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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2009/33/EU on the promotion of clean and energy-efficient road
transport vehicles

(Text with EEA relevance)

{SWD(2017) 366 final} - {SWD(2017) 367 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The EU is committed to creating a sustainable, competitive, secure and decarbonised energy system. Achieving a sustainable transport is a key objective of the common transport policy. It also figures prominently in the Commission's political priorities for 2015-2019, and most notably within the Energy Union¹, and Jobs, Growth and Investment. The 2017 State of the Union address outlines a new industry policy strategy committed to making the EU a world leader in decarbonisation².

These political priorities are underpinned by the Commission's European Strategy for Low-Emission Mobility, adopted in July 2016³. It confirms that in order to meet the EU's commitments at the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) held in Paris in 2015 the decarbonisation of the transport sector must be accelerated and greenhouse gas emissions and pollutant emissions should also be firmly on the path towards zero-emission by mid-century.

The Commission's 'Europe on the Move: an agenda for a socially fair transition towards clean, competitive and connected mobility for all'⁴ communication notes that increased production and uptake of clean vehicles, alternative fuel infrastructure and modern system services making use of the data economy in the EU offers multiple benefits: European citizens will benefit from safe, attractive, intelligent, seamless and increasingly automated transport solutions, which will provide industries with new sources of growth and competitiveness.

Around 95% of vehicles on Europe's roads still use fossil fuels. The European Strategy for Low-Emission Mobility makes clear that the deployment of low- and zero-emission vehicles will need to increase substantially in the future in order to meet the EU's emission reduction commitments. The strategy indicates the relevance of public procurement in this context. It notes that *"to support demand the Commission is working [...] on incentives in public procurement rules, in the context of the revision of the Clean Vehicles Directive."*⁵

As was announced in the Commission's Communication "Europe on the Move: an agenda for a socially fair transition towards clean, competitive and connected mobility for all"⁶ this proposal forms part of a second package of proposals, which will contribute to the Union's drive towards low-emission mobility. This package is presented in the Commission's Communication "Delivering on low-emission mobility - A European Union that protects the planet, empowers its consumers, and defends its industry and workers". It includes a combination of supply- and demand-oriented measures to put the EU on a path towards low-emission mobility and at the same time strengthen the competitiveness of the EU's mobility eco-system⁷.

¹ COM (2015) 80 final.

² https://ec.europa.eu/commission/news/president-juncker-delivers-state-union-address-2017-2017-sep-13_en.

³ COM (2016) 501 final.

⁴ COM (2017) 283 final.

⁵ COM (2016) 501 final.

⁶ COM (2017) 283 final.

⁷ COM(2017) 675 final

Directive 2009/33/EC on the promotion of clean, energy-efficient road vehicles, known as the Clean Vehicles Directive (or the Directive) complements the EU's horizontal public procurement legislation⁸. By making it mandatory to account for operational lifetime energy and environmental impact in the public procurement of road transport vehicles, it seeks to stimulate the market for clean, energy-efficient vehicles, contribute to reducing CO₂ and air pollutant emissions, and increase energy efficiency.

An ex-post evaluation carried out in 2015 showed that the Directive has serious shortcomings. Public bodies are on average not using public procurement well enough to help accelerate the market uptake of clean vehicles.⁹ It identified shortcomings in the Directive's design, including an insufficient scope and lack of a definition. Provisions for vehicle purchase are either vague (technical specifications) or overly complex (monetisation of external effects).

The general objective of this initiative is to increase the market uptake of clean, i.e. low- and zero-emission vehicles, in public procurement and hence to contribute to reducing overall transport emissions, and to competitiveness and growth in the transport sector. Public procurement remains relevant as a demand-side stimulus, including in the field of heavy-duty transport vehicles where no legislative requirement for reducing CO₂ emissions exists yet, though such legislation is under preparation. It helps further support market momentum in cars and van markets in Member States with a very low uptake of clean vehicles – in 2017, in 16 Member States the proportion of battery-electric vehicles in new car registrations was less than 1%, and in 10 Member States it was less than 0.5%. And it stimulates the uptake of clean vehicles in the heavy-duty market segment.

The revision ensures that the Directive covers all relevant procurement practices, that it provides clear, long-term market signals, and that provisions are simplified and effective. It aims to increase the transport sector's contribution to the reduction of CO₂ and air pollutant emissions and to competitiveness and growth. It also supports better alignment, and hence greater market impact of, public procurement policies in Member States.

