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The Voluntary Organization, "Nei til bompenger i Nordhordland"
Represented by:
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Regarding the Authority's Case no. 81441, "Pre closure letter" dated 26.03.2018 and all other documents regarding this complaint case.

OBSERVATIONS AND NEW INFORMATION REGARDING THE AUTHORITY'S ASSESSMENT

1. ESTABLISHED PLAN FOR BRAND NEW E39 THROUGH THE REGION OF NORDHORDLAND.

Brand new E39 is recently planned between Flatøy and the Eikefet tunnel. This is a project that is not affiliated with Nordhordlandspakken in any way (Attachment 02). If you compare the map for these new E39-alternatives to the map of Nordhordlandspakken (Attachment 03 and 04), you will see that projects 6, 15 and 17 in Nordhordlandspakken will end up as part of the local road network as a result of the new e39 plan.

This will have a lot to say for the future value in the E39 projects in Nordhordlandspakken, and it will most likely also affect the priorities of the projects included in Nordhordlandspakken. In this context, I would remind the Authority that all experience indicates that the costs will increase dramatically for the projects included in Nordhordlandspakken, and some projects will not be realized, as I have described and documented in my complaint.

2. THE NORWEGIAN MINISTRY'S CALCULATIONS ABOUT THE "USER PAYS" PRINCIPLE FOR HEAVY VEHICLES.

The Ministry's calculations:

«The calculation of the level of weighted average tolls that will be applied in connection with the Nordhordlandspakken

A total of five toll sections will be established, cf. figure 5.1 of Bill 164 S (2016-2017), which will contribute to the financing of the projects in Nordhordlandspakken. Two of the toll sections will be established on the E39, at E39 Flatøy and E39 Mundalsberget respectively. The remaining three toll sections will be established in the general road network in the area. Please note that toll section 1 is not located on the E39, but on the entry and exit ramps. This is not clear from the map due to the resolution.

It has been assumed that vehicles in rate group 2 (vehicles with a total permissible weight exceeding 3.5 tonnes covered by the provisions in the Directive) will pay a toll rate corresponding to approximately NOK 31 using 2017 values. No discounts are granted for vehicles in rate group 2, cf. Chapter 5 in Bill 164 S (2016-2017). As set out in the enclosed traffic note (Appendix 4), annual average daily traffic of around 15,800 vehicles has been calculated for the toll collection points on the E39 in 2012, or around 17,000 vehicles in 2018 when taking traffic growth during the period into account. Furthermore, the annual average daily traffic for vehicles exceeding 3.5 tonnes, and covered by the provisions in the Directive has been calculated to be around 8-10 per cent of the total traffic passing the toll collection points on the E39, corresponding to 1400-1700 vehicles, cf. also the enclosed traffic counts, page 49 and 50 (Appendix 5).

With an estimated toll rate of NOK 31 and a collection period of 12 years, it is estimated that the vehicles covered by the provisions in the Directive (rate group 2) will contribute around NOK 200-240 million in 2017 values in gross toll income from collections at the toll collection points on the E39. Furthermore, it has also been estimated that the total toll contribution from these vehicles will be around NOK 175-215 million in 2017 values, subject to a nominal estimated borrowing interest of 4.5 percent, an annual price increase of 2.5 percent and an annual traffic growth of 1 percent. This amounts to approximately 55-70 percent of the total costs for the projects on the E39, for which the preliminary estimated cost is NOK 317 million in 2017 values. This means that the anticipated toll contribution from these vehicles will not be sufficient to finance the costs associated with the infrastructure projects on the E39.»

In response to my questions, I have been informed by e-mail of a nearly identical layout as mentioned above from Norwegian Road Authorities at «Statens Vegvesen». In addition, I have received information that 77 million NOK from the light vehicles passing the toll collection points on the E39 will be used for investments on the E39 according to the same layout (Attachment 01).

In addition, Statens Vegvesen admits that this calculation of heavy vehicle tolls is made to check that the claim is in line with current EU directives. Furthermore, they also admit that in this layout:

"the heavy vehicle tolls demanded on the E39 will only finance projects on the E39, and will not part-finance projects on the local road network, even if there actually is no such accounting specified on which vehicle has paid tolls out of registered passages in the different stations."

