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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	22 March 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2010/40/EU as regards the period for adopting delegated acts

Delegations will find attached document COM(2017) 136 final.

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Brussels, 22.3.2017
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Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2010/40/EU as regards the period for adopting delegated acts

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport¹ (the ITS Directive), which entered into force in August 2010, is aimed at accelerating the coordinated EU-wide deployment and use of intelligent transport systems (ITS) in the field of road transport. The Directive requires that specifications be adopted, through delegated acts, for actions in four priority areas. The ITS Directive was one of the first pieces of Union legislation stipulating the use of delegated acts and the power to adopt the delegated acts was conferred on the Commission for a limited period only, until 27 August 2017.

Four delegated acts have been adopted since the entry into force of the ITS Directive. A fifth delegated act has been finalised with Member States' experts and addresses the provision of EU-wide multimodal travel information services. In addition to interoperability requirements for eCall, the data-sharing mechanisms developed in these contexts are contributing significantly to the objectives of the Digital Single Market Strategy². The digitisation of the transport sector also contributes to its sustainability.

A digital transport system requires horizontal thinking, across transport modes and industries. Digital technologies build on a layer of data which can be combined into a layer of innovative services and applications. Specifications under the ITS Directive enable the formulation of common functional, technical, organisational and service provisions that facilitate the accessibility and availability of data which are then used to develop this layer of innovative services and applications.

In the context of the recently adopted European strategy on Cooperative Intelligent Transport systems³ (C-ITS), the Commission is currently working with the Member States' experts to establish a legal and technical framework to support the deployment of cooperative ITS. This is part of the ITS Directive's priority area IV and is one of the actions under the Directive for which the Commission intends to use its delegation of power to adopt technical, functional and organisational specifications. In-depth preparatory work is necessary to guarantee that the specifications cover all the aspects required to ensure the harmonised and interoperable deployment of C-ITS in the Union. The work is benefiting from input from and close cooperation with C-ITS platform⁴ stakeholders, and lessons learnt from C-ITS deployment projects such as Member States' initiatives under the C-ROADS platform⁵. The C-ITS specifications will be fundamental to ensuring the coordinated and rapid deployment of cooperative, connected and automated vehicles in the Union.

¹ OJ L 207, 6.8.2010, p. 1.

² http://ec.europa.eu/priorities/digital-single-market_en

³ *A European strategy on Cooperative Intelligent Transport Systems, a milestone towards cooperative, connected and automated mobility* (COM(2016) 766).

⁴ http://ec.europa.eu/transport/themes/its/c-its_en

⁵ https://ec.europa.eu/transport/themes/its/news/2016-10-07-european-commission-member-states-and-industry-join-forces-deployment_en

Apart from the work on a legal and technical framework to support the deployment of C-ITS, several other actions in the four ITS Directive priority areas⁶ have still to be addressed, such as specifications and standards for the continuity and interoperability of traffic and freight management services (priority area II), specifications for other actions relating to ITS road safety and security applications (priority area III), and the definition of necessary measures to integrate different ITS applications on an open in-vehicle platform (priority area IV, paragraph 1.1).

In order that the Commission can adopt further specifications through delegated acts, it is essential that the delegation of power be extended. Furthermore, specifications that have already been adopted may need to be updated to reflect technological progress or lessons learnt from their implementation in the Member States.

The Commission is therefore proposing that the delegation of power be extended by five years from 27 August 2017 and tacitly thereafter for further five-year periods, unless the European Parliament or the Council oppose such extension.

- **Consistency with existing policy provisions in the policy area**

The only aim of this proposal is to extend the delegation of power to the Commission to adopt delegated acts, without changing the policy objectives or the scope of the ITS Directive.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 91 of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

The ITS Directive addresses trans-national issues that cannot be satisfactorily addressed by Member States only, such as the interoperability of equipment and strengthening the internal market for ITS services (thereby contributing to competitiveness at global level, jobs and growth).

In accordance with the principle of subsidiarity, the use of a (framework) directive such as the ITS Directive remains one of the most appropriate means of achieving the intended result. The overarching principles and enabling conditions for ITS implementation are given practical effect through specifications developed with the strong involvement of Member State experts. The Commission has also established a European ITS Advisory Group, through which representatives of relevant public and private ITS stakeholders advise it on the business and technical aspects of the implementation and deployment of ITS in the EU.