The revision widens the Directive's scope. It sets a definition for clean light-duty vehicles based on a combined CO₂ and air pollutant emissions threshold. It also makes it possible to adopt a delegated act under this Directive to adapt the same approach for heavy-duty vehicles after CO₂ emission standards for such vehicles have been adopted at EU level in the future. It sets minimum procurement targets at Member State level following the definition and in case of heavy-duty vehicles based on alternative fuels until the adoption of the delegated act. Finally, it introduces a reporting and monitoring framework and discards the methodology for monetisation of external effects.

- **Consistency with existing policy provisions in the policy area**

EU law sets out minimum harmonised public procurement rules through Directives 2014/24/EU and 2014/25/EU. These minimum thresholds are conditions for the applicability of provisions under the Clean Vehicles Directive. The objectives of this revision are consistent with the Charter of Fundamental Rights¹⁰, in particular as a non-discriminatory approach is applied to single contracting authorities, entities and relevant operators. They are

⁸ Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles (EE L120, 15.5.2009, p.5) .

⁹ In 2009-2015, an approximate average of 4.7% of all new public passenger vehicle purchases (or ~2,7k vehicles), 0.4% of all new van purchases (or 0,02k vehicles), 0.07% of all rigid truck purchases (or 0,006k vehicles), and 1.7% of all new buses (or 0,13k vehicles) purchased under the Clean Vehicles Directive were battery-electric, fuel-cell electric, plug-in hybrid or natural gas vehicles.

¹⁰ http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm

fully in line with the main objectives of other legislative and non-legislative initiatives aiming to reduce emissions of greenhouse gases and air pollutants and to support the use of clean, low- and zero-emission vehicles. The objectives of this initiative, and the measures proposed, are consistent with the proposed Regulation for CO₂ emission performance standards post-2020¹¹. The revision complements a market push-and-pull approach of policy levers at EU level by creating an additional demand-side stimulus for clean vehicles. In this way, it helps implement CO₂-emission-performance standards for cars and vans post-2020, as well as air quality legislation currently in place in the EU.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The Directive is based on Article 192 of the Treaty on the Functioning of the European Union. The European co-legislators underlined the importance of public procurement to the achievement of long-term EU environmental, climate and energy as well as growth and competitiveness objectives with the adoption of Directive 2009/33/EC. It is also the same legal basis as the ones used for the adoption of Directives 2014/24 /EU and 2014/25/EU.

• Subsidiarity (for non-exclusive competence)

Member States and the EU share competences in transport, environment and procurement law. However, the sectorial harmonisation of procurement rules in the Internal Market is an EU competence. Problems linked to the Directive as it currently stands could not be addressed by Member States alone, since Member State jurisdiction ends at national borders.

The impact assessment shows that action under this initiative limits EU intervention to providing a common policy framework with minimum requirements for the procurement of clean vehicles, while giving Member States flexibility in implementation, including the choice of technology. The proposed measures do not encroach on the Member State competence to organise the provision of (public) transport, and they do not constraint the ability to choose the most appropriate technology.

Large-scale potential impacts of climate change justify action at all levels of governance; this is an accepted basis for policy making at EU level. It is also accepted that air pollution, though mostly a local urban problem, can be more effectively tackled if authorities can draw on the best clean technologies available, which is made easier by the existence of a common market. The cost of air pollution warrants collaboration and action at all levels of governance.

• Proportionality

In accordance with the principle of proportionality, this proposal does not go beyond what is necessary to achieve the objectives set. All measures are considered to be proportionate in terms of their impacts. They complement other policy levers such as the CO₂ emission performance standards for cars and vans and support the implementation of EU air quality legislation. This initiative helps ensuring a clearer, better coordinated approach. They also do not constrain the ability to choose the most relevant technology. Rather they support with a minimum share approach the needed acceleration towards low- and zero-emission mobility.

It allows authorities to adopt, within specified timeframes, all measures needed to facilitate the use of clean vehicles in order to address European, national and local policy objectives. It also allows for flexible interaction between national, local and regional public bodies within

¹¹ COM(2017) 676 final

the context of the overall broad minimum procurement targets set at national level. The territorial impact assessment of the proposal showed that effects are predominantly positive and are relatively equally distributed throughout the EU.

