Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles (Text with EEA relevance)

DIRECTIVE (EU) 2019/1161 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

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 Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) In accordance with the conclusions of the European Council of 23-24 October 2014, the Union is committed to a sustainable, competitive, secure and decarbonised energy system. The Commission's Communication of 22 January 2014 entitled ‘A policy framework for climate and energy for the period from 2020 to 2030’ establishes ambitious commitments for the Union to further reduce greenhouse gas emissions by at least 40 % by 2030 as compared to 1990 levels, to increase the proportion of renewable energy consumed to 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[(4)] set a share of energy from renewable sources of at least 32 % of the Union's gross final consumption of energy by 2030, and Directive (EU) 2018/2002 of the European Parliament and of the Council[(5)] set a new energy efficiency target for the Union by 2030 of at least 32,5 %.

(2) In its Communication of 20 July 2016 entitled ‘A European Strategy for Low-Emission Mobility’ the Commission announced that in order to meet the Union's commitments pledged at the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change 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 will need to be firmly on the path towards zero

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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. That can be achieved by an array of policy initiatives, including measures that support a shift towards public transport and the use of public procurement to promote clean vehicles.

(3) In its Communication of 31 May 2017 entitled ‘Europe on the Move: an agenda for a socially fair transition towards clean, competitive and connected mobility for all’ the Commission underlines that increased production and uptake of clean vehicles, alternative fuels infrastructure and new mobility services which take advantage of digitalisation and automation in the Union offer multiple benefits to Union citizens, Member States and industries. Those benefits include safer and seamless mobility solutions and the reduction of exposure to harmful pollutant emissions. Furthermore, as stated in the State of the Union address of 13 September 2017, one of the main objectives for the Union is to become a world leader in decarbonisation.

(4) As was announced in the Commission's Communication ‘Europe on the Move’, this Directive forms part of a second package of proposals, which will contribute to the Union's drive towards low-emission mobility. That package, which was presented in the Commission's Communication of 8 November 2017 entitled ‘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 Union on a path towards low-emission mobility and at the same time strengthen the competitiveness of the Union's mobility eco-system. The promotion of clean vehicles should take place in parallel with the further development of public transport, as a way to reduce road congestion and consequently to reduce emissions and improve air quality.

(5) Innovation in new technologies helps to lower vehicle CO_2 emissions and to reduce air and noise pollution, while supporting the decarbonisation of the transport sector. An increased uptake of low- and zero-emission road vehicles will reduce CO_2 emissions 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 the competitiveness and growth of Union industry in the increasing global markets for low- and zero-emission vehicles. The Commission should pursue policy measures to foster widespread industrial uptake of and the growth of manufacturing capacity for such new technologies in all Member States in order to contribute to a level-playing field and a balanced development across Member States.

(6) Market forecasts estimate that the purchase prices of clean vehicles will continue to fall. Lower operational and maintenance costs already contribute towards competitive total cost of ownership. The expected reduction of purchase prices will further reduce barriers to market availability and uptake of clean vehicles in the next decade.

(7) While the Union is one of the leading regions for research and high value eco-innovation, the Asia-Pacific region hosts 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 on the procurement of clean vehicles will help to stimulate innovation and further promote

competitiveness and growth of the Union industry in the increasingly global markets for clean vehicles and associated technology infrastructure. As noted in its Communication of 3 October 2017 entitled 'Making public procurement work in and for Europe', the Commission will continue to lead efforts to ensure a level playing field and promote better access to third countries' public procurement markets, including for the purchase, leasing, rental or hire-purchase of road transport vehicles.

(8) Taking into account that public expenditure on goods, works and services represented approximately 16 % of GDP in 2018, public authorities, through their public procurement policy, can foster and support markets for innovative goods and services. In order to achieve that goal, Directive 2009/33/EC of the European Parliament and of the Council[(6)] should set out clear and transparent requirements, including clear, long-term procurement targets and a simple method for their calculation. Directives 2014/24/EU[(7)] and 2014/25/EU[(8)] of the European Parliament and of the Council set out minimum public procurement rules which coordinate the way contracting authorities and contracting entities procure works, supplies and services. In particular, those Directives set out overall monetary thresholds for determining which public contracts are to be subject to Union public procurement legislation. Those thresholds are also applicable to Directive 2009/33/EC.

(9) The availability of sufficient recharging and refuelling infrastructure is necessary for the deployment of alternative fuel vehicles. On 8 November 2017, the Commission adopted an action plan to support the accelerated roll-out of alternative fuels infrastructure in the Union, including strengthened support to the 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 Council[(9)] by 31 December 2020, and will submit a legislative proposal to amend that Directive, if it considers it necessary on the basis of that review.

