges in particular,³⁷ the German general road usage fee does not conflict with them.

b. The 1965 Decision

As regards the 1965 Decision, two provisions (both still in force)³⁸ might be relevant for a road usage charge: Article 1(a) prohibits double taxation of motor vehicles by a Member State other than that in which they are registered. Article 4 stipulates that Member States may not apply any specific taxes to the carriage of goods by road in addition to turnover tax. On the formal face of course, a road charge is neither a vehicles tax nor a tax on goods transport. Nonetheless, under certain circumstances, its effects might be equivalent to either type of tax.

A finding of equivalent effects of a road charge to taxes has two implications: on the one hand, it might justify a re-classification of the charge as a vehicles tax proper. This question is dealt with in the present

³¹ Also Boeing et al (n 25) Art 92, para 4.

³² Also Peter Schäfer, Art 92, para 6, in Rudolf Streinz (ed) *EUV/AEUV-Kommentar*² (2012).

³³ See n 25.

³⁴ Council Decision 65/271/EC on the harmonisation of certain provisions affecting competition in transport by rail, road and inland waterway, [1965] OJ 88/1500.

³⁵ Art 2(d) Eurovignette Directive.

³⁶ § 1(1) InfrastrukturabgabenG (n 13).

³⁷ Annex II Eurovignette Directive.

³⁸ Also Boeing et al (n 25) Art 91, para 39.

section On the other hand, effects equivalent to a tax on goods might bring a road charge within the scope of application of Articles 30, 34 or 110 TFEU, which all deal with different aspects of cost-based obstacles to the marketing of goods in the internal market. This latter aspect will be discussed in separate sections on those provisions further below.

A suspicion that it might be appropriate to re-classify of a road charge as a vehicles tax might arise depending on the actual effects of the measure. After all, EU law as a matter of principle takes an effects-based, never a formalistic approach, when assessing the compatibility of national measures.

The German example is such a border-line case, where an initial suspicion as to tax-equivalent effects of a measure that is formally denominated a charge arises. The reason for this lies in the existence of an intrinsic link between the German road charge and the German motor vehicles tax system.

The alleged link is firstly factual in the sense that the changes to the vehicles tax law were taken in parallel with the introduction of the road fee and with the declared aim of neutralizing its tax effects. Secondly, the link is also functional, since the provisions introduced to the vehicles tax law are an exact negative copy of the road fee mechanism. These measures are therefore two sides of the same coin: they cannot be split, would not have been taken individually or separately and could not achieve the regulatory aim behind them individually.

The Court has already in the past dealt with a German mechanism coupling a time-based road fee with a reduction of domestic motor vehicles taxes. Although the Court stopped short of re-qualifying the road charge as a vehicles tax in the sense of Decision 65/271, it recognized the close factual link between such a charge and vehicles taxation: an introduction of the charge might jeopardize harmonization measures to eliminate the double taxation of motor vehicles.³⁹

The Advocate General for that case, Francis Jacobs, was even clearer as regards the classification of a road charge as a measure equivalent to a vehicles tax:

In the absence of harmonization of the rates of vehicle duty, one consequence of the elimination of double taxation is that the burden of vehicle duty may vary as between vehicles from two different Member States[.] The introduction of road tax ..., combined with the reduction in ... vehicle duty, had the express aim of dealing with the consequences of such disparities for the conditions of competition of transport undertakings. ... In my view, it is difficult to reconcile the intended effects of such a

³⁹ Case C-195/90 *Commission/Germany* ECLI:EU:C:1992:219, para 27.

measure with the goal of eliminating the double taxation of motor vehicles, which goal must in my view be taken to include the avoidance of measures having an equivalent effect, in whole or in part, to such double taxation. The [road charge at hand] might be thought to have such an equivalent effect, because it introduces a charge paid by carriers from other Member States which has the specific aim of enabling the burden of vehicle duty paid by German carriers to be reduced.⁴⁰

The Advocate General was therefore clear that the concept of double taxation of motor vehicles in the 1965 Decision included measures having an equivalent effect and that a road charge is to be regarded as such a measure where it seeks to counterbalance the burden of vehicles taxation for transporters. In other words, the Advocate General recognized that an intrinsic link between the vehicles tax system and a road charge justifies classifying the charge as a measure of equivalent effect to vehicles tax.

Whether or not a road charge is to be re-classified to fall under the 1956 Decision thus depends on the circumstances of the case and, more precisely, on the presence of an intrinsic link. Where, like in the German case, a road charge is functionally coupled with a rebate on motor vehicles taxes, that mechanism simply shifts a part of the vehicles tax burden from one law to another. Such a formal move should not affect the nature of that fee as a functional part of the vehicles tax system.

This is underlined in the case at hand by the fact that from the point of view of German-registered vehicle owners, the motor vehicles tax liability does effectively not change in any way — neither in terms of the overall tax burden nor in terms of associated paperwork. They will not factually notice the regulatory change at all.

Where a road fee is an intrinsic functional part of the vehicles tax mechanism, its extension to foreign-registered vehicles would have to be considered a form of double vehicles taxation: foreign vehicles are subject to a vehicles tax in their Member State of registration and will, in addition, be submitted to bear part of a national (here: German) vehicles tax burden. In these circumstances a road usage fee for light vehicles, like the one devised for Germany, runs counter to Article 1(a) of Decision 65/271.

B. Primary Law

In addition to a potential infringement of the 1965 Decision, the combined road fee and rebate mechanism might also conflict with the standstill leg of Article 92 TFEU. Two questions arise here. The first is whether Article 92 applies to light vehicle traffic at all. Secondly, if it applies, what is the actual import of the prohibition contained in Article 92.

⁴⁰ Opinion of the AG for Case C-195/90 *Commission/Germany* ECLI:EU:C:1992:123, paras 59 and 60.

a. Applicability of Article 92

Doubts as to the applicability of Article 92 to light vehicles traffic, particularly to individual traffic and passenger cars, might arise from its wording, which refers only to 'carriers' ('transporteurs'/'Verkehrsunternehmer' in the original French and German versions). This indicates that non-commercial individual traffic might not fall under the standstill and non-discrimination clauses of Article 92. Any subsequent introduction of additional burdens or unequal treatment in relation to non-commercial traffic would then only be subject to other Treaty provisions.

This also seems to be the Commission's reading of Article 92, which in the early stages of the German plans stated that '[r]oad tolling schemes have to comply [only] with general Treaty principles as concerns ... passenger cars. ... As far as passenger cars are concerned, [therefore], Member States are free to set the level of circulation taxes for resident drivers'⁴¹ as long as this does not constitute discrimination on the grounds of nationality. Consequently, 'reducing circulation taxes for resident users ... and implementing proportional user charges for all users would, in principle, not constitute discrimination on grounds of nationality.'⁴² This statement encouraged the German government to give its plans the final go ahead and include them in the 2013 coalition pact.⁴³

As was shown, the German fee will not apply to light vehicles of more than eight seats and not to HGV traffic. Nonetheless, transport services in light vehicles, ie individual and group taxi services and deliveries, will be subject to the fee. Irrespective of the size of the undertaking providing such services (ie the self-employed taxi driver or delivery person as well as large taxi or deliveries firms), the fee will therefore affect undertakings ('Unternehmen') in the sense of EU law⁴⁴ and - therefore - also in the sense of Article 92 ('[U]nternehmer').⁴⁵ As a result, that aspect of the measure is to be assessed under Article 92.

b. Non-Discrimination and Standstill

As regards, next, the regulatory content of Article 92, the key question is whether the prohibition laid down therein prohibits any kind of deterioration of the conditions of traffic - even where they hit domestic and foreign users alike - or just discriminatory deteriorations of traffic conditions. For their differing views on the leeway accorded by Article 92 to Member States to move away from the traffic conditions of 1958, these

⁴¹ Written answer by Siim Kallas on behalf of the Commission to the question of MEP Michael Cramer (Verts/ALE), 8 October 2013, Doc. no. P-011520-13.

