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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 443/2009 to define the modalities for reaching the 2020 target to reduce CO₂ emissions from new passenger cars

{SWD(2012) 213 final}

{SWD(2012) 214 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **General context**

The EU has a stated objective of limiting global climate change to a temperature increase of 2°C above pre-industrial levels. To achieve this, global emissions need to peak by 2020 and be reduced by at least 50% globally by 2050 compared to 1990. The European Council reconfirmed the EU target of an 80-95% reduction by 2050 compared to 1990 in the context of the necessary reductions by developed countries as a group.

Current policies would only lead to about a 40% GHG ("GHG") emission reduction by 2050. The Commission *'Roadmap for moving to a competitive low carbon economy in 2050'*¹ sets out how to meet the 2050 target of reducing domestic emissions by 80% in the most cost-effective way. The Roadmap shows that every sector of the economy must contribute and, depending on the scenario, compared to 1990 transport emissions need to be between +20 and -9% by 2030 and decrease by 54% to 67% by 2050².

While emissions from other sectors are generally falling road transport is one of the few sectors where emissions have risen rapidly. Between 1990 and 2008 emissions from road transport increased by 26%. In 2008 around 70% of transport CO₂ emissions came from road transport³. As a result, it is the second biggest source of GHG emissions in the EU, and contributes about one-fifth of the EU's total emissions of CO₂.

In March 2011 the Commission adopted the *'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system'*. It sets out a transport strategy within a frame of achieving a 60% reduction in transport GHG emissions by 2050.

- **The Regulation**

Regulation (EC) 443/2009 sets the CO₂ reduction framework for the new car fleet to 2020. The Regulation has a two-step operation. In the first period to 2015 the modalities of compliance with the target have been established. For the second period to 2020 the target cannot become effective without implementing the necessary modalities, which are to be determined in a review. This target was established in the co-decision process and is not reconsidered in the review.

Failure to determine or implement the modalities would have a detrimental effect on vehicle manufacturers and parts suppliers who need certainty with regard to the technology and vehicles that will be needed to meet the target.

Modalities are aspects of the implementation which impact on how the emission target is achieved. Key modalities in the current Regulation include the limit value curve which is defined by the utility parameter and the function describing the relationship between the utility parameter and CO₂ emissions (setting the shape and slope). Other modalities include

¹ COM/2011/0112 final

² Excluding international maritime emissions

³ *EU transport in figures 2011*, European Commission

the excess emissions premium scheme, eco-innovations, derogations, pooling, the phasing-in of the targets and granting of super-credits for a limited period of time.

2. INTERESTED PARTIES' CONSULTATION AND IMPACT ASSESSMENT

Consultations with interested parties

- *External expertise*

An external study: '*Support for the revision of Regulation (EC) 443/2009 on CO₂ emissions from cars*⁴ has provided the main analysis underlying this proposal. It includes an evaluation of different modalities and assesses their costs. The PRIMES-TREMOVE model has been used to assess the overall impacts of the 2020 targets.

- *Consultation of interested parties*

Stakeholders have been formally consulted through an online questionnaire and through a stakeholder meeting. Input from stakeholders has been taken into account in assessing the different possible options to regulate CO₂ emissions from cars.

- Public consultation

An on-line public consultation was carried out in autumn 2011. Overall the responses give a generally clear message that regulating vehicle emissions is important, should be carried out in line with long term GHG goals, be based on new vehicle average emissions and be technologically neutral. Opinion was highly divided on whether the current legislation is working well. The main reason appears to be that many think that the current legislation is not sufficiently robust. There is strong support for setting targets beyond 2020, regardless of other measures that may be implemented. The results of the public consultation have been summarised and published⁵.

- Stakeholder meeting

A stakeholder meeting was held on 6 December 2011. The completed study was presented and presentations from the meeting along with a summary of the discussion have been published⁶. Participants did not express any substantial disagreement with the analysis presented; NGOs argued that since costs are lower than had previously been thought, the targets should be tightened.

Impact assessment

A joint impact assessment supporting the current proposal and an equivalent proposal to amend Regulation (EU) No 510/2011 has been prepared. A broad approach has been taken to identifying policy options which covers issues raised in the legislation, those arising with implementation and those assessed in the studies analysing possible approaches to improve the legislation's effectiveness. The following aspects were analysed:

⁴ http://ec.europa.eu/clima/policies/transport/vehicles/cars/docs/study_car_2011_en.pdf

⁵ http://ec.europa.eu/clima/consultations/0012/index_en.htm

⁶ http://ec.europa.eu/clima/events/0048/index_en.htm

- a) 'Do nothing' option;
- b) Modalities of meeting the car target;
- c) Simplification and reduction of administrative burden;
- d) Adaptation to the new test cycle;
- e) Form and stringency of legislation beyond 2020.

