

# Draft Bill for Internet Consultation

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We, Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc., etc., etc.

Greetings to all who shall see this or have it read to them! Be it known that:

Having considered it desirable, in view of Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJEU 1999, L 187) and Directive (EU) 2019/520 of the European Parliament and of the Council of 19 March 2019 on the interoperability of electronic road toll systems and facilitating cross-border exchange of information on the failure to pay road fees in the Union (OJEU 2019, L 91), to introduce a heavy goods vehicle charge with a view to a level playing field for foreign and Dutch heavy goods vehicles, and in connection with this to abolish the tax on heavy motor vehicles, to reduce the motor vehicle tax on heavy goods vehicles and to earmark revenues for innovation and sustainability in the transport sector;

We, therefore, having heard the Council of State's Advisory Division, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

## **CHAPTER 1. GENERAL PROVISIONS**

### **Article 1 (Definitions)**

As used in this Act and provisions based on it:

'On-board equipment' means the complete set of hardware and software components to be used as part of the toll service which is installed or carried on board a vehicle in order to collect, store, process and remotely receive/transmit data, either as a separate device or embedded in the heavy goods vehicle;

'Service provider' means the main service provider or EETS provider;

'Service agreement' means an agreement within the meaning of article 11, paragraph 1;

'EETS provider' means an EETS provider within the meaning of article 2, paragraph 6 of Directive (EU) 2019/520 that provides toll services to customers in one or more EETS domains within the meaning of article 2, paragraph 8 of Directive (EU) 2019/520 for one or more heavy goods vehicle categories;

'EETS domain' means an EETS domain within the meaning of article 2, paragraph 8, of Directive (EU) 2019/520;

'EETS domain statement' means an EETS domain statement within the meaning of article 6, paragraph 2, of Directive 2019/520;

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'Euro emission class' means emission class EURO 0, EURO I, EURO II, EURO III, EURO IV or EURO V within the meaning of Appendix 0 to Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJEU 1999, L 187), or emission class EURO VI within the meaning of Appendix I to Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information, and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives (Euro VI) and access to repair and maintenance information, amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (OJEU 2009, L 188);

'Physical living environment' means the physical living environment within the meaning of article 1, paragraph 2, of the Environment and Planning Act;

'Main service provider' means the service provider within the meaning of article 14;

'Holder' means the person:

- a. in whose name a heavy goods vehicle is registered in the vehicle registration register;
- b. who actually has available a heavy goods vehicle for which no registration number has been declared;
- c. in whose name a heavy goods vehicle is entered in a foreign register of motor vehicles, the register of motor vehicles used by the armed forces kept by Our Minister of Defence, as well as any other register of motor vehicles which the person is entitled to have in the Netherlands.

'Vehicle registration register' means a register within the meaning of article 42 of the Road Traffic Act 1994;

'Multi-year revenue recycling programme' means a programme within the meaning of article 15, paragraph 1;

'Our Minister' means the Minister of Infrastructure and Water Management;

'Directive (EU) 2019/520' means Directive (EU) 2019/520 of the European Parliament and of the Council of 19 March 2019 on the interoperability of electronic road toll systems and facilitating cross-border exchange of information on the failure to pay road fees in the Union (OJEU 2019, L 91);

'Maximum permissible mass' means the mass of the heavy goods vehicle or combination of vehicles plus the maximum permissible load weight for the heavy goods vehicle or combination of vehicles;

'Supervisor' means the party designated on the basis of article 16, paragraph 1;

'Heavy goods vehicle' means a motor vehicle within the meaning of article 1, paragraph 1, under c, of the Road Traffic Act 1994 or a combination of vehicles intended or used for the road haulage of goods, the maximum permissible mass of which is more than 3,500 kilograms;

'Heavy goods vehicle charge' means a charge within the meaning of article 2, paragraph 1;

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'Road' means a road within the meaning of article 1, paragraph 1, under b, of the Road Traffic Act 1994;

'Road section' means a defined road or part of a road.

## CHAPTER 2. HEAVY GOODS VEHICLE CHARGE

### Article 2 (Chargeable heavy goods vehicle event)

1. A tariff per kilometre shall be payable for driving a heavy goods vehicle on a road section within the meaning of Appendix 1.
2. The designation of road sections and their categorisation may be changed by statutory instrument.
3. Rules may be laid down by ministerial order for the marking of the beginning and end of a road section.

### Article 3 (Holder of a heavy goods vehicle is the payer)

The heavy goods vehicle charge shall be payable by the holder.

### Article 4 (Exemption)

1. The holder shall be exempt from the heavy goods vehicle charge for heavy goods vehicles that:
  - a. are used by the armed forces, police, fire brigade and are registered in their name;
  - b. do not have a registration number insofar as such heavy goods vehicles are equipped and are used exclusively for the construction and maintenance of roads;
  - c. have a dealer's registration number;
  - d. are used as waste disposal heavy duty vehicles, sludge gulpers and street sweepers;
  - e. are covered by a suspension within the meaning of Chapter IV, paragraph 6, of the Road Traffic Act 1994.
2. At the holder's request, Our Minister may grant exemption from the heavy goods vehicle charge for:
  - a. heavy goods vehicles that were first put into use at least 40 years ago, insofar as they are not used for commercial purposes;
  - b. heavy goods vehicles with a concrete pump without mixer;
3. Conditions and restrictions may be imposed by statutory instrument on the exemptions from the heavy goods vehicle charge referred to in the paragraphs 1 and 2.
4. Rules may be laid down by ministerial order for the information to be submitted with the request referred to in paragraph 2.

## CHAPTER 3. TARIFFS

### Article 5 (Charging based on number of kilometres driven)

The heavy goods vehicle charge shall be determined on the basis of the number of recorded kilometres travelled by the heavy goods vehicle on the road sections referred to in Appendix 1.

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## Article 6 (Recording of kilometres by means of on-board equipment)

1. The recording of the kilometres driven, which is necessary for calculation of the heavy goods vehicle charge, shall take place by means of on-board equipment.
2. Unless exempt from the heavy goods vehicle charge, the holder shall ensure, prior to using any road, that the heavy goods vehicle is equipped with working and activated on-board equipment.
3. The holder of the heavy goods vehicle shall immediately report the following findings to the service provider:
  - a. the on-board equipment is not in the correct heavy goods vehicle;
  - b. the on-board equipment is no longer working correctly;
  - c. the guarantee provided by the holder has become insufficient.
4. The service provider shall where necessary give instructions to the holder of the heavy goods vehicle according to rules laid down by statutory instrument.

## Article 7 (Tariffs)

1. The tariff for the heavy goods vehicle charge shall be payable in euros for each kilometre driven on a road designated in Appendix 1:

Maximum permissible mass [kg]	Euro emission class						
	EURO 0	EURO I	EURO II	EURO III	EURO IV	EURO V	EURO VI and cleaner
more than 3,500 up to and including 12,000	0.156	0.144	0.129	0.117	0.105	0.086	0.078
more than 12,000 up to and including 32,000	0.252	0.232	0.209	0.189	0.169	0.139	0.126
more than 32,000	0.260	0.239	0.216	0.195	0.174	0.143	0.130

2. The amount of the charge shall be calculated as follows:

$$\text{Charge} = \text{Tk} \times \text{A}$$

where:

'Tk' is the tariff in euros for each kilometre driven;

'A' is the number of recorded kilometres, within the meaning of article 5.

3. The tariff referred to in paragraph 1 shall be index-linked annually in relation to the 2018 price level in accordance with the Gross Public Sector Investment Index applied by Our Minister of Finance in the Spring Memorandum.

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## CHAPTER 4. DATA PROTECTION

### Article 8 (Protection of personal data used by Our Minister)

1. Our Minister shall be responsible for the processing of personal data designated by statutory instrument that are used for:
  - a. levying and collecting heavy goods vehicle charges;
  - b. monitoring compliance and enforcement;
  - c. imposing and collecting an administrative fine within the meaning of article 17, paragraph 1;
  - d. notifying holders who do not have a registered agreement.
2. The processing by Our Minister of personal data within the meaning of paragraph 1, under a, b, c and d shall be exclusively for:
  - a. levying and collecting heavy goods vehicle charges;
  - b. monitoring compliance with and enforcement of the provisions made under or pursuant to this Act;
  - c. imposing and collecting an administrative fine within the meaning of article 17, paragraph 1;
  - d. notifying holders who do not have a registered agreement.
3. Our Minister shall save the personal data:
  - a. referred to in article 8, paragraph 2, under a, for a period of five years after payment of the charge;
  - b. referred to in article 8, paragraph 2, under b, until, where applicable, an irrevocable administrative fine has been paid, or
  - c. referred to in article 8, paragraph 2, under c, for the period referred to in article 5:45 of the General Administrative Law Act, within which an administrative fine may be imposed;
  - d. referred to in article 8, paragraph 2, under d, for a maximum period of four weeks in order to notify a holder who does not have a registered agreement.
4. If the administrative fine pursuant to article 19 is waived, the personal data shall be deleted immediately, notwithstanding the provisions made in paragraph 3.
5. The recorded movement data shall not be saved by Our Minister for longer than a period of twelve weeks for the verification of the electronic data file within the meaning of article 13, paragraph 1.
6. The movement data referred to in paragraph 5 may, notwithstanding the provisions made there, be processed in an anonymous manner by Our Minister for the purposes of traffic policy and to improve traffic management.
7. This article shall be without prejudice to other legally prescribed retention periods.

### Article 9 (Protection of personal data used by the service provider)

1. A service provider shall be the controller of the processing of personal data that he processes for the purpose of transmitting the electronic data file referred to in article 13, paragraph 1, and the rendering of services within the meaning of article 11, paragraph 5.
2. The processing of personal data by a service provider for the purpose of the heavy goods vehicle charge shall occur solely for:
  - a. transferring the electronic data file referred to in article 13, paragraph 1;
  - b. rendering the services referred to in article 11, paragraph 5;
  - c. making known the suspension referred to in article 12, paragraph 2.
3. The recorded movement data shall not be saved for longer than a period of one year for the purpose of the verification referred to in article 8, paragraph 5.
4. The service provider shall not save the personal data for longer than is necessary to perform the services referred to in paragraph 2, under a and b.

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5. The service provider shall not disclose to any third party the personal data processed by him for the purpose of the heavy goods vehicle charge, unless the person concerned has given consent.
6. This article shall be without prejudice to other legally prescribed retention periods.

## CHAPTER 5. CHARGING AND COLLECTING

### Article 10 (Our Minister is the toll charger)

1. The heavy goods vehicle charge shall be levied by Our Minister.
2. The obligation to pay the amount of the heavy goods vehicle charge shall be determined daily by order of Our Minister. The order shall in any event state the amount owed over a period of one day, the tariff applied per kilometre and the number of daily kilometres recorded on that day for a road section within the meaning of Appendix 1.
3. Our Minister shall issue a receipt to the holder of the heavy goods vehicle after the amount of the heavy goods vehicle charge has been received.

### Article 11 (Service agreement between service provider and heavy goods vehicle holder)

1. For each heavy goods vehicle on the road, the holder of that heavy goods vehicle shall be required to have concluded a service agreement with a service provider, unless the holder is exempt from the heavy goods vehicle charge.
2. If the holder has paid the service provider the amount of the heavy goods vehicle charge as provided for in the order referred to in article 10, paragraph 2, the holder shall be deemed to have fulfilled his payment obligation to Our Minister.
3. The vehicle documents to be determined by statutory instrument which are necessary to determine the registration number of the heavy goods vehicle, the maximum permissible mass and the euro emission class shall be submitted by the holder to the service provider. It may be stipulated in the statutory instrument that, in the absence of data about the maximum permissible mass of the vehicle, the vehicle shall be deemed to have a maximum permissible mass of more than 32,000 kg and, in the absence of data on the euro emission class of the vehicle, that the highest tariff referred to in article 7, paragraph 1, shall apply. Correction of the data shall not have any retroactive effect.
4. To ensure the collection of the heavy goods vehicle charge, the service provider may impose, in the service agreement, an obligation for the holder of the heavy goods vehicle to provide a guarantee for payment.
5. With a view to the heavy goods vehicle charge, the service agreement shall at least regulate the following:
  - a. provision of on-board equipment by the service provider to the holder and the maintenance of its functionality;
  - b. payment by the service provider, in the name of the holder of the heavy goods vehicle, of the charge imposed by order of Our Minister within the period specified in the order;
  - c. sending by the service provider of an invoice to the holder at least once per calendar month, specifying the total amount of the heavy goods vehicle charge and the number of kilometres driven per day;
  - d. payment by the holder of the heavy goods vehicle charge to the service provider by means of bank transfer;
  - e. management by the service provider of the customer relationship with the holder;

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- f. implementation of and compliance with the security and privacy policy for the heavy goods vehicle charge system.
  - g. provision by the holder to the service provider of a power of attorney to fulfil the holder's payment obligation to Our Minister under article 13, paragraph 3;
  - h. granting of authorisation by the holder to the service provider for the performance of acts relating to the power of attorney referred to in item g.
6. Rules shall be laid down by ministerial order for the content of the invoice referred to in paragraph 5, under c.

## Article 12 (Suspension of service agreement)

1. The service provider may suspend performance of the service agreement in any event in cases where the holder of the heavy goods vehicle:
  - a. fails to meet its payment obligations to the service provider, such as the obligations arising from the service agreement;
  - b. has provided insufficient or no guarantee for payment;
  - c. uses the on-board equipment in a manner contrary to the instructions for use made available by the service provider;
  - d. fails to report a defect in the on-board equipment;
  - e. fails to follow the service provider's instructions referred to in article 6, paragraph 4, for the replacement or repair of the defective on-board equipment.
2. The service provider shall immediately notify the holder and Our Minister of the suspended performance of the service agreement.

## Article 13 (Our Minister and service provider)

1. On behalf of the holder, the service provider shall inform Our Minister on a daily basis by means of an electronic data file of how many driven kilometres have been recorded on a road section within the meaning of Appendix 1 and the applicable tariff per kilometre.
2. Our Minister shall send the service provider the order referred to in article 10, paragraph 2, notwithstanding article 3:41, paragraph 1, of the General Administrative Law Act. Our Minister shall be empowered to impose the order referred to in paragraph 2 with regard to the kilometres recorded by the service provider in an automated manner.
3. Within six weeks of receiving the order, the service provider shall on behalf of the holder pay Our Minister the amounts owed by the holder.
4. Further rules may be laid down by ministerial order for the implementation of paragraphs 1, 2, and 3.

## CHAPTER 6. SERVICE PROVIDER

### Article 14 (Performance of work by service provider)

1. A service provider who is the main service provider shall be separately contracted in that capacity and shall be required to conclude a service agreement with each holder who so requests.
2. An EETS provider shall be accepted in an EETS domain provided that it meets the obligations and general conditions stated in the EETS domain statement.

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## CHAPTER 7. REVENUE RECYCLING

### Article 15 (Multi-year revenue recycling programme)

1. At least every five years, Our Minister shall determine a multi-year revenue recycling programme after consultation with the transport sector.
2. Implementation of the multi-year programme shall be funded from the net proceeds of the heavy goods vehicle charge.
3. The programme shall specify, for a period of five years, as detailed as is reasonably possible, the distribution of the revenues for promoting innovation in and the sustainability of the transport sector among individual projects, project packages or policy areas.
4. The multi-year programme shall make clear the extent to which it contributes to innovation and to making the transport sector more sustainable.
5. The multi-year programme shall be announced by electronic media. The announcement shall be made known in the Government Gazette.

## CHAPTER 8. ENFORCEMENT AND PENALTY PROVISIONS

### Article 16 (Supervision)

1. Persons designated by order of Our Minister shall be entrusted with overseeing compliance with the provisions laid down by or pursuant to this Act.
2. The officials referred to in paragraph 1 may determine violations in an automated manner.
3. An order within the meaning of paragraph 1 shall be announced by publication in the Government Gazette.

### Article 17 (Administrative fine for a violation within the meaning of Appendix 2)

1. Our Minister may impose an administrative fine not exceeding an amount payable for a violation within the meaning of Appendix 2.
2. Paragraph 1 shall not apply if:
  - a. a notification within the meaning of article 6, paragraph 3, has been made and the holder of the heavy goods vehicle follows the instructions referred to in article 6, paragraph 4;
  - b. an administrative fine within the meaning of paragraph 1 was imposed within the preceding 24 hours for a violation of the same category, within the meaning of Appendix 2, and an administrative fine was imposed for that violation.
3. Only one administrative fine may be imposed for the heavy goods vehicle charge for one offence if that offence falls under various violations within the meaning of paragraph 1. In that case, the maximum imposable fine shall be the highest fine for the individual violations.
4. Payment of the administrative fine shall be made within two weeks after the decision to impose the fine becomes irrevocable.
5. If the administrative fine is not paid on time, the fine shall automatically be increased by fifty percent and Our Minister shall send the holder a first reminder. Payment of the increased amount shall be made within four weeks after the first reminder was sent.
6. If the increased administrative fine referred to in paragraph 5 has not been paid within the period specified in that paragraph, the increased fine shall be further increased by operation of law by one hundred percent of the amount of the increased administrative fine and Our Minister shall send the

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holder a second reminder. Payment of the further increased administrative fine shall be made within four weeks after the second reminder was sent.

7. If the further increased administrative fine referred to in the paragraph 6 has not been paid within the period specified in that paragraph, Our Minister shall be empowered to issue a writ of execution.

8. Article 4:113 of the General Administrative Law Act shall not apply to the first and second reminders.

9. Article 5:10(2) of the General Administrative Law Act shall not apply after the first reminder.

10. Article 5:53 of the General Administrative Law Act shall not apply to the imposition of the administrative fine.

11. The appendix referred to in paragraph 1 may be amended by statutory instrument. The tabling of the statutory instrument shall not take place until four weeks after the draft was submitted to both Houses of the States General.

### **Article 18 (Provisional measures for checks)**

1. The driver of a heavy goods vehicle shall stop on the first instruction of a designated person within the meaning of article 16, paragraph 1.

2. If a heavy goods vehicle has been stopped under the provisions made in paragraph 1, the announcement of an administrative fine within the meaning of article 17 may also take place by its issuance to the driver if the registration number of the holder cannot be verified. In that case:

- a. notwithstanding article 17, paragraph 4, the fine shall be paid immediately;
- b. the increase in the fine, within the meaning of article 17, paragraph 5, shall not be imposed earlier than two weeks after the unpaid administrative fine becomes irrevocable.

3. Designated persons within the meaning of article 16, paragraph 1, shall be authorised, in the case referred to in paragraph two, or if the holder has a record of non-compliance with an irrevocable sanction imposed upon him earlier for a violation within the meaning of Appendix 2, to cause the heavy goods vehicle to be transferred provisionally to a place designated by them and to detain it there, or to have a mechanical device fitted to the heavy goods vehicle, thereby preventing it from being driven away. They may require payment of the amount of the administrative fine, plus the costs of transfer and detention, before the vehicle is returned to the driver.

4. As regards the measure referred to in paragraph 2, attention is drawn to the authority referred to in paragraphs 3 and 6.

5. If twelve weeks after commencement of the provisional measure referred to in paragraph 3, the legally entitled person has not collected his heavy goods vehicle, he will be deemed to have forfeited his right to the property and the designated person referred to in article 16, paragraph 1, shall hold authority to transfer the heavy goods vehicle to a third party free of charge, to sell it or to have it destroyed.

6. Further rules may be laid down by ministerial order for the transfer, detention, free transfer of title, sale, destruction, the calculation of the costs of transfer and detention, and anything else necessary for implementation of this article.

### **Article 19 (Waiving of administrative fine)**

Our Minister shall in any event waive the administrative fine if the fined person objects to the administrative fine and:

- a. shows plausibly that someone else used the heavy goods vehicle against his will and that he could not reasonably have prevented this usage; or

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b. submits proof of indemnity within the meaning of article 1 of the Vehicle Registration Regulations or a statement within the meaning of Articles 31 up to and including 33 of the Vehicle Registration Code showing that he was no longer the holder of the heavy goods vehicle concerned at the time the charge was levied.

## **CHAPTER 9. OBJECTION AND APPEAL**

### **Article 20 (Suspensory effect of objection and appeal against fine under article 17)**

If an objection is lodged or an appeal is made against the decision to impose the administrative fine referred to in article 17, paragraph 1, and that decision was not announced in accordance with article 18, paragraph 2, the effect of that decision shall be suspended until it has become irrevocable.

### **Article 21 (Opposing a penalty collected immediately)**

An objection and appeal against the decision to impose an administrative fine, as referred to in article 18, paragraph 2, shall also be against the provisional measure referred to in article 18, paragraph 3.

## **CHAPTER 10. AMENDMENT OF OTHER LAWS**

### **Article 22 (Amendment of Collection State Taxes Act 1990)**

Article 9, eighth paragraph, of the Collection of State Taxes Act shall be replaced by:

8. Notwithstanding paragraph 2, an additional assessment for car and motorcycle tax imposed on a person other than a licence holder within the meaning of article 8 of the Car and Motorcycle Tax Act 1992 shall be collectable immediately.

### **Article 23 (Amendment of Road Traffic Act 1994)**

In article 42, paragraph 4, under b, of the Road Traffic Act 1994, "the Heavy Motor Vehicle Tax Act" shall be deleted and, after "ViA15", "the Heavy goods vehicle Charge Act" shall be inserted.

### **Article 24 (Amendment of the Roads Act)**

In article 14, paragraph 5, of the Road Act, the following shall be inserted after "ViA15", "and the levying of the rates for the heavy goods vehicle charge referred to in the Heavy goods vehicle Charge Act".

### **Article 25 (Amendment of the Heavy Motor Vehicles Tax Act)**

1. The Heavy Motor Vehicles Tax Act is hereby repealed.
2. The levying of the common user charge, referred to in Article 3 of the Treaty concerning the toll for the use of certain roads by heavy trucks, Brussels, 9 February 1994 (Treaty Series 1994, 69) shall be terminated in accordance with Article 17 of that treaty.

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## Article 26 (Amendment of Motor Vehicles Tax Act 1994)

Article 25a of the Motor Vehicles Tax Act 1994 shall be replaced by:

### Article 25a

1. For a heavy goods vehicle, the tax payable over a period of three months shall be:

For a maximum permissible mass (in kilograms) of	Without coupling device						With coupling device			
	Without air suspension			With air suspension			Without air suspension		With air suspension	
	With number of axles			With number of axles			With number of axles		With number of axles	
	2	3	4 or more	2	3	4 or more	2	3 or more	2	3 or more
Less than 12,000	nil	nil	nil	nil	nil	nil	nil	nil	nil	nil
12,000 to 13,000	€ 7.75									
13,000 to 14,000	€ 21.50	€ 4.25		€ 7.75						
14,000 to 15,000	€ 30.25	€ 6.00		€ 21.50	€ 5.50					
15,000 to 16,000	€ 68.50	€ 13.50	€ 5.75	€ 30.25	€ 7.75	€ 5.00				
16,000 to 17,000	€ 68.50	€ 13.50	€ 5.75	€ 30.25	€ 7.75	€ 5.00	€ 3.50			
17,000 to 18,000	€ 68.50	€ 27.75	€ 11.75	€ 30.25	€ 13.50	€ 8.75	€ 3.50			
18,000 to 19,000	€ 68.50	€ 27.75	€ 11.75	€ 30.25	€ 13.50	€ 8.75	€ 8.00	€ 5.00	€ 3.50	
19,000 to 20,000	€ 68.50	€ 36.00	€ 15.25	€ 30.25	€ 27.75	€ 18.00	€ 8.00	€ 5.00	€ 3.50	
20,000 to 21,000	€ 68.50	€ 36.00	€ 15.25	€ 30.25	€ 27.75	€ 18.00	€ 18.75	€ 12.00	€ 8.00	€ 5.75
21,000 to 22,000	€ 68.50	€ 55.50	€ 23.50	€ 36.00	€ 36.00	€ 23.25	€ 18.75	€ 12.00	€ 8.00	€ 5.75
22,000 to 23,000	€ 68.50	€ 55.50	€ 23.50	€ 36.00	€ 36.00	€ 23.25	€ 24.25	€ 15.50	€ 18.75	€ 13.25
23,000 to 25,000	€ 86.25	€ 86.25	€ 36.50	€ 55.50	€ 55.50	€ 36.00	€ 43.75	€ 28.00	€ 24.25	€ 17.25

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25,000 to 27,000	€ 86.25	€ 86.25	€ 57.00	€ 55.50	€ 55.50	€ 36.50	€ 76.75	€ 49.25	€ 43.75	€ 31.00
27,000 to 29,000	€ 90.50	€ 90.50	€ 90.50	€ 57.00	€ 57.00	€ 57.00	€ 76.75	€ 49.25	€ 43.75	€ 31.00
29,000 to 31,000	€ 134.25	€ 134.25	€ 134.25	€ 90.50	€ 90.50	€ 90.50	€ 83.75	€ 53.75	€ 51.00	€ 36.00
31,000 to 33,000	€ 134.25	€ 134.25	€ 134.25	€ 90.50	€ 90.50	€ 90.50	€ 116.25	€ 74.75	€ 83.75	€ 59.00
33,000 to 36,000	€ 134.25	€ 134.25	€ 134.25	€ 90.50	€ 90.50	€ 90.50	€ 176.50	€ 113.50	€ 116.25	€ 81.75
36,000 to 37,000	€ 134.25	€ 134.25	€ 134.25	€ 90.50	€ 90.50	€ 90.50	€ 176.50	€ 113.50	€ 116.25	€ 81.75
38,000 to 40,000	€ 134.25	€ 134.25	€ 134.25	€ 90.50	€ 90.50	€ 90.50	€ 176.50	€ 157.00	€ 128.75	€ 113.50
40,000 or more	€ 134.25	€ 134.25	€ 134.25	€ 90.50	€ 90.50	€ 90.50	€ 232.25	€ 232.25	€ 157.00	€ 157.00

where the air suspension is on the driven axles and air suspension is also understood to mean that it is recognized as equivalent to suspension within the meaning of Appendix I to the Directive.