⁴² *ibid.*

⁴³ Korte and Gurreck (n 11), 422.

⁴⁴ On the EU law concept of an undertaking Alison Jones, 'The Boundaries of an Undertaking in EU Competition Law' (2012) 8(2) *Eur. Comp. J.*, 301, 301 ff.

⁴⁵ Equally Korte and Gurreck(n 11), 427; Zabel (n 11), 187 ff

two readings of Article 92 are referred to as static (the former, stricter reading) vs dynamic (the latter, more generous reading).⁴⁶

The more generous reading draws upon political arguments: it argues that the interpretation of Article 92 should take into account the drastic changes that the conditions of intra-community transport experienced since the standstill date in 1958. In particular, road transport burgeoned along with the progressive integration of the internal market. Accordingly, Member States should retain freedom to dynamically react to this development through curbing measures, like road charges, that abolish benefits for foreign carriers as long as they entail no discrimination.⁴⁷

The (prevalent) more stringent reading⁴⁸ is based on the case law on Article 92 and its wording. The leading case, *Commission/Germany*, of 1992 has very similar facts to the current German mechanism. *Commission/Germany* concerned the first German attempt to establish an HGV fee (time based) for the use of federal roads and motorways in the early 1990s. The measure fell quite clearly within the ambit of Article 92: like in the current system, the idea was to set off the fee domestically via a reduction of motor vehicles taxes. The Court of Justice found that Article 92 'is intended to prevent the ... common transport policy from being ... obstructed ... by the adoption ... of national measures the direct or indirect effect of which is to alter unfavorably the situation ... of carriers from other Member States in relation to national carriers.'⁴⁹ This applies irrespective of the (eg environmental) objectives of such a measure.⁵⁰ Article 92, however, 'does not preclude a Member State from adopting measures which have the same unfavorable effects for national carriers as for carriers of other Member States.'⁵¹ According to this balanced standard, the measure at the time fell afoul of Article 92. This reading of Article 92 was also confirmed in subsequent jurisprudence.⁵²

The Court's approach is a strict or static one in the sense that any changes to the conditions of competition between domestic and foreign carriers are prohibited. This means that foreign carriers may, in particular, not be

⁴⁶ Boeing et al (n 25), Art 92, paras 5 ff; Korte, and Matti Gurreck (n 11), 429.

⁴⁷ Christian Jung, Art 92, para 5, in Christian Calliess and Matthias Ruffert (eds), *EUV/AEUV-Kommentar*⁴ (2011); Gerhard Muzak, Art 92, para 11, in Heinz Mayer and Karl Stöger, *Kommentar zu EUV und AEUV*, 133rd supp 2012; Thomas Ebenroth, Rafael Fischer and Christoph Sorek, 'Deutsche Straßenbenutzungsgebühr und EG-Recht', BB 1989, 1566, 1574 ff

⁴⁸ Matthias Knauff, § 6 Transportrecht, 303, para 65, in Matthias Ruffert (ed), *Europäisches Sektorales Wirtschaftsrecht* (2013); Boeing et al (n 25) Art 92, para 12; Schäfer (n 32), para 7; Gerhard Stadler, Art 72, para 4, in Jürgen Schwarze (ed), *EU-Kommentar*² (2009).

⁴⁹ *Commission/Germany* (n 39), para 20.

⁵⁰ *Commission/Germany* (n 39), para 33.

⁵¹ *Commission/Germany* (n 39), para 21.

⁵² Joined Cases C-184/91 and C-221/91 *Oorburg* ECLI:EU:C:1993:121, para 12 ff.

deprived of competitive advantages that they might have enjoyed vis-à-vis domestic carriers.

The Court explains its stringent approach with the preservation of maneuvering space in the common transport policy and the need to keep legislative options open. In addition, a stringent reading is relatively more effective in terms of harmonization of transport conditions in the internal market, since it fosters Member States' willingness to compromise on transport legislation in the Council.⁵³

A strict reading of Article 92 would mean that any introduction of road charges vis-à-vis foreign users that were formerly allowed to use roads for free is in conflict with Article 92, unless domestic users are subjected to a corresponding charge that forestalls a change to the conditions of competition between foreign and domestic road users. This means, in other words, that the level of charges between foreign and domestic users must be kept at the same distance. If the former level was zero, new charges may only be homogeneously for foreign and domestic users to set the level for both groups equally at zero plus X.

Coupled with the rebate on the level of motor vehicles taxes, the two-legged German mechanism does not impose 'the same unfavorable effects'⁵⁴ on domestic and foreign carriers alike. Instead, foreign carriers are deprived of the formerly enjoyed benefit of free use of German motorways, whereas, if the infrastructure law is read in conjunction with the vehicles tax rebate, domestic carriers effectively continue to use these roads for free. This is, in other words, not just a mere deprivation of foreign carriers of a benefit formerly enjoyed, but an effectively less favorable economic position as compared to German carriers for whom fees are fully set off.

Without the intertwined effects of the road fee on the one hand and the rebate on the motor vehicles tax on the other, the introduction of road fees would therefore be in line with the ECJ's reading of Article 92.⁵⁵ In the way the mechanism effectively works, however, it is incompatible with that provision.⁵⁶

A fee mechanism like the one devised in Germany falls foul of Article 92 even under the more generous reading of that provision:⁵⁷ The fact that in effect only foreign carriers pay for road use while domestic carriers use them for free is not just an alteration of the conditions of competition to the detriment of foreign carriers (static reading). Rather, it is a unilateral imposition of one-sided negative effects on those carriers which will place

⁵³ Equally *Boeing et al*(n 25) Art 92, para 12.

⁵⁴ *Commission/Germany* (n 39), para 21.

⁵⁵ Equally *Zabel* (n 11), 189 ff.

⁵⁶ Equally *ibid*, 190.

⁵⁷ Different however *ibid*, 190.

them in a worse economic position than German carriers (dynamic reading). Even with a generous reading of Article 92 therefore, which is not warranted under the ECJ's case-law, that measure could not hold.

Concerns under Article 92 could thus only be eliminated where, contrary to what is suggested here, the two mechanisms were looked at separately and the rebate on motor vehicles tax was artificially blinded out from the examination of the usage fee.⁵⁸ Again, that result would be the same both under a dynamic as well as under a static reading of Article 92: examining the law on fees alone, the competitive situation of domestic and foreign carriers vis-à-vis each other is not altered if the former fee level was zero and the level is now raised to an equal level of zero plus X for everyone. By itself therefore (ie blinding out the set off mechanism), the introduction of road charges would constitute a measure with 'the same unfavorable effects for national carriers as for carriers of other Member States'⁵⁹ in the Court's reading of Article 92. However, as was pointed out earlier, an isolated examination is not called for, given that the two legs of the measure are intrinsically, ie factually and functionally, linked. In fact, an artificial separate assessment only abets the circumvention of the prohibition in Article 92.⁶⁰

Where the combined non-discrimination and standstill prohibition of Article 92 are infringed, there is no leeway for justification arguments:⁶¹ Article 92's prohibition is absolute.⁶² The only exception to this rule is the possibility foreseen in Article 92 to obtain specific Council authorization for a given measure.