This layout, presented by both the Norwegian Ministry and Statens Vegvesen, has absolutely no credibility and this is why:

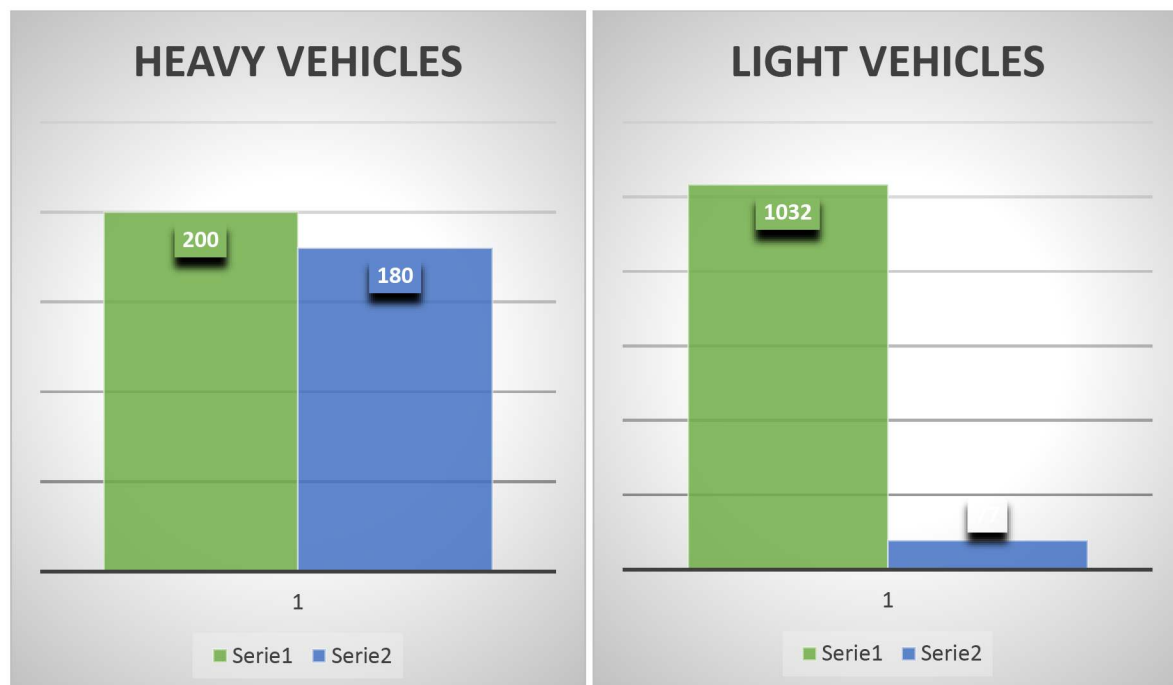
3. THE EXTREME MISMATCH BETWEEN THE "USER PAYS" PRINCIPLE FOR HEAVY VEHICLES VERSUS LIGHT VEHICLES IN THE MINISTRY'S- AND STATENS VEGVESEN'S LAYOUT.

If we perform exactly the same calculation with the known numbers for light vehicles:

It has been assumed that vehicles in rate group 1 / light vehicles will pay a toll rate corresponding to approximately NOK 19 using 2017 values. Discounts 20% are granted for vehicles with Auto Pass in rate group 1, cf. Chapter 5 in Bill 164 S (2016-2017). Let's say that lightweight vehicles on average have 18% off to simplify the calculation without the error margins becoming significant. $NOK\ 19 - 20\% = NOK\ 15,2$. As set out in the enclosed traffic note (Appendix 4), annual average daily traffic of around 15,800 vehicles has been calculated for the toll collection points on the E39 in 2012, or around 17,000 vehicles in 2018 when taking traffic growth during the period into account. Furthermore, the annual average daily traffic for light vehicles has been calculated to be around 90-92 per cent (100% - 8-10%) of the total traffic passing the toll collection points on the E39, corresponding to around 15500 vehicles, cf. also the enclosed traffic counts, page 49 and 50 (Appendix 5).

