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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/33/EC on the promotion of clean and energy-efficient vehicles – Analysis of the final compromise text with a view to agreement

1. On 9 November 2017, the Commission presented the above-mentioned proposal to the European Parliament and the Council, as part of the 'Europe on the Move' Mobility Package, as one of the Commission's initiatives related to low-emission mobility.
2. The proposal's main objective is to increase the market uptake of clean, i.e. low- and zero-emission vehicles in public procurement and hence contribute to the reduction of overall transport emissions and the competitiveness and growth in the transport sector. The evaluation of Directive 2009/33/EC revealed that the Directive did not trigger sufficient market uptake of clean vehicles across the Union, and the impact on reducing greenhouse gas and air pollutant emissions was found to have been very limited.

3. In the European Parliament Mr Andrzej GRZYB (EPP, PL) was appointed rapporteur on behalf of the committee on the Environment, Public Health and Food Safety (ENVI). The report was adopted by the EP Plenary on 25 October 2018. The committee on Transport and Tourism (TRAN) adopted an opinion on the proposal.
4. The European Economic and Social Committee delivered an opinion on 19 April 2018. The European Committee of the Regions delivered an opinion on 5 July 2018.
5. The Working Party on Transport - Intermodal Questions and Networks has discussed the proposal at between November 2017 and January 2019. Two progress reports were presented to the Council on 7 June and 3 December 2018.
6. On 25 January 2019, Coreper approved a mandate to the Presidency to start negotiations with the European Parliament ¹.
7. Two trilogues with the European Parliament took place on 29 January and 11 February 2019, resulting in the provisional agreement set out in the Annex to this note².
8. On the key political issues the compromise agreed provisionally with the Parliament consists of the following elements:

Articles:

- In Article 4, the definition of 'clean heavy-duty' vehicle has been amended to exclude certain types of biofuels;
- Article 9 (Committee procedure) has been re-instated to be in line with the amendments proposed in Article 10 (reporting and review) on the adoption of guidance regarding the format of national reporting through an Implementing Act but using the Committee established under Directive 2014/94/EU;

¹ Document 5351/19.

² Amendments to the Commission proposal are marked in bold and italics. Deletions are marked as **■** .

- In Article 10 a new paragraph 5 containing a review clause for the period post-2030 in relation to applicable targets and the possible inclusion of other vehicle categories such as two- and three-wheelers, has been inserted;
- The transposition date has been reduced to 24 months.

Tables

- Table 1 (Common procurement vocabulary codes): two codes covering mail and parcel delivery services have been added;
 - Table 4 (Minimum target for the share of light-duty vehicles): An increase of 10 percent compared to the originally proposed targets for all Member States for each reference period has been included;
 - Table 5 (Minimum target for the share of clean heavy-duty vehicles): In the footnote, the requirement which caters for lower applicable minimum targets for zero-emission buses, if more than 80 percent of those covered by the aggregate of all contracts in a Member State are double-decker buses, has been amended to apply only to the first reference period.
8. Further, the provisional agreement includes new recitals, in particular, recitals 5a and b, 6a, 10b, 12b and c, 13a, 16a, b and c, 18, 18a and 18b and additions and amendments to existing recitals.
 9. The ENVI Committee is scheduled to endorse the provisional agreement at its meeting on 26-27 February 2019 and the Plenary vote is scheduled for the April II session.

10. The Permanent Representatives Committee is invited to:

- examine and agree the text set out in the Annex to this note;
- authorise the Presidency to inform the European Parliament that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the text contained in Annex I to this document (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

PE-CONS No/YY – 2017/0291 (COD)

DIRECTIVE
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of ...

**amending Directive 2009/33/EC 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(1) 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 Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Acting in accordance with the ordinary legislative procedure⁵,

³ OJ C 262, 25.7.2018, p. 58.

⁴ OJ C 387, 25.10.2018, p. 70.

⁵ *Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...*

Whereas:

- (1) The Union is committed to a sustainable, competitive, secure and decarbonised energy system⁶. The Energy Union and the Energy and Climate Policy Framework for 2020 to 2030⁷ 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. ***Since then, Directive (EU) 2018/2001 of the European Parliament and of the Council***⁸ ***set the share of energy from renewables at least 32 % of the Union's gross final consumption in 2030 and Directive (EU) 2018/2002 of the European Parliament and of the Council***⁹ ***set a new energy efficiency target for the EU for 2030 of 32.5 %.***

⁶ European Council Conclusions of 24 October 2014.

⁷ Commission Communication on a policy framework for climate and energy from 2020 to 2030 (COM(2014)0013).

