

AVOSETTA MEETING, FRIBOURG, 23RD-24TH OF NOVEMBER 2012

“ENVIRONMENT AND LAND TRANSPORTATION LAW”

QUESTIONNAIRE:

CONTEXT:

The **volume of traffic** in the European Union respectively between the Member States and especially its increase as a consequence of the implementation of a single European market and of the enlargement of the European Union has problematic side-effects on the environment (i.e. air and noise pollution, land consumption etc.). These problems are even more intense when sensitive regions, such as mountains areas (Alps, Pyrenees etc.) are concerned.

A functioning transport system is essential for an internal market. This is also made clear by the characterisation of the Transport Policy as a “Common Policy” in the TFEU and its introduction already in 1957. At the same time the question arises, how to face the existing negative impacts on the environment of traffic without putting into question the basic concerns of the European internal market. From a legal point of view, it has also to be taken into account, that, as far as the north-south traffic via the Alps is concerned, Switzerland and Liechtenstein are not Member States of the European Union.

The goal of the Avosetta meeting shall be to explore the integration of environmental aspects into EU and Member State transport law. Actual or potential legal instruments mitigating unwanted environmental side-effects shall be discussed. In doing so, the accent will lie on Land Transportation Law leaving air and marine transport aside (although those who have a special interest in this field should feel encouraged to contribute). Instead of analysing the regulation of the environmental performance of the individual vehicles the focus of the meeting shall be **on instruments that aim at reducing the quantity of individualised land transportation**. This means that we will need to have a closer look at road tolls, user charges (see e.g. Directive 1999/62), emissions trading, and the provision of transportation infrastructure. As all of these measures have **a variety of functions** (such as infrastructure financing plus environmental protection in the case of tolls) the relationship between functions will be one issue of discussion. The national reports may focus on additional measures that are of high importance for the given Member State and that may be instructive also from other Members States’ perspectives.

KEY QUESTIONS:

This questionnaire is not to be seen as exhaustive. As well, it is not expected that all questions are answered (in detail), especially as the national legislation is concerned. So, the questionnaire shall only provide a guideline, in order to facilitate the preparation of the meeting and the discussions during the meeting. The accent should be on the extent to which EU law and policy encourages or constrains national transport initiatives and to which extent quantitative limitations may be in conformity with EU law.

A. TRANSPORTATION LAW

I. EUROPEAN UNION LAW

- What are the legal effects of the integration principle as far as transport law is concerned? Can the meaning of the principle be defined more precisely for this area?
- Especially: Is it – from a legal point of view – possible to restrict the traffic volume as such? By which measures? Can the integration principle be interpreted in a way that such measures have to be taken at EU level?
- How can the polluter-pays principle be defined more precisely?
- In which way does secondary law take environmental concerns into consideration? Is the integration principle implemented sufficiently in secondary law?
- What is the legal framework in European Union law for national measures trying to limit negative environmental effects especially of road and air traffic? In particular:
 - o What is the exact scope and objective of Directive 1999/62 in relation to vehicle taxation, tolls and user charges? What limits have to be drawn from the fundamental freedoms, in particular free movement of goods in view of the case law of the ECJ (C-195/90, C-205/98, C-320/02, C-28/09)? What is the discretion Member States have in implementing such measures?
 - o As the Alps are concerned: which measures could be taken on European, International and/or National level in order to limit the transalpine freight transports by road?
 - o What EU measures have an impact on the construction of roads, and how could they be made more environmentally friendly?
 - o What EU measures provide for product labelling concerning the transportation of a product?

II. NATIONAL LEGISLATION

1. GENERAL QUESTIONS ON NATIONAL TRANSPORT POLICIES AND LAWS

Describe the key national legislation to promote a sustainable transport policy.

- a. To what extent, environmental issues are taken into account in national transport policy? Does national transport policy set specific goals in order to reduce especially negative impacts from road traffic, e.g. emission goals, road traffic relocation on rail etc.?
- b. What are important constitutional law provisions?
- c. What are the most important legislative acts in the field of road and rail transportation?

