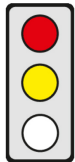


## KEY ISSUES

**Objective of the Directive:** The uptake of low-emission and zero-emission road vehicles is to be increased by way of stricter rules on public procurement.

**Affected parties:** Operators of public transport services, vehicle manufacturers



**Pro:** Extending the Directive to include the renting, leasing and hire-purchase of vehicles prevents avoidance of procurement rules.

**Contra:** (1) Using public procurement as a way of activating the mass production of “clean vehicles” is contrary to the principle of efficient use of public funds.

(2) The planned strict CO<sub>2</sub> limits on cars and light duty vehicles as a criterion for the definition of “clean vehicles” gives rise to a concealed quota for zero-emission vehicles.

(3) The cost increase resulting from expensive zero-emission or biomethane-powered public buses is counter-productive because there is a danger that passengers will go back to private modes of transport.

The most important passages in the text are indicated by a line in the margin.

## CONTENT

### Title

**Proposal COM(2017) 653** of 8 November 2017 for a **Directive** of the European Parliament and of the Council amending Directive 2009/33/EC **on the promotion of clean and energy-efficient road transport vehicles**

### Brief Summary

References relate to the Directive on clean road transport vehicles to be amended [2009/33/EC].

#### ► Context and objectives

- EU public procurement law [Public Procurement Directive 2014/24/EU, see [cepPolicyBrief 25/2012](#); Sectoral Public Procurement Directive 2014/25/EU, see [cepPolicyBrief 32/2012](#)] regulates EU minimum standards for public procurement including minimum order volume “thresholds” above which the law applies.
- The Clean Vehicle Directive [2009/33/EC] supplements EU public procurement law by way of environmental criteria for the acquisition of road vehicles by public authorities and operators of “passenger transport services” on the roads, e.g. local public bus services. This will [Recital 7]
  - stimulate the demand “for clean and energy efficient road transport vehicles”,
  - reduce greenhouse gas and air pollutant emissions and
  - strengthen the competitiveness of the European automotive industry.
- According to the Commission, “serious shortcomings” in the Clean Vehicle Directive [p. 3] meant that, on average, between 2009 and 2015, the number of electric, plug-in hybrid, fuel-cell and natural gas powered vehicles as a proportion of the overall number of new road vehicles was only [p. 3, footnote 9]
  - 4.7% of cars and 0.4% of light duty vehicles (LDVs) and
  - 0.07% of lorries and 1.7% of buses (“heavy duty vehicles”, HDVs).
- In future, the Clean Vehicle Directive will cover “all relevant procurement practices” and become “simplified and effective” in order to provide greater demand-side stimulus for “clean vehicles” [p. 3; Recitals 9, 14 and 18].

#### ► Scope

- The Clean Vehicle Directive applies to the procurement of road transport vehicles by way of purchase and in future also by lease, rent or hire-purchase [amended Art. 3].
- It applies to procurement [amended Art. 3]
  - by contracting entities that have to apply EU procurement law during procurement procedures;
  - by operators of “public transport services” on the road, under a public service contract, that are uneconomic but in the public interest [Regulation (EC) No. 1370/2007];
  - in future also by operators of “road transport services” for mail and parcel services as well as refuse collection pursuant to a public service contract [Annex, Table 1];

The requirement for this is a minimum order volume that is over a “threshold” to be set by the Member States, which may be lower than the threshold under the EU Procurement Directive [Art. 4 General Procurement Directive; Art. 15 Sectoral Procurement Directive].

► **Abolition of the “monetisation methodology”**

- When calculating the operating costs of the road vehicles being procured, over their entire life-cycle, contracting entities may take account of negative environmental effects such as CO<sub>2</sub> emissions or air pollution (“external effects”) as additional “external costs” [Recital 14].
- The specified mandatory costing method (“monetisation”) of external effects is abolished [deleted Art. 6] due to being “rarely used because it is so complex” [p. 5].
- Contracting entities can use their own methodology for calculating overall operational costs - tailored to their specific circumstances and needs - or simply do without one entirely [Recital 14].

► **Definition of “clean vehicle” in the case of cars and light duty vehicles (LDVs)**

- Until 2025, “clean vehicles” will be [new Art. 4 (4) (a) and (b) in conjunction with Annex, Table 2]
  - cars and minibuses with maximum CO<sub>2</sub> “tailpipe emissions” (“tank-to-wheel” emissions) of 25 g CO<sub>2</sub>/km,
  - vans with maximum CO<sub>2</sub> “tailpipe emissions” of 40 g CO<sub>2</sub>/km,
 provided their air pollutant emissions in real driving conditions are at least 20% below the generally applicable Euro-5 and Euro-6 emission limits (Vehicle Emissions Regulation [(EC) No. 715/2007], Annex I).
- As from 2026, cars and LDVs will only be deemed as “clean vehicles” where they have “zero emissions”, i.e. are battery-electric or fuel-cell powered.