⁸ ***Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82)***

⁹ ***Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency (OJ L 328, 21.12.2018, p. 210).***

- (2) In its European Strategy for Low-Emission Mobility¹⁰ 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 *and the environment* need to be significantly reduced without delay. This can be achieved by an array of policy initiatives, including *measures that support a shift towards public transport, and* the use of public procurement of clean vehicles.
- (3) In its Communication "Europe on the Move: an agenda for a socially fair transition towards clean, competitive and connected mobility for all"¹¹ 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.

¹⁰ COM(2016)-0501.

¹¹ COM (2017) 283 *final*.

- (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" 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. ***The promotion of clean vehicles should be done in parallel with the further development of public transport, as a way to reduce road congestion and consequently to improve air quality and reduce emissions.***
- (5) Innovation of new technologies helps to lower vehicle emissions, ***and reducing air and noise pollution while*** supporting the decarbonisation of the transport sector. An increased uptake of low- and zero-emission road vehicles ***will*** reduce emissions of CO₂ and certain pollutant emissions (particulate matter, nitrogen oxides and non-methane hydrocarbons) and ***thus improve the air quality in cities and other polluted areas, while contributing to*** competitiveness and growth of the European industry in the increasing global markets for low- and zero-emission vehicles. ***The Commission should pursue policy measures to foster widespread industrial uptake and manufacturing capacity of such new technologies in all Member States in order to contribute to a level-playing field and balanced development across Member States.***

- (5a)** *Market forecasts estimate a continued drop of purchase prices of clean vehicles. Lower operational and maintenance costs provide for competitive total cost of ownership already today. The expected reduction of purchase cost will further reduce barriers to market availability and uptake in the 2020s.*
- (5b)** *While the Union is one of the leading regions for research and high value eco-innovation, the Asia-Pacific Region is hosting the largest producers of battery-electric buses and batteries. Similarly, global market developments in battery electric vehicles are driven by markets in China and the United States. An ambitious Union policy for the procurement of clean vehicles will help to stimulate innovation and further promote competitiveness and growth of the European industry in the increasing global markets for clean vehicles and associated technology infrastructure. As noted in its Communication entitled “Making public procurement work in and for Europe”, the Commission will continue to lead efforts to ensure a level playing field and promote a better access to third country procurement markets, including for the purchase, leasing, rental or hire-purchase of road transport vehicles.*

- (6) ***Taking into account that government expenditure on goods, works and services represented around 16 % of GDP, as of 2018, public authorities, through their procurement policy, can establish and support markets for innovative goods and services. In order to achieve this goal, Directive 2009/33/EC of the European Parliament and of the Council¹² should set out clear and transparent requirements, including clear, long-term procurement objectives and a simple method for their calculation. Directives 2014/24/EU¹³ and 2014/25/EU¹⁴ of the European Parliament and of the Council set out minimum public procurement rules coordinating the way public authorities and certain public utility operators purchase goods, works and services. In particular, they set overall monetary thresholds for determining which contracts are to be subject to Union legislation, which also apply to Directive 2009/33/EC.***

¹² ***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 (OJ L 120, 15.5.2009, p. 5).***

¹³ ***Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 094 28.3.2014, p. 65).***

¹⁴ ***Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 094 28.3.2014, p. 243).***

- (6a) *The availability of sufficient recharging and refuelling infrastructure is necessary for the deployment of alternatively fuelled vehicles. On 8 November 2017, the Commission adopted an Action Plan to support an accelerated roll-out of alternative fuels infrastructure in the Union, including the strengthened support to roll out of publicly available infrastructure by means of Union funds, helping to create more favourable conditions for the transition towards clean vehicles, including in public transport. The Commission will review the implementation of Directive 2014/94/EU of the European Parliament and of the Council¹⁵ for the deployment of alternative fuels infrastructure by 31 December 2020, and it is entitled to make a proposal to amend it if it considers it necessary on the basis of such a review.*
- (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 *which* 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.

¹⁵ *Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1).*

- (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 citizens and enterprises fully justify this approach insofar as it *leaves sufficient flexibility to contracting authorities-and contracting entities in the choice of the technologies to be used.*
- (9) Extending the scope of the Directive by including practices such as lease, rental and hire-purchase of vehicles, as well as contracts for *certain services ensures that all relevant procurement practices are covered. The services to be covered, such as public road transport services, special purpose road transport passenger services, non-scheduled passenger transport as well as specific mail and parcel services and refuse collection services, should be those where the vehicles used for the provision of the services fall within the vehicle categories covered by this Directive, and they represent a major element in the contract. They should be identified through the respective CPV codes listed in the Annex. Existing contracts should not be retroactively affected by this Directive.*

