

## **Road Pricing in Italy**

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### **Resumo**

The legal foundation of Road Pricing in Italy is article 7 of the Road code. According to this provision, municipalities can charge entry into limited traffic zones with the payment of a fee

Nothing is said regarding rules for fixing the fee. This involves the problem of the individuation of the legal model to which the road pricing may conform. With regard to this, there are two possible models: a) as a tribute related to environmental ends; b) as a tribute conforming to the “appropriated tax”, based on the benefit principle. The first important Italian experience is the municipality of Milan. It has established the road pricing from the beginning of 2008. It is an experimental application. The amount of the tribute increases in relation of the worsening of the environmental assessment of the vehicles (so that methane-powered cars are exempt). The tax revenue is intended for the improvement of urban mobility and environment quality of the town centre.

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## **1. Special norms**

The legal foundation of Road Pricing in Italy is article 7 of the Road code. According to this provision, municipalities can charge entry into limited traffic zones with the payment of a fee. A later directive, as contained in circular no. 3816 (21.7.1997), of the Ministry of Public Works, provides municipalities with more precise instructions regarding the applicability of article 7. As a consequence, it is not possible to impose any pricing outside limited traffic zones or outside the town centre.

## **2. Principles**

Pricing on entry into limited traffic zones involves a variety of constitutional as well as EU principles, whose balance is crucial for the assessment of legitimacy entailed in the administrative procedures. These principles are:

- the legality principle, (i.e. the reservation of law) (art. 23, C) concerning all patrimonial charges;
- environment and health protection (art. 32, C and art. 174 EU Treaty);
- freedom of circulation (art. 16, C);
- freedom of enterprise (art. 41, C), which is involved inasmuch as the freedom of circulation is instrumental to it.

The balancing the interests involved, which are protected by the above mentioned principles, requires therefore that the practice of road pricing take place in accordance with the criterion of proportionality, which is sanctioned also by the EU legislation.

## **3. Critical Issues**

The most critical aspect of the road pricing legislation is due to the absence of sufficient legislative criteria for the determination of the fee as actually applicable. While the rule in the Road Code allows

municipalities to generically impose ‘a fee’ to access Limited Traffic Zones, nothing is said regarding rules for fixing the fee. It is evident that this aspect could imply aspects of dubious compatibility with the legality principle.

In this respect, there are two possible juridical models to which the pricing may conform:

- a) as a tribute related to environmental ends, as applied on the basis of the “polluter pays” principle;
- b) as a tribute conforming with the classical model of the appropriated tax (or “specific purpose” tax).

According to the ‘polluter pays’ model, the criterion for fixing the fee to be applied should consist in the estimation of the environmental damage as connected to road traffic; the relative cost, in turn, would be subdivided among the potential addressees of the tribute. The latter would be qualified as passive subjects, in relation to their quality as ‘pollution producers.’

According to the ‘appropriated tax’ model, pricing should be fixed in relation to the cost of the public work to be financed. In this case, passive subjects are taxed in relation to their quality as prospective users of the advantages deriving from the public work. This would be an application of the “benefit principle”, which is alternative to the “ability to pay” principle, both deriving, according to some scholars, from the Italian Constitution.

Moreover, the public work shall have to be aimed to the improvement of the road network and environment quality. The point is that the road pricing legislation does not provide an obligation to spend the money in a public work. Therefore, the model of the appropriated tax should be adopted on a voluntary basis.

It is evident, however, that once the fee is fixed moderately, this will contain the risks of situations of illegitimacy.

#### **4. Competence**

Regulation of the territory belongs in the legislative competence of the local authorities – “Regioni” – and is exerted within the fundamental principles as established by the State. Road pricing, therefore, pertains to a province where local authorities enjoy wide legislative autonomy. Moreover, since it is a

local tax, which does not draw on fiscal matter, as already taxed by the State, road pricing is not incompatible with the principles of tributary regulations.

## **5. Legal conditions for the application of road pricing**

In order to introduce an entry toll, municipalities shall:

- 1) preliminarily, create a Limited Traffic Zone within the city centre;
- 2) adopt an Urban Traffic Plan (“Piano Urbano del Traffico”), aimed to improve the conditions of road traffic and safety, reduce acoustic and atmospheric pollution, and energy management;
- 3) finally, decide upon the tax, giving reasons for levying a tax as a necessary means to fulfil the objectives of the Urban Traffic Plan.

In principle, municipalities are supposed to demonstrate that the mere establishment of Limited Traffic Zones is an insufficient measure, and it is therefore necessary to pay a fee to this end.

## **6. Early Italian Experiences**

There have been attempts in Italy to establish road pricing. The municipality of Ferrara, for instance, has adopted an especially interesting and sophisticated approach. Ferrara has established differentiated fees, not only regarding the amount, but also in relation to the kind of right of access entailed (whether holders are agents working in economic sectors, or in services, or residents). However, the case which has aroused an especially great deal of interest has been the municipality of Milan.

To begin with, it should be said that the case of Milan does not present any special novelty, with respect to analogous initiatives as adopted by other European cities, such as London or Trondheim.

The fee in Milan, which was dubbed ‘eco-pass’, was introduced as an experimentation for a year, on the basis of merely environmental considerations. It was discovered that environment pollution had not decreased with traditional initiatives. The cost of environmental externalities was deemed to amount to

5 million Euros per year. The procedure to adopt the eco-pass was in conformity to legislation since the decision was taken after the delimitation of the Limited Traffic Zone and the approval of the Traffic Plan. Moreover, the municipality's decision was taken in conformity with the environmental policy of Regione Lombardia. The experimentation started in 2008, on the 2nd of January.

## **7. Features of the tax in Milan**

- Payment concerns one delimited area of the city centre only (the so-called 'cerchia dei Bastioni');
- The fee is only applicable from 7:30 a.m. to 7:30 p.m., week-ends excluded, so as not to discourage social mobility;
- The fee is variable in relation to vehicles' environmental assessment. As a consequence, methane-powered cars, electrical vehicles and motor-cycles are exempt, while old diesel powered vehicles are taxed ten Euros per day, and petrol powered ones five Euros. The ordinary ticket is 2 euros per day;
- Special fees are established for residents, with the possibilities of relatively cheap, yearly subscriptions. It is also possible to purchase multiple permits to access LTZ. The cost increases with the increase of the number of accesses;
- Some forms of exemptions are provided for, especially for socially relevant cases (e.g. vehicles for disabled people, ambulances, police cars etc);
- Controls are carried out through cameras positioned at various spots within the LTZ. The police therefore intervenes only incidentally, when car number plates are cross-checked with data regarding fee payment;
- Being an experimental measure, the right of entry can be purchased also in the twenty-four hours following entrance in the LTZ;
- Violations are sanctioned with an administrative penalty, ranging from seventy (70) to two hundred and fifty-eight (258) Euros, as established by the Road Code; as a rule, the minimum sanction is applied;
- The tax revenue is intended for the improvement of urban mobility and environment quality (i.e., enlarging of the metro tracks, increasing of the public transport, enlarging of the parking area around the LTZ, etc..).

The earliest evidence regarding the period of application of road pricing shows a decrease in polluting substances.

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