2. INSTRUMENTS TO MANAGE AND REDUCE ROAD TRAFFIC

Is there a national debate on the sense and nonsense of traffic tolls and other instruments to manage and reduce road traffic, and if so, has this led to changes or corrections of the regulatory framework?

- a. Tolls and user charges
 - aa) To what extent is the Directive 1999/62 being implemented in the national legal systems?
 - Are user charges and/or tolls being levied for the use of infrastructure?
 - If so, on which roads are they levied?
 - On which vehicles are user charges/tolls being levied (minimum weight etc.)?
 - In case of a toll, which costs, infrastructure costs and/or external costs are taken into account?
 - Does national law fix a maximum amount for user charges/tolls (infrastructure costs/external costs)?
 - Is there a possibility for a mark-up for special infrastructure/regions?
 - bb) Do you have a road toll system "other" than the one foreseen by Directive 1999/62, e.g. on other roads, transport of persons etc.?
 - cc) To what extent external costs are being charged in the rail-sector?
- b. Emission Trading
 - aa) Does there exist an emission trading system on vehicles and how does it function?
 - bb) If not, to what extent adaption of national law will be necessary in order to introduce an emission trading system on vehicles?
- c. Transit Exchange System
 - aa) Does there exist a transit exchange system and how does it function?
 - bb) If not, to what extent will the adaption of national law be necessary in order to introduce a transit exchange system, such as the Alpine Crossing Exchange for example?

3. INSTRUMENTS TO PROMOTE RAIL TRAFFIC AND COMBINED TRAFFIC?

- a. Is there any specific legislation promoting rail traffic and combined traffic, such as regulation, price control, subsidies etc.?
- b. How are infrastructure costs for rail traffic financed?

4. CASE LAW

- a. To what extent have the following rulings of the Court of Justice also been of relevance in your countries?
 - CJUE, C-195/90, Commission/Germany (Toll and heavy goods vehicles)
 - CJUE, C-205/98, Commission/Austria (Brenner-Toll).
 - CJUE, C-320/02, Commission/Austria (Sectoral driving ban I); CJUE, C-28/09, Commission/Austria (Sectoral driving ban II)
- b. Is there any national case law on transport issues where EU issues came into play?
 - relating to tolls and user charges?
 - relating to driving bans (e.g. night lorry ban in London)?

B. LAND-USE PLANNING AND ENVIRONMENTAL IMPACT ASSESSMENT

1. Are there different levels of the planning of transportation infrastructure? If so, which ones and how do they differ from each other?
2. If there is road construction planning on a higher level, are the different transportation modes (roads, railways, air transportation, waterways etc) weighed against each other with a view to select the least environmentally burdensome?
3. Concerning the approval of individual road construction projects: Is there a test of need for more roads? If so, is it taken into consideration that new roads may trigger further individual transportation?
4. To what extent have alternatives to be taken into account?
 - a. What is the legal basis of alternatives testing: SEA and EIA? Natura 2000?
 - b. Do these alternatives include "other" projects (e.g. rail construction, instead of road construction)?
 - c. Does/should the "zero-option" need to be taken into account?
 - d. What is provided for on national basis in addition to EU requirements?

C. PRODUCT LABELING (EXCURSUS)

1. To what extent is long-distance travelling taken into account in the Eco Management and Audit Scheme-Regulation (1221/2009)?
2. To what extent does national law provide for product labeling in order to reflect long-distance transportation and thus energy-consumption of products? Does EU law set any (and if so which) limits to such a labeling?

3. How can this labeling be done nationally without breaching EU rules? Is adaptation of EU-law necessary?

NATIONAL REPORTS – RECENT DEVELOPMENTS IN MEMBER STATES ENVIRONMENTAL LAW

Participants are asked to submit a short paper (max 2-3 pages) which highlights what in their view are significant developments in national environmental law (cases, new laws, new institutional arrangements, significant new policies) which might be of interest to other members of the Group. Please do so until the 9th of November 2012 (two weeks in advance of the meeting) so that the chair of that session will then have the opportunity to present their own cross cutting analysis of the most interesting aspects and lead the discussion accordingly.

Also the national reports responding to the questionnaire above should be submitted until the 9th of November 2012 for the same reasons.

10th of september 2012