► **Definition of “clean vehicle” in the case of heavy duty vehicles (HDVs)**

- In future, lorries and buses will be deemed to be “clean vehicles” where they are powered by the following alternative fuels [new Art. 4 (4) (c) in conjunction with Annex, Table 3]:
- electricity (battery-electric or hybrid),
  - hydrogen or
  - gas including biomethane, compressed natural gas (CNG) and liquefied natural gas (LNG).

► **Minimum targets**

- Member States must reach country-specific minimum targets for the proportion of clean vehicles in public procurement [amended Art. 5 (1) in conjunction with Annex, Tables 4 and 5].
- These are determined according to per-capita income and level of urbanisation [Impact Assessment SWD(2017) 366, p. 120–122]. They range
  - for cars and LDVs, from 16% e.g. for Bulgaria to 35% for Luxembourg by 2030;
  - for lorries
    - from 6% for Romania to 10% for Germany by 2025 and
    - from 7% for Romania to 15% for Germany by 2030;
  - for buses
    - from 29% for Romania, to 48% for France and 50% for Germany by 2025 and
    - from 43% for Romania to 75% for Germany by 2030.
- The following contribute to meeting the country-specific minimum target:
  - in the case of cars and LDVs [Annex, Table 4]
    - one zero-emissions vehicle counts as 1 vehicle,
    - another - low-emission - “clean vehicle” as 0.5 vehicle;
  - in the case of lorries and buses [Annex, Table 5]
    - one zero-emission or biomethane-powered vehicle counts as 1 vehicle,
    - another “clean vehicle” counts as 1 vehicle where the country-specific minimum target is at least 50% (for lorries this will never be the case and for buses it will be the case in 13 Member States until 2025, and in 26 Member States until 2030),
    - another “clean vehicle” counts as 0.5 vehicle where the country-specific minimum target is below 50% (for lorries this is always the case and for buses it will be the case in 15 Member States until 2025, and in 2 Member States until 2030),

## Main Changes to the Status Quo

- Until now, the Directive only applied to the purchase of road vehicles and to authorities and “passenger transport services” under a public service contract. Now it applies to leasing, rental and hire-purchase as well as to “road transport services” carrying mail and parcels and to refuse collection under a public service contract.
- New: the fact that, in public procurement procedures, Member States have to meet minimum targets for the proportion of “clean vehicles” whose definition in the case of cars and LDVs is based on the limits for emissions of CO<sub>2</sub> and air pollutants and in the case of lorries and buses on the method of propulsion.

## Statement on Subsidiarity by the Commission

According to the EU Commission, EU intervention is limited to “providing a common policy framework with minimum requirements for the procurement of clean vehicles”. Member States are granted flexibility in implementation - including the choice of technology. Standard EU criteria on the public procurement of vehicles may create a common market in which local authorities can choose the most efficient clean technology.

## Policy Context

With its “Strategy for low-emission mobility” [COM(2016) 501; see [cepPolicyBrief 30/2016](#)], the Commission wants CO<sub>2</sub> emissions in the transport sector to fall by at least 60% by 2050 as compared with 1990 levels and be “firmly on the path towards zero”. Thus it emphasises the importance of the public procurement process in supporting the demand for “clean road vehicles”. This Proposal for a Directive is part of the “Second Roads Package” of November 2017 that also contains a proposal for a Regulation on CO<sub>2</sub> limits for cars and LDVs [see [cepPolicyBrief 02/2018](#)].

## Legislative Procedure

8 November 2017 Adoption by the Commission

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

## Options for Influencing the Political Process

Directorates General:	DG Transport (leading)
Committees of the European Parliament:	Environment, Public Health and Food Safety (leading), Rapporteur: Andrzej Grzyb (EVP Group, PL)
Federal Ministries:	Environment (leading)
Committees of the German Bundestag:	Environment (leading);
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

## Formalities

Legislative competence:	Art. 192 TFEU (Environment)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU) Legislative procedure:
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

# ASSESSMENT

## Economic Impact Assessment

The public sector is to provide reasonably priced goods and services according to public preferences. **Using public procurement**, based on the demand-side potential of the public sector, **as a way of activating the mass production of “clean vehicles”**, for which there has so far only been a low market uptake, is questionable. Firstly – contrary to the Commission’s assertions – this will not increase the competitiveness of European vehicle manufacturers because their competitors on the EU market coming from third countries are subject to the same criteria and can even profit from them. Thus Chinese manufacturers are currently able to offer electric buses at much lower prices than European companies due to cost advantages and mass production. Secondly, in the initial years, vehicles are more expensive to procure because cost reductions are only achieved gradually. **This is contrary to the principle of efficient use of public funds.**

The public sector should be able to take account of environmental aspects in the procurement process where this corresponds to the will of the electorate (see [cepPolicyBrief 02.10.2008](#)). However, the more frequently that the environmental costs of CO<sub>2</sub> or air pollution can successfully be included in prices (“internalising external costs”) the less need there will be for interventionist procurement rules to promote “clean road vehicles”.

