



Council of the
European Union

Brussels, 25 January 2023
(OR. en)

5686/23

LIMITE

TRANS 21
TELECOM 14
IND 22
CODEC 69
DATAPROTECT 11
DIGIT 8

**Interinstitutional File:
2021/0419(COD)**

NOTE

From:	Presidency
To:	Delegations
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2010/40/EU on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport - Presidency discussion paper

In view of the meeting of the Working Group on Transport - Intermodal Questions and Networks on 3 February 2023, delegations will find in the annex, a Presidency discussion paper on the main political issues.

Revision of the Directive on the framework for deploying Intelligent Transport Systems

Presidency discussion paper on the main political issues

1. Starting point

The negotiations with the European Parliament under the Czech Presidency have resulted in converging positions in respect of many discrepancies but haven't reached an agreement on the main political issue: the geographical scope and deadlines for the mandatory availability of key ITS data and services (lines 78 to 90, Articles 6a to 7, and lines 17 to 34 of Annexes III/ IV¹). Delegations insisted on the need to have control on decisions which require important budgetary commitments and administrative capacity at Member State level. As the deadlines, and even more so the geographical scope set out in the Annexes appeared much too ambitious or even disproportionate to most delegations, the Council opted for establishing details of the obligation via implementing acts, thus keeping flexibility and ensuring a case-by-case analysis. Complementarily, updating of Annexes III and IV by delegated acts would be limited to the data types, while implementing acts would describe the mandatory roll-out in the Member States in terms of geographical scope and deadlines.

The Council's compromise of December 2022 for the interinstitutional negotiations combined the concept of specifying the geographical scope of the obligation and the applicable deadlines by implementing acts with, at the Parliament's request, more visibility on the "ambition", by adding several conditions (time/ spatial) to the empowerment to adopt implementing acts. However, in trilogue the Parliament sided with the Commission in refusing implementing acts as the main tool for specifying the obligations, and also in asking for more ambition as regards the possible geographical scope. It was agreed that further work should concentrate on this main political issue.²

¹ See the latest 4 column-document, ST 15281/1/22 REV 1 + REV 1 ADD 1, dated 20 December 2022.

² In fact, although other political issues were not discussed in the first trilogue, all other political issues appear to be easier to solve.

2. The two elements of the main political issue

The main political issue consists of two (related) parts: a) Establishing a mandatory geographical scope and timeline for the obligation to make certain data types and services available, and b) a possible mechanism to introduce changes to the obligations through secondary legislation.

a) Geographical scope and timeline by data type and services

The Presidency is of the view that to overcome the main political issues in the negotiations, the EU legislator should try to specify in the Directive itself - rather than leaving it to future implementing acts - the geographical scope and timeline by data type (and by service, Annex IV, which seems less controversial).

Referring to the discussions under the French and Czech Presidencies, such an approach requires individual scrutiny of the data types concerned, of related efforts and costs to make data available at various administrative levels, and of the most appropriate geographical scope reflecting on the relevance of the data and on the level of traffic.

Scrutiny of the data types might be the best entry point for such a discussion. Delegations have pointed out that some data types are clearer, in terms of digital content, than others, and that some data types occur everywhere and/or change frequently while others are punctual and/or static, and that a tailored approach to define the obligation is therefore needed.

The Presidency is of the view that it could be helpful to assess the data categories listed in Annex III³ according to their complexity or difficulty related to fulfilling the obligation to make them available through the NAPs. Such an approach might facilitate finding the right timeline for implementation or possible conditions to it.

As an additional, horizontal approach, it is worth considering – as mentioned at various occasions by the Commission – the possibility to stagger the workload associated with making the data available: In essence, in a first step not all data would be needed on the road network related to the obligation. To address the legitimate concerns on required efforts and resources, the information would not have to be digitalised as a whole, but instead the first

³ Data relating to EU-wide road traffic information and navigation services; data relating to information and reservation services for safe and secure parking places; data on road safety-related events or conditions; static multimodal traffic data for EU-wide multimodal travel information services.

deadline would limit the obligation to make data available to data resulting from changes or new information (e.g., a new urban vehicle access regulation is created, a speed limit is changed, roadworks are planned). Such data would immediately increase the quality and relevance of all existing ITS services (running on smartphone applications, navigation devices and, increasingly, through Cooperative ITS) and further accelerate their use and deployment. The private ITS service providers have invested a lot in creating data, and continue to do so (e.g., map or navigation service providers) but what they are missing are high quality updates. It is impossible to keep track of the latest changes in real-time which means that a certain percentage of their data is permanently out-of-date.