2. Further rules may be laid down by ministerial regulation for the implementation of this article.

### **Article 27 (Amendment of Taxation in Euros (Transition) Act)**

Article 16 of the Transitional Taxation in Euros Act will be deleted.

### **Article 28 (Amendment of the Mutual Recognition and Enforcement of Financial Debt and Confiscation Orders Act)**

In article 10, paragraph 1, of the Mutual Recognition and Enforcement of Financial Debt and Confiscation Orders Act, a passage shall be added by replacing the full stop at the end of part f by a semicolon, so as to read:

g. administrative fine imposed by order of the competent authorities within the meaning of article 17, paragraph 1, of the Heavy goods vehicle Charge Act, or within the meaning of article 12, paragraph 1, of the Blankenburg Link and ViA15 Temporary Tolls Act.

## **CHAPTER 11. FINAL PROVISIONS**

### **Article 29 (Emergency arrangements)**

1. With a view to road safety, mobility or the physical living environment, Our Minister may in urgent cases, insofar as they result from the heavy goods vehicle charge, designate by ministerial order, within 18 months of the date of introduction of the heavy goods vehicle charge or after the effective date of an amendment to Appendix 1, by way of derogation from article 7 and Appendix 1, roads for

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which the tariff referred to in article 7 shall apply, or set the tariff for certain roads included in Appendix 1 at €0.00.

2. The ministerial order shall not be adopted until after consultation with the highway authority.

3. Following publication in the Government Gazette of a ministerial order adopted pursuant to paragraph 1, a draft law regulating the matter in question shall be submitted to the House of Representatives as soon as possible. If a proposal is withdrawn or if one of the two Houses of the States General decides not to accept the proposal, the ministerial order shall be withdrawn without delay. If the proposal becomes law, the ministerial order shall be withdrawn at the time of entry into force of that law.

### **Article 30 (Evaluation)**

Our Minister shall send a report to the States General every four years on the effectiveness and effects of this Act in practice.

### **Article 31 (Entry into force)**

The sections of this Act shall enter into force at a time to be determined by Royal Decree, which may be set differently for the different sections or parts thereof.

### **Article 32 (Citation title)**

This Act may be cited as the Heavy goods vehicle Charge Act.

We order and command that this Act shall be published in the Government Gazette and that all ministerial departments, authorities, bodies and officials concerned shall diligently implement it.

Done accordingly

MINISTER OF INFRASTRUCTURE AND WATER MANAGEMENT,

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APPENDIX 1 Road sections where the heavy goods vehicle charge will be levied, under article 2, paragraph 1, of the Heavy goods vehicle Charge Act.

Category	Road name	Description
National motorway	A1	junction at Watergraafsmeer – junction at Diemen – junction at Muiderberg – junction at Eemnes – junction at Hoevelaken – Barneveld – junction at Beekbergen – junction at Azelo
		The road section between the junction at Azelo and the junction at Buren is listed as A35 (see A35)
	A1	junction at Buren – German border
	A2	junction at Amstel – junction at Holendrecht – junction at Oudenrijn – junction at Everdingen – junction at Deil – junction at Empel – junction at Hintham – junction at Vught – junction at Ekkersweijer – junction at Batadorp – junction at De Hogt – junction at Leenderheide
	N2	junction at Batadorp – junction at Leenderheide
	A2	junction at Leenderheide – junction at Het Vonderen – junction at Kerensheide – junction at Kruisdonk – link road Maastricht-Centrum Noord – link road Maastricht - Centrum Zuid
	N2	link road Maastricht-Centrum Noord – link road Maastricht-Centrum Zuid
	A2	link road Maastricht-Centrum Zuid – Belgian border
	A4	junction at De Nieuwe Meer – junction at Badhoevedorp – junction at De Hoek – junction at Burgerveen – link road Zoeterwoude-Rijndijk – junction at Prins Clausplein – junction at Ypenburg – junction at Kethelplein – junction at Benelux
	A29	junction at Vaanplein – junction at Hellegatsplein
	A29/A59	junction at Hellegatsplein – junction at Sabina
	A4/A29	junction at Sabina – junction at Zoomland
	A4/A58	junction at Zoomland – junction at Markiezaat
	A4	junction at Markiezaat – Belgian border
	A5	junction at De Hoek – junction at Raasdorp – junction at Coenplein
	A6	junction at Muiderberg – junction at Almere – junction at Emmeloord – junction at Joure
	A7	Zaandam (from kilometre 4.0) – junction at Zaandam – link road Den Oever – junction at Zurich – link road IJlst
	A7	link road Sneek-Oost – junction at Joure
	A7	junction at Joure – junction at Heerenveen – link road Drachten – junction at Julianaplein
	A7	link road Westerbroek – junction at Zuidbroek – German border
A8	junction at Coenplein – junction at Zaandam – link road Zaanstad-Noord	
A9	junction at Diemen – junction at Holendrecht – junction at Badhoevedorp – junction at Raasdorp – junction at Rottepolderplein – junction at Velsen – junction at Beverwijk – junction at Kooimeer	
A10	junction at Coenplein – junction at Watergraafsmeer – junction at Nieuwe Meer – junction at Coenplein	

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N11	link road Zoeterwoude-Rijndijk – junction at Bodegraven
A12	's-Gravenhage (from kilometre 3.3) – junction at Prins Clausplein – junction at Gouwe – junction at Bodegraven – junction at Oudenrijn – junction at Lunetten – junction at Maanderbroek – junction at Grijsoord
A12/A50	junction at Grijsoord – junction at Waterberg
A12	junction at Waterberg – junction at Velperbroek – junction at Oud-Dijk – German border
A13	junction at Ypenburg – junction at Doenkade – junction at Kleinpolderplein
A15	link road Oostvoorne (from kilometre 25.1) – link road Brielle – junction at Benelux – junction at Vaanplein – junction at Ridderkerk-Noord
A15/A16	junction at Ridderkerk-Noord – junction at Ridderkerk-Zuid
A15	junction at Ridderkerk-Zuid – link road Papendrecht – junction at Gorinchem – junction at Deil – junction at Valburg
A16	junction at Doenkade – junction at Terbregseplein – junction at Ridderkerk-Noord
A16/A15	junction at Ridderkerk-Noord – junction at Ridderkerk-Zuid
A16	junction at Ridderkerk-Zuid – link road N3 – junction at Klaverpolder
A16/A59	junction at Klaverpolder – junction at Zonzeel
A16	junction at Zonzeel – junction at Princeville
A16/A58	junction at Princeville – junction at Galder
A16	junction at Galder – Belgian border
A17/A59	junction at Klaverpolder – junction at Noordhoek
A17	junction at Noordhoek – junction at De Stok
A18	junction at Oud-Dijk – Varsseveld
A20	link road Westerlee– junction at Kethelplein – junction at Kleinpolderplein – junction at Terbregseplein– junction at Gouwe
A22	junction at Velsen – junction at Beverwijk
A27	junction at St. Annabosch – junction at Hooipolder – junction at Gorinchem – junction at Everdingen – junction at Lunetten – junction at Rijnsweerd – junction at Eemnes – junction at Almere
A28	junction at Rijnsweerd – junction at Hoevelaken – junction at Hattermerbroek – junction at Lankhorst – junction at Hoogeveen – junction at Assen –junction at Julianaplein
A29	junction at Vaanplein – Klaaswaal
	The road section between Klaaswaal and the junction at Sabina falls under the A4 (see national motorway A4)
A30	junction at Maanderbroek – link road Barneveld
A32	junction at Lankhorst – junction at Heerenveen – link road Wirdum
A35	link road Wierden – link road Almelo-West – junction at Azelo
A35/A1	junction at Azelo – junction at Buren
A35	junction at Buren – link road Enschede-West – Enschede
A37	junction at Hoogeveen – junction at Holsloot – German border
A38	Ridderkerk Rotterdamseweg – junction at Ridderkerk
A44	junction at Burgerveen – Wassenaar

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N44	Wassenaar – N14
A50	John F. Kennedylaan Eindhoven (to Tempellaan) – link road Ekkersrijt
A50	junction at Ekkersweijer – link road Ekkersrijt – junction at Paalgraven – junction at Bankhoef – junction at Ewijk – junction at Valburg – junction at Grijsoord
	The road section from the junction at Grijsoord to the junction at Waterberg falls under the A12 (see national motorway A12)
A50	junction at Waterberg – junction at Beekbergen – junction at Hattemerbroek
N50	junction at Hattemerbroek – link road Ens
N50	The road section from link road Ens to the junction at Emmeloord falls under the administrative name of national motorway 838 (see there).
A58	junction at Batadorp – junction at De Baars – junction at St. Annabosch
A58	junction at St. Annabosch – junction at Galder
	The road section between the junction at Galder and the junction at Princeville is listed as A16 (see national motorway 16)
A58	junction at Princeville – junction at de Stok – junction at Zoomland
	The road section between the junction at Zoomland and the junction at Markiezaat is listed as A4 (see national motorway 4)
A58	junction at Markiezaat – Vlissingen (to kilometre 171.3)
	The road section between the junction at Hellegatsplein and the junction at Sabina is listed as A4 (see national motorway 4)
A59	junction at Sabina – junction at Noordhoek
	The road section between junction at Noordhoek and junction at Zonzeel is listed as A16 (see national motorway 16)
A59	junction at Zonzeel – junction at Hooipolder – junction at Empel
	The road section between the junction at Empel and the junction at Hintham is listed as A2 (see national motorway 2)
A59	junction at Hintham – junction at Paalgraven
A65	junction at Vught – Vught
N65	Junction at Vught – link road Berkel-Enschot
A65	link road Berkel-Enschot – junction at De Baars
A67	Belgian border – junction at De Hogt
	The road section between the junction at De Hogt and the junction at Leenderheide is listed as A2 (see national motorway 2)
A67	junction at Leenderheide – junction at Zaarderheiken – German border
A73	junction at Het Vonderen – junction at Tiglia – junction at Zaarderheiken – junction at Rijkevoort – junction at Neerbosch – junction at Ewijk
A73	junction at Neerbosch – Nijmegen (to kilometre 108.6)
A74	German border – junction at Tiglia
A76	Belgian border – junction at Kerensheide – junction at Kunderberg – German border

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	A77	junction at Rijkevoort – German border
	A79	junction at Kruisdonk – junction at Kunderberg
	A200	link road Halfweg – junction at Rottepolderplein – link road Haarlem-Centrum (to kilometre 11.8)
	A205	link road Haarlem – junction at Rottepolderplein
	A208	link road Velsbroek (from kilometre 7.3) – junction at IJmuiden
	A838	link road Ens – junction at Emmeloord
Provincial road	A256	Goes - junction at De Poel
	A325	Arnhem Nijmeegseplein - junction at Ressen
	A326	junction at Bankhoef - Palkerplein, Wijchen
	A348	Junctions at Velperbroek – Ellecom
	N201	N212 - A2 link road Vinkeveen
	N201	A2 link road Vinkeveen – A27 link road Hilversum
	N207	A4 link road Burgerveen - A12 link road Gouda (via N452 and N451)
	N209	N11 link road Hazerswoude - A12 link road Bleiswijk
	N209	A12 link road Bleiswijk - A13 link road Berkel en Rodenrijs
	N212	N201 - A12 link road Harmelen (via N198 and N419)
	N214	A15 link road Papendrecht - A27 link road Noordeloos
	N221	N237 Stichtse Rotonde - A28 link road Maarn
	N225	A50 link road Renkum - N781 Diedenweg Wageningen
	N230	A2 link road Maarsen - A27 link road Maarssen
	N235	Verzetslaan Purmerend - N247 Het Schouw
	N237	Berenkuil, Waterlinieweg Utrecht - Stichtse Rotonde (N221)
	N244	N243 junction at Hoorn – N246
	N246	A8 link road Zaanstad-Noord (Coentunnelweg) - N244 Westgraftdijk
	N247	N235 Het Schouw - A10 link road Volendam
	N260	A58 link road Gilze - N282
	N263	A16 link road Breda – Belgian border
	N268	A4 link road Dinteloord - A17 link road Roosendaal-Noord
	N278	Belgian border - Tongerseweg, Prins Bisschopssingel, J.F. Kennedybrug, J.F. Kennedysingel - A2 link road Maastricht – Zuid
	N279	A50 link road Veghel - A67 link road Asten
	N280	A2 link road Kelpen-Oler - A73 link road Roermond
	N280	A73 link road Roermond – German border
	N281	A76 link road Voerendaal - A76 link road Simpelveld
	N282	A27 link road Breda-Noord - N260
	N285	A59 link road Terheijden - A17 link road Zevenbergen
	N321	A73 link road Cuijk - N324 Grave
	N322	N323 - A50 junction at Ewijk

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	N323	A15 link road Echteld - N322
	N324	A59 link road Oss-Oost - N321 Grave
	N325	A12 junction at Velperbroek - A325 Nijmeegseplein Arnhem
	N401	A2 link road Breukelen - N212
	N470	A4 link road Delft - A13 link road Delft Zuid
	N640	A58 link road Etten-Leur-West (A58) - A17 link road Oudenbosch (via N641)
	N641	A17 link road Oudenbosch - N268 Oud Gastel
	N781	A12 link road Wageningen - N225 Ritsma Bosweg Wageningen
Municipal roads	<b>Rotterdam</b>	
	Parallel route A15 Rotterdam (I)	Route via link road A15 Havens 5700-6200, Rijnweg to Moezelweg, Moezelweg from Rijnweg to Saarweg, Saarweg, Ronde Saarweg, Calandbrug, Merseyweg, Droespolderweg, Botlekweg, Oude Maasweg, Oude Maaspad, Plaatweg to link road to A15 Botlekbrug
	Parallel route A15 Rotterdam (II)	Route via Link road A15 Spijkenisse, Oude Maasweg, Oude Maaspad, Plaatweg, Link road A15 Botlekbrug, Vondelingenweg to crossroads Gaderingviaduct
	Parallel route A15 Rotterdam (III)	Route via Link road A15 Havens 3225-4000 (Digna Johannaweg), Vondelingenweg van Digna Johannaweg to Groene Kruisweg
	<b>Maastricht</b>	
	Belgian border – Link road A2 Maastricht Noord	Route via Via Regia to Nobellaan, Nobellaan, Fagotstraat, Frans van de Laarplein, Fort Willemweg, Noorderbrug, Viaductweg to A2 link road Maastricht - Noord
	Belgian border - Noorderbrug	Route via Brusselseweg to Belvédèrelaan, Belvédèrelaan to Noorderbrug
	<b>Oosterhout</b>	
Oosterhout, Weststadweg – Bovensteweg	A27 link road Oosterhout - A59 link road Made	
<b>'s-Hertogenbosch</b>		
's-Hertogenbosch, Vlijmenseweg – Randweg	A59 link road 's-Hertogenbosch-West - A65 link road Vught-Centrum	

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APPENDIX 2. Level of fines under article 17, paragraph 1 of the Heavy goods vehicle Charge Act.

Violation category	Type of violation	Amount of the fine (in euros)
A	- manipulation or improper use of the on-board equipment of a heavy goods vehicle that is on the road;	1,000
B	- no working on-board equipment in a heavy goods vehicle that is on the road; - no service agreement concluded for a heavy goods vehicle that is on the road;	300
C	- the on-board equipment in a heavy goods vehicle belongs to a different heavy goods vehicle that is on the road; - the service agreement of a heavy goods vehicle that is on the road has been suspended.	200

# Draft Bill for Internet Consultation

## Explanatory memorandum

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## *General part*

### **1. Introduction**

#### **1.1 Reason for the Bill**

In line with our neighbouring countries, this Bill introduces a heavy goods vehicle charge for heavy goods vehicles with a maximum permissible mass of more than 3,500 kg, whereby heavy goods vehicle owners will pay for the kilometres driven and the net income will flow back to the transport sector to be used for innovation and sustainability. Dutch and foreign heavy goods vehicles will pay for use of the road network. This is how the government will implement the coalition agreement of the Rutte III Cabinet, which stipulates that, following the example of neighbouring countries, a heavy goods vehicle charge will be introduced as soon as possible<sup>1</sup>. The government has opted for this charge in the context of making the Netherlands more innovative and stimulating its innovative strength. Worldwide the Dutch transport sector is highly competitive internationally. The government wants to reinforce that position and thereby increase the leading status of the logistics sector<sup>2</sup>. In that context, investments in innovation and sustainability are essential for a future-proof Dutch transport sector. The Bill therefore also sets down the basis for distributing the net revenues obtained from the heavy goods vehicle charge back to the transport sector for the purpose of its innovation and sustainability. At the same time, innovation and sustainability contribute to achieving the objectives of climate policy. Arrangements agreed in the Paris Climate Agreement play a role in this regard<sup>3</sup>.

More and more European countries have a form of heavy goods vehicle charge for each kilometre driven. In Germany, a charge applies on motorways and on all national highways (comparable with the Dutch 'N' roads). Belgium makes a charge on motorways and on a number of national roads. In the Netherlands there are, apart from fuel tax, goods vehicle taxes and levies that are not linked to the number of kilometres driven. In the Netherlands (and also in Denmark, Sweden and Luxembourg), there is a time-limited tariff – the Eurovignette – that currently applies to heavy goods vehicles from 12,000 kg upwards. The Heavy Motor Vehicle Tax ('BZM') is charged on motorways for this purpose. Motor vehicle tax (road tax) is also payable by vehicle holders.

#### **1.2 Introduction of the heavy goods vehicle charge**

To be able to charge more specifically, the Bill provides for a charge that is payable for each kilometre driven. This gives substance to the "the user pays" principle. There is currently no legal basis for introducing a heavy goods vehicle charge. This legislative proposal creates this basis, with the aim of putting in place as quickly as possible a reliable charging system that is cost-efficient, manageable, flexible and user-friendly. An alternative to the heavy goods vehicle charge could be a tax increase on diesel. Such a measure is less effective because when filling up in other countries, the diesel duty is not fully paid per kilometre driven in the Netherlands. Moreover, this measure would also tax passenger travel. The government has not opted for this alternative, but instead for a charge that fits in well with the system used in Belgium and Germany.

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<sup>1</sup> "Vertrouwen in de Toekomst", Coalition Agreement 2017-2021, annex to Parliamentary documents II 2017/18, 34700, No. 34.

<sup>2</sup> This is also in line with the top sector policy; see Parliamentary Papers II 2017/18, 33009, No. 63.

<sup>3</sup> Agreement concluded in Paris on 12 December 2015 (Treaty Series 2017, 141).

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The Bill means that the use of motorways ('A' roads) and a number of other roads (in particular 'N' roads) will be payable per kilometre driven. The heavy goods vehicle charge will apply to both domestic and foreign hauliers. Heavy goods vehicles that fall under the Heavy Motor Vehicle Tax Act (Dutch act, called 'BZM') must now be in possession of a Eurovignette in order to travel around in the Netherlands and elsewhere. The costs of the vignette do not depend on the number of kilometres covered. In addition to the introduction of a heavy goods vehicle charge, heavy motor vehicle tax will be ended and motor vehicle tax (Dutch act, called 'MRB') will be reduced to the European minimum. The Bill provides principally for the charging of the use made of roads instead of payment of a fixed periodic tax.

A holder of a heavy goods vehicle who wants to use his vehicle on the Dutch road network must carry with him on-board equipment (also referred to as an electronic recording device or on-board unit) or install it in the heavy goods vehicle. A heavy goods vehicle charge will apply on designated road sections (tariff per kilometre driven). The Dutch government will be the toll charger. Private providers of toll services will be responsible for registering and paying the heavy goods vehicle charge on behalf of the holder.

Innovation and sustainability are important for the future of the transport sector. It will allow the transport sector to develop in a sustainable manner over the long term and to maintain and where possible strengthen its position, including internationally. The government believes it is important to encourage this in the relatively short term. At present, the transport sector appears to be insufficiently capable of generating sufficient investment for this without active government involvement. The transport sector consists of numerous large, but also many small businesses. Small businesses in particular often find it impossible to invest. Against this background, the government has decided to channel the net revenues from the heavy goods vehicle charge back to the sector in consultation with representatives of the sector by financing innovation and sustainability measures. By playing this stimulating role, the government aims to safeguard the competitive position of the Dutch transport sector in liaison with the sector.

There are three phases in the process of introducing the heavy goods vehicle charge. In the first phase, goals and basic principles were laid down in the Heavy Goods Vehicle Charge Policy Framework and were used in drafting this Bill<sup>4</sup>. The basic principles concern the scope of the charge, the tariff level, tariff differentiation, enforcement, organisation of implementation, the spending allocations for innovation and making the transport sector more sustainable. The Bill was drafted in the second phase. Preparations for the charge are being made at the same time. After adoption of the Bill, contracts will be awarded and then the system will be built (third phase) and subsequently put into service. This approach is in line with the ambition expressed in the coalition agreement to introduce the heavy goods vehicle charge as soon as possible.

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<sup>4</sup> Policy framework for heavy goods vehicle charge, annex to the Letter from the Minister of Infrastructure and Water Management of 9 November 2018, Parliamentary documents II 2018/19, 31305, No. 269. The policy framework was discussed in the House of Representatives on 6 March 2019.

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## 1.3 Objectives

This Bill establishes the basis for a special charge for heavy goods vehicles. The objectives of the heavy goods vehicle charge are to:

1. allow domestic and foreign hauliers to pay for the use made of the road by converting a fixed tax (motor vehicle tax and Eurovignette) into a variable charge payable for each kilometre driven. It means that hauliers will pay more than they do now for road usage.
2. innovate and make the Dutch transport sector more sustainable. It was agreed in the coalition agreement that revenues from the heavy goods vehicle charge will be channelled back to the transport sector in consultation with the sector by, alongside the reduction of motor vehicle tax on heavy goods vehicles, using the revenues for innovation and sustainability (revenue recycling).

## 1.4 EU law

European frameworks play an important role in the introduction of the heavy goods vehicle charge. The Eurovignette Directive (Directive 1999/62/EC)<sup>5</sup> is in force and determines, among other things, the way the tariffs of the heavy goods vehicle charge may be structured. The directive further stipulates that there must be differentiated tariffs based on the euro emission classes of vehicles. In addition, the Eurovignette Directive prescribes that the heavy goods vehicle charge and the Eurovignette may not be applied simultaneously.

The Directive on the interoperability of European electronic road toll systems (the EETS Directive, Directive (EU) 2019/520)<sup>6</sup> contains conditions to ensure interoperability between electronic road toll systems in the European Economic Area (EEA). The directive applies to the electronic collection of all types of tolls on the entire road network within the EEA. The directive also applies to the heavy goods vehicle charge. Under the new directive published on 19 March 2019, the Netherlands may request from other EEA countries licence plate data for the enforcement of the heavy goods vehicle charge and then send a fine to the holder of the heavy goods vehicle. This increases the effectiveness and efficiency of enforcement and results in a level playing field. The amendments to the EETS Directive have been incorporated into this Bill. In parallel with this Bill, a Bill for the implementation of the EETS Directive is under preparation (EETS Directive Implementation Act<sup>7</sup>). Together, they provide for the (re)implementation of the Directive, the main objectives of which are to improve interoperability between European toll systems and enforceability, including between countries.

The aforementioned Directives are without prejudice to the freedom of countries to lay down rules on road infrastructure charges and taxation matters. The European frameworks do not prevent the revenues from being used for innovation and sustainability in the transport sector.

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<sup>5</sup> Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJEU 1999, L 187).

<sup>6</sup> Directive (EU) 2019/520 of the European Parliament and of the Council of 19 March 2019 on the interoperability of electronic road toll systems and facilitating cross-border exchange of information on the failure to pay road fees in the Union (OJEU 2019, L 91).

<sup>7</sup> This is the working title.

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To the extent that this Bill provides for implementation of the aforementioned Directives, a correlation table has been appended at the end of this explanatory memorandum.

European frameworks for the protection of personal data are mentioned in Chapter 5 of this explanatory document.

