



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-321/19  
BY and CZ v Bundesrepublik Deutschland

## **Traffic police-related costs cannot be taken into account in the calculation of tolls for the use of the trans-European road network by heavy goods vehicles**

*Such costs are not part of the infrastructure costs on the basis of which those toll rates must be calculated*

BY and CZ operated a company governed by Polish law that was engaged in the business of road haulage, including in Germany. On that basis, BY and CZ paid tolls, for the period from 1 January 2010 to 18 July 2011, of a total of 12 420.53 euros for the use of German federal motorways.

Having taken the view that the method of calculating the tolls which they were obliged to pay had resulted, contrary to EU law, in an excessive financial obligation, BY and CZ brought an action before the German courts for reimbursement of the tolls at issue.

Hearing the case on appeal, the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court for the *Land* of North Rhine-Westphalia, Germany) asked the Court of Justice, in essence, whether the fact that costs related to traffic police were included in the calculation of the tolls at issue constituted an infringement of the directive on the charging of heavy goods vehicles for the use of certain road infrastructures.<sup>1</sup>

By its judgment, delivered today, the Court finds, first of all, that the directive 1999/62 imposes on Member States which introduce or maintain tolls on the trans-European road network a precise and unconditional obligation to determine the level of those tolls **taking into account infrastructure costs only**, that is to say, **the costs of constructing, operating, maintaining and developing the infrastructure network concerned**. Consequently, an individual may directly rely, before national courts, on that obligation against a Member State where that Member State has failed to comply with that obligation or has failed to transpose it correctly.

Next, as regards the question whether costs related to traffic police are covered by the concept of “operating costs” and may, on that basis, be included in the calculation of tolls, the Court notes that that concept relates to the costs arising from the operation of the infrastructure concerned. **Police activities are the responsibility of the State acting in the exercise of its public powers and not as operator of the road infrastructure**. Therefore, **costs related to traffic police cannot be considered to be operating costs** as referred to by the directive 1999/62.

As to the fact that, in the present case, the taking into account of costs related to traffic police would entail only a relatively minor overrun, in the order of 3.8% or 6%, of the infrastructure costs, the Court rules that **the directive 1999/62 precludes any overrun of the infrastructure costs that results, inter alia, from ineligible costs having been taken into account**.

Finally, the Court refuses Germany’s request for the temporal effects of its judgment to be limited.

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<sup>1</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 (OJ 1999 L 187, p. 42), as amended by Directive 2006/38/EC of the Parliament and of the Council of 17 May 2006 (OJ 2006 L 157, p. 8).

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106