In conclusion therefore, a road fee mechanism like the one devised in Germany is incompatible with Article 92 combined non-discrimination and standstill requirements insofar as it is applied to transport services in light vehicles, ie individual and group taxi services and deliveries.⁶³ A separate examination of the two components of that mechanism with a view to expunging such concerns would artificially negate the measure's unequal effects for domestic and foreign carriers and is therefore to be rejected.

2. Tax Effect on Goods: Articles 30 and 110 TFEU

Articles 30 and 110 TFEU are two closely related provisions prohibiting different forms of charges levied on goods. A road usage charge might come within the ambit of those norms for its potential price effect on

⁵⁸ Similarly (regarding a separation of the two measures in time) Korte and Gurreck (n 11), 431; also Kainer and Ponterlitschek (n 11), 200.

⁵⁹ *Commission/Germany* (n 39), para 21.

⁶⁰ Similarly Korte and Gurreck(n 11), 431.

⁶¹ *Commission/Germany* (n 39), para 33; Case C-17/90, *Pinaud Wieger*, ECLI:EU:C:1991:283, para 11 ff.

⁶² Also Korte and Gurreck(n 11), 434; Zabel (n 11), 190; Jung (n 46) Art 92, para 9.

⁶³ Equally Engel and Singbartl(n 11), 293; also (although critical of that result) Kainer and Ponterlitschek (n 11), 201.

transported goods: extra charges borne by transporters of goods in light vehicles (eg express couriers) transported through or imported into a Member State imposing such charges will be added onto the price of those goods: '[A] charge which is imposed not on products as such, but on the specific activity of an undertaking in connection with products ... falls within the scope' of those provisions 'in so far as it has an immediate effect on the cost of national and imported products.'⁶⁴

Even if a road charge does not directly target goods, it nonetheless affects them in a manner similar to a direct goods tax. As it will be elaborated further below, that potential cost effects of a road charge for imported vis-à-vis national products brings the charge within the scope of Articles 30 or 110.⁶⁵

It is of course true that the quantitative scale of the charge's effect on goods is limited insofar as by far most goods transports on the road use HGVs. Nonetheless, as it was pointed out, certain transport services typically rely on light vehicles, like mini vans. This is particularly so for quick (overnight or same-day) deliveries, eg of urgent parcels, pharmaceuticals, small spare parts etc.

In the neighbouring area of measures of equivalent effect to quantitative restrictions on the importations of goods (Article 34) the case-law takes a markedly wide approach when assessing the effect of state measures on goods: it includes any measures (except selling arrangements, discussed below) capable of hindering, directly or indirectly, actually or potentially, intra-Community trade,⁶⁶ without there being any minimum threshold for its application: no distinction is drawn there according to the effect of a measure on trade.⁶⁷ The bottom-line drawn in that regard is only where effects are uncertain or speculative.⁶⁸ That is, however, not the case here, given certain goods are manifestly transported by use of light vehicles.

In sum therefore, the Treaty provisions relating to goods are directly relevant also for road charges for light vehicles. The fact that the overall quantity of goods transported in light vehicles is less than for HGV transports does not exclude the applicability of those provisions.

⁶⁴ Both citations Case C-221/06 *Stadtgemeinde Frohnleiten* ECLI:EU:C:2007:657, para 43.

⁶⁵ Already Case 20/76 *Schöttle* ECLI:EU:C:1977:26, para 14 ff; Case 252/86, *Bergandi* ECLI:EU:C:1988:112, para 27; Case C-90/94 *Haar Petroleum* ECLI:EU:C:1997:368, para 38; similarly Joined Cases 317/86, 48/87, 49/87, 285/87, 363/87 to 367/87, 65/88 and 78/88 to 80/88 *Lambert* ECLI:EU:C:1989:125, para 3 ff.

⁶⁶ See, eg, Case C-323/93 *Centre d'Insémination de la Crespelle* ECLI:EU:C:1994:368, para 28; Case 8/74 *Dassonville* ECLI:EU:C:1974:82, para 5.

⁶⁷ See Case C-126/91 *Yves Rocher* ECLI:EU:C:1993:191, para 21.

⁶⁸ See Case C-379/92 *Peralta* ECLI:EU:C:1994:296, para 24.

A. Principles of Application

While Article 30 addresses charges levied at the border and because a border is crossed, Article 110 deals with fiscal rules within the Member State, ie charges levied once the goods are inside the State's territory.⁶⁹ So the focus of Article 30 is on measures affecting the cost basis of imported foreign goods, whereas Article 110 focuses on differences in the tax treatment of similar goods irrespective of their origin.⁷⁰ In addition to this difference in scopes of application, differing standards apply: Article 30 is a relatively stricter norm in that it incorporates an absolute prohibition, not open to justification,⁷¹ which does not (like Article 110) hinge upon a finding of discrimination or protectionism in the measure.⁷² Both norms are mutually exclusive: a state measure will only fall under either one of them.⁷³

Two observations are particularly important in delineating the respective scopes of application vis-à-vis road charges. Firstly, if a charge is part of the 'general system of internal taxation'⁷⁴ in that it applies to all products at a given stage of marketing, it falls under Article 110.⁷⁵ Secondly, a mechanism that leads to a complete offset of the price effect of a charge in relation to domestic goods is always a matter of Article 30 – even if it is by its form designed like an integral part of the domestic fiscal or parafiscal systems.⁷⁶

In the German example, the road usage fee is not a charge specifically targeting imported goods. Nonetheless, it will fall under Article 30, not Article 110, insofar as domestic transporters of goods are effectively compensated for the burden imposed by the road charge via the rebate mechanism. If no compensation takes place, the yardstick for EU law compatibility is Article 110.

Which of the two norms is to be applied thus primarily depends on the approach taken towards the two legs of the mechanism: do the combined fee and rebate mechanism together constitute one measure or are they separate measures? If examined together, the measure has the effect of fully compensating domestic transporters, thereby shielding goods transported by domestic road users from the burden. That cost and price neutrality is in fact, as was shown, the declared aim of the measure. Consequently, the more stringent standard of Article 30 would apply. Were it was, however, to be found that the road fee and the tax rebate

⁶⁹ Eg Catherine Barnard, *The Substantive Law of the EU: The Four Freedoms* (2013), 52ff.

⁷⁰ For more Hans-Georg Kamann, Art 30, para 23, and Art 110, para 32, in Rudolf Streinz (ed), *EUV/AEUV-Kommentar*² (2012).

⁷¹ Barnard(n 69), 50.

⁷² Eg Joined Cases 2/69 and 3/69 *Diamantarbeiders* ECLI:EU:C:1969:30, para 15 ff.

⁷³ Case 10/65 *Deutschmann* ECLI:EU:C:1965:75, 473.

⁷⁴ Case 39/82 *Donner* ECLI:EU:C:1983:3, para 7.

⁷⁵ *ibid*, para 8.

⁷⁶ Joined Cases C-78/90 to C-83/90 *Compagnie Commerciale de l'Ouest* ECLI:EU:C:1992:118, para 27 ff; Case C-72/92 *Scharbatke* ECLI:EU:C:1993:858, para 10; Case C-17/91 *Lornoy* ECLI:EU:C:1992:514, para 21.

mechanism have nothing to do with each other and constitute separate measures, a separate examination (of, then, only the road charge) would be carried out under Article 110.