With an estimated toll rate of NOK 15,2 (with average discount 18%) and a collection period of 12 years, it is estimated that the light vehicles (rate group 1) will contribute around NOK 1032 million ($15,2 \times 15500 \times 365 \times 12$) in 2017 values in gross toll income from collections at the toll collection points on the E39. Furthermore, it has also been estimated that the total toll contribution from these vehicles will be around NOK 77 million in 2017 values (See attachment 01 –e-mail from Statens Vegvesen), subject to a nominal estimated borrowing interest of 4.5 percent, an annual price increase of 2.5 percent and an annual traffic growth of 1 percent. This amounts to approximately 25 percent of the total costs for the projects on the E39, for which the preliminary estimated cost is NOK 317 million in 2017 values.

The «user pays» principle for heavy and light vehicles passing the toll collection points on E39, according to The Ministry and Statens Vegvesen's layout, is set as follows:



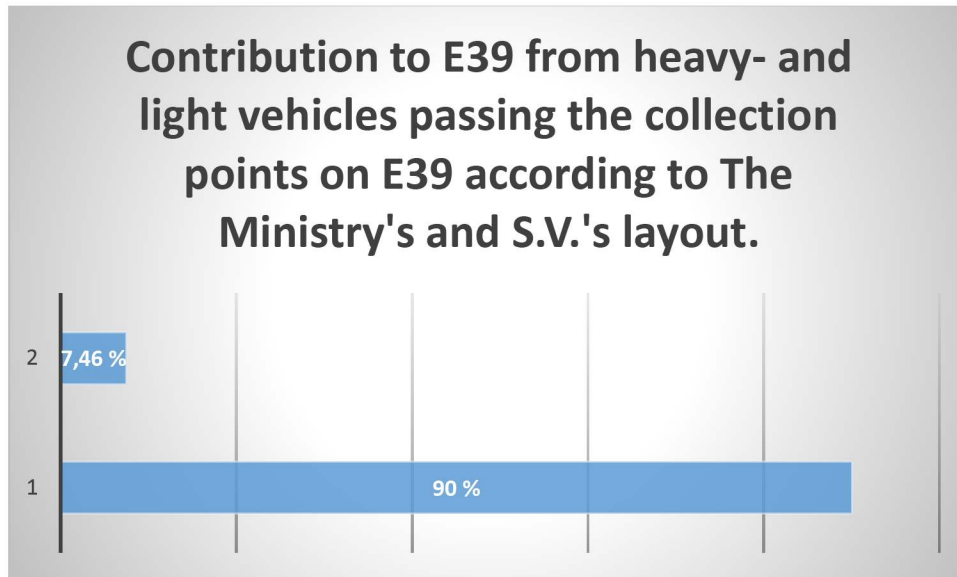
Serie 1: Mill NOK collected from Heavy vehicles

Serie 1: Mill NOK collected from Light vehicles

Serie 2: Mill NOK contributed on E39

Serie 2: Mill NOK contributed on E39

The percentage of the contribution to E39 from heavy- and light vehicles passing the toll collection points on the E39, according to The Ministry's and SV's calculations, is as follows:



2: 7,46% contribution from LIGHT vehicles

1: 90% contribution from HEAVY vehicles

Based on the above, in addition to the fact that the toll collection points on the E39 contribute 73% to Nordhordlandspakken out of the total tolls collected in all the 5 toll collection points (Refer to KS2 report table 8 (14040 + 1728) / 21556), this clearly shows that this calculation has undoubtedly no sense of credibility. That means that it is totally impossible to claim that heavy vehicles will not contribute significantly to all the other projects in Nordhordlandspakken with a much larger share than to the E39 projects.

