DECISION OF THE EEA JOINT COMMITTEE

No 5/2002

of 1 February 2002

amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular 98 thereof,

Whereas:

(1) Annex XIII to the Agreement was amended by Decision No 158/2001 of the EEA Joint Committee of 11 December 2001 ([1]).

(2) Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures ([2]) was incorporated into the Agreement by Decision of the EEA Joint Committee No 7/94 ([3]).

(3) The Court of Justice of the European Communities annulled Directive 93/89/EEC on 5 July 1995.

(4) The effects of Directive 93/89/EEC were preserved in the European Communities until the Council had adopted a new Directive.

(5) 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 infrastructure ([4]) was therefore adopted.

(6) Directive 1999/62/EC is to be incorporated into the Agreement.

(7) Directive 93/89/EEC is consequently to be deleted from the Agreement.

(8) Norway may, in light of the specific arrangements of its road system, impose tolls and user charges on vehicles using a wider range of road categories than stipulated in the Directive.

(9) Switzerland has introduced, as from 1 January 2001, a Heavy Vehicle Fee (toll) on all roads, as taken note of in the Agreement on Land Transport with the European Community signed on 21 June 1999, to be levied at the border posts on the basis of the kilometres driven and the vehicle characteristics.

([1]) OJ L 65, 7.3.2002, p. 36.
([2]) OJ L 279, 12.11.1993, p. 32.
([3]) OJ L 160, 28.6.1994, p. 1.
([4]) OJ L 187, 20.7.1999, p. 42.

(10) Liechtenstein, by virtue of its Customs Union Treaty with Switzerland, has no border posts at its border with Switzerland. To be in a position to keep the common border open Liechtenstein has introduced, also on 1 January 2001, on its territory, a Heavy Vehicle Fee (toll) on all roads, which is based on a Bilateral Agreement between Liechtenstein and Switzerland and on Liechtenstein law and which is equal to the Swiss Heavy Vehicle Fee.

(11) Directive 1999/62/EC allows charges (tolls) to be imposed on the highest category of roads when in a Member State there exists no general network of motorways (Article 7(2)(a)) and therefore Liechtenstein, which does not have a general network of motorways, may impose charges (tolls) on its highest category of roads.

(12) However it is not possible to determine the kilometres driven in Liechtenstein on the highest category of roads.

(13) Directive 1999/62/EC requires that charges (toll tariffs) be based on infrastructure costs (Article 7(9)).

(14) The Heavy Vehicle Fee tariffs have been set on the basis of Swiss infrastructure costs, which are different from infrastructure costs in Liechtenstein.

(15) Therefore the Heavy Vehicle Fee should be adjusted to bring it in line with Directive 1999/62/EC for the purpose of its application to Liechtenstein.

(16) For the purpose of simplicity, the adjustment of the Heavy Vehicle Fee should be made in a global way and therefore take the form of a flat reduction in the number of kilometres to be used in the computation of the toll levied in Liechtenstein,

HAS DECIDED AS FOLLOWS:

Article 1

The text of point 18a of Annex XIII to the Agreement shall be replaced by the following:

'**399 L 0062**: Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 187, 20.7.1999, p. 42).

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

(a) The following shall be added to Article 3(1):

"— Iceland: Þungaskattur,

— Liechtenstein: Motorfahrzeugsteuer,

— Norway: Vektårsavgift."

(b) In the situation referred to in Article 8(1), regarding EFTA States, "Commission" shall read "EFTA Surveillance Authority".

(c) Regarding the EFTA States, Article 6 shall be replaced by the following:

"The EFTA States shall continue to apply their existing provisions referred to in Article 3(1) so as to ensure that competition is not distorted, i.e. that the rate for each vehicle category or subcategory referred to in Annex I to the Directive is not lower than the minimum laid down in the Annex.

Without prejudice to Article 6 of Council Directive 92/106/EEC (*), the EFTA States may not grant any exemption from, or reduction in, the taxes referred to in Article 3 which would distort competition, i.e. which would render the chargeable tax lower than the minimum referred to in the previous paragraph.

(*) OJ L 368, 17.12.1992, p. 38."

(d) The following subparagraph shall be added at the end of Article 7(2)(a):

"In the case of Norway, tolls and user charges may also be imposed on specific secondary roads. In the case of Liechtenstein, tolls and user charges may be imposed on the highest category of roads, according to the provisions of the second and third subparagraphs of paragraph 9."

(e) The following shall be added to Article 7(2)(b):

"Regarding EFTA States, the prior consultations referred to above shall be held with the EFTA Surveillance Authority."

(f) The following shall be added at the end of Article 7(9):

"As of 1 January 2001 Liechtenstein may levy a toll (Heavy Vehicle Fee) to the level set in Switzerland for the same vehicle category and according to the same system as in Switzerland. As of the entry into force of this Decision, the number of kilometers to be considered in the computation of the toll to be paid will be based on the total kilometers driven, reduced by three kilometers for each crossing of the Liechtenstein/Austrian border in Schaanwald/Tisis.

If the volume of traffic at the border post in Schaanwald/Tisis increases disproportionately in comparison with other border posts in the region by attracting detour traffic, Liechtenstein, after consultation with and approval by the Joint Committee may reduce the deduction of three kilometers at the Schaanwald/Tisis border."'

Article 2

The texts of Directive 1999/62/EC in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Communities*, shall be authentic.

Article 3

This Decision shall enter into force on 2 February 2002, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 4

This Decision shall be published in the EEA section of, and in the EEA Supplement to, the *Official Journal of the European Communities*.

Done at Brussels, 1 February 2002.

For the EEA Joint Committee

The President

P. WESTERLUND

(*) No constitutional requirements indicated.