## 1.5 New law

Current legislation provides no basis for the introduction of a heavy goods vehicle charge. The Roads Act contains an obligation to allow everyone on to public roads. It is not possible to derogate from this without a legal remedy. The two toll laws that the Netherlands has (the Blankenburg Link Temporary Tolls Act and ViA15 and the Westerschelde Tunnel Act) are based on payment of toll each time a road section is used. This legislation is unsuitable for introducing the heavy goods vehicle charge, where on-board equipment will record the kilometres on priced road sections and is payable per kilometre.

The Bill provides a basis for the heavy goods vehicle charge as in neighbouring countries and other EU member states. Article 104 of the Constitution requires that a charge made by the State must be regulated by law. This includes in any event a legal assurance of who the payer is, the amount of the charge (tariff) and the chargeable event. This promotes legal certainty and provides guidance to citizens and companies.

## 2. Main points of the Bill

### 2.1 Introduction

The government envisages a heavy goods vehicle charging system that is reliable, cost-efficient, manageable, flexible and user-friendly. Research and experience in other European countries were used to design this Bill. Lessons learned from international comparative research were factored into the preparation of the policy framework and this Bill. An example is the choice of the road network, the chargeable vehicles and the parties involved in implementation<sup>8</sup>. Furthermore, input from various stakeholders was used. Studies into the tariff level in accordance with the Eurovignette Directive<sup>9</sup>, into technical and functional requirements of the charging system<sup>10</sup>, into the market and organisation models for the charging system and into the use of existing on-board units (OBUs) and services (market exploration)<sup>11</sup> underlie the Bill<sup>12</sup>.

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<sup>8</sup> The various studies were announced in a letter from the Minister of Infrastructure and Water Management of 4 June 2018 (Parliamentary documents II 2017/18, 31305, No. 252). Among other things, the following research was conducted: International comparative study of comparable charges in eleven countries (Belgium, Germany, France, Switzerland, Austria, Hungary, Slovenia, Poland, Czech Republic, Russia and Slovakia). The results of that research were sent to the House of Representatives in the collective letter on road transport and road safety of 17 September 2018. The letter contains a description of the structure of the charging system in eleven European countries (International study into kilometre charge for freight, annex to Parliamentary documents II 2017/18, 29398, No. 611).

<sup>9</sup> See the International study into the kilometre charge for freight in footnote 8

<sup>10</sup> To this end, an Architecture Blueprint was drawn up and it describes the most important design principles, the relevant roles, tasks, responsibilities and most important steps of the heavy goods vehicle charging process, in accordance with the applicable frameworks (including the EETS Directive), annex to Parliamentary documents II 2017/18, 31305, 262.

<sup>11</sup> Panteia, Research into on-board units and services. Market exploration, final report 2018, annex to Parliamentary documents II 2017/18, 29398 No. 611.

<sup>12</sup> The research focused on the choice of a market and organisation model where the question was what the market can do and what the government should do. The study identifies the market and organisation models that work in other countries. These models were then assessed in terms of opportunities, risks and applicability in the Dutch context. See Assessment of market and organisation model variants, PWC, June 2018, annex to Parliamentary documents II 2017/18, 31305, 272.

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The Bill consists of the following parts:

- Chapter 1: General provisions (definitions, explained only in the article-by-article explanation)
- Chapter 2: Heavy goods vehicle charge (chargeable event, chargeable person and exemption)
- Chapter 3: Tariffs (calculation and amount of the charge, recording by means of on-board equipment)
- Chapter 4: Data protection (protection of personal data)
- Chapter 5: Charging and collecting (toll charger, service agreement and disclosure of kilometres)
- Chapter 6: Service provider (main service provider)
- Chapter 7: Revenue recycling (multi-year revenue recycling programme)
- Chapter 8: Enforcement and penalty provisions (supervision and administrative fine)
- Chapter 9: Objection and appeal
- Chapter 10: Amendment of other laws
- Chapter 11: Final provisions, including emergency arrangements

## *Basic principles for the Bill*

The principles set out below were applied when drafting the Bill. They are included in the aforementioned Heavy Goods Vehicle Charging Policy Framework<sup>13</sup>, and it regards:

- Alignment with neighbouring countries.
- The principle of "one on-board unit, one contract, one invoice".
- The rechannelling of net revenues to the transport sector will contribute to the CO<sub>2</sub> reduction for transport included in the coalition agreement and the desire to achieve a smart and sustainable transport system.
- Substantial diversion of haulage traffic to the underlying road network must be limited because of its possible adverse effects.
- The recording system must be reliable, i.e. the heavy goods vehicle charging system must provide sufficient assurance that every chargeable kilometre driven on the network is reliably recorded and collected.
- The charge is differentiated based on the weight class of (or combination of) the heavy goods vehicle (and the trailer) and the environmental properties (euro emission class) in accordance with the Eurovignette Directive.
- Enforcement is aimed at promoting payment ethics (preventive effect) and tackling offenders (corrective effect). The sanctions must be effective, proportionate and dissuasive, as required by the European frameworks.
- No more data will be collected than necessary for implementation of the heavy goods vehicle charge. The data will not be saved any longer than necessary. Furthermore, the principle of protecting the privacy of data subjects in the final draft ("privacy and security by design") will apply by conducting a Privacy Impact Assessment (PIA) at various stages of legislation and implementation.

## *The system in brief*

The Bill resulted in the Minister of Infrastructure and Water Management being a toll charger for the heavy goods vehicle charge for each kilometre driven, the level of which depends on the maximum mass and emission class of a heavy goods vehicle. The charge applies to domestic and foreign motor vehicles intended for the transport of goods (heavy goods vehicles) with a maximum permissible mass of more than 3,500 kg. The charge will further apply to articulated vehicles of which the towing vehicle has a maximum permissible mass of less than 3,500 kg but with a towed vehicle if the combination has a maximum permissible mass of more than 3,500 kg (BE tractors). This is the same as in

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<sup>13</sup> Policy framework for heavy goods vehicle charge. Technical aspects are elaborated in the general design, annex to Parliamentary documents II 2018/19, 31305, 272

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Belgium. In principle, the heavy goods vehicle charge will be levied on all motorways and additionally on roads where substantial avoidance is likely to occur as a result of a charge on the motorways. This is expected to limit negative effects on the local area. Road sections, i.e. specific roads or parts thereof, will be designated by law because the designation of road sections determines the chargeable event. It will be possible to designate additional road sections by means of an accelerated procedure (emergency arrangement) or to set the tariff at €0.00 on certain road sections only in urgent cases.

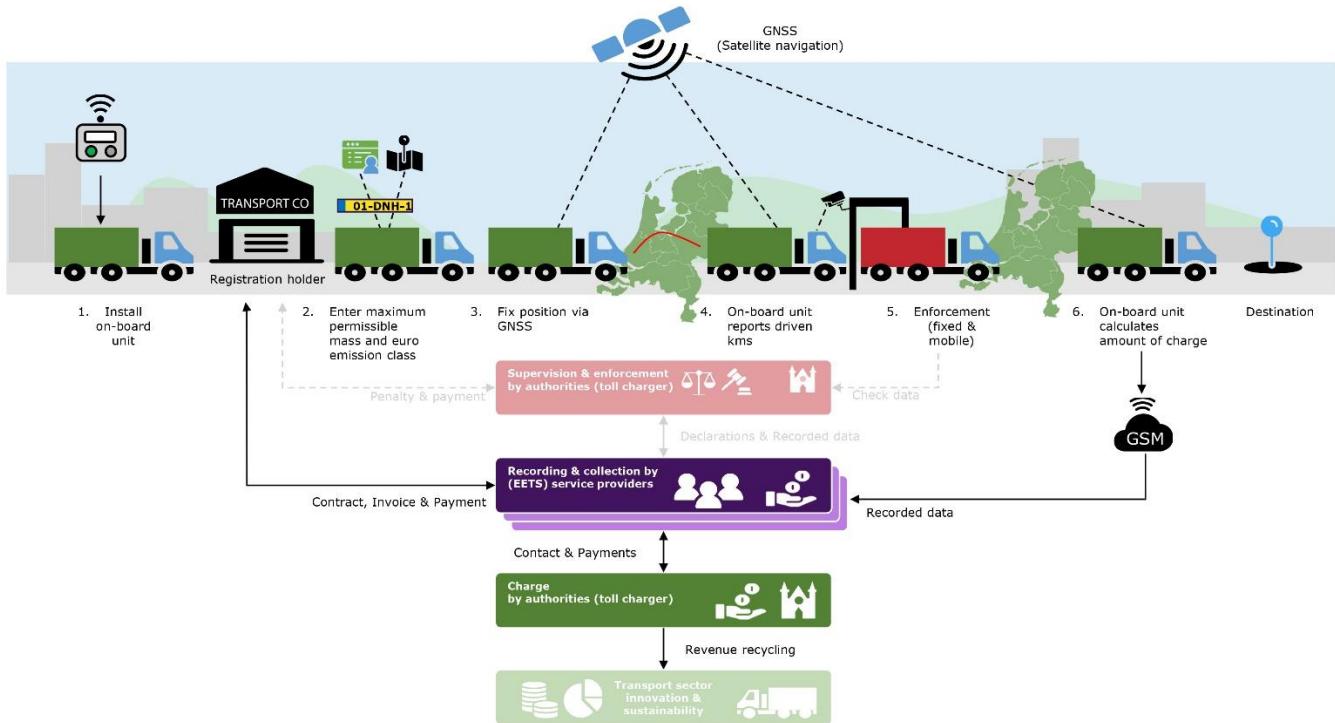
Figure 1 is a diagrammatic representation of the heavy goods vehicle charge<sup>14</sup>.

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<sup>14</sup> 'Architecture blueprint for heavy goods vehicle charge in the Netherlands' contains a more detailed description of the charging system; annex to Parliamentary documents II 2017/18, 31305, No. 262. A few terms have been altered in the meantime and the policy framework has been checked against the terminology and basic principles contained in the new EETS Directive.

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Figure 1: Diagram of the operation of the heavy goods vehicle charge.



The components are briefly explained below.

- The principle underlying the heavy goods vehicle charge is that for the use of a heavy goods vehicle (from 3,500 kg) a charge will be payable for the number of kilometres driven on road sections where the charge applies. The level of the tariff depends on the maximum permissible mass of the combination in kilograms and on the euro emission class of the heavy goods vehicle and is on average €0.149 (2018 price level) per kilometre driven. The tariff seeks a balance between on the one hand the generation of net revenues for the revenue recycling, and on the other the guarding of the competitiveness of the Netherlands vis-à-vis its neighbouring countries. That is why there has been alignment with the average tariffs applied in Belgium and Germany<sup>15</sup>. By charging according to the distance travelled, the principle of "the user pays" will be applied. Charging both domestic and foreign hauliers means that every user will pay a proportionate share for use of the road.
- The holder of a heavy goods vehicle that wants to use road infrastructure must carry on-board equipment for this or install it in the heavy goods vehicle. When the heavy goods vehicle is on chargeable road sections, the kilometres driven on the "toll roads" (the designated, priced roads) will be recorded by means of the on-board equipment.

<sup>15</sup> The average tariffs in neighbouring countries are currently around €0.15/km. The tariffs in Belgium vary between €0.076/km and €0.301/km. In Germany they vary between €0.093/km and €0.262/km.

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- Private providers of toll services will be responsible for the recording and for paying the heavy goods vehicle charge on behalf of the holder. For this purpose, heavy goods vehicle holders will have a service agreement with these service providers. If the holder fails to pay the service provider, it will be a matter of private law.
- The private service providers will conclude a contract with a public organisation that will be responsible for the operational implementation of the heavy goods vehicle charge. A public organisation will also perform checks on service providers.
- By means of recording apparatus and physical supervision at the roadside, there will be frequent checks on whether heavy goods vehicles have properly functioning on-board equipment. A public enforcement body will determine whether there has been a violation by the holder of a heavy goods vehicle.
- The net revenues from the charge will be channelled back to the transport sector for innovation and sustainability (revenue recycling).

With this system, the Bill fulfils the principles outlined above.

This chapter discusses in the same sequence as in the Bill the heavy goods vehicle charge (paragraph 2.2), tariffs (paragraph 2.3), data protection (paragraph 2.4), charging and collecting (paragraph 2.5) service provider (paragraph 2.6), revenue recycling (paragraph 2.7), enforcement and penalty provisions (paragraph 2.8), objection and appeal (paragraph 2.9), amendment of other laws (paragraph 2.10) and final provisions, including the emergency arrangements (paragraph 2.11). There is also a more detailed explanation of how the Bill will achieve the objectives outlined.

## 2.2 Heavy goods vehicle charge

In order to charge and collect the heavy goods vehicle charge, the Bill provides for a chargeable event (i.e. driving on a priced road section designated by law), the person liable for charge (the holder of a heavy goods vehicle that is not exempt from the charge) and the amount of the charge (the tariff). Chapter 2 of the Bill contains the first two elements of the charge (this is explained in this paragraph) and Chapter 3 contains the tariff (see paragraph 2.3 of this explanatory document).

### *Chargeable event*

The heavy goods vehicle charge will be payable for each kilometre driven by a heavy goods vehicle on road sections designated by law (priced roads). Road sections where the heavy goods vehicle charge will be payable are stated in Appendix 1 to the Bill. The Bill assumes that every license plate holder of a heavy goods vehicle must have on-board equipment that is switched on while on the road, even on roads where the charge does not apply. The purpose of this is to ensure that an individual heavy goods vehicle driver does not have to switch on his on-board equipment every time he arrives at a road section where the heavy goods vehicle charge is payable. This will prevent road safety problems because there will be no distraction due to switching the on-board equipment on and off. It will also prevent unintended violations caused by switching the on-board equipment on and off. This would represent an additional enforcement burden.

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Changing the list of road sections stated in the Appendix will in principle be possible only by amending the law. On account of road safety, mobility or the physical living environment, however, it be possible in certain urgent cases to designate road sections where the heavy goods vehicle charge will be payable by means of an accelerated procedure, pending an amendment to the law. This arrangement will be applied only in exceptional cases. Paragraph 2.11 explains this emergency arrangement.

The following figure contains an indicative map of the tolls network in the Netherlands.

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Figure 2: Tolls network in the Netherlands



## Roads with heavy goods vehicle charges<sup>1</sup>

A' roads

'N' roads

Municipal roads

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The road network on which the charge will apply has been the subject of research and consultation with the road authorities (water boards, municipalities, provinces and Rijkswaterstaat) and with working groups and committees of the Union of Water Boards (UvW), the Association of Netherlands Municipalities (VNG) and the Associations of Provinces of the Netherlands (IPO). The point of departure is that the heavy goods vehicle charge will be levied on all motorways and roads where substantial avoidance is likely to occur due to the motorway charges.

To arrive at a good designation of roads, modelling studies were launched on the basis of which it was calculated that with a charge on motorways only was likely to cause an increase of 10 to 15% of haulage traffic on the underlying road network (these are roads that are not managed by the State)<sup>16</sup>. This could have negative consequences for road safety and the physical living environment. By applying the charge on other roads as well, the potential practice of diverting to the underlying road network will be reduced.

The modelling studies were refined with the results of consultations and with experience from representatives of the transport sector. For example, a number of meetings were held in each province and regional knowledge of the road network and the surrounding area was obtained to identify the non-motorway roads where avoidance might be relevant, whether the model estimates were plausible and whether there were other reasons for designating or not designating roads. Special circumstances may also warrant a road section being added or not being added. A factor that might play a role is, for example, whether a road runs through or near a Natura 2000 area or residential area.

The following road sections are stated in Appendix 1 to the Bill:

- all motorways ('A' roads), with two exceptions because these are "separate" roads that do not connect to the rest of the motorway network. They are the A31 (approximately 18 km) in the province of Friesland and the A270 (approximately 3 km) in North Brabant;
- roads where substantial haulage traffic diversion is likely to occur if the charge is payable only on motorways. This applies in particular to 'N' roads and some municipal main roads, especially in the middle and south of the Netherlands. Based on regional knowledge, a number of roads were excluded, because the road is suitable for accommodating additional haulage traffic and not adjacent to a residential area, and the road does not pass through or alongside a Natura 2000 area.

The road network to be priced was therefore chosen in such a way that roads where haulage traffic diversion is expected were added to that network wherever possible. Measures will be taken if it transpires in practice that there is nevertheless some avoidance by choosing non-priced roads. For this purpose, the haulage traffic will be monitored after the introduction of the heavy goods vehicle charge. In urgent cases, a diversion route can quickly be included in the priced network by means of the emergency arrangements.

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<sup>16</sup> MuConsult, Impact studies into heavy goods vehicle charges, Final report 2018, annex to Parliamentary documents II 2018/19, 31305, No. 268.

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## *Chargeable party*

The heavy goods vehicle charge will be levied on the holder of a heavy goods vehicle. In principle, this will be the person in whose name the vehicle is registered in the vehicle registration register. On this point, the Bill is in line with legislation such as the Traffic Regulations (Administrative Enforcement) Act in which the licence plate holder plays a central role.

The charge will apply to domestic and foreign motor vehicles intended for the transport of goods (heavy goods vehicles) with a maximum permissible mass of more than 3,500 kg. This is going to apply in all European countries with a toll obligation for heavy goods vehicles. The only exception is Germany where there is a toll obligation (*Maut*) from 7,500 kg.

Agricultural and forestry tractors, mobile cranes and motor vehicles with limited speed are exempt from the heavy goods vehicle charge because they are not primarily intended for freight transport.

Furthermore, the charge does not apply to delivery vans with a maximum permissible mass of 3,500 kg or less. However, delivery vans that can tow a heavy trailer do fall under the charge. This concerns so-called 'BE tractors'<sup>17</sup>. These are vehicles that may be driven with a category 'BE' driving licence and are designed to drive with a trailer. They are subject to the charge because otherwise there would be a distortion of competition in relation to light heavy goods vehicles. BE tractors can in fact carry almost as much freight as light heavy goods vehicles that fall under the charge.

The following categories are exempt from the charge:

- vehicles used exclusively by the armed forces, police and fire brigade and are registered in their name;
- non-registered heavy goods vehicles that are equipped and used for the construction and maintenance of roads;
- heavy goods vehicles with a dealer's registration number;
- heavy goods vehicles used as waste collection units, sludge gulpers and street sweepers;
- heavy goods vehicles subject to suspension as referred to in Chapter IV, paragraph 6, of the Road Traffic Act 1994, for example if a heavy goods vehicle is required to undergo a roadworthiness test.

The exemptions apply to vehicles that may be exempted under the Eurovignette Directive and are in line with the exemptions included in the Motor Vehicle Tax Act 1994, the Blankenburg Link and ViA15 (Temporary Tolls) Act and the Westerschelde Tunnel Act. Some of these categories of vehicles are recognisable as such in the vehicle registration register. This facilitates enforcement and helps to hold down enforcement costs. Armed forces vehicles and unregistered heavy goods vehicles that are equipped and used for road construction and maintenance are also exempt. These categories are not recognisable in the vehicle registration register. If they were not exempt, it would make enforcement more complicated because it would not automatically be possible to identify the holder of the heavy goods vehicle.

In addition to these vehicles, the Eurovignette Directive allows exemption for vehicles used for road construction and maintenance. These vehicles are already exempt from the motor vehicle tax. As it is

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<sup>17</sup> BE tractors are vehicles that consist of two parts and together form a unit, which combined have a maximum permissible mass of more than 3,500 kg and which, by their nature, are intended for the transport of goods. Also see the section-by-section notes to Section 1 of the Bill that deals with the concept of a heavy goods vehicle.

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difficult in practice to assess whether the vehicles in question are used for road construction and maintenance or for other purposes, they are not exempt from the heavy goods vehicle charge. The same applies to vehicles for internal use (which travel short distances on public roads). These vehicles will rarely if ever use roads on which the charge is payable.

Vehicles that are fitted out and used exclusively as waste collection units, sludge gulpers or street sweepers are also exempt from the heavy goods vehicle charge, because they are used for cleaning or maintenance purposes and not for haulage.

At the holder's request, exemption may also be granted for:

- vehicles that were first authorized at least forty years ago and that are not used for commercial purposes;
- heavy goods vehicles with a concrete pump without a mixer;

These vehicles are not intended or used for the transport of goods.

### 2.3 Tariffs

In addition to the chargeable event and the chargeable party, the Bill contains another essential element of the charge, namely the tariff (Chapter 3 of the Bill). Chapter 3 also regulates the registration of the on-board equipment. The recording of kilometres travelled is necessary for the calculation of the heavy goods vehicle charge.

#### *Determining and differentiating tariffs*

The payable heavy goods vehicle charge will be determined based on the number of recorded kilometres driven on the road sections designated in Appendix 1. To prevent inflation from reducing the real amount of revenue from the heavy goods vehicle charge, the Bill provides for tariffs to be index-linked. After the charge comes into effect, the tariffs will be index-linked from year to year in accordance with the Gross Government Investment Index as published annually by the Netherlands Bureau for Economic Policy Analysis (CPB) in its Central Economic Plan. The tariffs will be set based on 2018 price levels.

The amount of the charge (tariff) contained in the Bill will be differentiated according to the weight class of the heavy goods vehicle (or the vehicle in combination with the trailer) and the environmental properties (euro emission class). The Eurovignette Directive requires, apart from some non-applicable exceptions, a differentiation based on the euro emission class<sup>18</sup>. The Netherlands has the freedom to apply a distribution by weight class. The classification for the tariff differentiation is in line with the system used in Belgium<sup>19</sup>.

The Eurovignette Directive stipulates that the tariffs must be differentiated according to the euro emission class, but the Directive does not contain rules for the method of differentiation. The only obligation is that the maximum tariff may not exceed twice the tariff of the cleanest emission class. The cleanest class is EURO VI and cleaner. This also includes emission-free vehicles. The Directive

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<sup>18</sup> Article 7g, paragraph 1, Directive 1999/62/EC.

<sup>19</sup> Belgium has a differentiation based on the euro emission class, weight and location (per region). See article 2.4.4.0.2 of the Flemish Taxation Codex. Germany uses a differentiation based on weight in conjunction with the number of axles and the euro emission class (Appendix 1 to the Gesetz über die Erhebung von streckenbezogenen Gebühren für die Benutzung von Bundesautobahnen und Bundesstraßen, Bundesfernstraßenmautgesetz - BFStrMG).

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does not have a separate tariff class for zero emission (electric or hydrogen-powered vehicles) and low emission (hybrid) vehicles.

For the differentiation according to EURO emission classes, the maximum permissible ratio between the tariff for EURO-0 and EURO-VI vehicles under the Eurovignette Directive was chosen. This will contribute to the use of cleaner heavy goods vehicles. It also implements the Van der Graaf/Schonis parliamentary motion asking the government to work out different variants for tariff differentiation to promote clean and sustainable freight transport<sup>20</sup>.

### *Recording by means of on-board equipment*

The Bill stipulates that the recording of the kilometres driven - which is necessary for calculation of the heavy goods vehicle charge - will take place by means of on-board equipment. Unless the holder of a heavy goods vehicle is exempt from the heavy goods vehicle charge, the holder of the vehicle, prior to using the road, must ensure that the vehicle is equipped with working and activated on-board equipment made available to him by a service provider.

Recording will take place with the help of on-board equipment, for example an OBU. On-board equipment is defined as hardware and software components installed or carried on board the heavy goods vehicle. This is in line with other European member states with a distance-related charge for freight traffic<sup>21</sup>. When using the public highway, every registered heavy goods vehicle must always have working on-board equipment. If the vehicle uses a non-priced part of the road network, no kilometres will be recorded. The location will be determined, however, so that the on-board equipment signals when a chargeable road section is entered, and kilometres must therefore be recorded. The government has opted for this structure in the Bill for road safety and user-friendliness reasons. A clear system simplifies usage for the holder of the heavy goods vehicle and also enforcement.

The service provider is responsible for making on-board equipment available, recording the kilometres driven, paying the amount owed on behalf of the holder and maintaining the customer relationship including the personal data to be processed. The Bill contains a provision requiring that the above elements be laid down in the service agreement between user and service provider (also see also paragraph 2.5 of this explanatory document).

The advantage of having a service provider is that the charge and its collection will be far clearer for the Minister and that the holder of a heavy goods vehicle can choose a service provider that best suits his personal preferences. A choice may be made between the main service provider or an EETS provider. The main service provider will be obliged to conclude a contract with anyone who so wishes (regulated in Chapter 6 of the Bill and explained in paragraph 2.6 below). This will ensure that when the system goes live, every holder of a heavy goods vehicle can meet his obligations and have on-board equipment. The government aims to have several EETS providers active in the Netherlands when the charge comes into force.

The Bill contains an obligation for the holder of a heavy goods vehicle to report to the service provider that, for example, the on-board equipment has signalled that the requirements laid down in this law or regulations based on it are no longer being met. This will be the case, for example, if the holder

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<sup>20</sup> Parliamentary documents II 2018/19, 31305, No. 286.