B. Traffic Charges As Equivalent of Customs Duties?

Article 30 bans charges having equivalent effect to customs duties, i.e. charges that are levied on goods because those goods cross a border between member states.⁷⁷ '[A]ny pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of [Art 30 TFEU], even if it is not imposed for the benefit of the state, is not discriminatory or protective and if the product on which the charge is imposed is not in competition with any domestic product.'⁷⁸

This is, therefore, an absolute prohibition without possibility for justification.⁷⁹ It is not subject to a *de minimis* logic ('however small'), applies irrespective of the aims and purposes of the charge and is not limited to discriminatory charges.

a. Direct or Indirect Effect on Goods

Older case-law seems to suggest that Article 30 only related to charges 'being imposed specifically upon a product' and thereby 'altering its price'.⁸⁰ As part of the provisions governing the conditions for the free movement of goods, Article 30, however, like the concept of equivalent effect in Article 34 TFEU (see below), is to be interpreted strictly and thus takes a broad, effects-based approach.⁸¹

Therefore, as was also pointed out here at the outset, it is not necessary that a given charge is one specifically levied on goods or specifically relates to goods. '[A]ny pecuniary charge' can be caught by Article 30 for any price effect it might have, as long as that price effect arises due to the fact alone, that the goods 'cross a frontier'.⁸² As a consequence, a road usage charge that also affects goods is not in principle excluded from the scope of application of Article 30 because it is not a specific charge on goods.

In addition, as was just shown in the principles section,⁸³ the combined effect in the German example of road fees and a compensation mechanism means precisely that this is not a burden imposed as an integral part of the national tax system. Instead, that fee constitutes a unilateral burden that

⁷⁷ For more, eg, Barnard (n 69), 44 ff.

⁷⁸ Case 24/68 *Commission/Italy* ECLI:EU:C:1969:29, para 9.

⁷⁹ Barnard (n 69), 50.

⁸⁰ Both citations *Deutschmann* (n 73), 473.

⁸¹ To that effect Case 46/76 *Baubuis* ECLI:EU:C:1977:6, para 12.

⁸² Both citations *Baubuis* (n 81), para 10.

⁸³ See at n 76.

only foreign transporters are subjected to because they cross the border into the respective Member State.

Indeed, a road usage fee applicable to the whole of the national system of high-level, interconnecting roads such as motorways affects those goods only 'by reason of the fact that they cross a frontier':⁸⁴ high-level roads are typical points of entry for commercial transporters of goods from other Member States. The electronic permit must be purchased at the border or before the border is crossed and constitutes the precondition for goods transported in small vehicles to cross the border into Germany. Crossing the border into Germany is thus the relevant act that triggers the obligation to pay.

b. Return for a Service?

Nonetheless, not all charges levied at the border run counter to Article 30. A charge is not caught by Article 30 if collected in return to a service or 'benefit provided ... for the exporter representing an amount proportionate to the said benefit'.⁸⁵ General advantages will however not suffice: the operator must obtain 'a definite specific benefit'⁸⁶ in return.⁸⁷

In return for a road charge, goods transporters may use the national system of roads, particularly motorways. The provision and maintenance of high-speed road links can be seen as a service that sets off the charge. That service is also directly consumed by those paying the charge and thus constitutes a sufficiently specific benefit in the aforementioned sense.

What remains open in the German example is whether the fee is also proportionate in the sense that it corresponds to the actual value of the consumed service. Proportionality is hard to measure for the yearly total of that fee, as the charges currently applicable in those Member States that have implemented road charges vary greatly (from around 30 to around 150 euros).⁸⁸ In addition, it is hard to compare those existing examples to one another, as proportionality of a charge will depend particularly on the local price level and on the size and quality of the road system made available in return for the charge. In Germany, the price level is somewhat above the European average. The quality of the (often aged) motorways is average at best, but their number is quite large.

Proportionality can, however, be measured within the system itself, ie by relating the cost of permits for shorter periods to the yearly price. The 2012 Communication provides some coarse guidance in that regard: rates should be around 10% monthly, 5% weekly and 2% daily in relation to the

⁸⁴ *Baubuis* (n 81), para 10.

⁸⁵ *ibid*, para 11.

⁸⁶ Case 18/87 *Commission/Germany* ECLI:EU:C:1988:453, para 7.

⁸⁷ Also Barnard (n 69), 50 ff.

⁸⁸ See the overview in the Annex to Communication 2012 (n 7).

price for a year's use.⁸⁹ In Germany, 10-day and two-month permits will be available at 5 to 15 Euros and 16 to 30 Euros respectively, with the upper price always being the one applicable to heavy polluters.⁹⁰ Measured against the yearly maximum charge of 130 Euros (ie the ceiling applicable to heavy polluters),⁹¹ fees for short-term use would thus range between 3,85 and 11,54 % for ten days and 12,31 and 23,08 % for two months. This exceeds Commission recommendations by approximately 15% of the relative fee level. If heavy polluters are therefore compared to one another, year-long users receive preferential treatment to short-term users if measured against the recommendations in the Communication. That effect is, in particular, not in line with the polluter-pays principle, which is also recognized in the Communication.⁹²

On average, Germany expects the yearly fee paid by most vehicle owners to be around 80 euros.⁹³ If the averages are compared to one another (10 Euros for 10 days, 22 Euros for two months), the picture is the same: the 10-day fee will be set at 12,50% of the average, the two-month fee even at 27,50 %. Here again therefore, Commission recommendations are exceeded by between 1/4th and 1/3rd of the relative fee level and short-term users are put at an even clearer disadvantage.

The disproportionality of the fees for short-term use in relation to yearly use in the German example indicates that the users pay more than the service rendered is actually worth. At the same time, that disproportionate fee affects the price of goods at the occasion of their importation into, or transit through, Germany. In consequence, the road usage fee for light vehicles in Germany likely contravenes the prohibition of charges having equivalent effect as customs duties laid down in Article 30 insofar as it includes, and hence affects, transporters of goods in light vehicles.

C. Traffic Charges As Discriminatory Indirect Taxes?

Article 110 TFEU prohibits discriminatory indirect taxation for similar types of goods and substitutable (ie competing) goods. Already from its wording ('any internal taxation of any kind'), Article 110 takes the same broad, effects-based approach as Article 30 (and Article 34)⁹⁴ that encompasses any 'disguised restrictions on the free movement of goods which may result from the tax provisions of a Member State.'⁹⁵

⁸⁹ *ibid*, 7.

⁹⁰ BTDRs 18/4455 (n 13), 14.

⁹¹ Anlage zu § 8 InfrastrukturabgabenG (n 13).

⁹² Communication 2012 (n 7), 1.

⁹³ BTDRs 18/3990 (n 13), 30, sets the average at 74 euros, subsequent estimates are higher.

⁹⁴ See n 81.

⁹⁵ Opinion of AG Sharpston, Case C-221/06 *Stadtgemeinde Frohnleiten* ECLI:EU:C:2007:372, para 26; also Opinion AG Mengozzi, Case C-206/06 *Essent Netwerk* ECLI:EU:C:2008:33, para 43.

As was pointed out here at the outset, non-goods specific charges are therefore in principle caught by Article 110.⁹⁶ The Court has repeatedly held in the past that the provision applies to 'a tax which in fact compensates for taxes which are imposed on the activity of the undertaking and not on the products as such.'⁹⁷ This includes, in particular 'a charge imposed on the international transport of goods by road.'⁹⁸ Consequently, Article 110 demands that road usage charges, which are a form of 'tax which has an immediate effect on the cost of the national and imported product must ... be applied in a manner which is not discriminatory to imported products.'⁹⁹

Nonetheless, Article 110 is not applicable to a combined road charges mechanism like the German one, ie that affords the full domestic compensation for the charge.¹⁰⁰ As was just shown, the prohibition of Article 30 was considered to be applicable because a combined assessment of the interaction of the two legs of the German mechanism show that the fee borne by imported goods there was fully compensated domestically. Thus, leeway for an assessment under Article 110 would open up only if the two legs of the mechanism were to be artificially separated.