- **Choice of the instrument**

As this proposal amends an existing Directive, an amending Directive is the most appropriate instrument. Most of the stakeholders who took part in the public consultation supported this position and rejected the repeal option and the option to change the Directive into a Regulation, in spite of the shortcomings of the current legislation. It was noted that a Regulation does not allow for the flexibility needed to address regional and local differences.

3. RESULTS OF EX-POST EVALUATION, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENT

- **Ex-post evaluation of existing legislation**

The ex-post evaluation concluded that the Directive has not stimulated the public procurement of clean, energy-efficient vehicles. Public procurement has had little effect on market uptake of clean vehicles across the EU and therefore also very limited impact on reducing greenhouse gas and air pollutant emissions. It has also had no visible impact on the sector's competitiveness or growth.

The evaluation noted the following as key reasons behind the Directive's limited impact:

- The limited range of contracts covered by the Directive: due to limited provisions on its scope, the Directive does not cover practices other than direct purchase by public bodies. For example, it does not address the renting, leasing or hire-purchase of vehicles. Furthermore, it does not cover transport service contracts other than for public passenger transport.
- The lack of clear provisions for vehicle purchase: the Directive does not clearly define clean vehicles, nor does it include clear purchase provisions for them.
- The complicated provision on using the monetisation methodology: the evaluation noted that public bodies rarely use this methodology because it is so complex.
- Lack of alignment of Member States' public procurement policies: in recital 15, the Clean Vehicles Directive notes that "procurement of vehicles for public transport services can make a significant impact on the market, if harmonised criteria are applied at Community level". Such harmonised criteria are not in place yet.

The ex-post evaluation concluded that the Directive should remain in place. Public procurement has the potential of helping increase market uptake of clean vehicles and contribute to the economies of scale that will lead to lower production costs and lower prices. In turn, this should help stimulate private demand for clean vehicles: greater visibility can increase consumer trust. A repeal would send the wrong policy signal in the context of the EU's transition to low-emission transport. Contracting authorities and entities would find it more difficult to justify the purchase – horizontal public procurement law does not set these specific requirements. At the moment, there are also no alternative policy measures available to stimulate the market for cleaner heavy-duty vehicles.

The ex-post evaluation recommended a series of amendments to the Directive, including to broaden its scope and change the provisions for vehicle purchase to include a definition and related action requirements. It also noted the need to improve the level and quality of

information and data available to support future monitoring of the effectiveness and efficiency of the Directive.

- **Stakeholder consultations**

As part of the impact assessment, stakeholders were consulted in:

- an open public consultation from 19 December 2016 until 24 March 2017: it confirmed the need for revision; broadening the scope and introducing a definition and related minimum action requirements found majority support;
- stakeholder interviews carried out between December 2016 and March 2017; they noted particularly the need for flexibility in the implementation of the Directive;
- a public stakeholder meeting on the public consultation on 28 April 2017, discussing the needs and relative benefits of approaches to broadening the scope of the Directive, setting up a definition and related procurement requirements;
- meetings with Member State representatives on 8 February, 5 April and 28 April 2017, underlining the relevance of policy consistency and the benefits of an emission-based approach to defining clean vehicles.

- **Collection and use of expertise**

The drafting of the impact assessment report started with the ex-post evaluation of the Directive¹². Most of the information used was provided by stakeholders in stakeholder consultation activities. This was complemented by information that stakeholders provided to the Commission on an ad hoc basis.

Further sources of information included work by an expert group under DG MOVE's Sustainable Transport Forum Sub-group on Alternative Fuels in Cities. Information generated for the revision of the Commission's Green Public Procurement Criteria was also used. The impact assessment relies to a considerable extent on an accompanying study carried out by Ricardo AEA.¹³ Overall, the sources used to draft the impact assessment report are numerous, largely exhaustive and representative of the various stakeholder groups.

The Commission's also organised a meeting with experts from different cities and regions on the territorial impact assessment of this legislative proposal on 11 May 2017.

- **Impact assessment**

The impact assessment was submitted to the Commission's Regulatory Scrutiny Board on 26 July 2017. The Board issued a positive opinion with reservations on 13 September 2017; it considered that the final report should fully explain the value added by the initiative compared to other initiatives that affect road transport emissions, and also in view of increasing vehicle uptake. It noted that the report needed to more clearly explain the reasoning behind the shift in the Directive's governance relative to the principle of technological neutrality, and further describe details of the policy options design. The opinion further noted that the short-term and long-term net benefits of the policy options should be clearer and that the implementation of the approach and its REFIT implications should be explained in more detail.

