

PETERKA PARTNERS

THE CEE LAW FIRM

REFUND OF OVERPAID TRUCK TOLLS IN GERMANY

CZECH REPUBLIC SLOVAKIA UKRAINE BULGARIA
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Payers of German truck toll may request a partial refund on toll paid

In its judgment of October 28, 2020, Az. C-321/19, the Court of Justice of the European Union (CJEU) decided that the truck toll levied by the Federal Republic of Germany violates the prohibition on the cost for overweight in Article 7 (9) of Directive 1999/62 / EC, amended by Directive 2006/38 / EC (the "**Directive**"). In particular, costs of the traffic police may not be regarded as operating costs within the meaning of Article 7 (9) of the Directive (CJEU, judgment of October 28, 2020, C-321/19, marginal number 26 et seq.). Consequently, the determination of the toll, at least to the extent to which it is based on costs of the traffic police, is contrary to European law and at least to this extent toll debtors were wrongly requested to pay the truck toll. According to initial estimates, this fact results in an increase in the toll by around four percent of the toll paid.

One of our collaborating German law firms provided specific information under German law, which is briefly presented herein below. **Nevertheless, please note that this is for information purposes only and for a detailed and customized advice, the assistance of a lawyer duly authorised under German law will be required.**

Further details & How to proceed

1. If you are (i) the owner or (ii) the holder of a vehicle which is subject to toll in accordance with Section 1 (1) BFStrMG¹ ("Vehicles are vehicles or vehicle combinations, 1. which are intended or used for road haulage and 2. their minimum gross weight is 7.5 tons") or (iii) the vehicle is registered at your name, you may claim toll refund. If these requirements are met, you are the toll debtor according to § 2 BFStrMG. Moreover, you are the joint-creditor (§ 428 BGB²) and the claimant and you may assert the total claim in particular proceedings.

2. **The request** for toll reimbursement must be submitted to the Federal Office for Goods Transport in accordance with Section 4 (2) sentence 2 BFStrMG. Applications should be sent to: *Federal Office for Goods Transport (BAG), PO Box 190180, 50498 Cologne, phone: 0221 5776-0, fax: 0221 5776-1777.*

¹ Act on the collection of route-related fees for the use of federal motorways and federal highways.

² Civil Code.

3. With regard to the specific procedure, an informal application sent by post or fax is sufficient. An application by e-mail is not permitted. In the application, however, the e-mail address of the contact person is to be stated and the acknowledgement of the receipt is to be sent by e-mail. German is the official language of the application. The application must be dated and signed. The toll statement and the vehicle license number may be attached and provided, though this is not absolutely necessary in the first step (Section 4 (2) sentence 3 BFStrMG).

4. According to the current assessment, there is no entitlement to recover the entire toll paid, since the toll collection itself was lawful; the amount was only incorrectly calculated. Therefore, only the amount that corresponds to the incorrectly calculated **parts** may be claimed. There is no need to quantify it now.

5. The OVG Münster³ has to decide now how the toll will be specifically and correctly calculated according to the specifications of the CJEU. This decision is unlikely to be made before summer 2021, more likely in the autumn. It is unclear now whether and to what extent this decision will then become final and whether the Federal Republic of Germany will abide by it or appeal against it.

6. According to German law, the toll is a **fee**. The right to reimbursement of an improperly levied fee is provided for in s21 BGebG.

7. The statute barred period for reimbursement of claims is generally based on German law. Claims for reimbursement become statute-barred if they are not asserted by the end of the third calendar year following the creation of the reimbursement claim (Section 21 (2) BGebG). Since the toll is automatically debited, the right to reimbursement arises at the time of debiting. As of now, all reimbursement claims before 2018 can no longer be successfully asserted.

8. It has not been decided yet whether s21 (2) BGebG takes into account requirements of the European law. This means that there is currently at least a theoretical **possibility** of successful recovery of the toll overpaid by 2005 if this legal opinion prevails.

9. In any case, it is very likely that claims for reimbursement that arose in **2018** will become statute barred **on 31 December, 2021**. A different rule applies to companies which have recently suspended the statute of limitations vis-à-vis the Federal Office for Goods Transport and have not yet received a notice or taken action against the notice.

³ The Supreme Administrative Court in Münster.

10. Theoretically, in order to **avoid** claims **becoming statute barred**, only negotiations on the claim, acknowledgment of the debtor, a waiver of the statute barred period objection by the debtor or the filing of a lawsuit come into consideration. The letter of assertion described in section 3 should therefore include an express request to waive the objection of the statute barred period and to declare in a legally binding manner that payments will be made on statute barred claims. If it does not happen - as of now - a lawsuit should be timely filed out of the highest precaution, i.e. before 31 December 2021. The administrative legal process will be initiated for this purpose

11. In order to submit your claims against the Federal Office for Goods Transport (Section 3), the support of German lawyers will be needed. The following documents will be made available

- a) a current extract of your company from the commercial register,
- b) a list of the toll you paid each year of the claim, ideally the relevant invoice from the toll-operator Toll Collect GmbH.

In addition to the above-mentioned, on a case by case situation, the German lawyers may request from your side additional documents and/or information.

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