The Emissions Trading System (ETS) provides this effective means of reducing CO<sub>2</sub> – and thus indirectly also air pollution. By including transport in the EU ETS or a transport-specific ETS (see [cepInput 2015-5](#)) the costs of fossil fuels would increase in proportion to their CO<sub>2</sub> content. Alternatively, the EU could scale minimum tax rates on oil according to CO<sub>2</sub> content. Both would mean that the overall operating costs for vehicles over their entire life-cycle would depend on their actual emissions so that the current cost disadvantages of low-emission and -zero-emission vehicles in public procurement procedures would be balanced out. This not only produces a permanent incentive to reduce CO<sub>2</sub> but, since it is technology-neutral, is also economically efficient and limits red tape.

**Extending the Directive to include**, firstly, additional modes of procurement in addition to purchase, such as the **renting, leasing and hire-purchase** of vehicles and, secondly, to include other road transport services, is appropriate in the context of the approach chosen by the Commission. The former **prevents the avoidance of procurement rules**, which has been possible up to now, by choosing a corresponding mode of procurement. Both also strengthen the demand for “clean vehicles”. This may, however, temporarily severely limit the number of suppliers in those business sectors for which there are currently hardly any “clean vehicles” and result in cost increases due to a lack of competition.

**The planned strict CO<sub>2</sub> limits for cars and light-duty vehicles** of between 25 and 40 g by 2025 – **as a criterion for the definition of “clean vehicles”** – can only be technically achieved by zero-emission battery-electric or fuel-cell propelled vehicles. Therefore, contrary to the Commission’s claims that the procurement criteria are technology-neutral [Impact Assessment, p. 23], they, together with the mandatory minimum targets for the procurement of “clean vehicles”, **result in a concealed quota for zero-emission vehicles**.

In addition, in order to count as “clean vehicles”, cars and light-duty vehicles should not have to exceed the applicable Euro-5 and Euro-6 emissions limits by 20% because this requirement may mean that mass producers will choose to give up on the relatively small public procurement market rather than strive to meet the requirement. There is therefore a risk that the number of potential suppliers that meet the additional requirements, will remain small and the remaining manufacturers will be able to push through high prices due to the lack of competition.

The rule that lorries and buses only count as “clean vehicles” when they are driven by electricity, hydrogen or gas is not cost effective because it immediately excludes as a cost-effective alternative, diesel vehicles, that comply with valid pollution standards and can be run in a climate-friendly way using biodiesel. **The preference given**, by the procurement criteria, **to more expensive zero-emission or biomethane-powered vehicles**, to the detriment of cheaper alternatives, places a burden on public budgets and **increases the cost of public services**. This is particularly apparent in the case of buses: The overall operating costs of battery-electric buses are about 60% higher than those of diesel buses, fuel-cell-powered buses are 150% higher. CNG or LNG gas-powered buses, by contrast, only give rise to additional costs of about 4% and are low in emissions of air pollutants. It is therefore misguided only to rate cheap CNG and LNG gas-powered buses as 0.5 vehicle in order to meet country-specific minimum targets below 50% whereas expensive zero-emission buses and biomethane-powered buses are rated more favourably as 1 vehicle.

**The likely cost increase due to expensive zero-emission or biomethane-powered public buses** is also **counter-productive** because it may delay the procurement of new vehicles or restrict the range of services and **there is a danger that passengers will go back to private modes of transport** which are significantly higher in emissions.

Ultimately, the varying ways of setting off CNG and LNG gas-powered buses against country-specific minimum targets – as 0.5 vehicles in the case of minimum targets below 50%, and as 1.0 vehicle above 50% – gives rise to a paradoxical result: Member States, that for economic reasons are allocated a minimum target below 50%, must, by contrast with the others, either acquire twice the number of CNG and LNG gas-powered buses or rely to a greater extent on more expensive zero-emission or biomethane-powered buses. Thus, in order to reach its 43% minimum target for 2030, Romania must procure 86% CNG or LNG gas-powered buses, whilst Germany only has to procure 75% in order to reach its 75% target. The unequal treatment of Member States is particularly drastic at the 50% threshold: Thus France needs 96% CNG or LNG gas-powered buses by 2025 in order to reach its minimum target of 48%, Germany needs only 50%.

## Legal Assessment

### Legislative Competency

The EU can adopt measures to protect the environment and the climate (Art. 192 TFEU). These include measures to promote low-emission and zero-emission road vehicles in the context of public procurement procedures.

### Subsidiarity

Measures to combat international climate change can only be adopted at EU level.

### Impact on German Law

The proposed changes require adjustments to the German Procurement Regulations (VgV) and Sectoral Procurement Regulations relating to transport, drinking water and the energy supply (SektVO).

## Conclusion

Using public procurement as a way of activating the mass production of “clean vehicles” is contrary to the principle of efficient use of public funds. Extending the Directive to include the renting, leasing and hire-purchase of vehicles prevents the avoidance of procurement rules. The planned strict CO<sub>2</sub> limits on cars and light duty vehicles as a criterion for the definition of “clean vehicles” gives rise to a concealed quota for zero-emission vehicles. The preference given to more expensive vehicles increases the cost of public services. The cost increase resulting from expensive zero-emission or biomethane-powered buses is counter-productive because there is a danger that passengers will go back to private modes of transport.