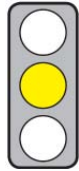


MAIN ISSUES

Objective of the Directive: The Commission wishes to accelerate the deployment of Intelligent Transport Systems (ITS) and to establish a legal framework.

Parties Affected: Automobile industry, developers of complex IT solutions, road traffic users.



Pros: (1) EU-wide binding standardisation, in particular the planned open in-vehicle platform for ITS services, increases the opportunities for innovations.
(2) Guidelines relating to the minimum quality requirements for road and traffic data ensure the geographic continuity of ITS based on road and traffic data.

Cons: (1) There is a risk that the Commission will push through certain ITS services. This might generate high costs, though it is not sure whether customers are willing to pay for them.
(2) EU guidelines for the provision of HGV parking facilities and urban mobility infringe the principle of subsidiarity.

CONTENT

Title

Proposal COM(2008) 887 of 16. December 2008 for a **Directive** of the European Parliament and of the Council laying down the framework **for the deployment of Intelligent Transport Systems in the field of road transport** and for interfaces with other transport modes and the **Communication COM (2008) 886** of 16. December 2008: **Action Plan for the deployment of Intelligent Transport Systems in Europe**.

Short Summary

► Subject matter and scope of the Directive

- According to the Commission, “Intelligent Transport Systems” can improve environmental performance, efficiency and road safety and can increase its competitiveness (Recital 3).
- “Intelligent Transport Systems” (ITS) are systems in which information and communication technologies are applied “in support of road transport” and for the “interfaces to other transport modes” (rails, inland waterways, seas and airspace; Art. 2 lit. a).
- The Directive aims to establish “a framework for the coordinated deployment and use of intelligent transport systems within the Community” (Art. 1).

► Action Plan: Single ITS services and applications

In its Action Plan [COM(2008) 886] the Commission calls for action and sets a timeframe for the deployment and improvement of single ITS (see [CEP Overview](#)):

– Road safety

- In order to reduce the number of road deaths the Commission wishes to prescribe in particular “driver assistance systems” such as electronic stability control (ETS) (cp. [CEP Policy Brief](#) in German only).
- The Commission wishes to deploy an automatic emergency call application (“eCall”) which, in case of an accident, automatically sends data - e.g. the coordinates of the scene of an accident and the vehicle chassis number - via radio frequency to an emergency hotline.

– Continuity of traffic and freight management

- ITS services and applications are to ensure that the actual location and condition of goods transported in the EU are electronically accessible (“eFreight”).
- ITS services and applications are also to be used in order to exchange content-related data of certain goods transports, to make electronic road toll systems interoperable and to define an “ITS framework architecture for urban mobility”, which in particular includes a concept for traffic management and the use of parking facilities.

– Use of road, traffic and travel data

- Currently, data on the condition of the road network, which is required for digital mapping, and information on real-time traffic and travel are provided by both private and public stakeholders.
- Such data are to be “validated” according to a standardised procedure to ensure their quality and be “made available to all players on a fair and equitable basis”.

► Directive: Establishing detailed requirements for ITS

- A committee is to be established assisting the Commission (“European ITS Committee”). It is to be chaired by a representative of the Commission and composed of representatives of the Member States (Art. 8 (1)).
- In addition, the Commission is to establish an advisory group composed of representatives from industry, associations of users and local authorities (“European ITS Advisory Group”). It is to advise the Commission on business and technical aspects. (Art. 9)

- The Commission will define the minimum requirements (“specifications”) to be complied with by the relevant ITS services and applications.

In the case of any essential amendments, the ITS Committee will provide a statement. The Council and the European Parliament may veto (so-called regulatory procedure with scrutiny; Art. 4 in connection with Art. 8).

- In the specifications the Commission may in particular define the following (Art. 4 in connection with Annex II):
 - how real-time data on road and traffic in Member States are made available to all providers of ITS services and applications,
 - how to ensure the cross-border availability of single ITS services and applications,
 - which measures to take in order to operate the emergency call application eCall,
 - which data traffic regulation centres need to exchange in order to establish an “ITS architecture for urban mobility”,
 - which measures have to be taken in order to ensure “safe and sufficient” parking facilities for HGV,
 - which measures have to be taken to establish an “open in-vehicle platform” enabling the easy integration of further IST services and applications in a “plug and play” manner.