<sup>21</sup> KPMG, International research into kilometre charges for freight, 2018, annex to Parliamentary documents II 2017/18, 29398, No. 611.

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observes that the on-board equipment is not working properly. The holder of a heavy goods vehicle must also report if he receives a signal that the means of payment has become insufficient. A heavy goods vehicle holder that fails to meet these obligations runs the risk of an administrative fine for the non-functioning of on-board equipment. The service provider must give instructions to the holder of the heavy goods vehicle (or the driver if the person is not the holder of the heavy goods vehicle). The purpose of this provision is to allow the holder of a heavy goods vehicle to continue his journey as quickly as possible without risking a fine. Further rules for this will be laid down by statutory instrument. The resolution currently envisaged by the government is that it might be possible to lay down rules that make it possible to provide replacement on-board equipment within a certain period of time.

## 2.4 Data protection

Personal data will be processed when carrying out the heavy goods vehicle charge, both by government agencies and by private parties that play a role in the provision of data in the chain. The heavy goods vehicle charge meets the legal requirements set by the General Data Protection Regulation (GDPR) and the GDPR Implementing Act (GDPR-IA). The system is designed in such a way as not to collect more data than is necessary for implementation of the heavy goods vehicle charge. The data will not be saved longer than necessary. A Privacy Impact Assessment (PIA) has been prepared for this purpose; see paragraph 6.4.

The purpose of data processing is to ensure that the heavy goods vehicle charge can be paid and collected. The Bill provides a basis for data processing (Chapter 4). It also gives substance to the existing legal frameworks by:

- naming processing streams and controllers; and
- standardising retention periods for the different data streams.

The vehicle movement data may be processed in an anonymous form for the purpose of traffic policy and to improve traffic management.

### *Controllers*

The Minister of Infrastructure and Water Management has been designated as the controller with regard to the processing of personal data used to levy and collect the heavy goods vehicle charge, to oversee compliance and enforcement, to impose and collect any administrative fines and to inform any holders who do not have a registered agreement with a service provider. The personal data involved will be defined by a statutory instrument and may be used solely for the purpose of the aforementioned exercise of duties and powers.

The service provider has been designated as the controller for the processing of personal data that it uses in the context of the service agreement. The Bill contains a prohibition on disclosing this information to third parties without the consent of the data subject.

### *Retention periods*

The Bill contains a provision applicable both to the Minister and to the service provider to ensure that data is not saved longer than necessary for the purpose for which it is used. For example, the Minister may not save data intended for payment purposes for longer than five years in principle. This period of time is consistent with the limitation period of such a debt in cash. The recorded movement data may not be saved by the Minister for longer than twelve weeks. The service provider will not store the

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personal data for longer than necessary and will save the movement data for not more than one year. The provisions made in this Bill do not affect other statutory retention periods.

## 2.5 Levying and collecting

### *System of levying and collecting*

The Bill contains rules for levying and collecting the charges (Chapter 5). The system of levying and collecting was set up in compliance with the EETS Directive. It is briefly described below.

- The Minister of Infrastructure and Water Management is the person who will receive the revenue from the heavy goods vehicle charges (the toll charger). Between the holder of the chargeable heavy goods vehicle and the toll charger there will be the service provider who remits payments on behalf of the holder of the heavy goods vehicle. The holder will have a private law service agreement with the service provider (the service provider will act as the day-to-day contact person of the holder).
- The Minister will issue a daily order for the amount due over a period of one day (this concerns an administrative monetary debt within the meaning of Title 4.4 of the General Administrative Law Act). The Minister will send it to the service provider.
- The service provider will remit the funds due to the Minister. The Bill contains obligations for the service provider for this purpose.

Certain elements of this system are explained below.

### *Toll charger*

The Minister of Infrastructure and Water Management will act as the sole toll charger for the heavy goods vehicle charge. This is a toll charger within the meaning of the EETS Directive. As a toll charger, the Minister will be responsible for levying the heavy goods vehicle charge.

### *Payment obligation*

By levying the heavy goods vehicle charge, an obligation arises to make payment to the administrative body of the Minister of Infrastructure and Water Management. This is covered by Title 4.4 of the General Administrative Law Act (GALA). This arrangement for administrative monetary debts therefore also applies insofar as the present Bill does not deviate from it. The order will be sent by the Minister to the service provider. Payment by the holder will occur via the service provider within two weeks of receiving the order. The Minister will provide a receipt after the amount of the heavy goods vehicle charge has been received<sup>22</sup>. The Minister may demand payment from the service provider under contract with the service provider.

### *Service provider and service agreement*

The holder of a heavy goods vehicle will make payment to a private service provider, who will then remit the charge to the toll charger. The EETS Directive (2019/520/EU) obliges EEA countries to admit

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<sup>22</sup> This obligation follows from the Eurovignette Directive (Article 7j, paragraph 3, Directive 1999/62/EC).

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EETS providers. A study into the public division of tasks and the market and organisation model examined how this model can best be set up<sup>23</sup>. This has already been explained in paragraph 2.3.

This Bill assumes that a service provider will enter into two types of agreement:

1. an agreement with the holder or user of a heavy goods vehicle (a service agreement, for which the Bill has specific requirements; see below);
2. an agreement with the toll charger in which arrangements are made for the payment of the amount owed on behalf of the holder and the fee payable by the toll charger to the service provider for the services rendered.

In addition to the EETS provider, the system has a main service provider. The Bill gives the main service provider a special obligation to conclude a service agreement with every heavy goods vehicle holder who so requests. As EETS providers will also offer their services in foreign countries, it is likely that many heavy goods vehicle owners will conclude a contract with an EETS provider instead of a main service provider that only works nationally. The main service provider is necessary to be able to provide a contract for the holder of a heavy goods vehicle that - for various reasons - cannot or does not want to conclude a contract with an EETS provider. This will ensure that when the system goes live, every holder of a heavy goods vehicle can meet its obligations and have on-board equipment. As follows from the EETS Directive, the main service provider can receive compensation for this latter obligation. This is therefore a different fee to the one the EETS service providers receive. The further requirements that service providers must meet are explained in paragraph 2.6.

For the Minister of Infrastructure and Water Management, levying and collecting will be far clearer thanks to the intermediary of service providers. The service provider must remit the tariff owed by the holder to the Minister, as long as the service agreement between the service provider and the holder is not suspended or terminated. The chargeable person will be released from his payment obligation provided that he has paid the service provider. If the holder does not pay, but does have a service agreement that is not suspended, the service provider must still pay the toll charger for the recorded kilometres. The Bill sets requirements for the content of the service agreement in the interests of the proper and reliable operation of the heavy goods vehicle charge. These requirements include that all vehicle documents required to determine the licence plate, the maximum permissible mass and the euro emission class of the heavy goods vehicle must be submitted by the holder to the service provider. Additionally, the service provider may require a guarantee from the holder to assure sufficient means of payment, such as a credit card or a fuel card. Furthermore, the Bill prescribes elements in the service agreement, such as the provision of on-board equipment, to the user by the service provider and the maintenance of its functionality and requirements for billing. In the service agreement, the service provider must also state, for example, how he manages the customer relationship and how there will be implementation of and compliance with the security and privacy policy for the heavy goods vehicle charging system.

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<sup>23</sup> Heavy goods vehicle charge. Research into the fulfilment of public tasks for the implementation of the heavy goods vehicle charge, annex to Parliamentary documents II 2018/19, 31305, No. 272.

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The data of the on-board equipment (location and movement data) will be managed by the service provider and will be used to bill the number of recorded kilometres. Other arrangements may also be made between customer and service provider, for example also to use the data for fleet management. In addition, the service provider will generally process (personal) data for the execution of regular processes in the heavy goods vehicle charge, such as billing and payment of the owed heavy goods vehicle charge on behalf of the holder. The protection of this data is the responsibility of the service provider. The service provider will naturally have to comply with GDPR when processing the data.

The Bill further provides for the possibility for the service provider to suspend the service agreement under certain circumstances, for example if the holder of the heavy goods vehicle fails to meet his payment obligations. The service provider would otherwise be required to continue to remit the amounts due to the toll charger, even though the owed amounts have not been received. The Minister of Infrastructure and Water Management may impose an administrative fine on the holder of the heavy goods vehicle for using on-board equipment during suspension of the agreement.

The Bill helps to ensure that the holder of a heavy goods vehicle can choose the most suitable offer from a service provider. The provision concerning the service agreement is without prejudice to the fact that a holder of a heavy goods vehicle may engage intermediaries (resellers) to enter into an agreement with the service provider on its behalf.

## 2.6 Service provider

To be admitted to the Dutch heavy goods vehicle charging system, service providers must comply with all technical specifications of the toll area included in the so-called domain statement (i.e. an EETS domain statement within the meaning of the EETS Directive; this will be drawn up by the toll charger and will contain the conditions for admission to the toll area). Only then can the service provider be accredited. The domain statement covers, among other things, the part of the road network where the charges are payable, the chargeable heavy goods vehicles, the accuracy of the measurements of heavy goods vehicles on toll roads, communication with enforcement agencies and financial stability. Its content will be regulated by the EETS Implementing Act.

As further explained in paragraph 3.2, the EETS Directive obliges EEA countries to admit all EETS providers, provided that they meet the requirements of a toll domain statement. The Bill regulates that an EETS provider will be accepted in an EETS domain if the provider meets the obligations and general conditions set out in the EETS domain statement. Admitted providers will qualify for an appropriate fee. The fee must follow the system of the fee agreed with the main service provider.

The government aims to utilise the market of EETS providers as much as possible. To this end, it is envisaged that at the start of the charge several EETS providers will offer their services in the Dutch toll domain. In addition, a main service provider will be contracted so that there is certainty that, at the start of the heavy goods vehicle charge, every holder of a heavy goods vehicle is able to enter into a service agreement. As already mentioned in paragraph 2.5, the main service provider will be under obligation to conclude a service agreement with any heavy goods vehicle holder who so requests. It will receive a higher, appropriate fee. Consequently, it will not be allowed to offer services in other countries (which explains why it was previously called a national service provider).

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## 2.7 Revenue recycling

The Bill contains a provision for the recycling of net revenue from the heavy goods vehicle charge. The net proceeds equal the income from the heavy goods vehicle charge after deduction of the system costs, compensation for the reduction of the motor vehicle tax for heavy goods vehicles and compensation for the loss of income from the Eurovignette and excise duties.

As indicated in paragraph 1.1, the coalition agreement states that the net proceeds from the heavy goods vehicle charge will be channelled back to the Dutch transport sector. This means that the measures in the context of the revenue recycling will be directly or indirectly in favour of the same hauliers. This will be worked out in more detail with the representatives of the transport sector (for further details, see paragraph 4.5 of this explanatory document).

Every five years the Minister of Infrastructure and Water Management will set down a multi-year programme. This policy agenda is aimed at innovation and making the transport sector more sustainable. This will be done after consultation with the three industry organisations of the road transport sector, i.e. evofenedex, Transport en Logistiek Nederland (TLN) and Vereniging Eigen Rijders (VERN)<sup>24</sup>. The multi-year programme will show the spending for the next five years. The Bill ensures that the multi-year programme will make clear to what extent a contribution is being made to innovation in and sustainability of the haulage sector. It will ensure that the recycling of revenues will help to fulfil the Bill's objectives as set out in paragraph 1.3.

## 2.8 Enforcement and penalty provisions

Partly on account of the reliability of the system, the heavy goods vehicle charge will be enforced, as in other countries, in the absence of properly functioning on-board equipment or a valid contract with a service provider for recording the owed charges. The holder of a heavy goods vehicle will be made liable for compliance with the applicable laws and regulations. As regards violations, a choice was made between administrative and criminal sanctions. To do this various indicators and criteria were examined<sup>25</sup>. This is a system in an open context. In principle, a system of sanctions under criminal law would be the appropriate basis. However, to the extent that "the nature and seriousness of the violation of standards" or "a shocked legal order" would apply here, these are not such as to warrant a criminal sanction system that would criminalise the violation further than is necessary. In the case of a criminal offence, for example, a person would get a criminal record and this could affect the issue of a certificate of good character. The system as proposed by the Bill has also been used for road traffic fines. In the Traffic Regulations (Administrative Enforcement) Act, an administrative fine was chosen for what prior to the entry into force of the Act would have been a fine under criminal law. An administrative fine is also deemed to be sufficiently effective for enforcement of the heavy goods vehicle charge.

As regards implementation of the imposition and collection of the administrative fines, the fines can be imposed by the administrative authority (the regulator). Involvement of the police or the Public Prosecution Service will not be required because they are primarily concerned with enforcement of

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<sup>24</sup> This also carries out the motion by Schonis et al., Parliamentary Papers II 2018/19, 31305, No. 282. This is discussed further in paragraph 4.5.

<sup>25</sup> Also see Further report on administrative fines, Government Gazette 2018, No. 31269, and Principles of enforcement accompanying the letter to Parliament on studies in the context of the heavy goods vehicle charge (dated 5 November 2018), annex to parliamentary documents II 2018/19, 31305, No. 268.

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criminal offences. The enforcement of the heavy goods vehicle charge is not in keeping with their tasks.

Dual enforcement was not chosen, i.e. where enforcement of conduct can be accomplished by both an administrative fine and a criminal law sanction. Criminal offences, such as computer hacking, are already covered by the Criminal Code. The Public Prosecution Service thus has a sufficient basis to act.

A combination of administrative and physical enforcement contributes to a credible system of heavy goods vehicle tolls with an acceptable perceived likelihood of being caught. The measures range from minor measures with (relatively) few consequences for the registration holder to more rigorous measures with far-reaching consequences. The sanctions fulfil the principle of effective, proportionate and deterrent sanctions, as required by the European frameworks. The specific and special circumstances of the case were also taken into account. Germany and Belgium have a similar combination of administrative and physical enforcement by means of roadside inspections.

The Bill contains provisions covering supervision, administrative fines other than for levying or collecting, including the waiving thereof, and provisional measures in the event of a heavy goods vehicle being stopped.

For an explanation of the amount of the administrative fine, please refer to the explanatory notes to Appendix 2.

### *Supervision*

The Bill provides a basis for the Minister of Infrastructure and Water Management to appoint supervisors. These are expected to be civil servants from the Centre for Vehicle Technology and Information (RDW) and the Human Environment and Transport Inspectorate (ILT). Also see paragraph 4.2 of this explanatory document.

### *Administrative fine*

Chapter 8 of the Bill is in line with Title 5.4 of the General Administrative Law Act. For violations other than those directly related to the collection of the heavy goods vehicle charge (payment-related violations), an administrative fine can be imposed on the holder of a heavy goods vehicle. This includes fines for manipulation of the on-board equipment or the absence of a (valid) service agreement while the heavy goods vehicle is on the road.

To set the amount of the fines in Appendix 2 to the Bill of €1,000, €300 and €200, respectively, there was an examination of fines from relevant Dutch legislation, such as the Heavy motor vehicle tax Act and the Motor Vehicle Tax Act 1994. The levels of fines in Germany and Belgium were also examined<sup>26</sup>.

The administrative fine may be waived if, for example, a person plausibly shows that his heavy goods vehicle was stolen and used against his will.

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<sup>26</sup> For example, in Germany the fines for violations concerning incorrect recording are between €240 and €480, whereby repeat offenders may ultimately be fined €20,000. In Flanders they are between €100 and €1,000.

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## *Stopping a vehicle (provisional measures)*

Roadside inspection forms the final piece of enforcement. A supervisor may force a heavy goods vehicle driver to stop. A decision to impose an administrative fine, as explained above, may be made known by issuing the fine to the driver. This will occur if the licence plate holder's licence plate data cannot be verified and irrevocable fines cannot be collected. In that case, the fine must be paid immediately. If stopped, a heavy goods vehicle may be transferred to a designated place as a provisional measure and detained there. A mechanical aid, such as a wheel clamp, may also be fitted to the vehicle. If the heavy goods vehicle is not collected from storage within twelve weeks, the right to it will be forfeited. More detailed rules can be laid down by ministerial order.

## **2.9 Objection and appeal**

Objections and appeals may in principle be lodged against a decision by the Minister. In connection with the heavy goods vehicle charge, this includes:

- a decision on a request for exemption;
- a decision by the toll charger issued to the holder of a heavy goods vehicle;
- a decision to impose an administrative fine;
- a decision to impose a fine after a provisional measure.

This means that under the General Administrative Law Act (GALA), an objection must generally be lodged before an appeal can be made against the aforementioned decisions. Also, if the amount of a fine issued during a vehicle stop is collected immediately (provisional measure), this does not affect the right to object to the decision by the supervisor or to lodge an appeal.

The Bill adds specific provisions to the General Administrative Law Act. They include:

- if an objection and appeal is lodged against a decision that has been sent out, the effect of that decision will be suspended until it has become irrevocable;
- if an objection and appeal is lodged against the decision to impose an administrative fine, the objection and appeal will also cover any provisional measure imposed.

The system assumes that most disputes about payment obligations will be resolved under private law. If the holder has questions about the invoice from the service provider, he will initially be able to contact the service provider and disputes arising between the service provider and the holder can be resolved under civil law. If the holder maintains objections to the invoice as a matter of principle, he can request the decision from the service provider and object to it by referring it to the Minister of Infrastructure and Water Management and subsequently lodge an appeal with the administrative court. It is also conceivable in the latter case that the holder will ask the service provider to object on his behalf, but this will depend on the arrangements agreed in this respect by the holder and the service provider. Arrangements may also be made in the service agreement about the possible forwarding of the decision by the service provider to the holder.

## **2.10 Amendment of other laws**

To introduce the heavy goods vehicle tax, the Bill amends the following laws: Road Traffic Act 1994, Heavy motor vehicle tax Act, Motor Vehicle Tax Act 1994, Taxation in Euros (Transition) Act and the Mutual Recognition and Enforcement (Financial Debts and Confiscation Orders) Act. The Collection of State Taxes Act and the Taxation in Euros (Transition) Act must be technically amended as a result of introduction of this Bill.

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In the section-by-section explanatory notes to articles 22 to 28 of the Bill, the amendments to the aforementioned laws are explained in more detail. They are mainly technical adjustments such as the alteration of references. Paragraph 3.1 discusses the relationship between this Bill and other laws; some are the same laws as mentioned above, but the substantive changes are amplified here.

## 2.11 Final provisions

### *Emergency arrangements*

The Bill limits the consequences of toll avoidance by diverting from motorways to the underlying road network. The choice of the road network was the subject of research and consultation (see paragraph 2.2). After introduction of the heavy goods vehicle charge, there will be monitoring to see to what extent avoidance occurs by heavy goods vehicles. The Bill contains a basis for making adjustments by ministerial order, pending legislative amendment, to prevent the occurrence of negative effects by heavy goods vehicles diverting to non-priced roads. This concerns effects on road safety, mobility or the physical living environment. The emergency arrangements will be introduced so as to deal adequately with unwanted substantial diversion on to non-priced roads if, due to urgency, it is not possible to wait for an amendment to the law.

Based on monitoring data, it will be possible to make adjustments in the following ways for eighteen months after introduction of the heavy goods vehicle charge, or after the entry into force of an amendment to Appendix 1 (priced roads):

- a road section can be added to Appendix 1 as a road section where the charge is payable (and thus becomes a priced road section);
- the tariff for a road section designated in Appendix 1 can be set at €0.00.

The latter is specific to the emergency arrangements. By law, chargeable road sections will be added or removed.

The determination of whether there is an urgent case will be made after avoidance has been observed. Application of the emergency arrangement will always require consultation with the highway authority. Furthermore, the Bill has the following guarantee to prevent the emergency arrangements from interfering with the system of the law whereby designation (or removal) of road sections occurs by law: a Bill for amending the law will be submitted to the House of Representatives as soon as possible after the ministerial order has been drawn up.

Evaluations in Belgium<sup>27</sup> and Germany<sup>28</sup> did not identify large-scale diversion of heavy goods vehicles on to the underlying road network. In a limited number of local situations, there was diversion to the underlying road network. In Belgium, this led to a decision to add some road sections to the priced network. The emergency arrangements described above will enable adjustments to be made in the Netherlands in the unlikely event of adverse effects.

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<sup>27</sup> Analysis before and after measurement of kilometre charges for heavy goods vehicles, Department of Mobility and Public Works, Policy Unit, 2017.

<sup>28</sup> Bericht über Verkehrsverlagerungen auf das nachgeordnete Straßennetz in Folge der Einführung der Lkw-Maut, 2016, Unterrichtung durch die Bundesregierung, Drucksache 18/10567.

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## *Evaluation*

Every four years the Minister of Infrastructure and Water Management will send a report to the States General about the effectiveness of this law in practice. The evaluation obligation is in line with the four-yearly reporting to the European Commission required under the Eurovignette Directive. The monitoring data used to determine the extent of haulage traffic engaging in toll avoidance will also be included in the evaluation so as to make pronouncements about the influence of introduction of a heavy goods vehicle charge on traffic flows.

## *Entry into force*

Entry into force will be at a time to be determined by Royal Decree. This is expected to be 2023.

## **3. Relationship with existing regulation and higher law**

### **3.1 National law**

This paragraph explains how the Bill complements current legislation and what the relationship is with those existing laws. Substantive changes to the laws referred to in paragraph 2.10 are also described in this paragraph.

## *Constitution*

The heavy goods vehicle charge is a government levy. Under Article 104 of the Constitution, the charge must therefore be regulated by law. In any event, the chargeable party, the tariff and the chargeable event must be regulated by law. The Bill therefore contains rules that:

- stipulate that the holder of a heavy goods vehicle is liable for payment;
- stipulate that a tariff applies, with the amount differentiated according to the euro emission class and weight;
- determine the road sections on which the charge is payable.

## *State Taxes Act*

The State Taxes Act applies to a government tax levied by government tax authorities. That is not the case here. Therefore, the States Taxes Act does not apply to the heavy goods vehicle tax.

## *Roads Act*

Under article 14, paragraph 1, of the Roads Act, the person who holds rights to a road and the person liable for its maintenance are obliged to allow all traffic on the road. The Bill adds to this article that this does not affect the heavy goods vehicle charge. The same applies to the levying of tolls within the meaning of the Blankenburg Link and ViA15 (Temporary Tolls) Act.

## *Blankenburg Link and ViA15 (Temporary Tolls) Act*

The heavy goods vehicle charge does not apply to the two road sections of the Blankenburg Link and ViA15. The toll regime under the Blankenburg Link and ViA15 Act will continue to apply to these road sections. The toll is payable for each passage, which is fundamentally different to paying for each kilometre driven. Moreover, the toll is intended to finance the two projects and the levy will stop once the projects have been paid for.

## *Westerschelde Tunnel Act*

The Westerschelde Tunnel Act allows the collection of tolls at the Westerschelde Tunnel. The tunnel was opened on 14 March 2003. The toll for the tunnel is based on collection by means of a barrier

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system, unlike the Bill under discussion here that is based on recording by means of on-board equipment (free flow principle). Therefore, the system under the Westerschelde Tunnel Act does not lend itself to use for the heavy goods vehicle charge. The Westerschelde Tunnel Act is unaffected by this Bill and, conversely, there are no consequences for this Bill.

## *Road Traffic Act 1994*

This Bill will amend the Road Traffic Act 1994, emphasising that the vehicle registration register is also used to hold data necessary for implementation of the heavy goods vehicle charge. The public enforcement organisation may request the required data from the vehicle registration register under article 43, paragraph 1, of the Road Traffic Act 1994.

## *Motor Vehicle Tax Act 1994*

This Bill adjusts the amount of the motor vehicle tax for heavy goods vehicles.

## *General Administrative Law Act*

The General Administrative Law Act (GALA) has a general regulation for debts owed under administrative law (article 4.4 of GALA). For an explanation of the relationship with this Bill, reference is made to the section-by-section explanatory notes.

Title 5.4 applies to the administrative fines. These provisions stipulate, for example, that an administrative fine may be imposed only if the violation is ascribable to the holder of a heavy goods vehicle (article 5:41 of GALA).

## **3.2 European legislation**

European regulatory regimes apply to heavy goods vehicle charges. The most important of these are:

- Directive 1999/62/EC (Eurovignette Directive)<sup>29</sup> for heavy goods vehicles.
- Directive 2019/520/EU (EETS Directive)<sup>30</sup> on the interoperability of electronic road toll systems and facilitating cross-border exchange of information on the failure to pay road fees in the Union.

The general treaty obligations (competition and non-discrimination) naturally also apply.

## *Eurovignette Directive*

Note: This text is based on the current Directive. A revision of this Directive is currently under negotiation and may have implications for the text below<sup>31</sup>.

The Eurovignette Directive sets out, among other things, how the tariffs of the heavy goods vehicle charge may be structured<sup>32</sup> and stipulates that there must be a differentiation of tariffs based on the

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<sup>29</sup> Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJEU 1999, L 187).

<sup>30</sup> Directive 2019/520/EU of the European Parliament and of the Council of 19 March 2019 recasting Directive 2004/52/EU on the interoperability of electronic road toll systems and facilitating cross-border exchange of information on the failure to pay road fees in the Union (OJEU 2019, L91).