In the latter case, however, no discrimination of similar goods and no protective effect for competing goods would arise either: if the German road usage fee is looked at by itself, the level of fees is the same for domestic and imported goods. There would thus be no room for application of Article 110 without there being a need to even enter into the questions of similarity of the goods affected, insofar as domestic and foreign goods across the board would be treated alike.

In short therefore, Article 110 is in any case irrelevant to a road charge mechanism that, like in Germany, affords full domestic compensation:¹⁰¹ when the legs of the mechanism are artificially separated, there is no discriminatory effect in the sense of Article 110. When the legs are examined together, the fact that the charge is fully compensated through the rebate on motor vehicles tax means that the (relatively stricter) prohibition of Article 30 is to be applied. A merely partial domestic compensation would, by contrast, open the mechanism up for an assessment (not undertaken here) under Article 110.

⁹⁶ Different (applicability to specific goods charges only) however Korte and Gurreck (n 11), 425; Christian Seiler, Art 110, para 22, in Eberhard Grabitz, Meinhard Hilf and Martin Nettesheim (eds), *Das Recht der europäischen Union – Kommentar*, 43rd supp 2011.

⁹⁷ *Schöttle* (n 65), para 14; see also the case-law cited in n 65.

⁹⁸ *Schöttle* (n 65), para 16 (there: distance- and weight based charges).

⁹⁹ *ibid*, para 15.

¹⁰⁰ Apparently different however Kainer and Ponterlitschek (n 11), 200.

¹⁰¹ Likewise (but with different reasoning) Korte and Gurreck (n 11), 425.

3. *Goods Transported Over Motorways: Article 34 TFEU*

Article 34 TFEU prohibits measures of an effect equivalent to quantitative restrictions on the importation of goods. Like the Articles 30 and 110 that were just discussed, Article 34 is concerned with the effects of national provisions on the free flow of goods in the internal market.

As was explained already at the outset, the norms are mutually exclusive: “[A]ccording to settled case-law [Article 34] does not extend to the obstacles to trade covered by other specific provisions and obstacles of a fiscal nature or having an effect equivalent to customs duties, which are covered by Articles [30 or 110].”¹⁰² Although the Court is sometimes less strict and seems to accept the application of Article 34 to customs- or tax-like measures when the effects on the free movement of goods are particularly intense,¹⁰³ Article 34 will normally not apply to a road fee mechanism.

Insofar as Articles 30 or 110 are considered relevant to a road charge collected already at the frontier as goods enter into a Member State, there is thus no room left for subjecting those charges to an additional test under Articles 34 and (for justification) 36 TFEU.¹⁰⁴ However, as was also already highlighted at the beginning, where the applicability of all customs- or tax-related norms was dismissed for a lack of relevant effects of the mechanism, this might re-direct attention to Article 34 as regards potentially restrictive effects of non-tax parts of the measure. This may admittedly be a remote possibility only, but it is still to be dealt with here for the sake of completeness of the argument.

Just above, it was argued that Article 30 in particular is applicable to road charges like the German ones. However, that assessment hinges upon a number of assumptions related to the facts of the case, such as the applicability of Article 30 to measures with indirect effects on goods, the combined examination of the fee and rebate mechanism and the inadequacy of the charge in relation to the service returned. One may however also look at the facts differently and focus less on the price effect for goods of the fee mechanism and more on the general effect of the measure of rendering goods transport into or via Germany less attractive. Insofar as these facts were to be assessed differently, eg by emphasizing indirect non-tax effects of the fee measure, room for scrutiny under Article 34 might open up.¹⁰⁵

If that exercise succeeds, an assessment under Article 34 might be relatively more attractive for the Member State concerned than under the strict standard of Article 30 because of the possibility of justification

¹⁰² Case C-313/05 *Brzeziński* ECLI:EU:C:2007:33, para 50; see also the case-law cited in n 29.

¹⁰³ See n 30.

¹⁰⁴ Already Case 7/68 *Commission/Italy* ECLI:EU:C:1968:51, 430.

¹⁰⁵ *Commission/Italy* (n 104), 430

afforded by the former norm. As it will be shown on the German example, it is of course not a given that any such justification attempts would succeed.

A. Effect on Goods

The effect of roads charges on goods was already explained in the introduction to this section. It is thus only briefly restated here for the sake of completeness. On top of the price effect dealt with above in the context of Article 30, which poses an extra burden on transporters, the measure might also have a generally impeding effect on the flow of goods in the internal market, via Germany. The measure might thus have the potential indirect effect of impeding the cross-border flow of goods in the internal market.¹⁰⁶ As was shown, this is enough to bring such a charge within the scope of application of Article 34, without there being a need to quantify a specific minimum scale or threshold of that effect.¹⁰⁷

Article 34 has a markedly broad scope of application that covers any measure 'taken by a Member State, the aim or effect of which is to treat goods coming from other Member States less favourably' or 'which hinders access of products originating in other Member States to the market of a Member State'.¹⁰⁸ A road charge with a price effect on transported goods would, in principle, fall within the scope of Article 34 for its potential of hindering goods trade in the internal market.

B. Disadvantage for Foreign Goods

Yet, the Court in its older jurisprudence carved out certain selling arrangements from the scope of application of Article 34.¹⁰⁹ Selling arrangements are rules stipulating the conditions under which a product is sold, eg the place or time of sale, but also its price.¹¹⁰ A road charge rendering the sale of goods in a Member State more expensive could generally qualify as a mere selling arrangement and thus fall outside the otherwise broad scope of Article 34.¹¹¹

However, the exception only applies to selling arrangements that actually 'apply to all relevant traders operating within the national territory and so long as they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States'.¹¹² Whereas, therefore, national road charges with price effects that are absolutely equal in their effects for foreign and domestic goods are not caught by Article

¹⁰⁶ Case C-110/05 *Commission/Italy* ECLI:EU:C:2009:66, para 33.

¹⁰⁷ See at n 67.

¹⁰⁸ Case 142/05 *Mickelsson* ECLI:EU:C:2009:336, para 24.

¹⁰⁹ Joined Cases C-267/91 and C-268/91 *Keck and Mithouard* ECLI:EU:C:1993:905, para 16.

¹¹⁰ Already *Keck* (n 109), para 18.

¹¹¹ Also Stefan Leible and Rudolf Streinz, Art 34, para 98, in Eberhard Grabitz, Meinhard Hilf and Martin Nettesheim (eds), *Das Recht der europäischen Union – Kommentar*, 55th supp 2015.

¹¹² *Keck* (n 109), para 16.

34, any charge that puts foreign products at a greater disadvantage or even discriminates against such products is still included in its scope of application.

At this point again therefore, the question returns whether a two-legged mechanism, like the German road usage fees and tax rebates, is examined together or separately. Depending on the approach to this issue, a road usage fee will or will not be caught by Article 34.

A combined examination of the German example reveals that foreign transporters, and thus foreign goods, are discriminated against, as from an economic point of view they alone bear the road fee while goods transported by domestic vehicle owners are spared. Thus, in its combined effects, the German road fee mechanism is equally applicable only in law, while it does not in fact affect domestic and foreign operators and goods in the same manner. This is therefore not just a measure of unequal effects but, an indirectly discriminatory measure that subjects foreign operators and goods to less favorable conditions only because of their non-German place of vehicle registration. A discriminatory measure can never qualify as a mere selling arrangement. A measure of this kind therefore always falls within the scope of Article 34.