Specifications adopted by the Commission apply by virtue of Article 5 of the ITS Directive, which acknowledges the right of each Member State to decide on the deployment of ITS applications and services on its territory.

⁶ See Annex I to the Directive.

- **Proportionality**

The Commission's involvement is limited to the minimum required for achieving the objectives of the proposal and does not go beyond what is necessary for that purpose. It is limited to developing, in support of the Member States and with the assistance of national ITS experts, procedures and specifications in well-identified priority areas that require a supra-national approach.

Not extending the delegation of power to the Commission would endanger the EU-wide integrated and coordinated deployment of interoperable ITS in road transport and their interfaces with other transport modes. It would not be practicable or time-efficient for the Council and the European Parliament to adopt all the necessary detailed specifications one by one.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

A report on the implementation of the ITS Directive in October 2014⁷ highlighted the need to extend (from August 2017) the delegation of power enabling the Commission to adopt delegated acts for ITS specifications, and the need, in a second phase, to prepare a possible more extensive revision of the Directive taking account of the constant technical evolution of ITS. This proposal addresses only the extension of the delegation of power.

- **Stakeholder consultations**

The outcome of the consultation conducted prior to the adoption of the ITS Directive and the ITS Action Plan⁸ is still considered to be of relevance, e.g. with respect to cross-sector collaboration, the implementation strategy and stakeholder coordination.

Targeted consultations have recently taken place with stakeholder groups, in particular the European ITS Committee and the members of the European ITS Advisory Group. There was general agreement on the need to extend the delegation of power to the Commission to adopt delegated acts.

- **Impact assessment**

There are no plans for an impact assessment, as the extension does not change the scope and content of the ITS Directive itself.

4. BUDGETARY IMPLICATIONS

There are no budgetary implications for the EU budget.

⁷ http://ec.europa.eu/transport/themes/its/road/action_plan/its_reports_en.htm

⁸ http://ec.europa.eu/transport/modes/road/consultations/2008_03_26_its_en.htm

5. OTHER ELEMENTS

- **Choice of the legal form of the proposal**

The objective of the proposal is to extend the delegation of power to the Commission to adopt delegated acts. Although part of a Directive, the new provisions are not actually addressed to the Member States but to Union institutions. They therefore do not have to be transposed into national legislation and should be adopted in a form of a Decision.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 extends by five years the power conferred on the Commission to adopt the delegated acts. Subsequently, the power will be tacitly extended for five years at a time unless the European Parliament or the Council oppose such extension.

Article 2 provides for the Decision to enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

- **European Economic Area**

The proposed act is of EEA relevance.

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2010/40/EU as regards the period for adopting delegated acts

(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 91 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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2010/40/EU of the European Parliament and the Council³ provides for the development of specifications for priority actions within priority areas.
- (2) Since the entry into force of Directive 2010/40/EU, four delegated acts relating to priority actions of that Directive have been adopted by the Commission. They address in particular eCall and data sharing mechanisms facilitating the electronic data exchange between the relevant public authorities and stakeholders and the relevant ITS service providers. There is a need for further delegated acts regarding actions still to be addressed and belonging to the scope of Directive 2010/40/EU.
- (3) Under Article 12 of Directive 2010/40/EU, the power conferred on the Commission to adopt the delegated acts referred to in Article 7 of the Directive expires on 27 August 2017.

¹ OJ C , , p. .

² OJ C , , p. .

³ Directive 2010/40/EU of the European Parliament and the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport (OJ L 207, 6.8.2010, p. 1).

- (4) In order to achieve the objectives of Directive 2010/40/EU, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission for an additional period of five years starting from 27 August 2017. This period should be tacitly extended for periods of the same duration, unless the European Parliament or the Council oppose such an extension. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts,

HAVE ADOPTED THIS DECISION:

Article 1

In Article 12 of Directive 2010/40/EU, paragraph 1 is replaced by the following:

- ‘1. The power to adopt the delegated acts referred to in Article 7 shall be conferred on the Commission for a period of five years from 27 August 2017. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such an extension no later than three months before the end of each period. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of each five-year period.’

Article 2

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the European Parliament
The President

For the Council
The President