The final impact assessment report includes a comprehensive description and assessment of the initiative's value added and its links with other policy initiatives in sections 1.2, 3.3, 3.4

¹² See <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2015-09-21-ex-post-evaluation-directive-2009-33-ec.pdf>.

¹³ SWD(2017) 366 final

and 4.3. Knock-on effects on private purchase decisions have been qualitatively described in section 2.1. A detailed description of the policy options has been included in section 5, building on the description of the process of pre-screening all possible measures in section 4. It includes the reasoning behind discarding the external cost internalisation approach, mainly due to its limited use in practice. A comprehensive analysis of the impacts of all options is presented in section 6 and includes an analysis of trade-offs, to the extent possible. The impact assessment also includes information on the sensitivity of the baseline relative to other policy initiatives. The executive summary of the impact assessment and the opinion of the Regulatory Scrutiny Board can be found on the Commission's website¹⁴.

Policy options

Option 1: Repeal of the Directive

This policy option repeals the Directive. The specific objectives of the Directive would be addressed through different non-legislative instruments, including awareness raising and promotion of the use of the voluntary green public procurement criteria established by the European Commission. Existing EU financial guidelines for moving towards low- and zero-emission vehicles¹⁵ could be revised. Voluntary action of market actors would be encouraged.

Option 2: Providing a definition of clean vehicles and requiring Member States to set up national policy plans or use the monetisation methodology

This policy option proposes a number of moderate changes. It does not change the scope of the Directive but requires Member States to choose one of two principal approaches:

- use a common definition of clean vehicles on the basis of tailpipe emissions as defined in the amended Directive and, based on this, develop a national policy framework towards a long-term target; or
- require all public bodies to procure vehicles based on their monetised internal and external costs, for which the use of the revised monetisation methodology under the Directive would be binding.

Option 3: Providing a definition of clean vehicles based on emission thresholds and setting up minimum procurement targets for light-duty vehicles, while increasing the scope

This policy option thoroughly revises the Directive. It makes it more ambitious and changes its principal governance approach. In particular, this option:

- introduces a common definition of clean vehicles based on an emissions-based threshold (tank-to-wheel) for light-duty vehicles, combining CO₂ and air pollutant emissions;
- adds a minimum procurement target for public bodies, defined at Member State level for light-duty vehicles following the thresholds set under EU procurement law, for 2025 and 2030¹⁶;
- introduces measures to extend the scope of the Directive; and

¹⁴ [Insert weblink when available].

¹⁵ SWD(2013)27.

¹⁶ 2025 provides sufficient time for preparation and adjustment of public procurement processes, while enabling market signals in the short-term. A staged approach towards 2030 also provides the opportunity to increase the ambition of the Directive to drive forward innovation in procurement of vehicles.

- removes the monetisation methodology.

Option 4: Providing a definition based on alternative fuels and setting up related minimum procurement targets for all vehicles, while increasing the scope

This policy option adopts the same general approach to revising the Directive as policy option 3, but with several differences. It:

- introduces a common definition of clean vehicles based on alternative fuels for plug-in hybrid, battery-electric, fuel-cell electric and natural/biomethane gas light- and heavy-duty vehicles;
- adds a minimum procurement target for public bodies, defined at Member State level for light- and heavy-duty vehicles following the definition and thresholds set under EU procurement law for 2025 and 2030;
- introduces measures to extend the scope of the Directive; and
- removes the monetisation methodology.

Option 5: Adopting a Regulation to use the monetisation methodology as the sole approach to informing vehicle procurement, while increasing the scope

This policy option completely changes the governance framework of clean vehicle procurement. It replaces the current Directive with a Regulation on the promotion of clean vehicles, and prescribes that vehicles be procured based on their energy and environmental impacts, which should be monetised according to the revised monetisation methodology. It also increases the scope of the Directive.

Option 6: Providing a definition of clean vehicles based on emission thresholds and setting up minimum procurement target for light-duty vehicles and combining it with a definition based on alternative fuels and setting up minimum procurement targets for heavy-duty vehicles

This option combines elements of policy options 3 and 4. It acknowledges the advantage of an emissions-based approach to defining a clean vehicle. The approach from option 3 is used for light duty vehicles. For heavy-duty vehicles it uses the approach of option 4 and enables the Commission to adopt a delegated act to change this approach to an emissions-based threshold approach, once CO₂-emission performance standards for heavy-duty vehicles have been adopted at EU level.