- (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-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 **the definition of zero-and low-emission vehicles in** Union legislation on CO₂ emission performance of cars and vans for the post-2020 period¹⁶. Action carried out under the amended Directive will contribute to compliance with the requirements of these standards. ***In order to tackle air quality, clean vehicles should perform better compared to the minimum requirements for NOx and PN set by the RDE emission limit values in force. In addition to zero-emission vehicles, today there are few light-duty vehicles with air pollutant emissions of 80% or less of the current limits, but the number of such vehicles is expected to increase in the coming years, especially plug-in hybrids. A more ambitious approach for public procurement can provide an important additional market stimulus.***
- (10a) ***Clean heavy-duty vehicles should be defined through the use of alternative fuels in alignment with existing Union legislation, namely Directive 2014/94/EU. In such cases where liquid biofuels, synthetic or paraffinic fuels are to be used for the procured vehicles, contracting authorities and contracting entities have to ensure through obligatory contract clauses or through similarly effective means within the public procurement procedure that only such fuels are to be used for these vehicles. These fuels may contain fuel additives, as is the case for example with ED95, but should not be blended with fossil fuels.***

¹⁶ COM(2017) 676 final.

- (10b) *In order to achieve an improvement of air quality in municipalities, it is crucial to renew the transport fleet to clean vehicle standard. Furthermore, the principles of the circular economy require the extension of product life. Therefore, vehicles that meet the clean vehicles or zero-emission vehicles requirements as a result of retrofitting should also be counted towards achievement of the respective minimum procurement targets.***
- (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~~■~~ 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. *Due to the limited level of maturity of low- and zero-emission coaches, the relatively limited role of public procurement in this market segment, and their specific operational requirements, coaches should not be included in the scope of this Directive. In line with the approach followed in Regulation (EC) No 661/2009 and UNECE Regulation 107, M3 vehicles with areas for standing passengers to allow for frequent passenger movement are considered buses, while M3 vehicles with very limited or no area for standing passengers are considered coaches. Given the very limited market for double-decker buses and their specific design limitations, it is appropriate to apply, during the first reference period covered by Directive 2009/33/EC, lower minimum procurement targets for zero-emission vehicles of that category of heavy-duty vehicles in Member States, where double-deckers buses represent a significant share of public procurement.***

(11a) In order to avoid imposing disproportionate burdens on public authorities and operators, Member States should be able to exempt from the requirements of this Directive the public procurement of certain vehicles with specific characteristics linked to their operational requirements. These include armoured vehicles, ambulances, hearses, wheelchair accessible M1 vehicles, mobile cranes, vehicles designed and constructed for use principally on construction sites or in quarries, port or airport facilities as well as vehicles specifically designed and constructed or adapted for use by the armed forces, civil protection, fire services and forces responsible for maintaining public order. Such adaptations may relate to the installation of specialized communications equipment or emergency lights. The requirements of this Directive should not apply to vehicles that are designed and constructed specifically to perform work and are not suitable for carrying passengers or for transporting goods. These include vehicles for road maintenance such as snow plows.

- (12) Setting minimum targets for clean vehicle procurement ***to be met*** 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. ***Further, mandating that half of the minimum target for the buses procured in the aforementioned time periods is to be fulfilled through the procurement of zero-emission buses strengthens the commitment to the decarbonisation of the transport sector. It should be noted that trolley buses are considered to be zero-emission buses, provided they only run on electricity, or they only use a zero-emission powertrain when they are not connected the grid, otherwise they still count as clean vehicles.*** 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). ■—The Territorial Impact Assessment of this amended Directive illustrated that the impact will be evenly distributed among regions in the Union.

- (12a) *Member States should have the flexibility to distribute efforts to meet the minimum targets within their territory, in accordance with their constitutional framework and in line with their transport policy objectives. In the allocation of efforts within a Member State, different factors could be taken into account, such as differences in economic capacity, air quality, population density, characteristics of the transport systems, policies to decarbonise transport and reduce air pollution, or any other relevant criteria.*
- (12b) *Vehicles with zero emissions at the tail-pipe also leave an environmental footprint due to the emissions deriving from the fuel supply chain from the extraction phase to the tank, as well as to the process of manufacture of the components and their level of recyclability. In order to be consistent with the objectives of sustainability, batteries should be produced with the minimum environmental impacts inside and outside the Union, especially regarding the process of extraction of material used for the building of the batteries. The promotion of technologies that address this challenge, such as sustainable and recyclable batteries, through initiatives such as the EU Battery Alliance and the EU Battery Action Plan and in the context of the review of Directive 2006/66/EC of the European Parliament and of the Council¹⁷, can contribute to the overall sustainability of these vehicles. The possible reflection of life cycle CO₂ emissions and of well-to-wheel CO₂ emissions of vehicles for the period after 2030 should be considered taking into account relevant provisions of Union law for their calculation at that point in time.*

