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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 on delegated acts

Delegations will find in the annex a Presidency discussion paper on delegated acts to introduce changes to Annexes III and IV (scope of the obligation under Article 6a), in view of the meeting of the Working Group on Transport - Intermodal Questions and Networks on 28 April 2023.

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

Presidency discussion paper on delegated acts to introduce changes to Annexes III and IV

I. Introduction

The possibility to make changes to the scope of the obligation was, in the general approach, foreseen by way of delegated as well as implementing act. That approach was based on the distinction between data types and services, on the one hand, and related geographical scope and implementation deadlines, on the other. As regards data types and services, those were spelled out in Annexes III and IV, with a possibility of making modifications or additions by way of delegated act, while for the geographical scope and deadlines, implementing acts would be used.

Following the first trilogue meeting and a discussion paper from the Presidency¹, the working party has embarked on a different path where most of the decisions in respect of the listed data types and services, both concerning geographical scope and deadlines, would be set out in Annexes III and IV of the Directive. It is a general view that this approach will make a political agreement with the European Parliament more likely.

The discussion has advanced considerably, and a majority view is building in regard of most of the elements.

However, there are still four areas in which the possibility to make changes after adoption of the Directive should be considered:

- a) Changes to the geographical scope or deadlines established in Annex III or IV;
- b) Adding deadlines to the 4th column where a decision on them is not mature in the near future;
- c) Adding data types to existing (sub)categories in Annex III;
- d) Adding data types by creating new (sub)categories in Annex III or services in Annex IV together with their geographical scope and deadlines.

¹ ST 5686/23.

The Presidency's approach has been not to allow changes to the geographical scope set out in the Directive (point (a) above), but to allow for delegated acts in respect of:

- adding deadlines to the 4th column in Annex III (point (b) of the above);
- adding datatypes to existing (sub)categories in Annexes III (point (c) of the above);
- adding data types by way of new (sub)categories in Annexes III and new services in Annex IV, together with their geographical scope and deadlines (point (d) of the above).²

The necessary safeguards for Member States, which are the addressees of the obligation and need to ensure the technical, financial and human resources for implementation, were established through a close link to the work programme (Article 4a), which needs adoption through implementing act, and through limitations to the empowerment as well as a cost-benefit analysis and impact assessment (Article 7).

Several delegations have consistently argued against the use of delegated acts, strongest when it comes to adding new (sub-)categories of data types to Annex III, while other delegations would accept such empowerment provided it is carefully framed. Nevertheless, all delegations seem to favour a certain flexibility in the ITS legal framework.

The Presidency is concerned that negotiations with the Parliament would become very difficult if they were overshadowed to a large extent by expressing preferences on the procedure for secondary law, while on the content of modernising the legal framework, there is large convergence.

II. Options

In view of this state of the debate, the Presidency would like to put several options for discussion:

² See Article 7: Amendments to Annexes III and IV, ST 6167/3/23 REV 3.

Option A

This is the option reflecting the current path of the compromise document³, namely allowing delegated acts for:

- completing missing dates of implementation in the fourth column of Annex III, and
- for adding data types and services to the Annexes, including through new (sub-)categories.

The Presidency does not consider necessary to allow modifications, by delegated act, of the geographical scope or applicable deadlines agreed upon in co-decision in Annexes III or IV.

Option B

The Presidency noted that concerns on delegated acts are strongest about adding new data types to Annex III together with their geographical scope and deadlines. Therefore, option B would limit the empowerment strictly to:

- completing the 4th column in Annex III for those data types for which only the 3rd column (start date for making data types on new information available) is filled with an applicable deadline; and
- enlarging existing (sub)categories in Annex III, whereby the added data types will have the same minimum geographical scope applied to all the data types in that (sub)category.

This option works under the assumption that it will be possible and acceptable to establish the geographical scope and starting dates for all data types in column three. Option B would thus, in the essence, limit the scope of delegated acts to filling the missing dates and adding crucial data types in case of an overhaul of specifications adopted under Article 6.

Given the limited scope of such an empowerment, it should be considered to alleviate the burden on the Commission as regards a prior cost-benefit analysis and impact assessment each time that a date for the fourth column (making all data on existing information available) is established or a data type within a (sub)category is added (current wording in Article 7 paragraph 1a introductory sentence and point (a), and paragraph 2 introductory sentence and point (a)). For instance, that preparatory work would not be required for establishing a missing date, and for adding data types within a (sub)category, only a prior cost-benefit analysis would be required. In any case, it must be clearly established that the preparatory work, linked to the work programme, is completed in a satisfactory way.

³ ST 6167/3/23 REV 3.

Option C

In case delegations cannot find sufficient reassurance with either option A or option B, option C would consist in removing any empowerment to complete, or to introduce changes to, Annexes III and IV.

None of the three options described above allow making changes to a geographical scope established in the revised Directive. For this, a review clause should be added asking for an evaluation by the Commission of the new obligations and, should it be needed and warranted, requesting the Commission to propose, where appropriate, updates of Annexes III and IV through ordinary legislative procedure. The formulation of such a review clause could reflect the choices made regarding delegated powers, for instance if (option C) there is no empowerment for inserting missing completion dates in Annex IV, the need for defining applicable dates could be included.