<sup>31</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures, as regards the provisions on vehicle taxes, COM (2017) 275, and Proposal for a Council Directive amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures, as regards the provisions on vehicle taxes, COM (2017) 276.

<sup>32</sup> Article 7e Directive 1999/62/EC.

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euro emission classes of vehicles<sup>33</sup>. The Eurovignette Directive additionally stipulates that the heavy goods vehicle charge and the Eurovignette must not be levied simultaneously<sup>34</sup>.

The current Eurovignette Directive prescribes that heavy goods vehicles of more than 3,500 kg should be subject to the charge when tolls are levied<sup>35</sup>. Member States may use a higher weight<sup>36</sup> only under certain conditions, namely if vehicles between 3,500 kg and 12,000 kg are found to use shortcuts or if the addition of this group of vehicles would entail administrative costs exceeding 30% of the extra income produced by this enlargement. Neither of these two exception grounds apply to the heavy goods vehicle charge.

As noted earlier, the amount of the fines has been aligned with comparable fines in the Netherlands and those related to heavy goods vehicle charges in Germany and Belgium. Under the Eurovignette Directive, sanctions must be effective, proportionate and deterrent<sup>37</sup>. The Bill complies with this requirement.

### *EETS Directive*

The EETS Directive contains conditions designed to ensure interoperability between electronic road toll systems in the EEA.

A new EETS Directive was recently adopted. The old Directive (2004/52/EC) was implemented in the Road Traffic Act 1994. The new EETS Directive must be transposed into national legislation at the latest within 30 months of 19 March 2019. This Bill provides for partial implementation of the EETS Directive. For the rest, implementation will occur by means of a separate law being prepared in parallel with this Bill. The Bill for implementation of the EETS Directive will, together with this Bill, contribute to the harmonization of electronic toll systems within the EEA and to the exchange of data between Member States in the event of non-payment of road fees.

The EETS Directive applies to the electronic collection of all types of tolls in the entire road network within the EEA. The Directive therefore also applies to the heavy goods vehicle charge. Based on this Directive, Member States must provide access to private service providers for the collection of tolls. Users of the toll service (i.e. road users) will thus be able to pay tolls under a single contract with a single service provider in all toll domains where electronic toll systems are in use. The EETS Directive further contains requirements for a domain statement<sup>38</sup>, containing the general conditions for being able to offer toll services. The new EETS Directive allows more flexibility in terms of the on-board equipment to be used. A possibility has also been created to exchange licence plate data between different Member States for enforcement purposes<sup>39</sup>. Through this data exchange, the Netherlands will be able to send a fine to a foreign registration holder. This will make enforcement more effective and efficient and result in a level playing field.

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<sup>33</sup> Article 7g, paragraph 1, Directive 1999/62/EC.

<sup>34</sup> Article 7, paragraph 2, Directive 1999/62/EC.

<sup>35</sup> Article 7, paragraph 1, in conjunction with article 2, point d, Directive 1999/62/EC.

<sup>36</sup> Article 7, paragraph 5, Directive 1999/62/EC.

<sup>37</sup> Article 9a Directive 1999/62/EC.

<sup>38</sup> The Commission will set down implementing acts by 19 October 2019 determining the minimum content of the EETS domain declaration, including: (a) the requirements for EETS providers; (b) the procedural conditions, including commercial conditions; c) the procedure for the accreditation of EETS providers; and d) the toll context data.

<sup>39</sup> The EETS Directive uses the same system as the CBE Directive (Directive (EU) 2015/413 of the European Parliament and of the Council of 11 March 2015 facilitating cross-border exchange of information on road-safety-related traffic offences (OJEU 2015, L 68/9) and aligns with system for the exchange of licence plate data.

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The EETS Directive, with which the Bill is aligned, contains among other things:

- definitions for actors, and similar<sup>40</sup>;
- technological solutions for electronic road toll systems for which on-board equipment must be installed or used<sup>41</sup>;
- provisions covering the registration of EETS providers<sup>42</sup>;
- rights and obligations of the EETS provider<sup>43</sup>; and
- rights and obligations of the toll charger<sup>44</sup>.

### *Other European frameworks*

In accordance with the EETS Directive, the Bill stipulates that an EETS provider must be accepted in an EETS domain if he meets the obligations and general conditions stated in the EETS domain statement. To the extent that the Services Directive could apply<sup>45</sup>, it will concern services that fall within the scope of Title V (Transport) of the EC Treaty (now Title VI of the Treaty on the Functioning of the European Union). Under article 2, paragraph 2, under d, of the Services Directive, these services are exempt.

The VAT Directive<sup>46</sup> does not apply to the heavy goods vehicle charge itself. The charge under this Bill is reserved for the Minister of Infrastructure and Water Management for the performance of a task under public law. The holder must pay this charge. He can do this by making payment to the service provider. Although an agreement has been concluded between the holder and the service provider, the collection by the service provider does not occur for pecuniary consideration. The payment to the service provider constitutes payment of the heavy goods vehicle charge to the Minister. This leads to the conclusion that the holder does not owe VAT on the collectible charges. A body governed by public law is naturally subject to VAT for services that the provider renders to the government for pecuniary consideration. Therefore, VAT will be payable over the fee that the service provider receives from the government for the remittance of the heavy goods vehicle charge owed by the holder.

This does not alter the fact that VAT may be due in the relationship between the road manager and the supporting legal person under private law, as in the case of outsourcing of the work.

Appendix 0 to the Eurovignette Directive refers to Regulation (EU) 595/2009<sup>47</sup>. This states the maximum emission threshold value for EURO VI. As explained in paragraph 2.3, this is one of the euro emission classes that determines the chargeable tariff.

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<sup>40</sup> Article 2 Directive 2019/520 / EU.

<sup>41</sup> Article 3 Directive 2019/520/EU.

<sup>42</sup> Article 4 Directive 2019/520/EU.

<sup>43</sup> Article 5 Directive 2019/520/EU. Under the old Directive, the rights and obligations of actors within the EETS were included mainly in Decision 2009/750/EC. These provisions were largely included in the Directive itself during the revision.  
Article 6 Directive 2019/520 / EU.

<sup>44</sup> Article 6 Directive 2019/520/EU.

<sup>45</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJEU 2006, L 376).

<sup>46</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJEU 2006, L 347).

<sup>47</sup> Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (OJEU 2009, L188).

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## 4. Implementation

### 4.1 Introduction

The Bill is expected to enter into force in 2023. Its implementation will be worked out in more detail in the coming years. This chapter describes the current insights for implementation of the Bill and the government's basic principles. Paragraph 4.2 explains the components of the implementation of the heavy goods vehicle charge. It also deals with the parties involved in implementing the Bill. Subsequently, the financial consequences of the Bill (paragraph 4.3), the relationship with existing and new toll domains (paragraph 4.4) and the revenue recycling (paragraph 4.5) are discussed. Finally, paragraph 4.6 examines monitoring and evaluation.

### 4.2 Elements of implementation

As a toll charger, the Minister of Infrastructure and Water Management will use a variety of private organisations and public implementation organisations to perform tasks. As far as known at this time, the intended implementers have been stated. This also serves as an amplification of the figure contained in paragraph 2.1 (Figure 1: Diagram of the operation of the heavy goods vehicle charge). The further elaboration of the charge system may result in new insights and choices.

#### *Communication and information*

Good familiarity with and clear communication about the system among heavy goods vehicle holders is of great importance to the success of the heavy goods vehicle charge. The heavy goods vehicle charge is new in the Netherlands. A situation must be avoided where road users are unaware of their obligation to pay charges or do not know how the system works. This calls for good and timely communication and information to make clear how the charge can be paid. This includes informing chargeable holders of heavy goods vehicles and answering questions before the charges comes into effect. There are likely to be questions such as where the charge applies, which service providers are available, what the tariffs are, how the charge can be paid and what the consequences will be if the charge is not paid (or not paid on time). It should be noted that customer contact regarding the payment of the charge on behalf of the holder will take place in principle between road users and/or transport companies and service providers. This is explained in the "Payment and customer contact" subparagraph below.

Rijkswaterstaat is the intended implementing body for communication and information from the government and will focus on three matters. A targeted campaign for the road haulage sector will be set up prior to the start of charging. This will ensure that both domestic and foreign heavy goods vehicle holders are familiar with the rules and can prepare for them, for example by concluding a contract with a service provider. During implementation, attention will be paid in various ways to the introduction of the charge and what is necessary to be properly prepared. In addition to a campaign, a website and a telephone line will be set up where road users can go for all their questions about the charge. This facility will be similar to the public information programme set up by the Belgian government agency Viapass. Finally, road users will be appropriately informed about the road network where the charge is payable.

#### *On-board equipment*

The Bill embodies the principle that on-board equipment will be used to record the number of kilometres driven. The on-board equipment will use a satellite navigation system (i.e. satellite positioning, GNSS). The equipment will be made available to the user by a private service provider.

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Various techniques are used in Europe for electronic toll collection<sup>48</sup>. The technically most suitable or most cost-effective solution differs from situation to situation. The decisive factors are mainly the characteristics of the traffic, the charging principle and the complexity of the charging network. The EETS Directive 2019/520/EU states that all new electronic toll systems that are put into service for the processing of electronic toll transactions must be based on satellite information (GNSS, 5.8 GHz microwave technology (DSRC)) or automatic licence plate recognition (ANPR).

A study conducted from 2014<sup>49</sup>, commissioned by the European Parliament, compares the different technology options for electronic road pricing. The study revealed that the applicability of the different technologies depends greatly on the characteristics of the pricing system. Another study<sup>50</sup> indicated that with a toll network with a length of more than 5,000 kilometres, a GNSS-based system is preferable to a system based on DSRC. The length of the part of the Dutch road network to be priced is far in excess of that figure (more than 6,000 km). The motorway network alone has more than 600 slip roads and a DSRC system requires a portal to be placed after each exit. This would far exceed the costs of (relatively more expensive) GNSS on-board equipment. This makes pricing based on GNSS technology the most obvious choice. Moreover, this system is similar to the systems used in Belgium and Germany, so that on-board equipment from EETS providers from those countries will also be usable in the Netherlands, provided that those providers are accredited by the Minister of Infrastructure and Water Management.

### *Payment and customer contact*

The Bill sets up the collection system in line with the EETS Directive. As explained earlier, a choice can be made between the main service provider or an EETS provider, and customers of EETS providers can in principle use different toll domains in Europe with one set of on-board equipment, one contract and one invoice.

As explained in paragraph 2.5, the main service provider is obliged to conclude a contract with anyone who so wishes. This will ensure that every holder of a heavy goods vehicle can meet his obligations and have on-board equipment (such as an on-board unit).

Most EETS providers are associated with or are a subsidiary of a parent company like an energy company or mobility provider. These companies often offer several services (such as fuel cards, breakdown assistance and fleet management). This gives users the possibility to purchase multiple services in one bundle, which increases user convenience. The government will therefore strive to utilise the market of EETS providers as much as possible<sup>51</sup>. It is envisaged that at the start of charging there will be several EETS providers offering their services in the Dutch toll domain.

Regardless of whether an EETS provider or a main service provider is chosen, the Bill contains the obligation to conclude a service agreement between the holder of a heavy goods vehicle and the

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<sup>48</sup> KPMG, International research into kilometre charge for freight, 2018, annex to Parliamentary documents 2017/18, 29398, No. 611

<sup>49</sup> Directorate General for Internal Policies (2014) *Technology Options for the European Electronic Toll Service* (IP/B/TRAN/FWC/2010-006/LOT1/C1/SC7).

<sup>50</sup> Directorate General for Mobility and Transport (2015) *Study on "State of the Art of Electronic Road Tolling"* (MOVE/D3/2014-259).

<sup>51</sup> Also see Umbrella memorandum on market and organisation model for heavy goods vehicle charge, Annex to Parliamentary Documents II 2018/19, 31305, No. 272.

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service provider. The agreement must contain arrangements for making on-board equipment available, recording the kilometres driven, paying the amount owed and maintaining the customer relationship including the processed personal data.

The service provider will be responsible for remitting the charges due to the Minister. To this end, private law agreements with service providers will be concluded on behalf of the Minister. This task is expected to be assigned to Rijkswaterstaat. The Minister will conclude a private law agreement with each EETS provider. These agreements will contain sufficient guarantees to ensure that the service provider remits the amount due on time and in full, that continuity is assured and that the State's financial risks are limited. If the holder of a heavy goods vehicle fails to pay the invoices of the service provider, there will be a private law dispute. To collect the invoiced amount, the service provider may use existing private law options and, for example, engage a debt collection agency. Moreover, the Bill contains a provision that allows the service provider to suspend the contract with the holder of a heavy goods vehicle if payment is not received. As a result, the on-board equipment will become invalid.

Verification of compliance with these arrangements is expected to be placed on behalf of the Minister with Rijkswaterstaat, in conjunction with RDW. To this end, monitoring will occur for such purposes as technical performance, quality of the data provided and legal requirements for data flows for security and privacy.

### *Enforcement and supervision*

Enforcement and supervision will occur at various places during implementation. In a general sense, the government is striving for an enforcement system with both a preventive and a corrective effect, both for national and foreign heavy goods vehicle holders. The preventive effect consists of sufficient communication and information (see above). The corrective effect will occur by creating a set of legal instruments with sufficient powers. For example, an administrative fine may be imposed if it is detected at a road portal that a holder of a heavy goods vehicle has not switched on the on-board equipment. The fine will be sent out. In certain cases, it is also possible to issue a fine directly to the driver of a heavy goods vehicle. For this purpose, the Bill contains possibilities for physical enforcement in the form of stopping the vehicle and taking provisional measures, such as detaining a vehicle or fitting a wheel clamp. These measures will be worked out in consultation with the engaged enforcer(s).

The enforcement system was designed with the benefit of experience in other countries (including Belgium and Germany; both countries achieve a 99% compliance rate)<sup>52</sup>, experience gained in enforcing traffic violations and the design of enforcement embodied in the Blankenburg Link and ViA15 (Temporary Tolls) Act.

Paragraph 2.8 of this explanatory document describes how for enforcement purposes a choice was made between administrative and criminal law sanctions. The Minister will check by means of automated enforcement facilities and physical supervision whether vehicles have properly functioning on-board equipment. This task is expected to be assigned to the Centre for Vehicle Technology and Information (RDW). The invoicing and collection of the administrative fine is expected to be placed in the hands of the Central Judicial Collection Agency (CJIB). If the fine is not paid on time, the fine will be increased. The collection of administrative fines will be enforceable for Dutch vehicles via a bailiff

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<sup>52</sup> KPMG, International research into kilometre charge for freight, 2018, annex to Parliamentary documents 2017/18, 29398, No. 611.

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and for vehicles from other EU member states via the transfer of the fine to the home member state. If payment is not made, the vehicle can be stopped on the road. In addition, the outstanding amount will be collectable immediately or the vehicle may be detained.

The Bill further allows the immediate stopping of vehicles for which name and address data cannot be retrieved, for example because they are registered in a non-EU member state. Imposed fines may also be collected directly from those vehicles.

The physical supervision referred to above is expected to be performed by Human Environment and Transport Inspectorate (ILT). ILT is additionally expected to monitor compliance during regular inspections and company visits.

### *Other involved parties*

- A mediation body

The EETS Directive requires the establishment of mediation body to resolve any disputes between service providers and the organisation with which they conclude contracts. The mediation body will be set up as part of the implementation of the EETS Directive. The body must be established not only for the purpose of the heavy goods vehicle charge, but also for other electronic toll systems in the Netherlands.

- Registration authority

RDW is already registering companies that want to register as EETS service providers in accordance with European Decision 2009/750/EC<sup>53</sup>. The requirements in this regard have remained virtually unchanged in the new EETS Directive. In the Netherlands, these requirements will be met through the Electronic Toll Systems Regulation.

### **4.3 Financial consequences**

The heavy goods vehicle charge will result in conversion from a fixed tax (motor vehicle tax and Eurovignette) to a variable charge payable for each kilometre travelled. The introduction will be neutral for the EMU balance (balance of the Economic and Monetary Union), the expenditures and receipts for the National Budget in total and for the budgets of the Ministry of Infrastructure and Water Management. Therefore, the system costs, the compensation for reduction of the motor vehicle tax for heavy goods vehicles and the compensation for the loss of the income from the Eurovignette and excise duties will be covered by income from the heavy goods vehicle charge.

Note: The information provided below is based on various scenarios; new estimates will be made in parallel with the internet consultation.

### *Variable costs*

The costs of the heavy goods vehicle charge for holders of a heavy goods vehicle (and the income for the government) depend primarily on the tariff set per kilometre and the number of kilometres driven. The costs will fluctuate depending on the road network on which the charge is made. Indirectly, the degree of economic growth and the development of the fleet will also play a role. The estimate of the costs varies between approximately €600 million in the case of a charge on motorways only and approximately €1.1 billion per year in the case of a charge on all roads (2018 price level) at an

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<sup>53</sup> Commission Decision of 6 October 2009 defining the European electronic toll service and associated technical components (2009/750/EC) (OJEU 2009, L 268).

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average tariff of €0.149 per kilometre. The costs of a charge on motorways and roads where substantial toll avoidance occurs are approximately €600 million.

### *System costs*

Costs will be incurred to be able to introduce and to operate the heavy goods vehicle charge. On the one hand, there will be non-recurring investment costs that are necessary to develop the system and make it ready for use, and on the other there will be annual operating costs.

The costs of introducing the system can be subdivided into personnel costs, preparation costs and implementation costs. The preparation costs include the costs of preparatory studies, consultancy, accreditation of EETS providers and tenders for systems, services and facilities. The implementation costs are the expenses incurred for such purposes as putting in place and testing the main provider, EETS providers and other systems, services and facilities. The latter category includes signage, fixed and flexible enforcement facilities, monitoring and control tools, and measures for enforcement and objection and appeal<sup>54</sup>.

The annual operating costs are the costs incurred by the public implementing organisations for things like the management of the aforementioned systems, services and facilities, for monitoring and enforcement and for managing the contracts with the main service provider and the EETS providers. The fees for the service providers also fall under operating costs. These will consist of a fixed component and a variable component.

The non-recurring investment costs come to around €200 million (2018 price level). The annual operating costs of the charging system are estimated at €100 to €125 million. The level of these costs is in line with the costs that - according to international research - apply to other electronic toll systems.

### *Impact on existing taxes*

With the roll-out of the heavy goods vehicle charge, the Eurovignette (tax on heavy motor vehicles) will no longer be levied in the Netherlands. The expected income from the Eurovignette is approximately €190 million per year for the Netherlands (2018 price level). The costs for holders of a heavy goods vehicle and the income for the government will cease to exist. This loss of income for the national budget will be covered by the income from the toll charges.

Once the heavy goods vehicle tax has been introduced, the motor vehicle tax for heavy goods vehicles will be reduced. The reduction of the motor vehicle tax will result in approximately €33 million per year (2018 price level) less income for the government (and costs for holders of a heavy goods vehicle). Research into the effects of heavy goods vehicle charges shows that fewer kilometres are driven by heavy goods vehicles than in a situation without a heavy goods vehicle charge. Additionally, there is a limited increase in the number of kilometres driven by passenger cars. All in all, this means a limited loss of excise duty of approximately €35-55 million per year (2018 price level). This loss will be covered by the income from the toll charges.

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<sup>54</sup> An exhaustive overview of the functionalities to be created can be found in the overall design, annex to Parliamentary documents II 2018/19, 31305, 272.

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## *Funding for innovation and sustainability*

An indication of the amount of funding for innovation and sustainability of the Dutch transport sector is €200 million per year. Note: This amount will be reassessed for the final Bill and the relevant draft budget. The funds for the revenue recycling will become available only after the introduction of the charge in 2023; therefore, it will not be possible to pre-finance measures. The spending allocations will be elaborated into concrete measures, in a multi-year revenue recycling programme, in consultation with representatives of the transport sector. This is explained in more details in paragraph 4.5.

## *Incorporation in budgets*

The net proceeds from the heavy goods vehicle charge will be used for innovation in the Dutch transport sector and for making it more sustainable. This funding for innovation and sustainability will form part of the expenditure set out in the national budget. Both the charge revenues and the revenue recycling will be estimated on the budget of the Ministry of Infrastructure and Water Management, with the proceeds from the toll charges forming part of the income for the national budget while the recycled revenue will be placed on the expenditure side. To ensure budgetary certainty that funding will remain available for revenue recycling, a fund will be included in a separate article in the policy budget. This will allow clear presentation of the income and expenditure associated with the heavy goods vehicle charge at a place in the budget. This fund will have an unlimited year-end margin so that any undrawn funds remain available for spending on goals contained in the multi-year programme.

The estimates will automatically be recalibrated every time a new Cabinet is formed. The following variables will always be factored into the adjustment of the estimated receipts: level of the tariffs, current forecasts of kilometres driven, road network on which the charge is payable, chargeable vehicles, composition of the fleet, operating costs and lost tax income. The adjustments will not be corrected retroactively for the outcomes from previous years.

## **4.4 Relationship with existing and new toll projects**

The government recognises that new temporary toll projects are currently underway (Blankenburg Link and ViA15). There are also existing toll tunnels (Kiltunnel and Westerscheldetunnel). The relationship with the Blankenburg Link and ViA15 (Temporary Tolls) Act and the Westerschelde Tunnel Act is described in paragraph 3.1.

The objective of the toll projects and tunnels is to finance the infrastructure concerned. As described, this will not change with the introduction of the heavy goods vehicle charge. At the locations where tolls must already be paid, a heavy goods vehicle charge would be a double levy and is therefore undesirable. Consequently, a heavy goods vehicle charge will not be payable on those routes. The construction of the Blankenburg Link (connection between the A15 at Rozenburg and the A20 between Maassluis and Vlaardingen) and the ViA15 (a connection from the A15 from the Valburg junction to the A12 at Zevenaar) is being co-financed through temporary tolls. To make toll collection possible on both roads, the Blankenburg Link Temporary Toll Collection programme (BBV) and ViA15 (hereinafter abbreviated as 'TTH') has been set up. The toll opening for both roads is scheduled to start in 2024. This is one year after the planned date of entry into force of the heavy goods vehicle charge. The elaboration of the heavy goods vehicle charge differs from the other toll projects. For example, the heavy goods vehicle charge is based on the distance travelled, whereas the other toll projects are based on the passage of a single toll charge point. The technical systems therefore partly differ.

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There are a number of similarities between the heavy goods vehicle charge and the yet-to-be-introduced temporary toll on the Blankenburg Link and ViA15. For example, both systems employ the "free flow" principle: registration occurs by means of an automated system without barriers, so vehicles do not have to stop to pay. There are also some differences: the toll also applies to passenger cars, for example, and it is not mandatory to have on-board equipment for registration purposes. The systems will be interconnected as efficiently as possible without the system becoming too complex. Research is being conducted into how the payment system for the temporary toll collection for heavy goods vehicles can be harmonised with the heavy goods vehicle charge. This will be described in the temporary toll collection implementation plan, in accordance with the relevant legal provisions.

## 4.5 Revenue recycling

As described in paragraph 2.8, the Bill sets down the goal for spending the net revenue from the heavy goods vehicle charge and thus its channelling back to the transport sector. The transport sector, market, science and government are being asked to contribute to a sustainability and innovation agenda that the Minister of Infrastructure and Water Management will lay down after consultation with the three transport sector parties (evofenedex, TLN and VERN). The measures must be efficient and effective and contribute to the promotion of a sustainable, smart and innovative transport system. Wherever possible, a link has been made with existing and planned incentives for innovation and sustainability. The recycling revenues will become available after introduction of the charge in 2023.

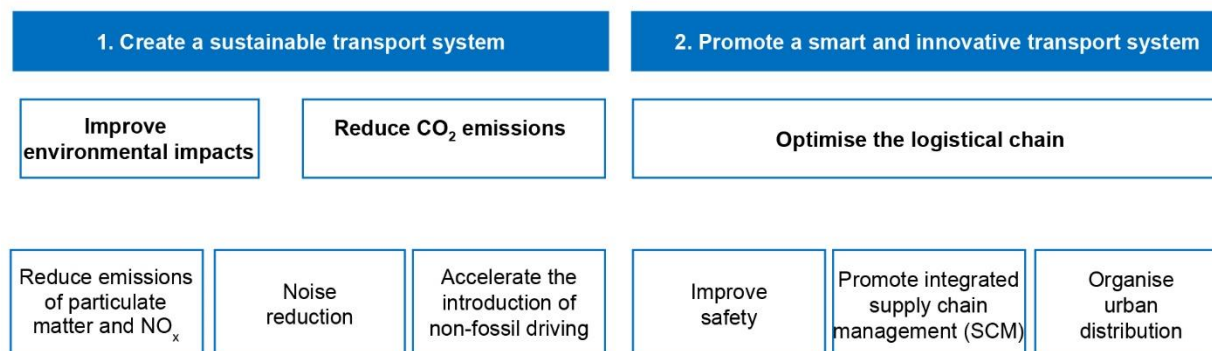
The following spending allocations have been adopted for the further detailing of the revenue recycling:

1. To promote a sustainable transport system:
  - accelerating of the introduction of non-fossil driving, such as promotion of the construction of electric charging infrastructure, promotion of the purchase of electric or hydrogen heavy goods vehicles or promotion of biodiesel;
  - reducing emissions of particulate matter and NO<sub>x</sub>, insofar as this does not get off the ground sufficiently through the stimulation of non-fossil driving;
  - reducing noise nuisance, for example by stimulating the use of quieter tyres.
2. To promote a smart and innovative transport system by optimising the logistical supply chain:
  - increasing the safety of equipment and personnel, by such means as encouraging the use of blind spot cameras or constructing secure heavy goods vehicle parking lots;
  - promoting integrated supply chain management, for example by encouraging data sharing and truck platooning or other forms of digitisation;
  - enabling efficient and zero emission urban distribution, for example by encouraging the construction of logistical transshipment points.