If, by contrast, the two legs of such a mechanism were to be artificially separated and the road fee was examined on its own, it would look like a mere selling arrangement: insofar as it applies in law to 'all relevant traders operating within the national territory'¹¹³ and the measure's unequal effects resulting from the granting of a tax rebate would be blinded out, that measure would fall outside the scope of Article 34. It was, however, shown above that such a separate examination would be inappropriate in the German case.

C. No Justification

Insofar as the combined road fee and tax rebate mechanism in the German example is caught by Article 34, it can also not be justified under Article 36 TFEU or additional mandatory requirements¹¹⁴ of public interest.

Firstly, mandatory requirements beyond Article 36 are likely¹¹⁵ to be available only for indistinctly applicable measures.¹¹⁶ The combined road charges and rebate mechanism is, however, precisely not indistinctly applicable.

¹¹³ *ibid.*

¹¹⁴ Case 120/78 *Rewe-Zentral AG* ECLI:EU:C:1979:42, para 8.

¹¹⁵ Jurisprudence has seen a few exceptions, eg in Case C-2/90 *Commission/Belgium*, ECLI:EU:C:1992:310, para 22 ff.

¹¹⁶ Eg Case C-21/88 *Du Pont de Nemours* ECLI:EU:C:1990:121, para 14; Joined Cases C-321/94 to C-324/94 *Pistre* ECLI:EU:C:1996:401, para 53; for more, cf Barnard (n 69), 100 ff.

Secondly, the only visible aim behind including foreigners and excluding domestic vehicle owners from the road usage fee is economic. According to settled case-law aims of a purely economic nature cannot normally constitute overriding reasons in the public interest that justify restricting a fundamental guarantees of EU law.¹¹⁷ This principle applies at least below the threshold of costs jeopardizing the overall equilibrium of an area (eg equilibrium of the social security system, the education system, or, for the case at hand, the infrastructure system).¹¹⁸

In conclusion therefore, were, contrary to the argument made here, the combined road fees and rebate mechanism devised for Germany to be considered not to be caught by Article 30, it might alternatively be caught by Article 34 as a measure discriminating against goods transported in foreign-registered vehicles.¹¹⁹ In the absence of legitimate reasons for justification, that mechanism would also infringe Article 34.

4. Services Relying on Motorways: Article 56 TFEU

Another¹²⁰ EU law provision that a road charge might be suspected to run counter to is the freedom to provide services under Article 56 TFEU. After all, such a charge would not only, as was just shown in the context of Articles 30, 34 and 110, have a price effect for goods transported into or through a Member State, but also for services rendered in that Member State or where service providers pass through.

Similarly to Article 34, Article 56 is subject to a broad, effects-based approach: it 'requires not only the elimination of all discrimination against a person providing services on the ground of his nationality but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, when it is liable to prohibit or otherwise impede the activities of a provider of services established in another Member State where he lawfully provides similar services.'¹²¹ A charge levied on road use would in principle qualify as a measure that renders the cross-border provision of services less attractive and thus falls within the scope of the prohibition of Article 56.

However, similarly to Article 34, a specific exception from the scope of the prohibition applies also in the context of Article 56. Selling arrangements,

¹¹⁷ Case C-109/04 *Kranemann* ECLI:EU:C:2005:187, para 34; Case 352/85 *Bond van Adverteerders* ECLI:EU:C:1988:196, para 34; Case C-288/89 *Gouda* ECLI:EU:C:1991:323, para 11; Case C-398/95 *SETTG* ECLI:EU:C:1997:282, para 23; Case C-35/98 *Verkooijen* ECLI:EU:C:2000:294, para 48; Case 388/01 *Commission/Italy*, ECLI:EU:C:2003:30, para 22.

¹¹⁸ Eg Case 147/03 *Commission/Austria* ECLI:EU:C:2005:427, para 64 ff; Case 293/83 *Gravier* ECLI:EU:C:1985:69, para 18.

¹¹⁹ Also Lukas Beck (n 11), 289.

¹²⁰ For an assessment also under Art 45 TFEU, cf Kainer and Ponterlitschek (n 11), 200.

¹²¹ Case C-76/90 *Säger* ECLI:EU:C:1991:331, para 12.

the area excluded for Article 34, do not play a role here.¹²² Instead, the Treaty directly stipulates a specific exception. Article 58(1) TFEU excludes the applicability of Article 56 in the area of transport services.¹²³ Transport services are instead exclusively governed by the provisions of the Transport Chapter, which was discussed before.

Article 56(1) is therefore not directly relevant for the assessment of road charges.¹²⁴ Still, it was shown before that also under the rules applicable to transport services under the Transport Chapter, a combined road fee and tax rebate mechanism is contrary to EU law.

5. Article 18 TFEU and the Proportionality Principle

The 2012 Communication recalls that traffic charges on light vehicles must be in line with the prohibition of discrimination on grounds of nationality under Article 18 TFEU and with EU law's general proportionality principle.¹²⁵ Both principles only apply subsidiarily to the provisions examined here before, as these contain the more context-specific prohibitions of discrimination.

Room for application of these more general standards is therefore restricted to two constellations: they may, firstly, become relevant because the applicability of the remaining provisions was, contrary to the argument made here, rejected. Secondly and more importantly, they are relevant in relation to users not covered by those other (essentially goods- and transport related) norms. A look at the general principles is thus warranted particularly for the effects of the road usage charges on non-commercial traffic and on commercial traffic not relating to goods and services.

Still, the outcome of an examination under Article 18 and the general proportionality principle would eventually not be any different if those other norms are blinded out. What is more, the outcome is also the same irrespective of whether the two legs of the measure at hand are artificially separated or looked at for their combined effects. In both cases, they fall foul of the proportionality and non-discrimination principles.¹²⁶ The differences between a separate and a combined examination are therefore just a question of degree of severity of the infringement of those principles.

A. A Separate Examination of a Combined Fee and Rebate Mechanism

It was shown before in the context of Article 30 that while the objective appropriateness of an overall level of road charges cannot easily be

¹²² Case C-384/93 *Alpine Investments* ECLI:EU:C:1995:126, para 36.

¹²³ See also Korte and Gurreck (n 11), 428.

¹²⁴ Apparently different however a considerable part of German literature, cf Beck (n 11), 289; Kainer and Ponterlitschek (n 11), 200; Engel and Singbartl (n 11), 289 ff.

¹²⁵ Communication 2012 (n 7), 4 ff.

¹²⁶ Equally Engel and Singbartl (n 11), 293; Boehme-Neßler (n 11), 100; different (compatibility with these principles) Kainer and Ponterlitschek (n 11), 201.

checked,¹²⁷ the appropriateness of fees for short-term use can. It was also shown that the fees in the German case put short-term users at a disadvantage in relation to year-long users of vehicles within the same or similar emissions classes:¹²⁸ those groups of users pay relatively more than their fair share of the yearly fee.

