



19.2.2024

NOTICE TO MEMBERS

Subject: Petition No 0156/2023 by T. R. (German) on the long lead-time for purchasing the digital version of the Austrian highway toll vignette

1. Summary of petition

The petitioner maintains that Austria is the only EU country where the digital toll vignette has to be purchased at least 18 days in advance. According to the petitioner, the provider – ASFINAG – bases this stipulation on a European directive that regulates the right of return for consumers. The petitioner adds that third party providers offer the digital vignettes for immediate use, but at increased prices. The petitioner suspects that this is due to purely financial interests, to the detriment of consumers, and requests that influence be exerted on Austria to ensure that, in the sake of European harmonisation, Austrian digital vignettes with immediate validity can be purchased in the future.

2. Admissibility

Declared admissible on 12 May 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 19 February 2024

The digital toll vignette is regulated by the Austrian Federal Road Tolls Act and, according to these national rules, failure to pay is sanctioned with administrative fines. Aspects related to the digital toll vignette in Austria were already raised in several parliamentary questions¹. In its replies, the Commission already explained that the Consumers Rights Directive 2011/83/EU²

¹ E-000401/2020: https://www.europarl.europa.eu/doceo/document/E-9-2020-000401_EN.html;
E-004453/2020: https://www.europarl.europa.eu/doceo/document/E-9-2020-004453_EN.html;
E-006475/2020: https://www.europarl.europa.eu/doceo/document/E-9-2020-006475_EN.html

² [Directive 2011/83/EU](#) of 25 October 2011 on consumer rights, amending Council Directive

regulates certain aspects of contracts concluded between traders and consumers, such as service contracts³, but that it does not apply to payment obligations that stem directly from the law and that do not have a contractual basis. Therefore, Directive 2011/83/EU is, in principle, not applicable to road toll vignette, unless under national contract law and notwithstanding the existence of the specific national rules governing the toll vignette, the relationship between the buyer of a vignette and the provider, i.e. the “Motorway and Expressway Financing Joint-Stock Company” (Autobahnen- und Schnellstraßen-Finanzierungs-Aktiengesellschaft, abbr. ASFINAG)“, is considered to be based on a service contract concluded between a consumer and a trader within the meaning of Directive 2011/83/EU.

According to its Article 3(5), Directive 2011/83/EU does not affect national general contract law such as the rules on the validity and formation of a contract. Accordingly, for the application of Directive 2011/83/EU, it remains decisive whether the respective relationship is regarded as ‘contract’ concluded between a consumer and a trader under the applicable national law.

If Directive 2011/83/EU and the respective right of withdrawal provided therein were applicable to the distance sale of toll vignettes by virtue of their classification as service contract under national law, the Directive provides for a mechanism whereby the supplier and the consumer can agree on an immediate provision of the service, i.e., immediate validity of the vignette as mentioned by the petitioner, without awaiting the expiration of the right of withdrawal period.

The Commission would like to point out that, according to the information provided by ASFINAG on its website⁴, consumers can buy online certain toll vignettes for immediate use, e.g. 1-day vignette, 10-day vignette, from 1 December 2023.

Where Member States choose to introduce road charging on their territory, they must follow certain common rules laid down in the Eurovignette Directive 1999/62/EC⁵. They aim, *inter alia*, at ensuring that the road charges do not discriminate against international traffic or result in the distortion of competition between transport operators. Article 7j requires Member States to establish methods enabling road users to pay vignette 24 hours a day at least electronically. However, the rules of the directive will apply to passenger cars only once Member States have transposed Directive (EU) 2022/362. Member States have time until 25 March 2024. The EETS

93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, *OJ L 304*, 22.11.2011, p. 64–88.

³ Under Article 2(6) of the Directive, ‘service contract’ means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof.

⁴ <https://shop.asfinag.at/en/products/digital-vignette/>
<https://shop.asfinag.at/en/info-pages/faq/> - see question ‘When is my digital toll product valid?’

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 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31999L0062>

Directive (EU) 2019/520⁶ provides for common rules for the exchange of information between Member States in case of failure to pay a road fee by a road user in another Member State⁷.

Conclusion

The Commission considers that Directive 2011/83/EU, in principle, does not apply to the payment obligations that are regulated entirely by national legislation. Such payment obligations can include toll vignettes that are mandatory for road users under national rules regulating their characteristics and price. However, the Directive will be applicable if, under national contract law and notwithstanding the existence of the specific national rules on the vignette, the relationship between the buyer of a vignette and its provider, in the current case the Motorway and Expressway Financing Joint-Stock Company (Autobahnen- und Schnellstraßen-Finanzierungs-Aktiengesellschaft, abbr. ASFINAG), is considered to be based on a service contract between a consumer and a trader within the meaning of Directive 2011/83/EU.

⁶ 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.

⁷ E-003449/2022: https://www.europarl.europa.eu/doceo/document/E-9-2022-003449-ASW_EN.pdf