4. REAL CALCULATIONS OF THE «USER PAYS» PRINCIPLE FOR HEAVY VEHICLES BASED ON FACTS FROM NORDHORDLANDSPAKKEN.

With reference to the letter from the Royal Norwegian Ministry of transport and communication dated 19 February 2018:

"The Ministry refers to the fact that infrastructure investments totalling around NOK 317 million (in 2017 NOK value) have been planned as part of Nordhordlandspakken on the E39. It has been estimated that vehicles with a permissible maximum weight exceeding 3.5 tonnes, i.e. vehicles covered by the requirements set down in the Directive, will contribute to around NOK 175-215 million (in 2017 NOK value) towards the investments in

Nordhordlandspakken via the toll collection points on the E39. This means that this toll contribution will amount to around 55-70 percent of the costs associated with the infrastructure investments on the E39. We are therefore unable to see that there are grounds to claim that the level of the toll for vehicles exceeding 3.5 tonnes on the E39 is not proportional to the costs associated with the implementation of infrastructure projects on the E39. Furthermore, we cannot see that there are grounds to claim that the majority of the toll collected from these vehicles on the E39 will be used to subsidize projects on the local road network, as long as this toll contribution is lower than the costs associated with the investment projects on the E39. "

As I have explained in my complaint letter and pointed out in my e-mails, this claim is not correct according to the "Prop 164 s" and all other relevant documents regarding Nordhordlandspakken.

As the ministry itself reads:

"A total of five toll sections will be established, cf. figure 5.1 of Bill 164 S (2016-2017), which will contribute to the financing of the projects in Nordhordlandspakken."

This means that every single NOK collected in these five toll sections will contribute to the financing of ALL the projects in Nordhordlandspakken, each NOK with a percentage share according to the percentage cost of the total investments of Nordhordlandspakken, as presented in the table below.

Pri	Projectname	Project-cost 2016 NOK	Cost in % of total investments
1	Marås - Soltveit	484	25,9 %
2	Knarvik - Isdal	21	1,1 %
3	Fosse - Moldekleiv	121	6,5 %
4A / 4B	Fløksand - Vikebø / Trafikksikring Holme	146	7,8 %
5	Frekhaug-krysset, inkl. utbedring Fv. 244	16	0,9 %
6	Knarvik sentrum	182	9,7 %
7	Kollektivtiltak E39/Fv. 57	213	11,4 %
8	Rammetiltak Austrheim	11	0,6 %
9	Rammetiltak Masfjorden	41	2,2 %
10	Rammetiltak Fedje	2	0,1 %
11	Rammetiltak Modalen	2	0,1 %
12	Trafikksikring Fosse-krysset	11	0,6 %
13	Kollektiv tiltak Radøy (skysstasjon)	5	0,3 %
14	Vatne-krysset	21	1,1 %
15	Molvik-krysset	21	1,1 %
16	Grense Radøy/Lindås - Sæbø skule	114	6,1 %
17	Vikane - Eikangervågen	79	4,2 %
18	Sandskaret - Holme	114	6,1 %
19	Hilland - grense Radøy	76	4,1 %
	Ufordelt ramme Lindås	108	5,8 %
	Ufordelt ramme Meland	80	4,3 %
	Total	1 869	100 %

As the Ministry reads:

"As shown in table 3.1 of the Bill, the following infrastructure projects are planned to be implemented on the E39:

Priority 6, E39 Knarvik Centre. The project concerns the expansion of the road to four lanes and the construction of a new roundabout to the east. The preliminary estimated cost for the project is NOK 185 million in 2017-value.

Priority 15, E39 Molvik Junction. The project concerns traffic safety measures and has a preliminary estimated cost of NOK 22 million in 2017-value.

Priority 17, E39 Vikane – Eikangervåg. The project concerns improvements to the stretch of road, including the construction of a pedestrian and cycle path, and has a preliminary estimated cost of NOK 110 million in 2017-value.

In total, these three projects will involve infrastructure investments on the E39 totalling approximately NOK 317 million in 2017-value."

As the Ministry reads:

"It has been estimated that vehicles with a permissible maximum weight exceeding 3.5 tonnes, i.e. vehicles covered by the requirements set down in the Directive, will contribute to around NOK 175-215 million (in 2017 NOK value) towards the investments in Nordhordlandspakken via the toll collection points on the E39."