Option 6 has been chosen as the preferred policy option for the revision of the Directive. It improves consistency with the use of CO₂-emission performance standards for cars and vans at EU level. Both initiatives concern the same type of vehicle through a combination of market push- and-pull levers. Option 6 ensures the adaptability of the Directive to an emissions-based approach applied in the field of heavy-duty transport vehicles in the future. It also guarantees immediate impact on market uptake in the area of heavy-duty transport. Finally, it sets a clear path forward, providing market actors with long-term certainty, while providing flexibility and discretion in implementation.

- **Regulatory fitness and simplification**

Regulatory fitness and simplification of the Clean Vehicles Directive will be achieved if a clear definition is set, if related minimum procurement targets are established, and if the complex monetisation methodology is abandoned. If the Directive's current approach was to be continued, trade-offs between better defining clean vehicles (and related purchase provisions) and improving the monetisation methodology would prevail and hamper the objective of creating stronger market signals and more effective procurement procedures.

Implementation of the preferred option are likely to yield an initial increase in administrative burden because of the need for target implementation and reporting. But these are outweighed by the overall socio-economic benefits but also the longer-term simplification gains under the proposed approach of clear provisions. The implementation in Member States leaves the possibility to flexibly combine local and regional procurement initiatives according to capacity and maturity of market. The effective use of the completed common procurement vocabulary (CPV) codes and registrations in the tender electronic daily database will support and simplify reporting and monitoring. The impact assessment report shows that the benefits of simplification will increase over time, with the Directive's implementation.

4. BUDGETARY IMPLICATIONS

The proposal does not have any implications for the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

This proposal addresses the current lack of reporting obligations. Member States will have to report on the implementation of the Directive every three years, starting with an intermediate report in 2023 and full reporting in 2026 on the implementation of the target for 2025. common codes for low- and zero-emission vehicles should be introduced in the EU's common procurement vocabulary, to enable easy notification in the tender electronic daily database. Moreover, the Commission will support the implementation of the revised Directive through continued work under the European Commission's sustainable transport forum.

- **Detailed explanation of the specific provisions of the proposal**

The proposal for a Directive amending the Clean Vehicles Directive is based on policy option 6. The Directive is amended as follows:

- the scope of the Directive as set out in Article 3 is extended to forms of procurement other than purchase, namely vehicle lease, rent or hire-purchase, and to public service contracts for public road transport services, special purpose road transport passenger services, non-scheduled passenger transport and hire of buses and coaches with driver according to their common procurement vocabulary codes listed in the Annex;
- definitions under the Directive are amended in Article 4(4) by adding a reference to the minimum procurement targets for Member States, listed in the Annex;
- the provisions for the purchase of clean vehicles under Article 5 are revised to set out minimum targets for the procurement of clean vehicles, differentiated by Member State and by vehicle segment categories according to combined CO₂-air pollutant emission-thresholds (light-duty vehicles) and alternative fuels (heavy-duty vehicles), as included in the Annex and as set from the dates specified there;
- the current Article 6 is deleted;
- a new Article 7 on the exercise of delegation of power is introduced and Article 9 on the exercise of implementing powers is adapted;
- Article 10 is adapted in order to introduce reporting obligations for the Member States and to align the Commission's reporting obligations with Member States'

reporting, with intermediate reporting in 2023 and full reporting in 2026 on the implementation of the targets for 2025 and every three years thereafter.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2009/33/EU on the promotion of clean and energy-efficient road transport vehicles

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union is committed to a sustainable, competitive, secure and decarbonised energy system³. The Energy Union and the Energy and Climate Policy Framework for 2020 to 2030⁴ establish ambitious commitments for the Union to further reduce greenhouse gas emissions by at least 40 % by 2030 as compared with 1990, to increase the proportion of renewable energy consumed by at least 27 %, to make energy savings of at least 27 %, and to improve the Union's energy security, competitiveness and sustainability.
- (2) In its European Strategy for Low-Emission Mobility⁵ the Commission announced that in order to meet the Union's commitments at the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) held in Paris in 2015, the decarbonisation of the transport sector must be accelerated and that therefore greenhouse gas emissions and air pollutant emissions from transport should be firmly on the path towards zero-emission by mid-century. Moreover, emissions of air pollutants from transport that are harmful to health need to be significantly reduced without delay. This can be achieved by an array of policy initiatives, including the use of public procurement of clean vehicles.