¹⁷ *Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266 26.9.2006, p. 1).*

- (12c) *In its recommendation of 4 April 2017 to the Council and the Commission following the inquiry into emission measurements in the automotive sector¹⁸, the European Parliament called for on Member States to foster green public procurement policies through the purchasing of zero-emission vehicles (ZEVs) and ultra-low emission vehicles (ULEVs) by public authorities for their own fleets or for (semi-)public car-sharing programmes and for the phasing out new CO₂-emitting cars by 2035.*
- (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 *and noise* 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 take measures such as making available sufficient financial resources to contracting authorities and contracting entities, to avoid that the costs of compliance with the minimum procurement targets established in Directive 2009/33/EC lead to higher ticket prices or reduction of public transport services, or discourage the development of non-road clean transport such as trams and metro trains. They should* reflect related action in their reporting under the amended Directive. *In order to avoid disproportionate burden and optimise the potential results of the amended Directive, appropriate technical assistance should be provided to the public authorities.*

¹⁸ *OJ C 298, 23.8.2018, p. 140.*

- (13a) ***Public transport only contributes a small share of the emissions originating from the transport sector. In order to further promote transport decarbonisation, improve air quality and maintain a level playing field between different operators Member States can, in compliance with Union law, decide to also impose similar requirements to private operators and services outside the scope of this Directive, such as taxi, car rental and ride-pooling companies.***
- (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, ***in particular the most economically advantageous tender ('MEAT') criteria as described in Article 82 of Directive 2014/25/EU, taking into account cost-effectiveness over the lifetime of the vehicle, as well as environmental, and social aspects.***

- (15) Reporting on public procurement under this amended Directive should provide a clear market overview to enable effective monitoring of **■**-implementation. It should start with ***a preliminary submission of information by Member States to the Commission in 2023,*** and continue with a first full report on the implementation of the minimum targets in 2026 and thereafter every three years. ***The timeframe should be aligned with existing reporting obligations under Directives 2014/24/EU and 2014/25/EU.*** To minimise administrative burden on single public bodies and establish an effective market overview, simple reporting should be facilitated. The Commission ***will provide solutions for the registration and monitoring under the Tender Electronic Daily Database, and*** 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 *and their infrastructures* can be achieved by providing targeted public support measures at national and Union level. This includes *the increased use of Union funds to support the renewal of public transport fleets and* 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 2014-2020¹⁹. However, the *Treaty on the Functioning of the European Union*, and in particular Articles 107 and 108 thereof, will continue to apply to such public support.

¹⁹ OJ C 200, 28.6.2014, p. 1.

(16a) Targeted support measures for the procurement of clean vehicles can help contracting authorities and contracting entities. Under the current Multiannual Financial Framework (MFF), the Union already possesses an array of different funds to support Member States, local authorities and concerned operators in their transition to sustainable mobility. In particular, the European Structural and Investment Funds are a key source for financing urban mobility projects. Horizon 2020, the Union's research programme, funds research and innovation projects on urban mobility and smart cities and communities, while the Connecting Europe Facility devotes support to deployment of relevant infrastructure in urban nodes. The introduction of a clean vehicle definition and the setting of minimum targets for their procurement in this Directive can help ensure an even more targeted use of Union financial instruments including in the next MFF. These efforts will reduce the initial high investment for the infrastructural changes and support the decarbonisation of transport.

- (16b)** *In order to help ensure that these potential benefits are fully exploited, the Commission will provide guidance to Member States with regard to the different Union funds that might be used, and facilitate and structure the exchange of knowledge and best practices between Member States to promote the purchase of clean and energy-efficient road transport vehicles by contracting authorities and contracting entities. The Commission will also keep providing technical and financial advisory services to local authorities and operators through instruments such as the European Investment Advisory Hub, JASPERS and JESSICA. This should include encouraging contracting authorities to pool their resources in the joint procurement of low emission and energy-efficient road transport vehicles, in order to achieve economies of scale and facilitate the achievement of the objectives of Directive 2009/33/EC.*
- (16c)** *In order to maximise the impact of investments, mobility and urban planning need to be better coordinated, such as through the use of sustainable urban mobility plans (SUMP). SUMP are plans that are developed across individual policy areas and in cooperation with different levels of governance combining different transport modes, road safety, freight delivery, mobility management and intelligent transport systems. SUMP can play an important role in achieving the Union’s targets regarding CO2 emissions, noise and air pollution reduction.*