Based on an analysis of their economic, environmental and social impacts the impact assessment reached the following conclusions:

- The utility parameter should continue to be mass for cars; the limit value curve should continue to be linear.
- The evidence indicates that the slope of the curve should be set at a relatively low level to reduce market distortions.
- The Excess Emissions Premium should be maintained at €95 per g/km per vehicle.
- The Regulation should be updated to bring it into line with the Lisbon Treaty.
- The derogation procedure should be simplified by introduction of a 'de-minimis' exclusion for the smallest manufacturers from the obligation of having a CO₂ target. In addition, more flexibility regarding the date of granting small volume derogations should be allowed.

3. LEGAL ELEMENTS OF THE PROPOSAL

The EU has already acted in this area when it adopted Regulation (EC) 443/2009 based upon the environment chapter of the Treaty. The single market also provides grounds to act at EU level rather than at Member State level so as to ensure common requirements across the EU and thus minimise costs for manufacturers.

The adoption of the proposal will not lead to the repeal of existing legislation.

Summary of the proposed action

The proposal amends the Regulation to implement the modalities of meeting the 95 gCO₂/km target for new passenger cars to be reached in 2020. The main modalities implemented are as follows:

- The utility parameter continues to be the vehicle's mass in running order.
- The limit value curve remains linear with a slope of 60% compared to the baseline fleet which is kept as the 2006 fleet in line with the 2015 limit value curve.
- Super-credits for cars emitting below 35 gCO₂/km are introduced between 2020 and 2023 with a multiplier of 1.3 and limited to a cumulative figure of 20 000 vehicles per manufacturers over the duration of the scheme.

- The "niche" derogation target is updated for 2020.
- Manufacturers responsible for less than 500 registrations of new passenger cars per year are excluded from the obligation of having a CO₂ target.
- More flexibility is allowed in the timing of decisions granting small volume derogations.
- Eco-innovations are retained when a revised test procedure is implemented.
- The Excess Emissions Premium is maintained at €95 per g/km per vehicle.
- The Committee procedure provisions are updated to be compatible with the Lisbon Treaty.

As industry benefits from indications of the regulatory regime that would apply beyond 2020, the proposal includes a further review to take place by, at the latest, 31 December 2014.

4. BUDGETARY IMPLICATION

The proposal does not require additional financial resources.

5. OPTIONAL ELEMENTS

- Review/revision/sunset clause

The proposal includes a review clause.

- European Economic Area

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

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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 Committee⁷,

Having regard to the opinion of the Committee of the Regions⁸,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 13(5) of Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO₂ emissions from light-duty vehicles⁹ requires the Commission to review the modalities for reaching the 95g CO₂/km target by 2020 in a cost-effective manner in particular the formula in Annex I and the derogations in Article 11. The proposal to amend the Regulation is requested to be as neutral as possible from the point of view of competition, socially equitable and sustainable.
- (2) It is appropriate to clarify that for the purpose of verifying compliance with the target of 95gCO₂/km, CO₂ emissions should continue to be measured in accordance with Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information¹⁰ and its implementing measures and innovative technologies.

⁷ OJ C , , p. .

⁸ OJ C , , p. .

⁹ OJ L 140, 5.6.2009, p. 1.

¹⁰ OJ L 171, 29.6.2007, p.1.