¹ OJ C , , p. .

² OJ C , , p. .

³ European Council Conclusions of 24 October 2014.

⁴ Commission Communication on a policy framework for climate and energy from 2020 to 2030 (COM(2014)0013)

⁵ COM(2016) 501 final.

- (3) In its Communication "Europe on the Move: an agenda for a socially fair transition towards clean, competitive and connected mobility for all"⁶ the Commission underlines that increased production and uptake of clean vehicles, alternative fuels infrastructures and new mobility services taking advantage of digitalisation and automation in the Union offer multiple benefits to Europe's citizens, Member States and industries. These include safer and seamless travel and reduction of exposure to harmful pollutant emissions. Further, the 2017 State of the Union address stated that the objective is for the EU to become a world leader in decarbonisation.
- (4) As was announced in the Commission's Communication "Europe on the Move: an agenda for a socially fair transition towards clean, competitive and connected mobility for all"⁷ this proposal forms part of a second package of proposals, which will contribute to the Union's drive towards low-emission mobility. This package, which is presented in the Commission's Communication "Delivering on low-emission mobility - A European Union that protects the planet, empowers its consumers, and defends its industry and workers" includes a combination of supply- and demand-oriented measures to put the EU on a path towards low-emission mobility and at the same time strengthen the competitiveness of the EU's mobility eco-system.
- (5) Innovation of new technologies helps to lower vehicle emissions, supporting the decarbonisation of the transport sector. An increased uptake of low- and zero-emission road vehicles is likely to reduce emissions of CO₂ and certain pollutant emissions (particulate matter, nitrogen oxides and non-methane hydrocarbons) and to promote competitiveness and growth of the European industry in the increasing global markets for low- and zero-emission vehicles.
- (6) Public authorities, through their procurement policy, can establish and support markets for innovative goods and services. Directives 2014/24/EU⁸ and 2014/25/EU⁹ set out minimum harmonised public procurement rules harmonising the way public authorities and certain public utility operators purchase goods, works and services. In particular, they set overall thresholds for the volume of contracts to be subject to Union legislation, which also apply to the Clean Vehicles Directive.
- (7) Directive 2009/33/EC complements the horizontal public procurement legislation of the Union and adds sustainability criteria, and thereby aims to stimulate the market for clean and energy efficient road transport vehicles. The Commission carried out an ex-post evaluation of the Clean Vehicles Directive in 2015 concluded that the Directive did not trigger market uptake of clean vehicles across the Union, particular due to shortcomings in its provisions on scope and vehicle purchase. The impact on reducing greenhouse gas and air pollutant emissions and the impact on promoting industry competitiveness was found to have been very limited.
- (8) The Impact Assessment carried out underlines the benefits of changing the overall governance approach to clean vehicle procurement at Union level. Setting minimum procurement targets can effectively reach the objective of impacting market uptake of clean vehicles in comparison to relying on the internalisation of external cost into overall procurement decisions, while noting the relevance to consider environmental aspects in all procurement decisions. The medium and long-term benefits for European

⁶ COM(2017) 283 final.

⁷ COM (2017) 283 final.

⁸ OJ L 94, 28.3.2014, p. 65 - 242.

⁹ OJ L 94, 28.3.2014, p. 243 – 374.

citizens and enterprises fully justify this approach insofar as it does not prescribe a specific technology to use for contracting authorities, entities and operators.