(17) **┆**

- (18)** *In order to set out the uniform format of the reports from Member States and their transmission arrangements, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and the Council²⁰.*
- (18a)** *By 31 December 2027, the Commission should review the implementation of Directive 2009/33/EC. That review should be accompanied, where appropriate, by a legislative proposal to amend that Directive for the period after 2030, including for the setting of new ambitious targets and the extension of the scope to other categories of vehicles, such as L-category vehicles and construction site machinery. In its review, the Commission should also assess, inter alia, the possibility of aligning this directive to any methodology for counting life-cycle CO₂ emissions and well-to-wheel CO₂ emissions developed in the context of EU vehicle CO₂ emission performance standards, as well as promoting sustainable and recyclable batteries, and the use of best-graded and retreaded tyres.*
- (18b)** *Recalling that even though the procurement targets of Directive 2009/33/EC does not apply to the Union institutions, it is desirable for the Union institutions to lead by example.*

²⁰ *Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).*

- (18c) 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 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 documents²¹, 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:

²¹ OJ C 369, 17.12.2011, p. 14.

Article 1

Amendments to Directive 2009/33/EC

Directive 2009/33/EC is amended as follows:

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

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

- (2) ***Article 1*** is replaced by the following:

"Article 1

Subject matter and objectives

This Directive requires contracting authorities and contracting entities to take into account lifetime energy and environmental impacts, including energy consumption and emissions of CO₂ and of certain pollutants, when procuring certain road transport vehicles with the objectives of promoting and stimulating the market for clean and energy-efficient vehicles and improving the contribution of the transport sector to the environment, climate and energy policies of the Union."

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

"Article 2

Exemptions

Member States may exempt from the requirements laid down in this Directive vehicles referred to in point (d) of Article 2(2), points (a) and (b) of Article 2(3) and in points 5.2. to 5.5. and point 5.7. of Part A of Annex I to Regulation (EU) 2018/858 of the European Parliament and of the Council.*

* *Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (OJ L 151, 14.6.2018, p. 1)";*

(4) Article 3 is replaced by the following:

"Article 3

Scope

1. This Directive shall apply to *procurement through*

- (a) contracts for the purchase, lease, rent or hire-purchase of road transport vehicles *awarded* by ~~the~~ 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** *of the European Parliament and of the Council*;
- (b) ~~the~~ public service *contracts* within the meaning of Regulation (EC) No 1370/2007 of the European Parliament and of the Council*** *having as their subject matter the provision of passenger road transport services in excess of a threshold which shall be defined by Member States not exceeding the applicable threshold value set in Article 5(4) of that Regulation*;

- (c) ~~■~~—service contracts ~~■~~—as set out in Table 1 of the Annex *to this Directive in so far as the contracting authorities or contracting entities are under an obligation to apply the procurement procedures set out in Directives 2014/24/EU and 2014/25/EU*~~■~~.

This Directive shall only apply to such contracts for which the call for competition has been sent or, in cases where a call for competition is not foreseen, where the contracting authority or contracting entity has commenced the procurement procedure after ... [24 months after the date of entry into force of this amending directive].

2. This Directive shall not apply to:

- (a) vehicles referred to in points (a), (b) and (c) of Article 2(2) and in point (c) of Article 2(3) of Regulation(EU) 2018/858;**
- (b) vehicles of category M3 other than Class I and Class A vehicles as defined in points 2 and 3 of Article 3 of Regulation (EC) No 661/2009 of the European Parliament and of the Council****.**

*** Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65);**

**** Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243);**

***** Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315 3.12.2007, p. 1);**

****** Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor (OJ L 200 31.7.2009, p. 1).";**

(5) Article 4 is replaced by the following:

"Article 4

Definitions

For the purpose of this Directive:

1. 'contracting authorities' means contracting authorities as defined in *point 1 of Article 2(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 *of category M or N, as defined in points (a) and (b) of Article 4(1) of Regulation (EU) No 2018/858.*
4. 'clean vehicle' means:
 - (a) a vehicle of category *M1, M2 or 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 *of the Annex, or;*

- (b) a vehicle of category *M3, N2 or N3 using alternative fuels as defined in Article 2(1) of Directive 2014/94/EU of the European Parliament and of the Council**, *excluding fuels produced from high indirect land-use change-risk feed stock for which a significant expansion of the production area into land with high-carbon stock is observed in accordance with Article 26 of Directive 2018/2001. In the case of vehicles using liquid biofuels, synthetic and paraffinic fuels, these shall not be blended with conventional fossil fuels.*