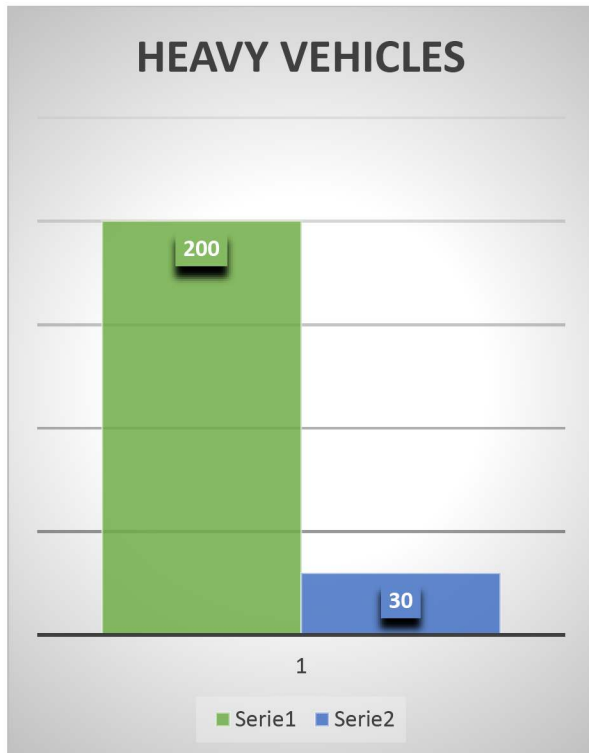
This means that the collected tolls from these vehicles, around NOK 175-215 million, will contribute 100 % towards the investments in Nordhordlandspakken, but only 15 % (9,7% + 1,1% + 4,2%) of this contribution is associated with the investments on the E39 thru priority 6, 15 and 17 as shown in the table above.

15% out of NOK 175-215 million is NOK 26,3-32,3 million or around NOK 30 million, and this is the actual contribution associated with the investments on the E39. This means that this toll contribution will only amount to around 8-10 percent of the costs associated with the infrastructure investments on the E39.

As much as 85% percent of the collected tolls from these vehicles will contribute towards the investments on the 16 other projects (All 19 projects, except priority 6, 15 and 17).

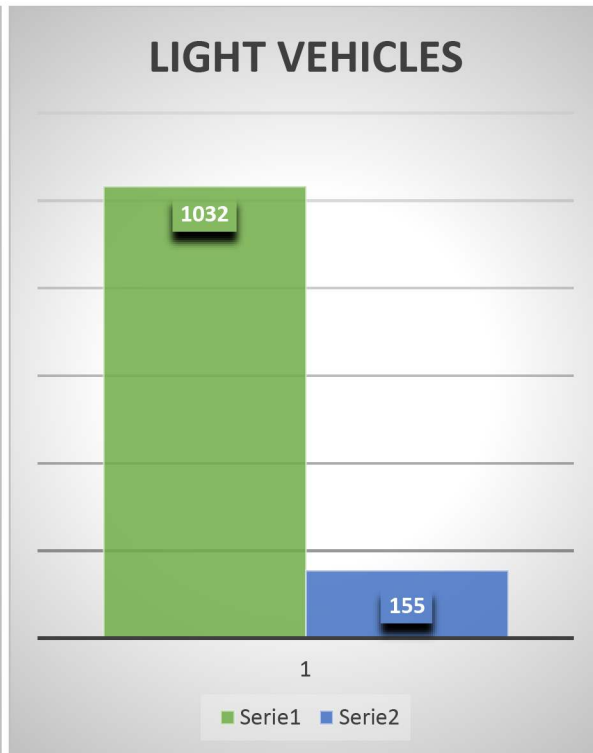
The corresponding numbers for light vehicles will be 15% of NOK 1032 millions = around NOK 155 millions.