► **Directive: Coordinated deployment of ITS services and applications in Member States**

Member States must take measures to ensure a “coordinated deployment and use of” single ITS services and applications. They must:

- provide ITS service providers and ITS users with updated road and traffic data,
- take measures to integrate safety-related ITS, such as eCall, into vehicles,
- ensure the integration of different ITS services and applications within one single platform. (Art. 3 Abs. 2)

► **Directive: Reporting obligations**

Member States must report on their activities regarding the deployment of ITS services and applications (Art. 10 (1-3)):

- They must submit reports on their projects in this area within six months of the Directive coming into force.
- They must submit detailed five-year plans, including the financing and supervision of the deployments of ITS services and applications within two years of the Directive coming into force
- Thereafter they must report annually on the progress made in the implementation.

► **Directive: Handling of personal data**

Member States must ensure that data protection requirements are observed where personal data have to be processed for the use of single ITS services and applications (Art. 6).

Changes Compared to the Status Quo

With its Proposal the Commission breaks new legislative ground: Currently, there exists no comprehensive regulation as to the establishment of a framework for the deployment of ITS services and applications, which is not limited to certain ITS services and applications.

Statement on Subsidiarity

According to the Commission, the parallel deployment of interoperable ITS services and applications in all Member States requires coordinated EU action. Otherwise, there is the danger of a “fragmented technological spectrum”. Moreover, joint action at Community level would have benefits for scale in the development of ITS.

Political Context

In its mid-term evaluation of the Transport White Paper [COM(2006) 314; cp. [CEP Policy Brief](#) in German only], the Commission sets the target to reduce the negative impacts of traffic and to improve the cross-linking of single modes of transport (“co-modality”). To this end, ITS would have an “essential role to play”.

ITS services and applications have already been the object of Commission initiatives, such as the Green Paper towards a new culture for urban mobility [COM(2007) 551, cp. [CEP Policy Brief](#) in German only] and in the freight transport logistics action plan [COM(2007) 607, cp. [CEP Policy Brief](#) in German only]. According to the Commission, ITS services and applications can make an important contribution to a more environmental design of traffic, in particular through internalising ecological costs in traffic prices [Communication COM(2008) 433 on the “internalisation of external costs” cp. [CEP Policy Brief](#)].

In 2002, together with companies from the automobile industry, the Commission launched “eSafety”, a joint initiative aiming to establish a strategy for the deployment of ITS services and applications in road traffic. In addition, ERTICO (European Road Transport Telematic Implementation Coordination Organisation) was founded by local authorities and industries pursuing ITS research.

Legislative Procedure

16.12.08 Adoption by Commission

Open Adoption by European Parliament and the Council publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Context

Leading Directorate General:	DG Energy and Transport
Committees of the European Parliament:	Transport and Tourism (in charge), rapporteur A. E. Jensen (ALDE Group, DK); Industry, Research and Energy
Committees of the German Bundestag:	Transport, Building and Urban Affairs (in charge); Economics and Technology; Education, Research and Technology Assessment; Tourism; Affairs of the European Union
Decision Mode in the Council:	Qualified majority (adoption with a majority of the member states and 255 of 345 votes; Germany: 29 votes)

Formalities

Legislative Competence:	Art. 71 (1) TEC (Transport)
Form of legislative competence:	Concurrent legislative competence
Legislative procedure:	Art. 251 TEC (Co-Decision)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

It is problematic that the Commission establishes a comprehensive legal basis for detailed implementation rules and at the same time sets a timeframe for the deployment of certain ITS services and applications. Although these proposals are not yet legally binding, **there is a risk that the Commission will push through the deployment of certain ITS services and applications.** Though Member States (through ITS Committee), industry and user associations (through the ITS Advisory Group) may advise the Commission, in the end it is the Commission who sets the minimum requirements and therewith the deployment of single ITS services and applications. Thus it promotes those companies which participate in the development of such services and applications and finally distorts competition.

However, market results should result from cost-benefit calculations of market actors. **The deployment of ITS services and applications generates high costs,** since infrastructures and vehicles first need to be equipped with the required information and communications technologies. **It is therefore not at all certain whether potential users be willing to pay for it.** Due to the differing conditions of roads and even greater differences in traffic density it is not evident whether or not all Member States would benefit equally from a coordinated deployment of complex ITS.

Market interventions are indeed justified where ITS services and applications are deployed to protect third parties. This is particularly true for measures aiming at the improvement of road safety. Whether or not for example the planned emergency call application eCall will actually result in adequately higher safety is not yet certain. In Member States where well-established emergency call systems already exist, the added value of eCall would be limited. Even the Commission itself admits that a “robust” business model for eCall is still lacking [SEC(2008)3083, p. 15]. Therefore, it is not comprehensible why the Commission explicitly already calls for a harmonised deployment of eCall in its Directive Proposal.