†

5. ***‘zero-emission heavy duty vehicle’ means a clean vehicle as defined in point (b) of Article 4(4) of this Directive without an internal combustion engine, or with an internal combustion engine that emits less than 1 g CO₂/kWh as measured in accordance with Regulation (EC) No 595/2009 of the European Parliament and of the Council** and its implementing measures, or that emits less than 1 g CO₂/km measured in accordance with to Regulation (EC) No 715/2007 of the European Parliament and of the Council*** and its implementing measures.***

* ***Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1);***

** ***Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (OJ L 188, 18.7.2009, p. 1)***

*** ***Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 171, 29.6.2007, p. 1)";***

†

(6) Article 5 is replaced by the following:

"Article 5

Minimum procurement targets

1. Member States shall ensure that *the procurement of vehicles-and services* referred to in Article 3 *complies* with the minimum procurement targets for *clean* light-duty vehicles referred to in *Table 4* of the Annex and for *clean* heavy-duty vehicles referred to in *Table 5 of the Annex. Those targets are expressed as minimum percentages of clean vehicles in the total number of road transport vehicles covered by the aggregate of all contracts referred to in Article 3, awarded between ... [the day after the date of transposition of this amending Directive] and 31 December 2015 for the first reference period, and between 1 January 2026 and 31 December 2030 for the second reference period.*
 - 1a. *For the purpose of calculating the minimum procurement targets, the date of the public procurement to be taken into account is the date of completion of the public procurement procedure, by way of awarding of the contract.*
 - 1b. *Vehicles that meet the definition of clean vehicle under Article 4(4) or of zero-emission heavy-duty vehicle under Article 4(5) as a result of retrofitting may be counted as clean vehicles or zero-emission heavy-duty vehicles, respectively, for the purpose of compliance with the minimum procurement targets.*

- 1c. In the case of contracts referred to in point (a) of Article 3(1), the number of road transport vehicles purchased, leased, rented or hire-purchased under each contract should be taken into account for the purpose of assessing compliance with the minimum targets.*
- 1d. In the case of contracts referred to in points (b) and (c) of Article 3(1), the number of road transport vehicles to be used for the provision of services covered by each contract should be taken into account for the purpose of assessing compliance with the minimum targets.*
- 1e. In case new targets for the reference period after 1 January 2030 are not adopted, the targets set for 2030 shall continue to apply, and shall be calculated in accordance with paragraphs 1 to 1d, over subsequent five-year periods.*
2. Member *States may apply or authorise their contracting* authorities or *contracting entities to* apply higher *national targets or more stringent requirements* than those referred to in the Annex ~~1~~.";

(7) Articles 6 and 7 are deleted;

(8) *Article 8 is replaced by the following:*

"Article 8

Best practice exchange

The Commission shall facilitate and structure the exchange of knowledge and best practices between Member States on practices for promoting the purchase of clean and energy-efficient road transport vehicles by contracting authorities and contracting entities."

█
(8) Article 9 is replaced by the following:

"Article 9

Committee procedure

1. The Commission shall be assisted by *the* Committee *established by Article 9 of Directive 2014/94/EU*.

That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 *of the European Parliament and of the Council**.

2. Where reference is made to this paragraph, Article 5 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.

* ***Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13)";***

- (9) Article 10 is *replaced by the following*:

"Article 10

Reporting and review

1. ***Member States shall inform the Commission by ...[36 months after the entry into force of this amending Directive] on the steps undertaken to implement this Directive, including on Member States' intentions regarding future implementation activities, including the timing and possible effort-sharing between different levels of governance, as well as on any other information which the Member State considers relevant.***

2. Member States shall submit to the Commission a report on the implementation of this Directive by **18 April 2026**, and every three years thereafter. ***These reports shall accompany the reports provided for in the second subparagraph of Article 83(3) of Directive 2014/24/EU and the second subparagraph of Article 99(3) of Directive 2014/25/EU, and they shall contain information on the steps undertaken to implement this Directive, future implementation activities, as well as any other information which the Member State considers relevant. The report shall also include the number and the categories of vehicles covered by the contracts referred to in Article 3(1) of this Directive, based on the data provided by the Commission according to Article 10(3) of this Directive.*** Information should follow the categories contained in Regulation No 2195/2002 ***of the European Parliament and of the Council****.