(10) Directive 2009/33/EC complements the horizontal public procurement legislation of the Union and adds sustainability criteria, thereby aiming to stimulate the market for clean and energy-efficient road transport vehicles. The Commission carried out an ex-post evaluation of Directive 2009/33/EC in 2015 and concluded that that Directive did not trigger a market uptake of clean vehicles across the Union, in particular due to shortcomings as regards its scope and the provisions on vehicle purchase. That evaluation concluded that the impact of that Directive has been very limited in reducing greenhouse gas and air pollutant emissions and in promoting industry competitiveness.

(11) The impact assessment carried out by the Commission on the revision of Directive 2009/33/EC underlines the benefits of changing the overall governance approach to clean vehicle procurement at Union level. Setting minimum procurement targets can effectively help to reach the objective of promoting and stimulating the market uptake of clean vehicles in comparison to relying on the internalisation of external cost into overall procurement decisions, while noting the relevance of considering environmental aspects in all procurement decisions. The medium and long-term benefits for Union citizens and enterprises fully justify that approach insofar as

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it leaves sufficient flexibility to contracting authorities and contracting entities in the choice of the technologies to be used.

(12) Extending the scope of Directive 2009/33/EC 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 covered by the scope of this Directive, 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 that are used for the provision of these services fall within the vehicle categories covered by this Directive, and where they represent a major element in the contract. Those services should be identified using their respective Common Procurement Vocabulary codes listed in the Annex. Existing contracts should not be retrospectively affected by this Directive.

(13) There is widespread support from key stakeholders for a definition of clean vehicles which takes into account the requirements for the reduction of greenhouse gases and air pollutant emissions from light-duty vehicles. To ensure that there are adequate incentives to promote market uptake of low- and zero-emission vehicles in the Union, provisions for their public procurement under this Directive should be aligned with the definition of zero- and low-emission vehicles provided for in Regulation (EU) 2019/631 of the European Parliament and of the Council[(10)]. Action carried out under this Directive will contribute to compliance with the requirements of the standards laid down in Regulation (EU) 2019/631. In order to improve air quality, clean vehicles should perform better compared to the minimum requirements for nitrogen oxides (NOx) and for ultrafine particles — Particle Number (PN) set by the real-driving emission (RDE) 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 emission limits. The number of such vehicles, however, is expected to increase in the coming years, especially plug-in hybrids. A more ambitious approach for public procurement can provide a significant additional market stimulus.

(14) Clean heavy-duty vehicles should be defined through the use of alternative fuels in line with Directive 2014/94/EU. Where liquid biofuels, synthetic or paraffinic fuels are to be used by procured vehicles, contracting authorities and contracting entities have to ensure, through mandatory contract clauses or through similarly effective means within the public procurement procedure, that only such fuels are to be used in those vehicles. While it is possible for those fuels to contain fuel additives, as is the case for example with ethanol-based fuel for adapted diesel engines (ED95), they should not be blended with fossil fuels.

(15) In order to improve air quality in municipalities, it is crucial to renew the transport fleet with clean vehicles. 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 the achievement of the respective minimum procurement targets.

(16) 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 those 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 market 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 of the European Parliament and of the Council[11] and United Nations Economic Commission for Europe (UNECE) Regulation 107, vehicles of category M_3 with areas for standing passengers to allow for frequent passenger movement are considered to be buses, while vehicles of category M_3 with very limited or no area for standing passengers are considered to be 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 this Directive, lower minimum procurement targets for zero-emission vehicles belonging to that category of heavy-duty vehicles in Member States where double-decker buses represent a significant share of public procurement.

(17) 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. Those vehicles include armoured vehicles, ambulances, hearses, wheelchair accessible vehicles of category M_1, 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 specialised communications equipment or emergency lights. The requirements provided for in this Directive should not apply to vehicles that are designed and constructed specifically to perform works and which are not suitable for carrying passengers or for transporting goods. Those vehicles include vehicles for road maintenance such as snow ploughs.

(18) Setting minimum targets for the procurement of clean vehicles to be met in two reference periods ending in 2025 and in 2030 at Member State level should contribute to policy certainty for markets where investment in low- and zero-emission mobility is needed. The minimum targets support market creation for clean vehicles throughout the Union. They provide time for the adjustment of public procurement processes and give a clear market signal. Moreover, requiring half of the minimum target for the buses procured in those reference periods to be fulfilled through the procurement of zero-emission buses strengthens the commitment to decarbonisation of the transport sector. It should be noted that trolley buses are considered to be zero-emission buses, provided that they run only on electricity or that they use only a zero-emission powertrain when they are not connected to 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 on the seriousness of the problem. Different targets should be