A diagrammatic representation of the two main goals, three-sub goals and six spending allocations of the measures is provided below. These goals provide a framework within which innovation and sustainability will take place.

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Figure 3: Diagrammatic representation of the basic principles of the revenue recycling.



The spending allocations of the revenue recycling must lead to a sustainable transport system by lowering CO<sub>2</sub> emissions and reducing negative environmental impacts and stimulating the innovative strength of the Netherlands. The Bill contributes to accelerating the introduction of non-fossil driving, reducing particulate matter and NO<sub>x</sub> emissions and curbing noise pollution. The Bill also aims to contribute to increasing the safety of equipment, personnel and the environment, promoting integral supply chain management and enabling efficient and zero emission urban distribution. Innovation opens up great opportunities. Technological development offers the possibility of ultimately achieving a more integrated transport system that will become increasingly cleaner.

In the draft climate agreement, the transport sector expressed its ambition to reduce CO<sub>2</sub> emissions by 30 percent by 2030, as an intermediate goal towards the national target of reducing CO<sub>2</sub> emissions by at least 95 percent relative to 1990. This task will form an important guiding objective in the development of revenue recycling. It can be accomplished by switching to sustainable biofuels, accelerating the transition to electric or hydrogen haulage, developing zero emission urban distribution zones and optimising the logistical supply chain in a way that helps to reduce vehicle kilometres.

The spending allocations will be elaborated into concrete measures in a multi-year revenue recycling programme. There will be the following preconditions:

- the measures must be effective in terms of the extent to which a measure contributes to achieving the intended objectives. A fragmented landscape with a multitude of measures must be prevented;
- the measures must be efficient in that they must contribute to innovation and sustainability in the transport sector with a good cost-benefit ratio and lead to a minimum cost burden on businesses;
- the measures must set a direction by being so robust that they give transport sector businesses longer-term investment security and thus enable them to make responsible investment decisions;
- the measures must lead to opportunities for large and small companies alike.

For the consolidation of the measures, the following preconditions will apply:

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- the measures must be sector-relevant in that they directly or indirectly benefit the chargeable hauliers (or their representatives);
- the measures must be lawful by being in line with the Government Accounts Act and taking into account the rules for state aid.

These criteria and preconditions were established in consultation with the transport sector.

## 4.6 Monitoring and evaluation

The actual toll avoidance behaviour of heavy goods vehicles may differ from what may be expected on the basis of research with models prior to introduction of the charge. That is why the government attaches importance to monitoring the diversion of heavy goods vehicles on to roads where the charge does not apply. This monitoring will occur on the basis of haulage traffic counts and the anonymised data generated by the on-board equipment. Based on identified undesirable traffic movements, it will be possible to examine which measure can be used to reduce undesirable toll avoidance behaviour. Adding a local road to the road network where the heavy goods vehicle charge applies may have a negative impact. A highway authority may impose prohibitions or take other measures. In consultation with regional highway authorities, the roads will be determined where there will be monitoring of possible toll avoidance. The Bill also contains emergency arrangements to allow rapid intervention if adverse effects occur unexpectedly. This is explained in more detail in paragraph 2.11.

As it has been decided, just as in Belgium, to oblige all chargeable vehicles to have working on-board equipment in the vehicle when using public roads, any modification to the road network where the charge is payable will be technically simple and straightforward.

The Bill further contains a reporting obligation (evaluation, see paragraph 2.11 of this explanatory document). This obligation will also contribute to the revenue recycling objectives (see paragraph 4.5).

## 5. Privacy

### 5.1 General

The choice of the method of heavy goods vehicle charging makes it necessary to record data of the holder of a heavy goods vehicle, including personal data. The purpose of data processing is to ensure that the heavy goods vehicle charge can be paid and collected. The following data will be recorded:

- when a heavy goods vehicle starts to move, the on-board equipment will record the movement, using GNSS facilities (GPS, Glonass or Galileo);
- the on-board equipment will send the information via mobile communication to the connected service provider. Based on this, the service provider can calculate the charge due<sup>55</sup> and invoice the holder of the heavy goods vehicle, the person liable to pay the charge. As described in Chapter 2, the service provider will remit the charge to the toll charger on behalf of the person liable to pay the charge;
- use will be made of roadside monitoring equipment that can detect the vehicle and read out the on-board equipment. The vehicle will be detected by the equipment as a chargeable heavy goods vehicle. When a chargeable vehicle is detected, ANPR (Automatic Number Plate

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<sup>55</sup> The way the calculation takes place, i.e. in the on-board equipment or in the back office of the service provider, will depend on the working method of the service provider.

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Recognition) cameras will be used to record the licence plate, while DSRC (Dedicated Short-Range Communication) will be to read the on-board equipment (if present);

- the information will be sent to the enforcer's back office. A possible violation will be established here if the user is found not to have complied with the rules, for example by driving without activated and correctly functioning on-board equipment, or by not reporting a defect to the service provider in time.

The licence plate information is necessary to check whether the detected on-board equipment belongs to the vehicle in question and is provided with the correct charging parameters such as weight and euro emission class. This will allow the correct tariff to be charged for each kilometre driven. The location and movement data recorded by the on-board equipment will be managed by the service provider and in principle will be used only used for billing the number of kilometres driven. Other arrangements may additionally be made between customer and service provider, for example to use the data for fleet management, i.e. the logistical side of the matter. This is sometimes referred to as fleet management. In addition, the service provider will generally process (personal) data for the performance of regular processes in the heavy goods vehicle charge, such as invoicing and payment of the charge due on behalf of the holder. The protection of this data is the responsibility of the service provider. As stated in paragraph 2.4, the Bill provides for further fulfilment of existing legal frameworks by:

- naming processing flows and controllers; and
- standardising retention periods for the different data streams.

These preconditions will ensure that the service provider adheres to general requirements for data protection (such as GDPR) and security.

The processing of personal data constitutes encroachment of the entitlement to privacy of a chargeable person who is the holder of a heavy goods vehicle. In the remainder of this chapter, the admissibility of this infringement will first be discussed, followed by the relationship with General Data Protection Regulation (GDPR) and the GDPR Implementing Act (GDPR-IA) and the position of private parties in the processing of personal data for the purpose of the heavy goods vehicle charge. Finally, attention will be devoted to Cyber Security.

## 5.2 Protection of the right to privacy

This Bill provides a legal basis for encroaching upon the private life of users of road sections where the charge is payable. The Bill minimises as far as possible the processing of personal data in the context of the charge. Where personal data is processed, it will be done carefully and the data will be saved for the shortest possible time. In this connection, a PIA was carried out for the Heavy Goods Vehicle Charge Policy Framework<sup>56</sup>. This will be repeated periodically<sup>57</sup>. Conducting a PIA means the protection of personal data in a structured way becomes part of the weighing up of interests and of decision-making. A basis for data processing has been included in this Bill. The government has no direct access to the movement data; the government may carry out random checks to see whether the service provider is calculating the correct amount. It is unimportant who the owner or driver of the vehicle is; the driver's personal details will not be stored in the on-board equipment. Movement and usage data will be made available to the government without privacy-sensitive information. This is

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<sup>56</sup> Annex to Parliamentary documents II 2017/18, 31305, No. 272.

<sup>57</sup> This is based on the PIA performed in June 2019.

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allowed under the EETS Directive<sup>58</sup>. The information that is provided will be completely anonymous and cannot be traced to a person in any way whatsoever. This data may be used for policy purposes. The data will contribute, for example, to the quality and effectiveness of traffic management and traffic information and will offer an opportunity to continue optimising traffic models, but also to identify an increase in toll avoidance traffic on non-priced road sections. In this way, it will also be possible to monitor the decrease and increase in (haulage) traffic in certain areas, so that a contribution can be made to reducing avoidance behaviour. This anonymous data will be made available to everyone.

Data collected by the authorities at the roadside for enforcement purposes will, if there is no violation, be deleted as soon as possible. To this end, the Bill contains rules for the Minister of Infrastructure and Water Management (see explanation in paragraph 2.4). The name and address of the licence plate holder of the heavy goods vehicle will be requested only if there has been a violation to enable a fine to be sent out. In all cases, any persons in images of passing vehicles will be made irreparably unrecognisable immediately after the photo is taken.

### 5.3 GDPR and GDPR-IA

The way charging occurs must meet the legal requirements laid down in GDPR and GDPR-IA<sup>59</sup>. These legal frameworks indicate the cases in which personal data may be processed, how the data may be processed and how long the data may be saved. GDPR regulates such matters that personal data may be processed provided that the data processing is necessary for adherence to the law<sup>60</sup>. The Bill contains a ground for processing. This determines the purpose of processing. Also, personal data may not be processed any further in a way incompatible with the purposes for which obtained or saved longer than necessary in a form that enables identification of the data subject other than for the purposes for which the data were collected or processed. Paragraph 2.4 explains the guarantees the Bill embodies for this in Chapter 4.

The Minister of Infrastructure and Water Management is the controller for personal data that will be designated by statutory instrument that will be processed for the purpose of the charges. The Bill further contains the designation of the service provider as the controller. The service provider will by definition have personal data about the holder of a heavy goods vehicle, because the holder will be the service provider's customer. The service provider has to be able to invoice and remit on behalf of the holder.

Each party in the supply chain will take the appropriate technical, organisational and legal measures as to reasonably prevent the occurrence of the risks associated with data processing. For this purpose, use will be made of the experiences gained in Germany and Belgium in this respect. The PIA will describe risks confronting data subjects as a result of data processing in connection with the heavy goods vehicle charge. Besides the risks, there will be a description of the mitigating measures to keep the identified risks to an acceptable level.

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<sup>58</sup> Article 14, paragraph 2, EETS Directive.

<sup>59</sup> Reference is also made to Article 8 of the Charter of Fundamental Rights of the European Union (OJEU 2019, L 91/49). Recital 55 of the EETS Directive lists the European frameworks.

<sup>60</sup> Article 6, paragraph 1, under c, GDPR.

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## *Proportionality and subsidiarity*

The law specifies the purposes for which personal data must be processed in order to fulfil those purposes. The amount of personal data that must be processed for this must be kept as small as possible. For example, recorded movement data will only be saved by the Minister to allow supervision of the service provider. A limited retention period of twelve weeks applies to this. Only anonymised data may be saved by the Minister for traffic policy and to improve traffic management. Service providers may save personal data only for as long as it is necessary to fulfil the purpose of processing. Recorded movement data will not be saved for longer than a period of one year. A service provider also needs a customer contact file to be able to serve his customers and this requires the saving of such data. If service providers want to process more data than is necessary for implementation of the heavy goods vehicle charging system, they will for example have to have permission from the person concerned or there will have to be a different processing basis as referred to in Article 6 of GDPR. This makes the processing of data proportionate and it meets GDPR's proportionality requirement. As the goal cannot be met using less burdensome and less intrusive means, the GDPR subsidiarity requirement will also be met.

Preparation of the PIA referred to in paragraph 6.4 is intended to contribute to the protection of the privacy and security of those involved who may be affected by the Bill. Performing the PIA in the policymaking phase and periodically repeating it will fulfil the principle of privacy and security by design.

The PIA will be submitted to the data protection officer of the Ministry of Infrastructure and Water Management, who will oversee the processing of personal data under the responsibility of the Ministry.

## *Outsourcing*

As private parties will be involved in the registration of heavy goods vehicles and the charge is payable on behalf of the holder, it is not yet possible to provide a complete picture of the concrete manner of protecting the privacy of the holder of a heavy goods vehicle. Privacy aspects will be taken into account when developing the recording and collection organisation. Protection of personal data will be an important element in any outsourcing.

## **5.4 Cyber security**

Information security policy - as part or consequence of information policy - is crucial in order to comply with privacy legislation and to prevent unwanted breaches of information in information systems. Not only is more and more information being saved and exchanged in systems, but technological advances by malicious parties require greater efforts and measures to minimise security risks. Note: A Security Impact Assessment will be carried out in parallel with the internet consultation. This product will provide an insight into the measures being taken to manage security risks.

## **6. Consequences**

Note: Further research will be conducted in parallel with the Internet consultation. This text will be supplemented and is subject to change as a result of the outcomes.

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## 6.1 Regulatory burden

### *Administrative burdens*

Administrative burdens are the costs for businesses to comply with information obligations arising from the Heavy Goods Vehicle Charging Act. The effects on the one-off and structural administrative burdens on businesses and service providers are<sup>61</sup>:

- Partial abolition of the motor vehicle tax will reduce the administrative burden for companies. Motor vehicle tax for heavy goods vehicles with a maximum permissible mass between 3,500 and 12,000 kg will be abolished. Although these are not administrative burdens, these companies will experience a direct burden reduction as a result. In addition, the abolition of motor vehicle tax will result in a decrease in the administrative burden for businesses with heavy goods vehicles in this weight class. For each heavy goods vehicle, this amounts to a reduction of the one-off costs by a minimum of €30.75 and a maximum of €35.40, depending on the chosen payment method. Moreover, there will be a decrease in the structural annual costs by at least €14.76 and at most €100.59 per heavy goods vehicle, depending on the payment method chosen;
- the abolition of the heavy motor vehicle tax will reduce the administrative burden for businesses. The heavy motor vehicle tax will be abolished for all heavy goods currently taxable in this context. The heavy motor vehicle tax now applies to all heavy goods vehicles with a maximum permissible mass of more than 12,000 kg. After introduction of the heavy goods vehicle charge, this group will no longer pay heavy motor vehicle tax and, consequently, the following administrative actions no longer have to be carried out: declaration of heavy motor vehicle tax and (for a smaller part of this group), requesting of refund of heavy motor vehicle tax or requesting of an exemption from heavy motor vehicle tax. For each heavy goods vehicle, this represents a decrease in one-off costs by €30.75 for the application for the heavy motor vehicle tax. In addition, there will be a decrease in the structural annual costs by €14.75 per heavy goods vehicle for payment and administrative processing;
- the introduction of the heavy goods vehicle charge will cause an increase in the administrative burden for businesses. The heavy goods vehicle charge will be introduced for heavy goods vehicles from 3,500 kg. This will increase the administrative burden. It means that the following administrative burdens will apply to these heavy goods vehicles: becoming acquainted with and preparing for the use of the heavy goods vehicle charge system, acquiring on-board equipment, installing on-board equipment and paying the charge and checking on-board equipment before a journey or (for a smaller part of this group) requesting exemption. For each business, this will cause an increase in the one-off costs by at least €51.26 and at most €61.51 and for each heavy goods vehicle an increase in one-off costs of between €17.08 and €41.00. Additionally, there will be an increase in structural annual costs by €65.60 per heavy goods vehicle to meet the payment obligation and to process it administratively;
- there will be an increase in one-off and structural administrative burdens after the introduction of the heavy goods vehicle charge for service providers. In the current situation, there is no heavy goods vehicle charge in the Netherlands and, as a result, there are no administrative burdens for the service providers (after all, they are only partially active if at all in the Dutch market). The introduction of the heavy goods vehicle charge will have the effect of increasing the one-off and structural administrative burdens because service

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<sup>61</sup> A more detailed description of the administrative burdens can be found in "Memo on the initial exploration of the administrative burdens on heavy hoods vehicles charge" (see [www.vrachtwagenheffing.nl](http://www.vrachtwagenheffing.nl)).

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providers will become active after the introduction. These service providers can be subdivided into EETS service providers and a main service provider. Both service providers will be faced with one-off and structural administrative burdens as a result of the heavy goods vehicle charge. As few if any key figures are available at this time, it is not yet possible to quantify the administrative burden for service providers in this phase.

## *Compliance costs*

Introduction of the heavy goods vehicle charge will not cause compliance costs. There are no costs for companies to conclude a service agreement with a service provider. The service provider will provide the on-board equipment necessary to record the kilometres driven, free of charge to the holder of any heavy goods vehicle. However, the holder might be obliged to pay a deposit for the on-board equipment.

## **6.2 Consequences for companies**

The charge will result in a cost increase for production sectors. In sectors where road transport represents a large proportion of costs, this increase will come to a maximum of 0.2%. This may lead to a small increase in consumer prices (maximum +0.06%). In addition, the charge may result in a small decrease in employment. Here again it will be a marginal effect (maximum 0.05%). It is important to note that these results do not yet factor in measures for the revenue recycling for innovation and making the transport sector more sustainable<sup>62</sup>. Research in Belgium and Germany shows that forms of revenue recycling have the potential to transform potentially negative effects on production, consumption and the economy into positive effects.

## **6.3 Consequences for the environment**

The goal of the Bill for a heavy goods vehicle charge is to pay according to usage and, with some of the funds raised, to innovate in the transport sector and make it more sustainable. The Bill differentiates the payable tariff according to the environmental class and the permissible weight of the heavy goods vehicle.

The price incentive for use of heavy goods vehicles will contribute to better use of the loading capacity of heavy goods vehicles, the better handling of goods flows and the optimum use of the road network by covering shorter distances. As described earlier, the measures to make the transport sector more sustainable and innovate will be funded from the net proceeds. The aim is to make freight traffic quieter, cleaner, more economical, more efficient and safer. For example, the measures in the multi-year programme will encourage non-fossil driving. This will contribute to climate policy, among other things. The six ways the revenue recycling will be used, as set out in the policy framework, will be elaborated into concrete measures by means of a sustainability and innovation agenda. The multi-year programme included in the Bill will therefore bring about an additional reduction of emissions.

## *Emissions: CO<sub>2</sub>, NO<sub>x</sub>, PM<sub>10</sub>, NH<sub>3</sub>*

Research shows that there will be a CO<sub>2</sub> reduction by introducing a heavy goods vehicle tax, from 0.5 to 0.7%, determined in relation to total emissions by road traffic (thus including passenger cars)<sup>63</sup>.

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<sup>62</sup> MuConsult, Impact studies into heavy goods vehicle charge, final report 2018, annex to Parliamentary documents II 2018/19, 31305, No. 268, p 6.

<sup>63</sup> MuConsult, Impact studies into heavy goods vehicle charge, final report 2018, annex to Parliamentary documents II 2018/19, 31305, No. 268, pp 32-33.

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The NO<sub>x</sub> and PM<sub>10</sub> emissions are expected to decrease by around 0.5%. NH<sub>3</sub> emissions are expected to increase slightly by around 0.2% as a result of a limited increase in vehicle kilometres with passenger cars.

The heavy goods vehicle charge will be introduced on motorways. To prevent heavy goods vehicles from diverting on to other roads because of the introduction of the heavy goods vehicle charge, a number of underlying roads have been included in the charged network. This will prevent unwanted negative effects of freight traffic diverting to avoid the charge. The road network that will be priced was chosen in such a way that roads where freight traffic diversion is likely in the vicinity of a Natura 2000 area have been added to the priced road network. Also see paragraph 2.2 of this explanatory document, which discusses the choice of the road network. Measures will be taken if it transpires in practice that there is nevertheless some diversion on to unpriced roads. For this purpose, freight traffic will be monitored after introduction of the heavy goods vehicle charge. In urgent cases, a charge avoidance route can quickly be included in the charged network via the emergency arrangements.

### *Modal shift (choice of other modes of transport) and decrease in the number of heavy goods vehicle kilometres*

The heavy goods vehicle charge will result in higher costs for road haulage. This applies to a lesser extent to heavy goods vehicles that provide local supplies and make little use of priced roads and heavy goods vehicles with very few kilometres. Both categories are small.

Model calculations show a slight decrease in the number of tons transported by road by introducing a heavy goods vehicle charge (by a maximum of 0.7%). Model calculations reveal a possible modal shift to transport by rail (increase of up to 0.6% in tons carried by rail) and inland shipping (increase of up to 1.9% in tons carried by inland shipping). Goods are expected to be transported by road over a shorter distance. By improving logistical efficiency, it is likely that slightly fewer journeys will be needed to transport the same number of goods. Carriers can also opt for a shorter route to minimise transport costs. All of these effects combined are likely to reduce the number of freight kilometres in the Netherlands by 5%<sup>64</sup>. The expected 5% fewer heavy goods vehicle kilometres on the road will have a minimal effect on congestion. This is largely due to the relatively small proportion of heavy goods vehicles in the rush hour. Less freight traffic will also create "space" on the roads for passenger cars, resulting in a slight increase in the kilometres covered by passenger cars. Ultimately, the expected decrease in freight traffic and the expected slight increase in passenger traffic will change congestion minimally.

### **6.4 Privacy Impact Assessment**

A Privacy Impact Assessment (PIA) was carried out for this Bill. For performance of a PIA, the technical operation and the various data flows and data processing operations were made transparent. The document was drawn up on the basis of the Civil Service Data Protection Impact Assessment Model.

The GDPR applies to the processing of personal data collected for the purpose of the heavy goods vehicle charge. The GDPR requires data to be processed lawfully, carefully and transparently. The PIA

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<sup>64</sup> MuConsult, Impact studies into heavy goods vehicle charge, final report 2018, annex to Parliamentary documents II 2018/19, 31305, No. 268.

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was carried out to test whether the personal data in the heavy goods vehicle charge system will be processed lawfully, carefully and transparently.

The PIA determined when personal data processing within the meaning of the GDPR and GDPR-IA will occur. It also made clear that the proposed processing is genuinely necessary and relevant. It was established that personal data will be used solely for the purpose for which collected, and that where required by law this will be done with the consent of the holder of a heavy goods vehicle. The PIA showed that the Bill meets the legal requirements. Implementation and enforcement will be shaped further within these legal frameworks. Chapter 5 of this explanatory document describes how privacy is addressed in this Bill. For the sake of brevity, reference is made to that chapter.

## 7. Advice and consultation

### *Transport sector*

Evofenedex, Transport en Logistiek Nederland (TLN) and Vereniging Eigen Rijders (VERN) represent the road haulage sector. There is frequent consultation with these parties, both on the basic principles of the charge and on the use of revenues for innovation and sustainability in the sector. The spending allocations for innovation and sustainability were drawn up jointly with the sector. In the coming period, the sector will remain involved in the preparation of the multi-year programme.

### *Authorities*

For other authorities (provinces, municipalities and water boards), the choice of the road network on which the heavy goods vehicle charge will apply is important in connection with possible freight traffic diversion from motorways to the underlying road network. Together with the regional highway authorities, it was mapped out where any diversion to avoid the charge will occur. Consultations also took place with committees of the Association of Water Boards, the Association of Municipalities of the Netherlands and the Association of the Provinces of the Netherlands. Based on these talks, a good picture was obtained of the road sections that should be included in addition to the motorway network. This is explained in detail in paragraph 2.2.

### *SME test*

From 1 May 2019, the SME test will be applied to new legislative dossiers with substantial regulatory burden consequences for SMEs. The drafting of the Bill for the heavy goods vehicle charge began when the heavy goods vehicle charge policy framework was sent to the House of Representatives on 9 November 2018. Therefore, a formal SME test does not need to be conducted.

Nonetheless, there were early talks with different types of companies (including SMEs), before the policy framework was drawn up, about experiences with the use of on-board equipment, services and the use of other kilometre charging systems in other countries. Panteia did this for the Ministry of Infrastructure and Water Management in a study (market exploration) into the experience and satisfaction of users of existing on-board units and services<sup>65</sup>. The research was partly supervised by the industry organisations evofenedex, TLN and VERN.

Panteia was also asked, based on user experiences, to identify in the same study which elements can be included in the design of the Dutch heavy goods vehicle charge. This will allow the system to be

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<sup>65</sup> Panteia, Study into on-board units and services. Market exploration, final report 2018, annex to Parliamentary documents II 2017/18, 293398 No. 611.

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designed as customer-friendly as possible. The insights and outcomes of the study are being used for the elaboration of the system and form the basis for choices made in the Bill.

PM internet consultation

On ... the draft of the Bill together with the explanatory memorandum was opened for Internet consultation for a period of ..... weeks (up to and including ...). A total of ... responses have been received.