The charge applied to light vehicles in the German example is therefore disproportionate in the light of the Commission's recommendations on fee levels.¹²⁹ This is already so where it was unduly disregarded that domestic road users are fully compensated (ie when the two legs of the measure were examined separately). As it was shown, that kind of disproportionality becomes all the more problematic insofar as it also contravenes the polluter-pays logic relevant to infrastructure charges.¹³⁰

The effect of the German mechanism to place short-term users at a disadvantage vis-à-vis year-long users with comparable vehicles moreover entails discrimination against non-nationals as year-long permits will typically be purchased by domestic users and short-term permits are primarily attractive for foreigners using national motorways on an irregular basis only. In the German case, there is no intrinsic explanation or justification for this effect. Quite to the contrary: the polluter-pays principle would imply that groups who use infrastructure more frequently should bear a relatively heavier burden to discourage use.¹³¹ Under such circumstances therefore, a road charge would have a discriminatory effect in the meaning of Article 18 TFEU even if the fact that domestic road users are fully compensated was unduly blinded out.¹³²

B. Combined Examination of a Fee and Rebate Mechanism

When the two legs of a fee and rebate mechanism are examined together, the discriminatory effect just observed is even more straightforward: given that domestic users are fully compensated for their share of the charge by way of a corresponding rebate (in Germany: on motor vehicles tax), the charge constitutes an extra burden for non-nationals only. As was stated before, a combined examination looking at the effects, not the form, of the mechanism is also the only appropriate approach under EU law.¹³³

Again, no intrinsic explanation or justification is visible here.¹³⁴ Given the importance of mutual access to infrastructure interconnecting the Member States of the Union, any restrictions on that access weigh particularly heavy and would, accordingly, call for a particularly pressing and convincing justification. In particular, an argument to the effect that

¹²⁷ See n 88.

¹²⁸ See nn 91 and 93.

¹²⁹ See n 89.

¹³⁰ See n 92.

¹³¹ With a different outcome Kainer and Ponterlitschek (n 11), 201.

¹³² Similarly Münzing (n 2) 198.

¹³³ Likewise (but with a different outcome) Kainer and Ponterlitschek (n 11), 200.

¹³⁴ Boehme-Neßler (n 11), 99 ff.

domestic taxpayers already finance the building and maintenance of infrastructure by way of their general tax obligations and that foreigners should contribute their share is not valid: as was shown before in the context of Article 34, aims of a purely economic nature will normally not serve as reasons of public interest justifying restrictions.¹³⁵ This certainly applies as long as, which will not typically be the case and is certainly not the case for Germany, the overall equilibrium of the infrastructure system was not jeopardized by the fact that foreigners have free access to domestic roads.¹³⁶

Simple financial considerations alone, ie the normal cost effect of building and upkeeping infrastructure benefiting also non-nationals, will thus not justify the imposition of a light vehicles charge on foreign users only. Such a charge, like the combined German fee and rebate mechanism, would thus amount to discrimination on grounds of nationality.

IV. SEPARATION OF FEE AND REBATE MECHANISMS IN TIME?

In the context of the German case, the Commission apparently suggested recently that separation of the two legs in time, ie the implementation first of a general usage fee and only at a later point in time of a lowering of vehicles taxes for German-registered vehicles, might justify an isolated assessment of the fee mechanism only.¹³⁷

1. Separation Would End Most, But Not All Concerns

Such a separation would indeed render the fee mechanism compatible with Article 92 insofar as the imposition of a fee for everybody would no longer be discriminatory and the conditions of competition between foreign and domestic carriers would remain equitable (at the new level of X for all). The same applies to discrimination under Article 18. Also, the severing of ties between the fee and corresponding changes to the motor vehicles tax law would eliminate concerns of incompatibility with the 1965 Decision.

If the fees were not fully set off by way of a rebate any more, the effects of the fee would no longer qualify as a measure equivalent to a customs duty in the sense of Article 30, but would instead have to be examined under the discrimination and protectionism tests of Article 110. The outcome of the test under Article 110 is not quite straightforward. As was shown in the context of Article 30, the German mechanism yields indications that the fee level for short-term users might be disproportionate. This would evidently also have to be taken into account when assessing any protective effect of the fee for non-competing products under Article 110(2).

¹³⁵ See n 117.

¹³⁶ See n 118.

¹³⁷ *derstandard.at* online version of 3 June 2015, 'Deutsche Pkw-Maut: EU schlägt schrittweise Einführung vor'; *welt.de* online version of 3 June 2015, 'Brüssels Nein zur Pkw-Maut würde Millionen kosten'; *wiwo.de* online version of 3 June 2015, 'EU schlägt schrittweise Einführung vor'.

This, however, also means that a separation of the measures could not end concerns under the general proportionality principle. Discrepancies with the standards of proportionality required in particular under the 2012 Commission Communication would therefore remain and require an adaptation of the fee levels for short-term users.

This, finally, leads over to Article 34. It was shown here that if the fee imposed was examined alone, ancillary effects of that fee might potentially be covered by Article 34, but would still fall outside the scope of Article 34 as a selling arrangement. However, that would only be so if the fees were indeed indiscriminate in their effects for domestic and foreign users.

Disproportionate fee levels for short-term users, who will typically be foreigners, would mean that the effects of the fee are not indiscriminate for foreign and domestic goods, but that foreign goods will typically be more affected by the fee.¹³⁸ If that is so, even a separation of the two legs would not end potential concerns against the fee under Article 34. In addition, justification under Article 36 and a rule of reason would face problems of explaining that disproportionate effect particularly in view of the fact that it is, as was also shown, in particular not in line with the polluter-pays logic.

2. *Qualitative Requirements for Separation*

Even in respect of the areas just mentioned above, where the separation might work to eliminate concerns (Articles 30 and 92), it was however pointed out before that EU law generally takes a functionalist approach, ie looks at the actual effects of the mechanism as a whole and not at formal circumstances. This means that any attempt to separate fee and rebate mechanisms from one another, which in the German case are factually and legally closely intertwined, must amount to far-reaching structural changes that bring the complementary character and combined effects of the two legs of the mechanism genuinely to end.

To factually end the complementary character and combined effects of the two legs of the mechanism, changes on two levels will likely be necessary.

One change is, clearly, a distinct timely separation of the implementation of each of the legs. In view of the German mechanism's political history, whereby the aim to exempt German-registered vehicles from the fee formed the central focus from beginning to end, the timely separation would probably have to be drastic to be convincing. Convincing means, that the timely separation credibly demonstrates that the intended beneficial economic effect for German-registered vehicles no longer occurs. The timely separation must, in other words, warrant a delay sufficiently large to forestall changes to the conditions of competition between domestic and foreign carriers. This will be so only if German-registered users are required to start paying fees along with everybody else

¹³⁸ To that effect Case C-322/01 *DocMorris* ECLI:EU:C:2003:664, para 70 ff.

long before possible competitive effects of a lowering of motor vehicles taxes kicks in. We are, in other words, likely speaking of several years here.

A timely separation alone will, however, not suffice, if the rebate eventually granted still corresponds exactly to the amount of the usage fees paid. As long as the two legs of the measure exactly match each other in value, the link between them can never credibly be separated and the competitive effects of neutralization of the usage fee burden for German-registered carriers will effectively occur. A credible separation of the two legs of the measure will therefore, in addition to a delay in time, also require changes in the calculation and amount of the lowering of motor vehicles taxes. In other words, the German government's promise of guaranteed economic neutrality of the usage fee for each individual German-registered vehicle owner would have to be abandoned. Some easing of the motor vehicles tax burden according to the logics of that field of taxation is acceptable and part of sovereign national taxation, guaranteed neutrality in terms of a prolongation or export of the logics applicable to the road usage fees into the tax system is not.

Whether the Commission's compromise proposal¹³⁹ thus actually ends the concerns over the design of the light vehicles traffic fee in the German case will depend on how sincere the German legislator's approach in that regard will be. Beyond the German case, the considerations laid out here provide general guidelines for the assessment of road fee mechanisms that, as often, seek to mitigate burdening effects on domestic users.