- (9) Extending the scope of the Directive by including practices such as lease, rental and hire-purchase of vehicles, as well as contracts for public road transport services, special purpose road transport passenger services, non-scheduled passenger transport and hire of buses and coaches with drivers as well as specific postal and courier services and waste refusal services ensures that all relevant procurement practices are covered.
- (10) There is widespread support from key stakeholders for a definition of clean vehicles taking account of reduction requirements for greenhouse gases and air pollutant emissions from light- and heavy-duty vehicles. To ensure that there are adequate incentives to supporting market-uptake of low- and zero-emission vehicles in the Union, provisions for their public procurement under this amendment should be aligned with provisions of Union legislation on CO₂ emission performance of cars and vans for the post-2020 period¹⁰. Action carried out under the amended Directive will contribute to compliance with the requirements of these standards. A more ambitious approach for public procurement can provide an important additional market stimulus.
- (11) Light-duty and heavy-duty vehicles are used for different purposes and have different levels of market maturity, and it would be beneficial that public procurement provisions acknowledge these differences. The Impact Assessment illustrated the added value of adopting an approach based on alternative fuels until technology-neutral requirements for CO₂ emissions from heavy-duty vehicles have been set at Union level, which the Commission intends to propose in the future. The Impact Assessment further recognised that markets for low- and zero-emission urban buses are characterised by increased market maturity, whereas markets for low- and zero-emission trucks are at an earlier stage of market development.
- (12) Setting minimum targets for clean vehicle procurement by 2025 and by 2030 at Member State level should contribute to policy certainty for markets where investments in low- and zero-emission mobility are warranted. The minimum targets support market creation throughout the Union. They provide time for the adjustment of public procurement processes and give a clear market signal. The Impact Assessment notes that Member States increasingly set targets, depending on their economic capacity and how serious the problem is. Different targets should be set for different Member States in accordance with their economic capacity (Gross Domestic Product per capita) and exposure to pollution (urban population density). Minimum procurement targets should be complemented by the obligation of the contracting authorities, entities and operators to consider relevant energy and environmental aspects in all their procurement procedures. The Territorial Impact Assessment of this amended Directive illustrated that the impact will be evenly distributed among regions in the Union.
- (13) The maximum impact can be achieved if public procurement of clean vehicles is targeted in areas that have a relatively high degree of air pollution. Public authorities in Member States are encouraged to particularly focus on those areas when concluding the implementation of their domestic minimum targets and to reflect related action in their reporting under this amended Directive.

¹⁰ COM(2017) 676 final

- (14) Life-cycle costing is an important tool for contracting authorities and entities to cover energy and environmental costs during the life-cycle of a vehicle, including the cost of greenhouse gas emission and other pollutant emissions on the basis of a relevant methodology to determine their monetary value. Given the scarce use of the methodology for the calculation of operational lifetime costs under Directive 2009/33/EU and the information provided by contracting authorities and entities on the use of own methodologies tailored to their specific circumstances and needs, there should be no methodology mandatory to use, but contracting authorities, contracting entities or operators should be able to choose any life-costing methodology in order to support their procurement processes.
- (15) Reporting on public procurement under this amended Directive should provide a clear market overview to enable effective monitoring of the implementation. It should start with an intermediate report in 2023 and continue with a first full report on the implementation of the minimum targets in 2026 and thereafter every three years. To minimise administrative burden on single public bodies and establish an effective market overview, simple reporting should be facilitated. The Commission will ensure full reporting for low- and zero-emission and other alternative-fuel vehicles within the context of the Common Procurement Vocabulary of the Union. Specific codes in the Common Procurement Vocabulary will help the registration and monitoring under the Tender Electronic Daily Database.
- (16) Further support to market uptake of clean vehicles can be achieved by providing targeted public support measures at national and Union level. This includes better exchange of knowledge and alignment of procurement to enable actions at a scale great enough for cost reductions and market impact. The possibility of public support in favour of promoting development of infrastructures necessary for the distribution of alternative fuels is recognised in the Guidelines on State aid for environmental protection and energy 2014-2020¹¹. However, the rules of the Treaty, and in particular Articles 107 and 108 thereof, will continue to apply to such public support.
- (17) In order to achieve the objectives of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in order to update provisions in respect of CO₂ emission standards of heavy duty vehicles for a period of five years starting from *[Please insert the date of entry into force]*. This period should be tacitly extended for periods of the same duration, unless the European Parliament or the Council oppose such an extension. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (18) Since the objectives of this Directive, namely to provide a demand-side stimulus for clean vehicles in support of a low-emission mobility transition, cannot be sufficiently achieved by the Member States alone, but can rather, by reason of a common and long-term policy framework and for reasons of scale be better achieved at Union level the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle

¹¹ OJ C 200, 28.6.2014, p. 1.

of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

- (19) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹², Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a Directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (20) Directive 2009/33/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2009/33/EC is amended as follows:

- (1) the title is replaced by the following:

"Directive 2009/33/EU on the promotion of clean road transport vehicles in support of low-emission mobility"

- (2) Article 3 is replaced by the following:

"Article 3

Scope

This Directive shall apply to contracts for the purchase, lease, rent or hire-purchase of road transport vehicles by:

- (a) contracting authorities or contracting entities in so far as they are under an obligation to apply the procurement procedures set out in Directives 2014/24/EU and 2014/25/EU;
- (b) operators for the discharge of public service obligations under a public service contract within the meaning of Regulation (EC) No 1370/2007 of the European Parliament and of the Council¹³;
- (c) to public service contracts covering transport services as set out in Table 1 of the Annex in excess of a threshold which shall be defined by Member States not exceeding the threshold values as set out in Article 4 of Directive 2014/24/EU and Article 15 of Directive 2014/25/EU".

- (3) Article 4 is replaced by the following:

" Article 4

¹² OJ C 369, 17.12.2011, p. 14.

¹³ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport by road and rail (OJ L 315, 3.12.2007, p. 1).

Definitions

For the purpose of this Directive:

1. 'contracting authorities' means contracting authorities as defined in Article 2(1)(1) of Directive 2014/24/EU and in Article 3 of Directive 2014/25/EU.

2. 'contracting entities' means contracting entities as referred to in Article 4 of Directive 2014/25/EU.

3. 'road transport vehicle' means a vehicle covered by Annex II, letter A, points 1 and 2 of Directive 2007/46/EC¹⁴.

4. 'clean vehicle' means

(a) a vehicle of category M1 or M2 with a maximum tail-pipe emission expressed in CO₂g/km and real driving pollutant emissions below a percentage of the applicable emission limits as referred to in Table 2 in the Annex , or;

(b) a vehicle of category N1 with a maximum tail-pipe emission expressed in CO₂g/km and real driving pollutant emissions below a percentage of the applicable emission limits as referred to in Table 2 in the Annex, or;

(c) a vehicle of category M3, N2 or N3 as defined in Table 3 in the Annex ".

(4) The following Article 4a is inserted:

"Article 4a

Delegation of powers

The Commission shall be empowered to adopt delegated acts in accordance with Article 8a in order to update Table 3 in the Annex with CO₂ tail-pipe emission and air pollutants thresholds for heavy duty vehicles once the related heavy-duty CO₂ emission performance standards are in force at Union level".

(5) Article 5 is replaced by the following:

"Article 5

Minimum procurement targets

1. Member States shall ensure that purchase, lease, rent or hire-purchase of road transport vehicles, and public service contracts on public passenger transport by road and rail and public service contracts as referred to in Article 3 of this Directive comply with the minimum procurement targets for light-duty vehicles referred to in table 4 of the Annex and for heavy-duty vehicles referred to in Table 5 in the Annex .

2. Member State authorities may apply higher minimum mandates than those referred to in the Annex of this Directive.

(6) Articles 6 and 7 are deleted;

(7) A new article 8a is inserted:

"Article 8a

Exercise of the delegation

¹⁴ OJ L 263, 9.10.2007, p. 1.

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 4a shall be conferred on the Commission for a period of five years from [*Please insert the date of entry into force*]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 4a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 4a shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council".

(8) Article 9 is replaced by the following:

"1. The Commission shall be assisted by a Committee.

That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

'3. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request."

(9) Article 10 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. The Commission shall submit a report on the application of this Directive and on the actions taken by individual Member States for the effective implementation of this Directive to the European Parliament and to the Council every three years starting on 1 January 2027, following the reporting from Member States."

(b) The following paragraphs 4 and 5 are added:

"4. Member States shall submit to the Commission a report on the implementation of this Directive by 1 January 2026, and every three years thereafter. Member States shall submit to the Commission an intermediate report by 1 January 2023. That report shall contain information on the steps undertaken to implement this Directive, including on the number and the categories of vehicles procured by authorities and entities, on the dialogue carried out between the different levels of governance, information on Member States' intentions regarding the above reporting activities, as well as any other valuable information. Information's should follow the categories contained in Regulation No 2195/2002 on the Common Procurement Vocabulary (CPV) ¹⁵ as noted in the Annex.

5. The Commission shall be empowered to adopt, by means of implementing acts, guidance on the contents of Member States' reports referred to in paragraph 4".

(10) The Annex is replaced by the text in the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by XXXX [*Please insert the date 24 months following the date of entry into force*] at the latest. They shall immediately communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

¹⁵ OJ L 340, 16.12.2002, p. 1,