3. *In order to support the Member States in their reporting obligations according to paragraphs 1 and 2 of this Article, the Commission shall collate and publish the number and the categories of vehicles covered by the contracts referred to in points (a) and (c) of Article 3(1) of this Directive by extracting the relevant data from contract award notices published on the TED Database in accordance with Directives 2014/24/EU and 2014/25/EU.*
4. *By 18 April 2027, and every three years thereafter, the Commission shall submit a report to the European Parliament and to the Council on the implementation of this Directive, specifying the actions taken by individual Member States in this regard, following the reporting from Member States.*
5. *By 31 December 2027, the Commission shall review the implementation of this directive and, where appropriate, submit a proposal for its amendment for the period after 2030, including for the setting of new targets and for the inclusion of other categories of vehicles, such as two- and three-wheeled vehicles.*

6. The Commission shall ~~adopt~~ ~~implementing acts~~ *in accordance with Article 9(2) setting out the format of the reports referred to in paragraph 2 of this Article and their transmission arrangements.*

* *Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ L 340, 16.12.2002, p. 1)";*

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

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... *[24 months after the date of entry into force of this amending Directive]* ~~].~~ 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

Entry into force

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

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

ANNEX

*Information for the implementation of minimum procurement targets
for clean road transport vehicles
in support of low-emission mobility in Member States*

Table 1: Common Procurement Vocabulary codes referred to in Article 3

CPV Code	Description
60112000-6	Public road transport services
60130000-8	Special-purpose road passenger-transport services
60140000-1	Non-scheduled passenger transport
I	
90511000-2	Refuse collection services
60160000-7	Mail transport by road
60161000-4	Parcel transport services
<i>64121100-1</i>	<i>Mail delivery services</i>
<i>64121200-2</i>	<i>Parcel delivery services</i>

I

Table 3: Emission-thresholds for light-duty vehicles

Vehicle categories	<i>Until 31 December 2025</i>		<i>From 1 January 2026</i>	
	CO ₂ g/km	RDE air pollutant emissions* as percentage of emission limits**	CO ₂ g/km	RDE air pollutant emissions* as percentage of emission limits
M1 vehicles	50	80 %	0	n.a.
M2 vehicles	50	80 %	0	n.a.
N1 vehicles	50	80 %	0	n.a.

* *Declared maximum Real driving emission (RDE) values of particles (PN) in #/km and nitrogen oxides (NOx) in mg/km as reported in point 48.2 of the Certificate of Conformity, as described in Annex IX of Directive 2007/46/EC for both complete and urban RDE trips.*

** *The applicable emission limit found in Annex I of Regulation (EC) 715/2007, or its successors.*

Table 4: Minimum target for the share of light-duty vehicles in accordance with Table 2 in the total number of light-duty vehicles covered by contracts referred to in Article 3 at Member State level

<i>Member State</i>	<i>From ... [24 months after the date of entry into force of this amending Directive] to 31 December 2025</i>	<i>From 1 January 2026 to 31 December 2030</i>
<i>Luxembourg</i>	<i>38,5 %</i>	<i>38,5 %</i>
<i>Sweden</i>	<i>38,5 %</i>	<i>38,5 %</i>
<i>Denmark</i>	<i>37,4 %</i>	<i>38,4 %</i>
<i>Finland</i>	<i>38,5 %</i>	<i>38,5 %</i>
<i>Germany</i>	<i>38,5 %</i>	<i>38,5 %</i>
<i>France</i>	<i>37,4 %</i>	<i>38,4 %</i>
<i>United Kingdom</i>	<i>38,5 %</i>	<i>38,5 %</i>
<i>Netherlands</i>	<i>38,5 %</i>	<i>38,5 %</i>
<i>Austria</i>	<i>38,5 %</i>	<i>38,5 %</i>
<i>Belgium</i>	<i>38,5 %</i>	<i>38,5 %</i>
<i>Italy</i>	<i>38,5 %</i>	<i>38,5 %</i>
<i>Ireland</i>	<i>38,5 %</i>	<i>38,5 %</i>
<i>Spain</i>	<i>36,3 %</i>	<i>36,3 %</i>
<i>Cyprus</i>	<i>31,9 %</i>	<i>31,9 %</i>
<i>Malta</i>	<i>38,5 %</i>	<i>38,5 %</i>
<i>Portugal</i>	<i>29,7 %</i>	<i>29,7 %</i>
<i>Greece</i>	<i>25,3 %</i>	<i>25,3 %</i>
<i>Slovenia</i>	<i>22 %</i>	<i>22 %</i>
<i>Czech Republic</i>	<i>29,7 %</i>	<i>29,7 %</i>
<i>Estonia</i>	<i>23,1 %</i>	<i>23,1 %</i>
<i>Slovakia</i>	<i>22 %</i>	<i>22 %</i>
<i>Lithuania</i>	<i>20,9 %</i>	<i>20,9 %</i>
<i>Poland</i>	<i>22 %</i>	<i>22 %</i>
<i>Croatia</i>	<i>18,7 %</i>	<i>18,7 %</i>
<i>Hungary</i>	<i>23,1 %</i>	<i>23,1 %</i>
<i>Latvia</i>	<i>22 %</i>	<i>22 %</i>
<i>Romania</i>	<i>18,7 %</i>	<i>18,7 %</i>
<i>Bulgaria</i>	<i>17,6 %</i>	<i>17,6 %</i>