V. CONCLUSION AND OUTLOOK

The introduction of road charges in the hitherto harmonized area of light vehicles traffic must conform to a number of provisions in primary and secondary EU law, far beyond the mere principles of non-discrimination on the grounds of nationality and respect for proportionality that are mentioned in the Commission's 2012 Notice. These provisions have more precise scope of application than the more general norms invoked by the Commission and therefore allow for a relatively more precise scrutiny of national measures as regards their compatibility with the aims of the internal market. As the more specific norms, they also enjoy preferred application vis-à-vis the general principles.

The foregoing examination revealed that Member States have the possibility to introduce road charges for light traffic, but that their legality depends on a number of factors. Particularly stringent in that regard are the limits set by the TFEU's traffic-related provisions, namely Decision 65/271 on the secondary law level and Art 92 on the level of primary law. Those provisions of the Transport Chapter exclude the applicability of Article 56 regarding the effects of the charge for the provision of transport services. While the former prohibits certain forms of double taxation and

¹³⁹ See n 137.

goods taxes, the latter sets out a stringent non-discrimination and standstill regime that recognizes that the conditions of road access for foreigners constitute a decisive factor in cross-border competition and that seeks to protect those conditions against deterioration. As the German example shows, the imposition of road fees may run counter to both sets of norms.

Also beyond the Transport Chapter, the Treaty sets limits to Member States' freedom to impose charges on light traffic. The most decisive norms in that regard are Articles 30, 34 and 110, all of which deal with the price effects of a road charge on transported goods. Depending on how such a charge is devised, it will likely come within the scope of application of either one of those norms (which are alternative, not cumulative). Furthermore depending on the design of the charge and on which of the treaty articles applies, any negative effects of the charge on the conditions under which goods can be marketed might be justified by overriding reasons of public interest. Article 30 is however not open to such arguments. For Articles 110, they are part of the discrimination assessment undertaken in this paper. A justification assessment in the classic sense is thus only available in the context of Article 34. However, given the importance of mutual access to infrastructure interconnecting the Member States of the Union, the reasons given would have to be particularly convincing. The two-legged mechanism in the German example was, due to the fact that the fees are charged only because the border into Germany is crossed and because the fees imposed are fully set-off regarding domestic goods, qualified here as a charge of equivalent effect to a customs duty under Article 30, which runs into an absolute prohibition without the possibility for justification.

Thus, in sum, Article 18 and the general proportionality principle have a very limited scope of application here – if any. Article 92 applies to all charges affecting commercial transport service providers, whereas Articles 30, 34 and 110 catch all negative effects of the charge on the price of goods transported by foreign carriers. Potentially also, road charges might also conflict with the free movement of workers under Article 45 TFEU.¹⁴⁰

All of this effectively limits the relevance of the general prohibitions to the non-commercial sphere. There too, however, Decision 65/271 applies in terms of a potential double taxation of (commercial as well as non-commercial) vehicle owners through a road use charge. As the German example shows, a road charge that is designed to grant a rebate on vehicles taxation to offset the domestic effects of the road charge might qualify as such prohibited instance of double taxation. In such a case, there remains effectively no set of facts for which an assessment under the general principles would still be relevant.

¹⁴⁰ See n 28. Arguably however, those effects might finally be too remote, cf Case C-190/98 *Graf* ECLI:EU:C:2000:49, para 15 ff.

Another important conclusion from the foregoing assessment is that, of course, road charges are particularly problematic where, as in the German example, they are effectively imposed on foreigners only. Whether that is done directly in terms of a foreigner-only law or, as in Germany, indirectly via a combination of formally separate mechanisms leading to the same effect, makes no difference under the generally effects-based approach of EU law. Any other approach would abet the circumvention of EU law.

Concerns of possible circumvention arise in particular where, as the Commission apparently suggested for the German case, the imposition of traffic fees is flanked by an easing of the overall tax burden, but the ties between those two measures in time and fact should be blurred.¹⁴¹ It is possible to flank the introduction of traffic fees by changes to the overall domestic tax burden, but the threshold for legality of such an approach would be quite high. That threshold is one of effect, not form: The separation in time and functioning must be genuine in the sense that competitive cross-effects are forestalled. This calls for a delay of several years between such measures to allow competitive effects to kick in equally, as well as for the non-neutrality of the overall cross-effects of the package in the sense that the flanking changes may not be designed precisely so as to neutralize the effects of the charge. This also means that flanking tax law changes must follow their own logic and may not just implement or import fee calculation logics into the tax system.

In the absence of the peculiarities of the German case, road charges that are truly indistinctly applicable will have to be checked under Article 92 only, ie for a potential alteration of the conditions of competition in road transport. If collected at the border because the border is crossed, they may also come within the ambit of Article 30. They will, however, stay clear of that Article if it can be shown that those charges are part of a general system of internal taxation (and should thus be checked under Article 110 where, however, a non-discriminatory applicable charge will not run into problems). By contrast, Article 34 will never pose an obstacle to an indistinctly applicable road charge, which is essentially a selling arrangement excluded from its scope.

The German case demonstrates the difficulties encountered by national legislators in the attempt to come to terms with the opposing needs of generating sufficient revenue for the expansion and maintenance of infrastructure on the one hand, while not significantly increasing the cost base for domestic undertakings and users on the other hand.¹⁴² Although those difficulties might arguably be overcome in a more elegant manner that is less invasive for the functioning of the internal market than in the German example, even a more cautious national legislator will experience them in one form or another.

¹⁴¹ See n 137.

¹⁴² Cf also Maaß (n 11), 449 ff.

For this reason, the Commission's announcement that it would not just try to swat down the German fee mechanism, but also use the occasion to try to push for a more general solution to light traffic road pricing is to be particularly welcomed. In that regard, the Commission is apparently¹⁴³ set to elaborate an EU-wide framework for light traffic charges that might look similar to the Eurovignette Directive for HGV traffic in terms of type and depth of regulation. Unlike the existing system for HGVs, such a framework could address especially the needs of the users for small travel.

Current Commission plans envisage distance-based instead of time-based usage fees. This would be more in line with the polluter-pays principle, but it would also require relatively more infrastructure on the road (toll booths or electronic equipment on roads and in vehicles) and accordingly relatively more administrative effort both on the part of users as well as Member States. In addition, distance-based systems are significantly more sensitive in terms of data protection. In other words, the factual, legal and thus political hurdles for an EU-wide distance-based road charge system for light traffic are not to be underestimated.

That is likely one of the reasons why the Commission is currently only aiming at a voluntary scheme in which Member States could decide to opt in. A voluntary scheme would not clear out all problems Member States currently experience in the setup of road charges: since that scheme might not fit particular national needs or limitations (of infrastructure, but importantly also of national constitutional law), Member States might still be inclined to go their own ways. However, even a voluntary scheme would at least provide an initial point for orientation as to the principles that national road charges for light traffic could and should follow to minimize their negative effects for the internal market and maximize their environmental steering effects.

And Germany? Who knows – should the Court of Justice bring its envisaged road fee and tax rebate mechanism to a fall, perhaps Germany might even join an optional EU-wide tolling system next time around.

¹⁴³ Cf Reuters UK of 30 January 2015, 'EU-wide toll could end road spat with Germany' (accessed 2 June 2015) at <http://uk.reuters.com/article/2015/01/30/eu-transportation-idUKL6NoV94LM20150130>.