Impact on Efficiency and Individual Freedom of Choice

An EU-wide, binding fundamental standardisation which serves as a basis on which further products can be developed is appropriate. On the one hand, binding standardisation might impede the development of technically improved alternatives. On the other hand, it provides planning reliability, which improves the opportunities for innovation. **To this end, the planned open in-vehicle platform for ITS services and applications,** enabling the integration of new services and applications in a “plug and play” manner, **is to be welcomed.**

Reasonable, too, is the planned standardisation of minimum requirements for road and traffic data, since it ensures the geographic continuity of the ITS services and applications on which they are based and thus improves their attractiveness.

The establishment of an ITS Committee and ITS Advisory Group in addition to the already existing working groups (amongst others “eSafety” Forum) leads to ineffective double structures. Although the Commission wishes to avoid this, the Proposal does not really demonstrate how to achieve such a goal.

Impact on Growth and Employment

Obligations relating to the integration and use of ITS services and applications increase costs, in particular for car manufacturers and transport carriers. However, ITS services and applications at the same time enable optimised tour planning and an improved traffic flow, which would lower follow-up costs of congestion. This would have a positive impact on growth and employment.

Impact on Europe as a Business Location

Currently not foreseeable.

Legal Assessment

Legislative Competence

Since the Directive pursues several goals it must be based on the legal competence which conforms to the main objective of the planned project (ECJ, Case C-338/01, Directive 2001/44/EC – choice of legal basis, No. 54 et seq.). ITS services and applications should, in the first place, improve environmental performance, efficiency and safety of road traffic (Recital 3). Hence, the Commission is right in applying Art. 71 (1) TEC (Transport) as the relevant legislative competence for the Directive.

Subsidiarity

It is questionable that the Directive establishes the premises for an EU-wide deployment of ITS services and applications, since it is not certain that all Member States need such services to an adequate extent. **EU action is therefore appropriate only if ITS services and applications represent a solution to a cross-border problem** and if their deployment is clearly of public interest.

This applies to technical specifications which harmonise ITS services and applications in all Member States as to make them available at a cross-border level. This is to avoid incompatible systems, particularly in the field of traffic management, where they could lead to impediments to traffic flow and consequently to additional costs.

The provision of sufficient parking facilities for HGV and urban mobility, however, has no cross-border relevance. There is no added value apparent that EU action might bring about.

Proportionality

ITS services and applications using personal data raise data protection issues. Therefore, each ITS service and each ITS application should be verified so as to detect which personal data are necessarily required. The planned processing of the complete vehicle chassis number in line with the emergency call application eCall is not really suitable for contributing to a faster rescue of casualties.

Compatibility with EU Law

The automatic processing of personal data via radio frequency within the scope of certain ITS services and applications – such as the emergency call application eCall – might infringe the Data Protection Directive 95/46/EC. Personal data may be processed only if “necessary in order to protect the vital interests” of the person concerned (Art. 7 lit. d of the Data Protection Directive). However, any unintentional processing of personal data would be avoidable if the emergency call application could be deactivated through a button. Activating an ITS service through such a button would constitute a consent by the person concerned and justify the processing of the pertaining data (Art. 7 lit. a of the Data Protection Directive).

Compatibility with German Law

There are certain objections regarding the Proposal's compatibility with the principle of legal certainty (Art. 20 (3) German Basic Law) derived from the rule of law. It is considered infringed if public action, which can be based on legal provisions, is not foreseeable. The Proposal suggests that the Commission can prescribe the deployment of concrete ITS services and applications. In view of rapid technological developments it is, at best, somewhat vague as to which concrete ITS services and applications should be deployed. An obligation to adjust vehicles to certain ITS services and applications could constitute an intervention into entrepreneurial freedom of choice, which, according to the so-called “materiality theory” of the German Federal Constitutional Court, would have to be resolved by the legislator itself (Art. 20 (3) German Basic Law; principle of legality). However, the provided regulatory procedure with scrutiny assigns to the European Parliament the right to veto only and does not allow for a participation of national parliaments in determining the ITS services and applications to be deployed.

Alternative Policy Options

The Directive Proposal should be restricted to the standardisation of ITS platforms and services of cross-border relevance.

Possible Future EU Action

The Commission might prescribe the deployment of concrete ITS.

Conclusion

The Directive should not be adopted in its current form. On the one hand, the opportunities for innovation are improved through EU-wide, binding fundamental standardisation, such as the deployment of open in-vehicle platforms. On the other hand, there is a risk that the Commission pushes through certain ITS services and applications. This might generate high costs, though it is not certain whether customers would be willing to pay for it. Regulations regarding the provision of HGV parking places and urban mobility infringe the principle of subsidiarity, since they relate to domestic affairs solely.