By the first date authorities would thus be required to make data available (in a digital machine-readable format⁴) concerning a traffic information that is provided on or after that date. This means that the authority in charge needs to digitalise its processes and ensure the necessary means to provide such updates in the future. The first deadline in Annex III would from this perspective appear as a deadline for starting the fulfilment of the obligation rather than completing it. With the second deadline, “all data” for this specific data type would then have to be made available for the relevant road network, for instance by providing all speed limits on a certain road. This second step would amount to considerably more data being made available.

Annex III could reflect this horizontal idea through the following structure:

ANNEX III

List of data types

Data type	Geographical coverage	Start date for making data on new information available	Date by which all data is available
...	...	...	...

⁴ Currently, authorities already provide information on new traffic regulations, but many do so in “paper” or “pdf” or a line on a webpage. In the future they would also need to provide machine-readable information.

b) Possibility to introduce changes to the obligation

The possibility to make changes to the scope of the obligation (in respect of data types, geographical scope, timelines) is currently foreseen in the positions of all three institutions. However, only the Council considers this possibility in two steps: a delegated act amending the data type or services that should fall under the obligation (Article 7 (1) and (2), lines 85 to 88b), and an implementing act for defining the geographical coverage and timeline (Article 6a (3), lines 81b to 81e). What the institutions have in common again is that the 5-year working programme, to be adopted by implementing act, must mention the (new) data types and services which might be included into Annexes III and IV by means of a delegated act and therefore will fall under the obligation to make data and services available (Council: Article 4a, line 61f, Parliament and Commission: Article 17, line 129).

Generally, it is preferable to embed the possibility to make changes to the scope of the obligation into the Directive. In this way the Directive could not only keep pace with the emergence of new data and services and the speed of innovation⁵ in terms of developing Union-wide specifications, but also in terms of ensuring a harmonised minimum for the data availability.

However, this also triggers strong opposing views on the merits of using implementing vs. delegated acts, and concerns about a sufficient involvement of Member States into formulating a larger scope of the obligation.

The Presidency would like to present the following way forward for discussion: With a view to making progress in the negotiations, the use of implementing acts would be replaced by the use of delegated acts for specifying geographical scope and timelines applicable to new data and services to be added in the future in Annexes III and IV (an even further step would consist in allowing also amendments to the geographical scope and timelines already specified in those annexes). Safeguards would in this scenario have to be put to the empowerment for delegated acts, and in respect of the delegated acts' link to the 5 year working programme.

⁵ For example, in the area of multimodal digital mobility services (MDMS) and cooperative connected and automated mobility (CCAM).

As regards the latter, the link is already established in the Council position, namely saying that the working programme shall include the data types and ITS services for which the Commission may adopt delegated acts amending the Annexes (line 61f). There are limits to strengthening this link. In particular, it would not be legally sound to anticipate in the working programme every aspect of the future delegated acts, as this would void those acts of their own rule-making substance and circumvent the delineation between delegated acts and implementing acts laid down in Articles 290 and 291 TFEU. As regards the safeguards in the empowerment for delegated acts, the Council position already contains qualifications for adding data types or services to the annexes (lines 87a and 87b, 88a and 88b). When it comes to geographical scope and timelines, additional safeguards for these aspects should be considered as well.⁶

In case delegations cannot find sufficient reassurance with this approach, an alternative would consist in removing any empowerment to introduce changes to Annexes III and IV. Instead, building on the discussion under the Czech Presidency, a review clause could be added asking for an evaluation by the Commission of the new obligations and, should it be both needed and warranted, requesting the Commission to propose, where appropriate, updates of Annexes III and IV through ordinary legislative procedure.

3. Conclusion

The Presidency would like to listen to delegations' views on these two topics, namely: establishing the geographical scope and timelines in the Annexes, involving the aspects outlined under point 1 above, and on the way forward in respect of changes to the scope of the obligation through secondary law presented under point 2.

⁶ To be noted that the Council's December compromise followed a similar approach within the discussion on adding conditions to the implementing acts under Article 6a (3).