- (3) In recognition of the high research and development and unit production costs of early generations of ultra-low carbon vehicles it is appropriate to accelerate and facilitate, on an interim basis and to a limited extent, the process of their introduction into the Union market at their initial stages of commercialization.
- (4) In recognition of the disproportionate impacts on the smallest manufacturers resulting from compliance with specific emissions targets defined on the basis of the utility of the vehicle, high administrative burden of the derogation procedure and only marginal benefit in terms of avoided CO₂ from the vehicles sold by these manufacturers, producers responsible annually for less than 500 new passenger cars are excluded from the scope of the specific emissions target and the excess emissions premium.
- (5) The procedure to grant derogations to small-volume manufacturers shall be simplified to allow for more flexibility in terms of the timing of application for a derogation by the manufacturers and the decision to grant it by the Commission.
- (6) The procedure to grant derogations to niche manufacturers should be continued for 2020. However, in order to ensure that the reduction effort required by niche manufacturers is consistent with that of large volume manufacturers, a target 45 % lower than the average specific emissions of niche manufacturers in 2007 should therefore apply from 2020.
- (7) To enable the automotive industry to carry out long-term investments and innovation it is desirable to provide indications of how this Regulation should be amended for the period beyond 2020. These indications should be based on an assessment of the necessary rate of reduction in line with the Union's long term climate goals and the implications for the development of cost effective CO₂ reducing technology for cars. It is therefore desirable for these aspects to be reviewed, the Commission to make a report and if appropriate proposals made for targets beyond 2020.
- (8) The Regulation requires the Commission to carry out an impact assessment in order to review the test procedures to reflect adequately the real CO₂ emissions behaviour of cars. This work is proceeding through the development of a World Light Duty Test procedure in the framework of the United Nations Economic Commission for Europe but is not yet complete. In view of this, Annex I to Regulation (EC) No 443/2009 establishes emission limits for 2020 as measured according to Regulation (EC) No 715/2007 and Annex XII to Regulation (EC) No 692/2008. When the test procedures are amended, the limits set in Annex I should be adjusted to ensure comparable stringency for manufacturers and classes of vehicles.
- (9) It is appropriate to adjust the wording of Article 3(2) of Regulation (EC) No 443/2009 to ensure that the concept of connected undertakings is in line with the provisions of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations¹¹ between undertakings as well as with Article 3(2) of Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO₂ emissions from light-duty vehicles¹².

¹¹ OJ L 24, 29.1.2004, p. 1.

¹² OJ L 145, 31.5.2011, p. 1.

- (10) Regulation (EC) No 443/2009 confers powers on the Commission to implement some of its provisions in accordance with the procedures laid down in Council Decision 1999/468/EC of 28 June 1999¹³. As a consequence of the entry into force of the Treaty of Lisbon, those powers need to be aligned to Articles 290 and 291 of the Treaty on the Functioning of the European Union.
- (11) In order to ensure uniform conditions for the implementation of Regulation (EC) No 443/2009, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers¹⁴.
- (12) 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 in order to supplement the rules on derogations from the specific emissions targets, to amend data requirements for the purpose of monitoring of CO₂ emissions and to adjust the formulae for calculating the specific CO₂ emissions in Annex I to changes in the vehicle mass value and the regulatory test procedure for the measurement of specific CO₂ emissions referred to in Regulation (EC) No 715/2007. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (13) It is appropriate to retain the approach towards setting the target based on a linear relationship between the utility of the car and its target CO₂ emissions as expressed by the formulae in Annex I, since this allows maintaining the diversity of the passenger car market and the ability of manufacturers to address different consumer needs, and thus avoiding any unjustified distortion of the market.
- (14) The Commission has assessed the availability of footprint data and its use as the utility parameter in the formulae in Annex I. This data is available and its potential use has been assessed in the impact assessment, on the basis of that assessment it is concluded that the utility parameter used in the formula for 2020 should be mass. Nevertheless, the lower cost and merits of a change to footprint as the utility parameter should be considered in the future review.
- (15) Regulation (EC) No 443/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 443/2009 is amended as follows:

¹³ OJ L 184, 17.7.1999, p. 23.

¹⁴ OJ L 55 of 28.2.2011, p. 13.

- (1) In Article 1, the second paragraph is replaced by the following:

"From 2020 onwards, this Regulation sets a target of 95 g CO₂/km as average emissions for the new car fleet as measured in accordance with Regulation (EC) No 715/2007 and Annex XII to Regulation (EC) No 692/2008 and its implementing measures, and innovative technologies."

- (2) In Article 2, the following paragraph 4 is added:

‘4. Article 4, Article 8(4)(b) and (c), Article 9 and Article 10(1)(a) and (c) shall not apply to a manufacturer which is responsible together with all of its connected undertakings for less than 500 new passenger cars registered in the EU in the previous calendar year.’