PM EEFr test/feasibility test RDW, RWS, ILT and CJIB

PM Data Protection Authority

PM Regulatory burden test (ATR)

PM Council for the Judiciary

### **8 Entry into force and notification**

Entry into force will occur at a time to be determined by Royal Decree (expected in 2023). This was chosen to ensure that there is a reasonable period for implementation. Before the entry into force, it is also necessary for the required implementing rules to be ready. As explained earlier, the Eurovignette will be cancelled and the motor vehicle tax will be reduced. The changes required for this will take effect at the same time. In addition, there must be sufficient opportunity for implementers to prepare for the new regulations. To assure careful implementation, it may be advisable for elements of the legislation to enter into force at a later date. Article 31 of the Bill provides this possibility.

The Bill must be notified to the European Commission under the Eurovignette Directive (Article 12) and EETS Directive (Article 32) because it concerns partial implementation/reimplementation. Notification will occur once the Bill has been adopted. The Eurovignette Directive further contains an obligation to provide notification of the calculated maximum tariff for the heavy goods vehicle charge. This must be done six months before the regulations come into effect and the Commission must give its approval in those six months.

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*Article-by-article explanatory notes*

## **CHAPTER 1. GENERAL PROVISIONS**

### **Article 1 (definitions)**

#### *On-board equipment*

On-board equipment means the equipment that is used to record in any case how many kilometres are driven on a particular road. For the time being, it is assumed that this will be accomplished by means of an On-Board Unit (OBU), but it is conceivable that it could be done differently in the future. The definition is in line with the definition contained in Directive (EU) 2019/520.

#### *Service provider*

The government aims to have as much of the heavy goods vehicle charge as possible collected by EETS providers, partly to increase interoperability between different countries. EETS providers also provide services in other countries and it is expected that many heavy goods vehicle holders will conclude a contract with them. The main service provider, which will only work nationally, is needed for the holder of a heavy goods vehicle that - for whatever reason - cannot or does not want to conclude a contract with an EETS provider.

#### *Service agreement*

The service agreement is the agreement between the service provider and the holder of a heavy goods vehicle (chargeable person) and regulates, among other things, that the holder will pay the heavy goods vehicle charge to the service provider and that the service provider will make on-board equipment available to the holder.

#### *Euro emission class*

Annex 0 of the Eurovignette Directive (Directive 1999/62/EC) states maximum limit values for euro emission classes EURO 0 up to and including EURO V. The maximum limit value for EURO VI is stated in Regulation (EU) 595/2009. Since this is a maximum value, this class also covers cleaner vehicles, such as emission-free vehicles. This regulation does not provide for a separate class for emission-free vehicles.

#### *Physical living environment*

The term physical living environment is based on article 1.2, paragraph 2, of the Environment and Planning Act. This section contains a non-exhaustive list of matters that make up the physical living environment, including air, noise and nature.

#### *Main service provider*

The main service provider is a service provider, other than an EETS provider, who has the obligation to conclude agreements with all interested users. The main service provider will be specially contracted by the toll charger.

#### *Holder*

The holder of a heavy goods vehicle is in principle the Dutch or foreign licence plate holder. There is also a small category of unregistered vehicles, the holder of which is the person who has the use of the heavy goods vehicle. This definition is largely derived from article 1, paragraphs 1 and 2, of the

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Traffic Regulations (Administrative Enforcement) Act. For the sake of completeness, it should be noted that leasing companies are therefore also holders of heavy goods vehicles that belong to their fleets.

### *Vehicle registration register*

The vehicle registration register contains the details of the holder of a licence plate that belongs to a heavy goods vehicle and is managed by the Centre for Vehicle Technology and Information (RDW).

### *Heavy goods vehicle*

The definition of a heavy goods vehicle was derived from Article 2, under d, of Directive 1999/62/EC. The directive provides for the possibility of imposing tolls on vehicles or a combination of vehicles that have a maximum permissible mass of more than 3,500 kg. This includes all heavy goods vehicles, but also the tractors as referred to in Article 1.1 of the Vehicle Regulations with body code BE (hereinafter 'BE tractors'). The BE tractors are two-part vehicles that together form a unit, which combined have a maximum permissible mass of more than 3,500 kg and which, by their nature, are intended for the transport of goods. Vehicles with a maximum permissible mass not exceeding 3,500 kg with a towbar are not included, because towing a trailer is optional.

Among other things, the term heavy goods vehicle does not include buses, mobile cranes, telehandlers, aerial platforms, excavators and bulldozers because those vehicles are not intended or used for freight transport. The same applies to agricultural and forestry tractors.

### *Heavy goods vehicle charge*

The heavy goods vehicle charge is a charge owed for driving a heavy goods vehicle on certain designated roads in the road network.

### *Road*

As regards the term "road", reference is made to article 1, paragraph 1, under b, of the Road Traffic Act 1994. The term is understood to mean all roads or paths open to public traffic, including the bridges and culverts in them, and the paths, verges and sides belonging to those roads.

### *Road section*

Road section means a specific road or part thereof.

## **CHAPTER 2. HEAVY GOODS VEHICLE CHARGE**

### **Article 2 (chargeable event for heavy goods vehicle charge)**

Paragraph 1 stipulates that a tariff per kilometre, called the heavy goods vehicle charge, is payable for heavy goods vehicles that travel over a road section within the meaning of Appendix 1.

In principle the roads listed in the appendix may only be changed by an amendment to the law. This concerns the chargeable event. In exceptional cases, it will be possible under article 30 to price or not to price roads through a fast procedure with a view to road safety, mobility or the physical living environment. For a further explanation, refer to the article-by-article explanatory notes to article 30. Based on paragraph 2, a statutory instrument may be used only to change the name of the roads and the categorisation of the roads. The statutory instrument cannot be used to add or remove roads from the list in Appendix 1.

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Rules may be laid down by ministerial order to mark the exact start and end of a road section (paragraph 3).

## **Article 3 (holder of a heavy goods vehicle is liable for the charge)**

The holder of a heavy goods vehicle is the person who is liable for the heavy goods vehicle charge.

## **Article 4 (exemption)**

For certain vehicles that can be classified as heavy goods vehicles, the holder of a heavy goods vehicle is exempt from the heavy goods vehicle charge under article 4. Article 7, paragraph 4, in conjunction with Article 6, paragraph 2, under a and b, of Directive 1999/62/EC allows for the possibility of this exception.

Article 4, paragraph 1, states the heavy goods vehicles that are legally exempt from the heavy goods vehicle charge. This concerns vehicles used by the armed forces, police and fire brigade (part a), and unregistered vehicles that are used for road construction and maintenance, such as dumpers (part b). Heavy goods vehicles with a dealer's registration number (part c) are neither intended nor used for the transport of goods and are therefore also exempt from the heavy goods vehicle charge. The same applies to waste collection trucks, sludge gulpers and street sweepers (part d) that are not used for the transport of goods, but for the removal of waste and other contamination.

Heavy goods vehicles with a suspended entry in the vehicle registration register are also exempt from the heavy goods vehicle charge (part e). These vehicles are not used for haulage. They are therefore now allowed to use the road apart from two exceptions set out in Article 23, paragraph 1, of the Vehicle Registration Code, namely:

- a. if a heavy goods vehicle has to be inspected, such as a roadworthiness test or another inspection mentioned in the Road Traffic Act 1994, or
- b. if a heavy goods vehicle is 15 years old or older, insofar as, in the opinion of the Minister of Finance, there is a special occasion (including special events).

Subarticle e is in line with the system of Chapter III, part 4, of the Motor Vehicle Tax Act 1994, on the basis of which motor vehicle tax does not have to be paid if a motor vehicle has been suspended.

Paragraph 2 stipulates that the Minister of Infrastructure and Water Management may on request also grant exemption from the heavy goods vehicle charge for old-timer heavy goods vehicles more than 40 years old that are not used for commercial purposes (part a) and for heavy goods vehicles with a concrete pump without a mixer (part b). The old-timer heavy goods vehicles that are not used for commercial purposes will participate only occasionally in traffic on public roads and can therefore be exempted. Heavy goods vehicles with a concrete pump without a mixer can be exempted because they are not intended or used to transport freight.

In contrast with the heavy goods vehicles mentioned in paragraph 1, the heavy goods vehicles referred to in paragraph 2 cannot be recognised as such in the vehicle registration register. An individual exemption must therefore be requested for these heavy goods vehicles. Title 4.1 of the General Administrative Law Act applies to the processing of the request. By means of a statutory instrument, conditions and restrictions may be imposed for the exemption. Rules may be laid down by ministerial order for the information to be submitted with the request (paragraph 4).

For the sake of completeness, reference is also made to the explanatory notes to the term heavy goods vehicle, as referred to in article 1, where vehicles are mentioned that do not fall within the

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scope of Directive 1999/62/EC. As there will be the fullest possible alignment with European directives, the heavy goods vehicle charge will not apply to those vehicles.

## CHAPTER 3. TARIFFS

### Article 5 (charging based on number of kilometres driven)

The payable heavy goods vehicle charge will be determined on the basis of the number of kilometres driven on the designated road sections referred to in Appendix 1. The tariffs per kilometre for different types of heavy goods vehicles will be calculated according to the weight and the euro emission class of the vehicle. For information on the calculation of the charge, reference is made to article 7.

### Article 6 (recording of kilometres by means of on-board equipment)

Under article 6, paragraph 1, the number of kilometres driven will be recorded by means of on-board equipment, such as an On-Board Unit (OBU). The holder of a heavy goods vehicle may be obliged to pay a deposit for the on-board equipment.

Under paragraph 2, all heavy goods vehicles must be provided with on-board equipment that is switched on, so that an individual heavy goods vehicle driver does not repeatedly have to switch on his recording equipment when he arrives on a road where a heavy goods vehicle charge is payable. This will avoid road safety risks that may arise from switching the equipment on or off while driving. It also rules out the chance of unintended violations when switching the recording unit on and off.

Otherwise, acceptance of the system might come under pressure and result in an additional enforcement burden. The data collected because the on-board equipment must be switched on can also be used in an anonymised form to be able to monitor the numbers of heavy goods vehicles on roads in the Netherlands (also see article 8, paragraph 6).

Paragraph 3 includes cases where the holder of the heavy goods vehicle must immediately contact the service provider. A holder who fails to do this will risk a fine.

Paragraph 4 stipulates that the service provider may issue instructions to the driver of the heavy goods vehicle. These instructions will be given in accordance with rules laid down by statutory instrument. They will include instructions if the on-board equipment has unexpectedly broken down and replacement on-board equipment is required. This could include regulations that make it possible to provide replacement on-board equipment within a time limit set by the statutory instrument, without the holder being fined in the meantime for not having properly functioning on-board equipment.

### Article 7 (tariffs)

Paragraph 1 sets out the tariffs per kilometre for the heavy goods vehicle charge. The tariffs have been differentiated according to the maximum permissible mass and the euro emission class of the heavy goods vehicle.

Under Article 7 (8), paragraph 1, of Directive 1999/62/EC, the highest tariff may not exceed 100% of an equivalent vehicle that meets the strictest emission standards. With the chosen tariffs, the average tariff will be €0.149 per kilometre. Under paragraph 2, the tariff of the heavy goods vehicle charge will be determined on the basis of the tariff per kilometre driven on a priced road multiplied by the number of kilometres driven.

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To prevent inflation from reducing the real size of revenues from the heavy goods vehicle charge, it is desirable to index-link the rates. After the charge comes into effect, the tariffs will be indexed annually in accordance with the Gross Government Investment Index (IBOI) as published annually by the Netherlands Bureau for Economic Policy Analysis (CPB) in its Central Economic Plan. The tariffs were set based on the price level in 2018.

## CHAPTER 4. DATA PROTECTION

### Article 8 (protection of personal data used by Our Minister)

Personal data will be processed for the purposes of the heavy goods vehicle charge. This is necessary to be able to bill the heavy goods vehicle charge or to impose administrative fines, for example. The processing of personal data is governed by the General Data Protection Regulation (GDPR)<sup>66</sup>.

Articles 8 and 9 relate to the processing of personal data necessary to comply with a legal obligation resting upon the controller under Article 6, paragraph 1, under c, of GDPR.

Article 8, paragraph 1, of this Bill designates the Minister of Infrastructure and Water Management as the controller of the processing of personal data used to levy and collect the heavy goods vehicle charge, oversee compliance, conduct enforcement, impose and collect the administrative fine that may be imposed for a violation included in Appendix 1 and notify holders of heavy goods vehicles who according to the vehicle registration register do not appear to have an agreement with a service provider. Paragraph 2 relates to the processing of the data by the Minister. This is in line with paragraph 1.

The data retention periods are stated in paragraph 3. In part a., a retention period of five years will apply to data relating to payment of the charge. This corresponds with the five-year limitation period for monetary claims.

When it comes to the payment of an administrative fine (part b), the data must be deleted after payment of the irrevocable fine.

Under part c, the data will be saved for such time as an administrative fine may be imposed. Under article 5:45, paragraph 2, of the General Administrative Law Act, that period of time is three years. For the sake of completeness, it should be noted that under article 5:45, paragraph 1, of the General Administrative Law Act, a period of five years would apply if article 5:53 of that Act is applicable with regard to the preparation of an official report and the opening up of an opportunity for opinions. However, in article 17, paragraph 10 of this Bill, article 5:53 has been declared inapplicable and the five-year period does not apply. Also refer to the article-by-article notes to article 17.

Part d stipulates that the data for notifying a holder that an agreement has not been registered will be saved for four weeks.

Under paragraph 4, data will be deleted immediately if it transpires that a heavy goods vehicle was been used against the will of the holder or for which the holder can provide a notice of release from liability.

The recorded data (rough relocation data) will not be saved for longer than twelve weeks on the basis of paragraph 5. This is a set of data with coordinates that will be edited according to the number of kilometres driven on a specific road section. The editing must take place within ninety days. If

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<sup>66</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (PbEU 2016, L 119).

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questions are raised about the number of kilometres driven, it will be possible to carry out a verification within this period of twelve weeks.

Under paragraph 6, the raw movement data may however be processed in an anonymised form for the purposes of traffic policy and to improve traffic management. This provision is derived from Article 14, paragraph 2, of the EETS Directive.

If under other legislation the data must be retained for longer than the period specified in this article, paragraph 7 provides a possibility to do so. In that case, the relevant data will obviously not need to be deleted.

### **Article 9 (protection of personal data used by the service provider)**

Paragraph 1 stipulates that the service provider will be designated as the controller for the processing of personal data that he uses in the context of the service agreement and the transmission of the electronic data file to the Minister of Infrastructure and Water Management.

Under paragraph 2, the processing of the data will occur exclusively for the services that the service provider renders and for the forwarding of the electronic data file.

The recorded movement data (raw movement data) for supervision of the service provider will not be saved for longer than one year (paragraph 3).

Under paragraph 4, the service provider will not save the personal data that he processes for the purpose of forwarding the electronic data file or for the services it renders to the holder for longer than is necessary for those tasks.

Paragraph 5 prohibits the service provider from reselling or disclosing the data used for the heavy goods vehicle charge to a third party. However, this will be different if a holder has given consent for this to happen (Article 6, paragraph 1, under a, GDPR).

If under other legislation the data must be retained for longer than the period specified in this article, paragraph 6 provides a possibility to do so. In that case, the relevant will obviously not have to be deleted.

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## CHAPTER 5. LEVYING AND COLLECTING

### Article 10 (Our Minister is the toll charger)

Article 10 stipulates that the Minister of Infrastructure and Water Management will levy the heavy goods vehicle charge. The Minister will levy it on the holder of a heavy goods vehicle (article 3). A service provider will be introduced into the payment chain between the Minister and the holder. Articles 11 and 12 set out the relationship between the holder of a heavy goods vehicle and the service provider. Article 13 sets out the relationship between the service provider and the Minister of Infrastructure and Water Management.

Article 10 provides for the Minister of Infrastructure and Water Management to levy the heavy goods vehicle charge. Therefore, the Minister is also the toll charger within the meaning of the EETS Directive. The heavy goods vehicle charge is levied on the holder of a heavy goods vehicle (see article 3, paragraph 1).

As this gives rise to a payment obligation to an administrative body, Title 4.4 of the General Administrative Law Act on administrative legal debts applies. Consequently, the Minister will issue an order based on the kilometres recorded by the service provider for road sections where a heavy goods vehicle charge is payable. The money that will be included in the order will relate to a day and will state the number of kilometres recorded on that day on a priced road.

For the sake of completeness, it should be noted that the State Taxes Act does not apply to the heavy goods vehicle charge because it is not a government tax levied by the state tax authority.

The Minister may demand compliance by the service provider based on the contract with the service provider.

After the amount due has been received, the Minister will issue proof of payment on the basis of paragraph 3. Paragraph 3 is derived from Article 7 (11), paragraph 3, of Directive 1999/62/EC.

### Article 11 (service agreement between service provider and heavy goods vehicle holder)

It follows from paragraph 1 that the holder of a heavy goods vehicle cannot enter the road without having a service agreement with a service provider. This concerns not only the roads listed in Appendix 1, but all roads. This obligation will not apply if the holder is exempt from the heavy goods vehicle charge.

If a holder wishes to conclude a service agreement through a reseller (a kind of intermediary), this will be possible. However, it must ultimately be clear that an agreement has been concluded between the service provider and the holder. After all, the holder needs that agreement if he wants to go on to the roads with his heavy goods vehicle, because driving without an agreement is a violation.

If the holder pays the amount of the order to the service provider, he will be deemed to have fulfilled his payment obligation to the Minister of Infrastructure and Water Management (paragraph 2).

Although the holder remains the person liable to pay the charge, on the basis of these provisions and the service contract between the holder and the service provider, the Minister will then in fact be able to collect the amounts due by way of the heavy goods vehicle charge only from the service provider. Under paragraph 3, the holder must submit to the service provider all relevant documents necessary to determine the licence plate, the maximum permissible mass and the euro emission class. It will be

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determined by statutory instrument precisely which data must be submitted. In the absence of data, the highest amount will be payable. However, a subsequent correction of the data will not have any retroactive effect.

Paragraph 4 stipulates that in the service contract, the service provider may impose an obligation on the holder of the heavy goods vehicle to provide a guarantee that payment will be made. This may be done, for example, by means of a credit card or a fuel card. In fact, this provision makes it possible to have a prepaid subscription.

Paragraph 5 regulates the minimum elements that the service agreement must include. This concerns the provision of on-board equipment (part a), the obligation that the service provider must pay the Minister on behalf of the holder (part b), that the holder receives an invoice at least once a month stating the total amount of the charge and the number of driven kilometres per day (part c), which the holder may pay by bank transfer (part d), maintains a customer relationship such as setting up a customer contact point (part e), ensures that privacy and security are guaranteed (part f), ensures that the holder grants power of attorney to the service provider (part g) and the holder issues authorisation to the service provider (part h).

If the holder has questions about the invoice from the service provider, he will in the first instance be able to contact the service provider and disputes between the service provider and the holder can be resolved under civil law. However, if the holder objects to the invoice as a matter of principle, he can request the order from the service provider and object to the Minister of Infrastructure and Water Management and, subsequently, lodge an appeal with the administrative court. It is also conceivable that in the latter case the holder may ask the service provider to object on his behalf, but that will depend on the arrangements agreed in this respect by the holder and the service provider. Arrangements may further be agreed in the service agreement about the possible forwarding of the order by the service provider to the holder.

### **Article 12 (suspension of service agreement)**

If the holder fails to pay despite having a service agreement, the service provider will be obliged to pay the Minister for the recorded kilometres. Article 12 contains a number of grounds on which the service provider may in any event suspend the agreement. In that case, the obligation for the service provider to pay the toll charger will cease. If the holder of a heavy goods vehicle nevertheless drives despite the suspension, it will constitute a violation within the meaning of Appendix 2. The suspension will be terminated the moment the obligations are as yet fulfilled. For further information about suspension, see Articles 6:262 *et seq* of the Civil Code (CIVIL CODE). Article 12 of the Bill does not affect the fact that the service agreement may be dissolved, for example on the basis of Article 6: 265 of the Civil Code.

If the agreement is suspended, it follows from paragraph 2 that the service provider will immediately notify the Minister and the holder of the heavy goods vehicle.

### **Article 13 (Our Minister and service provider)**

The kilometres driven will not be recorded directly with the Minister, but with the service provider. By forwarding the recorded kilometres with the corresponding tariffs to the Minister, the Minister will know what amount the service provider will pay. The service provider will submit his recorded information daily.

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The order that the Minister will impose each calendar month under article 10, paragraph 2, will be made known by sending it to the service provider. The order may be imposed on the basis of the kilometres recorded automatically by the service provider.

The service provider will pay the Minister the amounts owed by the holder within six weeks. Further rules may be laid down by ministerial order for the implementation of the first up to and including paragraph 3 of this article.

## CHAPTER 6. SERVICE PROVIDER

### Article 14 (main service provider)

Paragraph 1 stipulates that the main service provider is a service provider with a special obligation to conclude a service agreement with every holder of a heavy goods vehicle who so requests. Therefore, the main service provider will receive a different fee than the EETS providers receive. This follows from Article 7, paragraph 3, of Directive (EU) 2019/520.

Under paragraph 2, an EETS provider can operate as a service provider in an EETS domain, subject to compliance with obligations and general conditions set forth in the EETS domain statement. This paragraph was derived from Article 6, paragraph 3, of Directive (EU) 2019/520. Further rules have been laid down in the EETS Directive for the EETS providers and the EETS domain statement.

## CHAPTER 7. REVENUE RECYCLING

### Article 15 (multi-year revenue recycling programme)

Under the provisions made in paragraph 1, the Minister of Infrastructure and Water Management will lay down a multi-year programme every five years. The multi-year programme is a financial programme aimed at innovation and making the transport sector more sustainable. The programme will not be adopted until after it has been discussed with the transport sector. To maintain sufficient flexibility, the formal requirements regarding the content of the programme have been kept as limited as possible. Paragraph 2 stipulates that, in line with the coalition agreement<sup>67</sup>, the net proceeds from the heavy goods vehicle charge will be used for the sustainability and innovation of the transport sector. The net proceeds are the income from the heavy goods vehicle charge minus the compensation for the reduction of the motor vehicle tax for heavy goods vehicles, the compensation for the loss of income from the Eurovignette and excise duties and the costs of the system. For the sake of completeness, it should also be noted that the revenue recycling may not lead to impermissible state aid.

## CHAPTER 8. ENFORCEMENT AND PENALTY PROVISIONS

### Article 16 (supervision)

Under the provisions made in paragraph 1, the Minister of Infrastructure and Water Management will designate supervisors who will be responsible for overseeing compliance with the law and the statutory instruments and the applicable ministerial orders. Under paragraph 2, the supervisors will hold authority to determine a violation in an automated manner.

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<sup>67</sup> "Vertrouwen in de toekomst", Regeerakkoord 2017-2021.

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A decision to designate the supervisors will be announced in the Government Gazette (paragraph 3).

### **Article 17 (administrative fine other than for levying or collection)**

An administrative fine may be imposed on the holder for offences other than those directly related to the collection of the heavy goods vehicle charge.

Title 5.4 of the General Administrative Law Act applies to the administrative fine. Appendix 2 to the Bill states the relevant violations together with the highest administrative fine imposable by the Minister of Infrastructure and Water Management (paragraph 1). Objection, appeal and higher appeal may be lodged against the administrative fine.

However, a fine cannot be imposed under paragraph 2 if defective on-board equipment was reported and the holder acts in accordance with the service provider's instructions to replace his on-board equipment. If the on-board equipment was broken deliberately, an administrative fine will not be imposed but the holder of the heavy goods vehicle will no longer get back his deposit for the on-board equipment.

Neither can a fine be imposed if the same violation was committed within the 24 hours preceding the violation and an administrative penalty was imposed for it. This will avoid the holder of a heavy goods vehicle being given a disproportionate number of fines for the same violation.

Under article 5:41 General Administrative Law Act, an administrative fine cannot be imposed if the licence holder is not to blame for the violation. This will be the case, for example, if someone can demonstrate that another person used his motor vehicle against his will and he could not reasonably have prevented such usage. Even if the (former) registration holder can submit a certificate of indemnity or a statement as referred to in Articles 31 up to and including 33 of the Vehicle Registration Regulations (lapse of registration), no administrative fine can be imposed on him. In a similar context, also see article 19, under which the administrative fine will be waived in those cases. Even in instances where someone can prove that he notified the service provider, no administrative fine will be imposed.

It may occur that a certain offence is placeable under several violations, referred to in Appendix 2. In that case, the maximum fine imposable under paragraph 3 will be the fine for the violation for which the highest fine is stated.

Under paragraph 4, the administrative fine will be payable within two weeks after it has become irrevocable.