Table 5: Minimum target for the share of clean heavy-duty vehicles in the total number of heavy-duty vehicles covered by contracts referred to in Article 3 at Member State level*

<i>Member State</i>	<i>Trucks (vehicle category N2 and N3)</i>		<i>Buses (vehicle category M3)*</i>	
	<i>From ... [24 months after the date of entry into force of this amending Directive] to 31 December 2025</i>	<i>From 1 January 2026 to 31 December 2030</i>	<i>From ... [24 months after the date of entry into force of this amending Directive] to 31 December 2025</i>	<i>From 1 January 2026 to 31 December 2030</i>
<i>Luxembourg</i>	<i>10 %</i>	<i>15 %</i>	<i>45 %</i>	<i>65 %</i>
<i>Sweden</i>	<i>10 %</i>	<i>15 %</i>	<i>45 %</i>	<i>65 %</i>
<i>Denmark</i>	<i>10 %</i>	<i>15 %</i>	<i>45 %</i>	<i>65 %</i>
<i>Finland</i>	<i>9 %</i>	<i>15 %</i>	<i>41 %</i>	<i>59 %</i>
<i>Germany</i>	<i>10 %</i>	<i>15 %</i>	<i>45 %</i>	<i>65 %</i>
<i>France</i>	<i>10 %</i>	<i>15 %</i>	<i>43 %</i>	<i>61 %</i>
<i>United Kingdom</i>	<i>10 %</i>	<i>15 %</i>	<i>45 %</i>	<i>65 %</i>
<i>Netherlands</i>	<i>10 %</i>	<i>15 %</i>	<i>45 %</i>	<i>65 %</i>
<i>Austria</i>	<i>10 %</i>	<i>15 %</i>	<i>45 %</i>	<i>65 %</i>
<i>Belgium</i>	<i>10 %</i>	<i>15 %</i>	<i>45 %</i>	<i>65 %</i>
<i>Italy</i>	<i>10 %</i>	<i>15 %</i>	<i>45 %</i>	<i>65 %</i>
<i>Ireland</i>	<i>10 %</i>	<i>15 %</i>	<i>45 %</i>	<i>65 %</i>
<i>Spain</i>	<i>10 %</i>	<i>14 %</i>	<i>45 %</i>	<i>65 %</i>
<i>Cyprus</i>	<i>10 %</i>	<i>13 %</i>	<i>45 %</i>	<i>65 %</i>
<i>Malta</i>	<i>10 %</i>	<i>15 %</i>	<i>45 %</i>	<i>65 %</i>
<i>Portugal</i>	<i>8 %</i>	<i>12 %</i>	<i>35 %</i>	<i>51 %</i>

<i>Member State</i>	<i>Trucks (vehicle category N2 and N3)</i>		<i>Buses (vehicle category M3)*</i>	
	<i>From ... [24 months after the date of entry into force of this amending Directive] to 31 December 2025</i>	<i>From 1 January 2026 to 31 December 2030</i>	<i>From ... [24 months after the date of entry into force of this amending Directive] to 31 December 2025</i>	<i>From 1 January 2026 to 31 December 2030</i>
<i>Greece</i>	8 %	10 %	33 %	47 %
<i>Slovenia</i>	7 %	9 %	28 %	40 %
<i>Czech Republic</i>	9 %	11 %	41 %	60 %
<i>Estonia</i>	7 %	9 %	31 %	43 %
<i>Slovakia</i>	8 %	9 %	34 %	48 %
<i>Lithuania</i>	8 %	9 %	42 %	60 %
<i>Poland</i>	7 %	9 %	32 %	46 %
<i>Croatia</i>	6 %	7 %	27 %	38 %
<i>Hungary</i>	8 %	9 %	37 %	53 %
<i>Latvia</i>	8 %	9 %	35 %	50 %
<i>Romania</i>	6 %	7 %	24 %	33 %
<i>Bulgaria</i>	7 %	8 %	34 %	48 %

* *Half of the minimum target for the share of clean buses has to be fulfilled by procuring zero-emission buses as defined in Article 4(5). This requirement is lowered to one quarter of the minimum target for the first reference period if more than 80 percent of the buses covered by the aggregate of all contracts referred to in Article 3, awarded during that period in a Member State, are double-decker buses.*