- (3) In point (a) of Article 3(2) the first indent is replaced by the following:

"- the power to exercise more than half the voting rights; or"

- (4) Following Article 5 the following article shall be inserted:

"Article 5a

Super-credits for 95 g CO₂/km target

1. In calculating the average specific emissions of CO₂, each new passenger car with specific emissions of CO₂ of less than 35 g CO₂/km shall be counted as 1.3 passenger cars in the period from 2020 to 2023 and as 1 passenger car from 2024 onwards.

2. The maximum number of new passenger cars to be taken into account in the application of the multipliers set out in paragraph 1 for the period 2020 to 2023 shall not exceed a cumulative total of 20 000 new registrations of passenger cars per manufacturer."

- (5) In Article 8, paragraph 9 is replaced by the following:

"9. The Commission shall adopt detailed rules on the procedures for monitoring and reporting of data under this Article and on the application of Annex II by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).

The Commission may adopt delegated acts in accordance with Article 14a to amend Annex II as regards data requirements and data parameters."

- (6) In Article 9, paragraph 3 is replaced by the following:

"3. The Commission shall adopt detailed arrangements for the collection of excess emissions premiums under paragraph 1 by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2)."

- (7) Article 11 is amended as follows:

- (a) In paragraph 3 the last sentence is deleted.
- (b) In paragraph 4, second subparagraph, point (b) is replaced by the following:
- "(b) if the application is in relation to point (a) and (b) of Annex I, point 1, a target which is a 25 % reduction on the average specific emissions of CO₂ in 2007 or, where a single application is made in respect of a number of connected undertakings, a 25 % reduction on the average of those undertakings' average specific emissions of CO₂ in 2007."

- (c) In paragraph 4, second subparagraph, the following point (c) is added:
- "(c) if the application is in relation to point (c) of Annex I, point 1, a target which is a 45 % reduction on the average specific emissions of CO₂ in 2007 or, where a single application is made in respect of a number of connected undertakings, a 45 % reduction on the average of those undertakings' average specific emissions of CO₂ in 2007."

- (8) (b) Paragraph 8 is replaced by the following:

"8. The Commission shall adopt delegated acts in accordance with Article 14a laying down rules to supplement paragraphs 1 to 7 of this Article, as regards the eligibility criteria for derogations, the content of the applications, and the content and assessment of programmes for the reduction of specific emissions of CO₂."

- (9) In Article 12(2), the first sentence is replaced by the following:

"The Commission shall adopt detailed provisions for a procedure to approve the innovative technologies referred to in paragraph 1 by way of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2) of this Regulation."

- (10) Article 13 is amended as follows:

- (a) In paragraph 2, the third subparagraph is replaced by the following:

"Those measures shall be adopted by means of delegated acts in accordance with Article 14a."

- (b) The second subparagraph of paragraph 3 is deleted.

- (c) Paragraph 5 is replaced by the following:

"5. By 31 December 2014, the Commission shall review the specific emissions targets, modalities and other aspects of this Regulation in order to establish the CO₂ emission targets for new passenger cars for the period beyond 2020."

- (d) Paragraph 7 is replaced by the following:

"7. The Commission shall be empowered to adopt delegated acts in accordance with Article 14a to adapt the formulae in Annex I in order to reflect any change in the regulatory test procedure for the measurement of specific CO₂ emissions referred to in Regulation (EC) No 715/2007 and Regulation (EC) No 692/2008 while

ensuring that reduction requirements of comparable stringency for manufacturers and vehicles of different utility are required under the old and new test procedures."

- (11) Article 14 is replaced by the following:

"Article 14
Committee procedure

1. The Commission shall be assisted by the Climate Change Committee established by Article 9 of Decision No 280/2004/EC of the European Parliament and of the Council. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply."

- (12) The following Article 14a is inserted:

"Article 14a
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adapt delegated acts referred to in the second subparagraph of Article 8(9), Article 11(8), the third subparagraph of Article 13(2) and Article 13(7), shall be conferred on the Commission for an indeterminate period from [the date of entry into force of this Regulation].

3. The delegation of power referred to in the second subparagraph of Article 8(9), Article 11(8), the third subparagraph of Article 13(2) and Article 13(7) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to the second subparagraph of Article 8(9), Article 11(8), the third subparagraph of Article 13(2) and Article 13(7) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

- (13) In point 1 of Annex I, the following point (c) is added:

"(c) From 2020:

Specific emissions of CO₂ = 95 + a × (M – M₀)

Where:

M = mass of the vehicle in kilograms (kg)

M₀ = the value adopted pursuant to Article 13(2)

a = 0,0333."

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President