If the fine has not been paid or paid in full within the two-week period after it became irrevocable, the original fine will be automatically increased by fifty percent. This increase will be made known by sending a reminder. The increased amount must be paid within four weeks of the sending of the reminder. If the entire amount of the original fine plus the fifty percent increase has not been paid in full within those four weeks, the already increased amount (the original fine plus fifty percent) will be automatically increased by one hundred percent. The total amount of the fine, after two increases, will thus come to the original amount plus 200 percent. Paragraphs 4 to 6 are largely derived from articles 23 up to and including 25 of the Administrative Law Enforcement (Traffic Regulations) Act (hereinafter called the 'Mulder Act'). A period of four weeks was chosen after each increase to ensure that foreign road users also have sufficient time to receive the fine and make payment. After the second reminder, enforced collection may occur under paragraph 7 in conjunction with article 4:117 and article 5:10, paragraph 2, of the General Administrative Law Act.

However, the increases in the administrative fine and any enforced collection may be prevented if the person liable for payment of the administrative fine is granted deferment of payment under article

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4:94 of General Administrative Law Act. During the deferment, the Minister can neither send reminders nor collect.

Paragraph 8 stipulates that no reminder costs may be charged for the first and second increases of the fine. The reminder costs are included in the increases.

Under paragraph 9, the first reminder and the associated fine cannot yet be collected by means of a final demand and notice. This will be possible only after the second increase.

Paragraph 10 stipulates that article 5:53 of the General Administrative Law Act does not apply, which means that an official report of the violation will not always have to be drawn up and that the offender will not always get the opportunity to express his views. This would constitute a disproportionate burden in imposing the administrative fine for the violations referred to in Appendix 2. Appendix 2 may be amended by statutory instrument on the basis of paragraph 11 after first a draft thereof has been submitted to both Houses of the States General.

### **Article 18 (provisional measures if a vehicle is stopped)**

In principle, fines imposed for violations referred to in Appendix 2 will be sent to the holder. A fine may also be imposed if a violation as referred to in Appendix 2 is detected on the road and the details of the registration holder cannot be verified. This is particularly relevant to foreign licence holders from member states where the fine cannot be enforced because the violation in question is not punishable there, or if the violation was committed by a registration holder from a country outside the EU.

It must then be possible to enforce immediately, because otherwise there will be no adequate option for collection.

The fine will be imposed on the registration holder but may be made known by issuing it to the driver. Paragraph 2, under a, stipulates that in such a case the fine must be paid immediately.

This construction is necessary because the driver will not always be the registration holder in all instances. For a further explanation, reference is made to the article-by-article notes to article 28.

It follows from paragraph 2, under b, that increases in the fine, such as those applied to a fine that is sent out, will also apply to a fine imposed when a vehicle is stopped on the road. However, those increases will only take effect two weeks after the fine has become irrevocable (also see article 20).

Under paragraph 3, motor vehicles may be directed from the main road to a safe location, such as a car park, and their further use may be prevented. This power will exist only if an administrative fine as referred to in Article 18 has been imposed on the registration holder for that motor vehicle. This also means that once an outstanding fine has been paid, it will no longer be possible to prevent the use of the motor vehicle. Paragraph 4 also applies to a holder of a heavy goods vehicle who has a record for not having paid an administrative fine imposed on him earlier.

Paragraph 4 provides for the decision to impose the fine also to refer to the authority of the supervisor to move the vehicle to a place designated by him and to prevent the vehicle from being driven away.

The decision will further refer to the possibility for the supervisor to have ownership of the motor vehicle transferred or to have it sold or destroyed without charge, in accordance with paragraph 5.

Under paragraph 5, twelve weeks after preventing the heavy goods vehicle from being driven without the registration holder having collected his vehicle, the ownership of the vehicle may be transferred or the vehicle may be sold or destroyed without charge. In that case, the registration holder will be deemed to have forfeited his right to the vehicle. Ownership of the motor vehicle may also be transferred or it may be sold or destroyed without charge if the costs are disproportionately high in relation to the value of the vehicle.

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Under paragraph 6, further rules important to the implementation of article 18 may be laid down by ministerial order.

Similar arrangements can be found in article 9, paragraph 8, of the Collection of States Taxes Act 1990 and in article 31 of the Administrative Enforcement (Traffic Regulations) Act.

## **Article 19 (waiving of administrative fine)**

The administrative fine for a violation as referred to in Appendix 2 will in any event be waived if the person in whose name the registration is entered in the vehicle registration register plausibly shows that, for example, his heavy goods vehicle was stolen and used against his will. To that end, he can object to the fine. If he can prove that at the time of registration he was no longer the holder of the heavy goods vehicle, he will also not owe a heavy goods vehicle charge and the administrative fine will be waived.

The new holder is the person who must be regarded as the person liable to pay the heavy goods vehicle charge and will still owe the fine.

## **CHAPTER 9. OBJECTION AND APPEAL**

### **Article 20 (suspensory effect of objection and appeal against fine under article 17)**

By making an objection or appealing against the decision to impose the administrative fine under article 17, the effect of the decision will be suspended until it has become irrevocable. Under article 17, paragraph 4, the irrevocable fine must be paid within two weeks.

The suspensory effect does not apply to the decision to impose an administrative fine when the heavy goods vehicle was stopped on the road. In that case, the fine must be paid immediately because the driver may otherwise drive away without it being known where the administrative fine should be sent.

### **Article 21 (opposing an immediately collected fine)**

As the fine under article 18, paragraph 2, must be paid immediately after being made known, the registration holder can only avail of the possibility to object to and appeal against the fine after it has been paid. The article stipulates that such an objection or appeal will also cover detention of the vehicle or the fitting of a wheel clamp, for example. If the objection or appeal is upheld, the fine will obviously be refunded and, where applicable, the motor vehicle will be returned. The power to impose an administrative fine will be assigned to the persons referred to in article 16, paragraph 1.

## **CHAPTER 10. AMENDMENT OF OTHER LAWS**

### **Article 22 (amendment of Collection of States Taxes Act 1990)**

This is a technical change in connection with the repeal of the Heavy Motor Vehicle Tax Act due to the introduction of the heavy goods vehicle charge.

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## **Article 23 (amendment of Road Traffic Act 1994)**

The amendment of article 42, paragraph 4, under b, of the Road Traffic Act 1994 will make it possible for the data entered in the vehicle registration register to be used for the proper implementation of the Heavy Goods Vehicles (Charges) Act.

## **Article 24 (amendment of Roads Act)**

In principle, everyone must be allowed on to public roads and a form of toll is not permitted. The amendment to article 14, paragraph 5, of the Roads Act makes will allow introduction of the heavy goods vehicle charge.

## **Article 25 (amendment of the Heavy Motor Vehicle Tax Act)**

This article repeals the Heavy Motor Vehicle Tax Act and ends the charge under Article 17 of the Eurovignette Treaty.

## **Article 26 (amendment of the Motor Vehicle Tax Act 1994)**

The motor vehicle tax will be reduced as a result of introduction of the heavy goods vehicle charge. The new tariffs have been set in the table. The number of weight classes has been increased compared with the current table to allow adherence to the minimum rates under Directive 1999/62/EC.

The following basic principles were taken into account when determining the tariffs:

1. The tariffs are the same as the European minimum rates.
2. The determination of the motor vehicle tax rate will remain possible on the basis of vehicle information.

Registration according to use by the taxpayer or a physical check by the tax authorities should not be necessary. This has consequences for the rates for heavy goods vehicles with a coupling device. In practice, it is impossible to determine whether the heavy goods vehicle is towing a trailer and how many axles the trailer has. To prevent the motor vehicle tax rate from falling below the European minimum rate, the rate was set as follows:

- a. for a heavy goods vehicle with a coupling device, the maximum permitted total weight is the sum of the maximum weight that the tractor unit can tow and the maximum permitted weight of the towing unit;
  - b. the different minimum rates of the Directive - differentiated according to the number of axles of the semi-trailer - have been combined, with the highest rate always being chosen and ensuring that the rates are also logically related to each other.
3. Some weight classes are not specified in the Directive. For these classes, a Directive-based rate will apply that logically relates to the Directive and other rates.

For the sake of completeness, it should be noted that the rates referred to in the proposed table may be subject to the annual inflation correction referred to in article 81a of the Motor Vehicle Tax Act 1994.

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## **Article 27 (amendment of Taxation in Euros (Transition) Act)**

This is a technical change in connection with the repeal of the Heavy Motor Vehicle Tax Act due to introduction of the heavy goods vehicle charge.

## **Article 28 (amendment of Mutual Recognition and Enforcement of Financial Sanctions and Confiscation Decisions Act)**

The Mutual Recognition and Enforcement of Financial Sanctions and Confiscation Decisions Act provides, among other things, for a procedure to make it possible to collect fines in other countries. The scope of the Act is limited to the collection of financial penalties for criminal offences, traffic violations referred to in the Administrative Law Enforcement (Traffic Regulations) Act (Mulder Act) and violations as referred to in article 10:5 of the Working Hours Act, insofar as violations of Chapter 2 of the Working Hours (Transport) Decree are concerned.

Under the Cross-Border Enforcement Directive (Directive (EU) 2015/413), it is possible, with regard to certain traffic violations, to exchange licence plate data between the holder's home member state and the member state where he committed the violation. The Administrative Enforcement (Traffic Regulations) Act regulates upon whom a traffic fine can be imposed and Article 8a of the Vehicle Registration Regulations also regulates to whom vehicle registration data may be provided. The EETS Directive uses the same system as the CBE Directive and the elaboration is based on the system for exchanging vehicle registration data.

The proposed amendment brings fines for non-payment of tolls within the scope of the Mutual Recognition and Enforcement Act. This is particularly important for free flow systems (toll systems without a barrier). It includes violations that prevent the correct recording of the number of kilometres driven or the absence of an agreement between the registration holder and a service provider who collects the charges from the registration holder. After all, these are violations that avoid the payment of tolls.

Article 5, paragraph 3, of Framework Decision 2005/214/JHA provides for the possibility of recognition and enforcement of these decisions. The executing State may, however, make it conditional that the decision must also relate to a criminal offence under the law of the executing State, irrespective of the elements or qualification thereof.

At present, this legislative amendment would allow recognition and enforcement in at least eight other member states, including our neighbouring countries of Belgium and Germany. Collection will then take place according to the regulations of that EU member state and the proceeds will also accrue to the relevant EU member state.

## **CHAPTER 11. FINAL PROVISIONS**

### **Article 29 (emergency arrangements)**

#### *First paragraph*

Paragraph 1 makes it possible, in urgent cases, to add roads by means ministerial order to the appendix to the Act that designates the roads where the heavy goods vehicle charge is payable. The tariff on certain designated roads may also be set at €0.00. These are cases where, as a result of the heavy goods vehicle charge, there is unexpectedly such substantial toll avoidance traffic away from priced roads and on to roads where the charge is not levied that road safety, mobility or the physical living environment is jeopardised. If this occurs, it must be possible to act adequately in order to resolve as quickly as possible the undesirable situation that has arisen.

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As a result of the introduction of the heavy goods vehicle charge, there is a chance that heavy goods vehicles will divert to unpriced roads. This means roads of the underlying road network that are often managed by regional authorities. However, in the expert judgment of the highway authorities, it is not possible to predict with sufficient certainty whether this substantial diversion will actually occur. That is why, after introduction of the heavy goods vehicle charge, there will be monitoring to see whether and to what extent diversion occurs. Arrangements will be made with the regional highway authorities about how monitoring will take place.

Alternative measures that a regional highway manager could take to prevent diversion traffic, such as a heavy goods vehicle ban or a speed reduction, are not the obvious solution. A ban on heavy goods vehicles is too stringent as a remedy because it is not the intention to immediately prohibit all heavy goods vehicle traffic if there is a lot of diversion traffic. A speed reduction affects not only the diverting heavy goods traffic, but also regular traffic on that road.

The derogation by ministerial order in urgent cases will be allowed for a period of 18 months after the introduction of the heavy goods vehicle charge or after the entry into force of an amendment to the appendix to the Act. Whether there are urgent cases will be based partly on monitoring data. It will not always be clear whether an additional increase in traffic is attributable to the heavy goods vehicle charge or whether there are other causes, such as the time of day, weather conditions, roadworks, the opening of a business park and holidays. In some cases, therefore, it will only become clear after a longer period of time whether there is an urgent case.

### *Second paragraph*

A ministerial order may only be adopted after agreement has been reached with the highway authority. If a highway authority considers it desirable for a ministerial order to be laid down, it may submit a request to the Minister of Infrastructure and Water Management.

### *Paragraph 3*

Paragraph 3 stipulates that a Bill must be submitted to the House of Representatives as soon as possible after the urgent ministerial order has been published in the Government Gazette. If the Bill is withdrawn by the government, or if the House of Representatives or Senate decides not to accept the Bill, the ministerial order will be withdrawn. If the Bill is adopted and elevated to law, the ministerial order will be withdrawn at the same time as that law comes into force.

### **Article 30 (evaluation)**

Under Article 11(1) of Directive 1999/62/EC, a report on the tolls must be sent to the European Commission every four years. To avoid double burdens, this period will be adopted for informing the States General about the practical effectiveness and effects of this Act. The monitoring data used to determine the extent of the diverting freight traffic will also be included in the evaluation in order to make pronouncements about the influence that the introduction of a heavy goods vehicle charge has on traffic flows.

### **Article 31 (entry into force)**

Entry into force will occur at a time to be determined by Royal Decree. This approach was chosen because the entry into force of this law cannot take place until the necessary implementation rules are also ready. The Act and the implementing rules will enter into force at the same time in principle. To

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ensure a careful entry into force, it may be advisable to have certain parts come into effect at a later date. Article 32 provides that possibility.

### **APPENDIX 1. Roads sections where the heavy goods vehicle charge will be payable, under article 2, paragraph 1, of the Heavy Goods Vehicle (Charges) Act.**

Appendix 1 contains a list of road sections where the heavy goods vehicle charge will be payable.

### **APPENDIX 2. Levels of fines under article 17, paragraph 1, of the Heavy Goods Vehicle (Charges) Act.**

Appendix 2 of the Bill contains violations together with the associated maximum penalty to be imposed. The appendix is subject to change by statutory instrument. The Administrative Enforcement (Traffic Violations) Act also includes the violations with the corresponding penalties in an appendix that may be amended by statutory instrument, four weeks after being submitted to both Houses of the States General.

Three categories of fines have been included. Manipulation or improper use of the on-board equipment is the most serious violation (category A) for which a maximum fine of €1,000 may be imposed. As the fine exceeds €340, a report or official notice of the violation must be drawn up.

Category B includes less serious offences for which a maximum fine of €300 may be imposed. A fine of up to €200 may be imposed for violations that fall under category C. If such a fine is imposed, it can be increased by 50% and then by 100% on the basis of article 17 if payment is not made on time.

As far as the manipulation of the on-board equipment is concerned, it should be noted that computer trespass is also punishable under Article 138ab of the Criminal Code. This includes a prison sentence of at most two years or a fine of the fourth category (€20,750).

The amount of the administrative fines is based on fines applicable to other tax-related fines for vehicles. The maximum fine imposable for not paying motor vehicle tax or not paying the Eurovignette is €5,278. However, if a registration holder subsequently pays, he will have fulfilled his obligation for the rest of the year. The fines for road traffic violations are slightly lower. This concerns in particular the enforcement of road safety. In the case of the heavy goods vehicle charge, however, things work differently. The holder must pay a fine if his kilometres cannot be recorded. If he has committed this violation, he may be fined again after 24 hours if he repeats the violation. For an incidental violation, the penalty per violation may be slightly lower than that for not paying motor vehicle tax or the Eurovignette, but if a person commits this violation more often, the total amount of the various fines will increase pro rata.

The fines are in line with those in, for example, Flanders and Germany. In Flanders, the maximum fines imposable are between €100 and €1,000. In Germany, the fines for violations regarding incorrect registration are between €240 and €480, whereby repeat offenders may ultimately be fined €20,000 under the German Tolls ('Maut') Act.

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MINISTER OF INFRASTRUCTURE AND WATER MANAGEMENT,

**Correlation table for Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJEU 1999, L 42), as last amended by Directive 2013/22/EU of the Council of 13 May 2013:**

<b>Provision in EU regulation</b>	<b>Provision in implementing regulations or existing regulations (where the regulation is not named, it means the Heavy Goods Vehicle (Charges) Act)</b>	<b>Description of policy scope</b>	<b>Notes to choice(s) for using policy scope</b>
Article 1 (scope of the Directive)	Article 2, paragraph 1		
Article 2 (definitions)	Implementation not required		
Article 3 up to and including 6 (motor vehicle tax)	Implementation not required	These articles concern motor vehicle tax and not tolls.	The articles have already been implemented in existing law.
Article 7, paragraph 1 (charging of tolls in trans-European road network)	Article 2		
Article 7, paragraph 2 (no tolls and usage charges for the same stretch, unless for bridges, tunnels and mountain passes)	Implementation not required	The Heavy Motor Vehicles (Eurovignette) Act will be repealed.	The real of the Heavy Motor Vehicles Tax means there will be no vignette and toll.
Article 7, paragraph 3 (no discrimination)	Article 3		
Article 7, paragraph 4 (possibility of exemption from tolls)	Article 4		
Article 7, paragraph 5 (tolls only for vehicles up to 12 tons)	Implementation not required	This is an optional provision that will not be used.	
Article 7 (2) (usage rights according to use made of the	Implementation not required	The Heavy Motor Vehicles (Eurovignette) Act will	This article concerns usage charge and not tolls.

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Provision in EU regulation	Provision in implementing regulations or existing regulations (where the regulation is not named, it means the Heavy Goods Vehicle (Charges) Act)	Description of policy scope	Notes to choice(s) for using policy scope
infrastructure)		be repealed.	
Article 7 (3), paragraph 1 (infrastructure charge based on principle of earning back the costs of the infrastructure)	Article 7		
Article 7 (3), paragraph 2 (costs are related to the stretch of road where the infrastructure charge is applied)	Article 2, paragraph 1		
Article 7 (4) (external cost-charging relatable to the environment)	Implementation not required	This article concerns external cost charges and they will not be levied.	
Article 7 (5) (values for new euro emission standards)	Implementation not required	This article concerns external cost charges.	
Article 7 (6), paragraph 1 (calculation of toll)	Article 7, paragraph 1		
Article 7 (6), paragraph 2 (level of concession toll)	Implementation not required	This paragraph concerns concession tolls and they are not envisaged.	
Article 7 (6), paragraph 3 (toll before 10 June 2008)	Implementation not required	This paragraph concerns tolls before 10 June 2008 and this is not relevant in the present case.	
Article 7 (7) (infrastructure charges in mountainous areas)	Implementation not required	This is an optional article that will not be used.	
Article 7 (8), paragraph	Article 7, paragraph 1		

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Provision in EU regulation	Provision in implementing regulations or existing regulations (where the regulation is not named, it means the Heavy Goods Vehicle (Charges) Act)	Description of policy scope	Notes to choice(s) for using policy scope
1 (variation of rate for euro emission class)			
Article 7 (8), paragraph 2 (tariff for euro emission class)	Article 11, paragraph 3		
Article 7 (8), paragraph 3 (variation of infrastructure charge)	Implementation not required	This is an optional article that will not be used.	
Article 7 (8), paragraph 4 (no extra revenues as a result of variation of paragraphs 1 and 3)	Article 7, paragraph 1		
Article 7 (9) (notification toll regulation)	Implementation not required		This concerns a notification obligation.
Article 7 (10), paragraph 1 (no discount or charge of external cost element of toll)	Implementation not required	This paragraph concerns external cost charges that will not be used.	
Article 7 (10), paragraph 2 (discount or lowering of infrastructure charge)	Implementation not required	This paragraph is optional. It will not be used	
Article 7 (10), paragraph 3 (permissible other variations of other toll rates for specific projects of major European importance within the meaning of Annex III)	Implementation not required	This is an optional provision that will not be used. Moreover, No. 661/2010/EU has been repealed.	

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Provision in EU regulation	Provision in implementing regulations or existing regulations (where the regulation is not named, it means the Heavy Goods Vehicle (Charges) Act)	Description of policy scope	Notes to choice(s) for using policy scope
van Decision No. 661/2010/EU)			
Article 7 (11), paragraph 1 (least possible obstructions for traffic flow in the event of tolls)	Implementation not required		Factual act.
Article 7 (11), paragraph 2 (no unfair disadvantage for non-regular users of the road network)	Article 11		
Article 7 (11), paragraph 3 (receipt for paid toll)	Article 10, paragraph 3		
Article 7 (11), paragraph 4 (possibility to charge tolls by means of on-board equipment)	Article 11		
Article 7 (12) (compensation for tolls)	Article 26	Lowering of motor vehicle tax for heavy goods vehicles.	
Article 8 (member states may cooperate in levying usage charges)	Implementation not required	This article is optional. It will not be used.	
Article 8 (2) (supervision of transparency and non-discriminatory tolls)	Article 16		
Article 8 (3) (member states may jointly levy tolls)	Implementation not required	This is an optional provision that will not be used.	
Article 9, paragraph 1 and paragraph 1 (2) (no restrictions in	Implementation not required		This Bill does not impose restrictions on other charges or

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<b>Provision in EU regulation</b>	<b>Provision in implementing regulations or existing regulations (where the regulation is not named, it means the Heavy Goods Vehicle (Charges) Act)</b>	<b>Description of policy scope</b>	<b>Notes to choice(s) for using policy scope</b>
relation to other charges or taxes)			taxes.
Article 9, paragraph 2 (use of income)	Article 15		
Article 9 (2) (checks and penalties regulations for violations of national legal provisions)	Articles 16 up to and including 19		
Article 9 (3) up to and including 9 (8) (delegated action by EC and promotion of knowledge exchange between member states)	Implementation not required		
Article 10 (exchange rate to be used for the euro)	Implementation not required		This article sets the exchange rate to be used for the euro. The Directive states the amounts in euro. Other currencies play no role in this Bill.
Article 10 (2) (revision of amounts in the Directive)	Implementation not required		This article concerns amendment of Appendices II and III of the Directive.
Article 11 (member state treaty to EC and effectiveness of the Directive)	Implementation not required		Factual act and aimed at European institutions.
Article 12, paragraph 1 (conversion and navigation obligation)	Article 2, paragraph 1		
Article 12, paragraph 2 (notification)	Implementation not required		
Article 13	Implementation not		

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<b>Provision in EU regulation</b>	<b>Provision in implementing regulations or existing regulations (where the regulation is not named, it means the Heavy Goods Vehicle (Charges) Act)</b>	<b>Description of policy scope</b>	<b>Notes to choice(s) for using policy scope</b>
(provision for entry into force of the Directive)	required		
Article 14 (Directive is addressed to the member states)	Implementation not required		
Annex 0 (emission limit values)	Article 7, paragraph 1		
Annex I (maximum rates for tax on vehicles)	Implementation not required		This annex concerns tax and not tolls.
Annex II (maximum amounts for usage charges)	Implementation not required		This annex concerns usage charges and this Bill makes no use of them.
Annex III (core principle for apportioning costs and calculating tolls)	Article 7		
Annex III (2) (minimum requirements for applying external cost charges)	Implementation not required		This annex concerns external cost charges that are not used in this Bill.
Annex III (3) (maximum weighted average external cost charges)	Implementation not required		This annex concerns external cost charges that are not used in this Bill.
Annex IV (indicative determination of the vehicle class)	Implementation not required	This is in conjunction with article 2, under f, an optional provision that will not be used.	

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**Correlation table Directive (EU) 2019/520 of the European Parliament and of the Council of 19 March 2019 on the interoperability of electronic road toll systems and facilitating cross-border exchange of information on the failure to pay road fees in the Union (OJEU 2019, L 91):**

This Directive has been implemented in the Bill for the EETS Directive Implementing Act. Some provisions of the Directive have been implemented in the current Bill.

<b>Provision in EU regulation</b>	<b>Provision in implementing regulations or existing regulations (where the regulation is not named, it means the Heavy Goods Vehicle (Charges) Act)</b>	<b>Description of policy scope</b>	<b>Notes to choice(s) for using policy scope</b>
Article 5, paragraph 7 (EETS providers supply information to the toll charger)	Article 8, paragraph 5		
Article 5, paragraph 8 (identification of non-payers)	Article 12, paragraph 2		
Article 6, paragraph 3 (acceptance of EETS providers)	Article 14, paragraph 2		
Article 6, paragraph 4 (toll invoice to be sent directly by EETS provider to EETS user)	Article 11, paragraph 5, under c		
Article 6, paragraph 5 (toll is the same at all service providers)	Article 7, paragraph 1		
Article 7, paragraph 3 (fee for main service provider)	Article 14, paragraph 1		
Article 8, paragraph 2 (EETS-provider is obliged to pay the toll notification)	Article 13, paragraph 3		
Article 10, paragraph 2 (EETS user has met his payment obligation if he has paid the EETS provider)	Article 11, paragraph 2		
Article 14, paragraph 1	Articles 10 up to and		

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Provision in EU regulation	Provision in implementing regulations or existing regulations (where the regulation is not named, it means the Heavy Goods Vehicle (Charges) Act)	Description of policy scope	Notes to choice(s) for using policy scope
(relationship between toll chargers, EETS provider and EETS user)	including 13		
Article 14, paragraph 2 (use of data for traffic management)	Article 8, paragraph 6		