Based on the fact that that there is no distinction between heavy and light vehicles regarding the "user pays" principle in Norway, as well as facts from the case documents relating to Nordhordlandspakken as described above, the real ratio between the "user pays" principle for heavy vehicles versus light vehicles will be as follows:



Serie 1: Mill NOK collected from Heavy vehicles

Serie 2: Mill NOK contributed on E39 (15%)



Serie 1: Mill NOK collected from Light vehicles

Serie 2: Mill NOK contributed on E39 (15%)

5. CONCLUSION BASED ON FACTS.

The financing of Nordhordlandspakken is structured as a splitting team where tolls from heavy- and light vehicles finances nearly all of the projects included in this package. Every single NOK contributing to the financing of Nordhordlandspakken contributes equally to all the projects, except for the small contributions made from Hordaland Fylkeskommune and from the Norwegian state that have been awarded special projects (This is stated in the Prop 164s).

Based on the information above, there are obvious reasons to conclude that the collection of tolls on the E39 is incompatible with the conditions set out in Article 7b of the Directive:

Pursuant to Article 7b(1) of the Directive, infrastructure charges shall be based on the principle of the recovery of the infrastructure costs, and the weighted average infrastructure charge' shall be related to the construction costs and the costs of operating, maintaining and developing the infrastructure network concerned (and may also include a return on capital and/or a profit margin based on market conditions).

The calculations made by The Ministry and Statens Vegvesen are entirely clearly fabricated for the only purpose of creating an illusion that the current EEA law has been followed. (See also attachment 01, the e-mail from Statens Vegvesen).

Under these circumstances, there is no doubt about my claim that the majority of the toll collected from heavy vehicles on the E39 will be used to subsidise projects on the local road network.

Against this background, there are no reasons to claim that the tolls to be levied on the E39 are based on the principle of the recovery of the infrastructure costs and that the weighted average infrastructure charge is related to the construction costs and the toll road operator's cost associated with borrowing, toll collection and financing the relevant infrastructure projects on the E39. The collection of tolls at issue, therefore, is definitely in conflict with EEA law.

Regarding The Authority's statement:

«As to the rest of the projects in the Nordhordlandspakken (infrastructure projects where charges will be levied on the local road network), the assessment can only cover the question whether the toll collection is in accordance with the fundamental EEA law principles of non-discrimination and of proportionality. There are no indications that the tolls at issue are directly or indirectly discriminatory in relation to any category of vehicles, neither on grounds of the nationality of the haulier, nor of the car owner, nor of the origin or destination of the vehicle.»

I would like to point out that the rest of the projects in the Nordhordlandspakken, only a small part of the charges will be levied on the local road network. As I have stated in my complaint, as well as above, the toll collection points on E39 will contribute 73% to Nordhordlandspakken of the total amount of collected tolls even though the investments associated to the three projects on E39 account for only 15% of the investments in Nordhordlandspakken.

If the Authority's conclusion, on the assumption, is still based on the Ministry's calculations, I would like to point out the basic EEA law principles of nondiscrimination and of proportionality:

«The tolls at issue fall within the scope of the Directive only insofar as they concern heavy goods vehicles ("HGV") with a maximum permissible gross laden weight above 3.5 tonnes. Insofar as tolls are also collected for vehicles falling outside the scope of the Directive, in particular light vehicles and busses with a weight of over 3.5 tonnes, national measures related to toll collection are not covered by the Directive. However, such measures nevertheless have to comply with the fundamental EEA law principles of nondiscrimination and of proportionality.»

In my view, this principle is certainly not fulfilled as long as only 7.46% of collected tolls via the toll collection points on the E39 from light vehicles are used for investments on the E39.

I also wonder how the EEA law works if, for example, Projects 15 and 17 are not realized as a result of cost overruns? Then there is only project 6 remaining of these projects on the E39, with a cost of NOK 185 million. This will result in a toll contribution from heavy vehicles will be higher than the costs associated with the projects on the E39.

I would also like to remind the Authority that this complaint is being followed closely by local media in addition to the fact that national media have shown their interest in the matter. I hope that the conclusion will be based on an impartial and thorough review of the facts from the case documents and that it can withstand the medias' spotlight.

Best regards

Harald Breivik.