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THE EUROPEAN UNION**

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Subject: 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.  
- Analysis of the final compromise text with a view to agreement

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**I. INTRODUCTION**

1. At its meeting on 15 May 2013, COREPER agreed on a mandate for the Presidency to enter into negotiations with the European Parliament with a view to a first-reading agreement. A first informal trilogue took place on 22 May 2013. This mandate was revised on 31 May 2013, in view of the second informal trilogue that took place on 3 June 2013.

2. At the third informal trilogue on 24 June 2013, an agreement on a possible final compromise package was reached. The main elements of this possible final compromise package are contained in the consolidated text set out in the Annex<sup>1</sup> to this note.

## II. ANALYSIS OF THE COMPROMISE TEXT WITH A VIEW TO AN AGREEMENT

3. The consolidated text set out in the Annex contains the modifications (underlined) agreed *ad referendum* at the last trilogue to the mandate approved by Coreper (11335/13). They include in particular:
- i) In recital (7), the date of the review is changed to 2015; a specific reference to 2025 as a possible date for a post-2020 target is included in the text; the words "comparable to that achieved in the period to 2020" are added to enhance the reference to an emissions reduction trajectory;
  - ii) Stronger wording is inserted in new recital (8a) in relation to the conformity procedure: the deviations between type approval CO<sub>2</sub> emission values and emissions from vehicles offered for sale, as well as ways for addressing cases of demonstrated substantial divergence between the two need to be considered and addressed;
  - iii) Article 5a: the threshold is increased to 50grCO<sub>2</sub>/km; a decreasing multiplier is inserted for the period 2020-2023;
  - iv) In Article 12, the reference to "innovative technology packages" is included in the text of paragraph 1, entailing subsequent changes to paragraphs 2 and 3; it is further specified that the methodology used to assess the innovation is capable of producing verifiable, repeatable and comparable results;

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<sup>1</sup> Changes to the original Commission proposal are indicated in ***bold italics*** and [...] for deletions.

- v) In Article 13(5): the date of the review is changed to 2015; a reference is included to the assessment of the need for the utility parameter and whether mass or footprint is the more sustainable utility parameter;
  - vi) In Article 13(7), a technical adjustment is made to the text following the suggestions of the Legal Services of the Council and of the European Parliament.
4. The Permanent Representatives Committee considered the text at its meeting on 4 October and decided to refer the matter to the Council.

### III. CONCLUSION

The Council is invited to:

- analyse the consolidated text as set out in the Annex to this note and confirm final agreement on an overall compromise text on this basis; and
- authorise the Presidency, if appropriate, to send a letter to the European Parliament stating that if the Parliament were to adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form as set out in the Annex to this note, subject to the previous revision of the text by the lawyer-linguists, the Council would, in accordance with Article 294 paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of**

**amending Regulation (EC) No 443/2009 to define the modalities for reaching the 2020 target  
to reduce CO<sub>2</sub> emissions from new passenger cars**

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<sup>1</sup>,

*After consulting* the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C , , p. .

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 CO<sub>2</sub> emissions from light-duty vehicles<sup>2</sup> requires the Commission to review the modalities for reaching the 95g CO<sub>2</sub>/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.
- (1a) The further development of the worldwide market for advanced technologies aimed at improving the efficiency of passenger cars is in line with the flagship initiative for a resource-efficient Europe under the Europe 2020 strategy, which supports the shift towards a resource-efficient, low-carbon economy for achieving sustainable growth.*
- (2) It is appropriate to clarify that, for the purpose of verifying compliance with the target of 95 g CO<sub>2</sub>/km, CO<sub>2</sub> 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 information<sup>3</sup> and its implementing measures and innovative technologies.

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<sup>2</sup> OJ L 140, 5.6.2009, p. 1.

<sup>3</sup> OJ L 171, 29.6.2007, p.1.

- (2a) *High fossil fuel prices have a negative effect on economic recovery and on energy security and affordability in Europe. Increasing, therefore, the efficiency and sustainability of new passenger cars and light commercial vehicles, thus reducing the dependency on oil, is a priority.*
- (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. *Actors at different levels should give appropriate attention to identifying and disseminating best practices for stimulating demand for ultra-low emission vehicles.*
- (3a) *Lack of alternative fuel infrastructure and of the common technical specifications for the vehicle-infrastructure interface could be an obstacle to the market uptake of ultra-low emissions vehicles. Ensuring the build-up of such infrastructure in the Union could facilitate the work of market forces and contribute to economic growth in Europe.*

- (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 CO<sub>2</sub> from the vehicles sold by these manufacturers, producers responsible annually for less than **1000** new passenger cars **registered in the EU should be** excluded from the scope of the specific emissions target and the excess emissions premium. ***In order to ensure from the earliest point legal certainty for those manufacturers, it is essential for this derogation to apply from the calendar year 2012.***
- (5) The procedure to grant derogations to small-volume manufacturers **should** 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 **continue beyond 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 CO<sub>2</sub> reducing technology for cars. ***The Commission should, by 2015, review these aspects and submit a report to the European Parliament and to the Council on its findings. That report should include, if appropriate, proposals for amending this Regulation with a view to establishing CO<sub>2</sub> emission targets for new passenger cars beyond 2020, including the possible setting of a realistic and achievable target for 2025, based on a comprehensive impact assessment that will consider the continued competitiveness of the car industry and its dependent industries, while maintaining a clear emissions reduction trajectory comparable to that achieved in the period to 2020. When elaborating such proposals, the Commission should ensure they are as neutral as possible from the point of view of competition and are socially equitable and sustainable.***



- (8) The Regulation requires the Commission to carry out an impact assessment in order to review the test procedures to reflect adequately the real CO<sub>2</sub> emissions behaviour of cars. ***There is a need to amend the currently used "New European Driving Cycle" (NEDC), to ensure its representativeness of real driving conditions and avoid the underestimation of real CO<sub>2</sub> emissions and fuel consumption. A new, more realistic and reliable test procedure should be agreed as soon as feasible. Work in this direction*** is proceeding through the development of a World Light Duty Test procedure (***WLTP***) 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. ***In order to ensure that specific CO<sub>2</sub> emissions quoted for new passenger cars are brought more closely into line with the emissions actually generated during normal conditions of use, the WLTP should be applied at the earliest opportunity.*** 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. ***For this purpose, the Commission should carry out a robust correlation study between the NEDC and the new WLTP test cycles [...] to ensure its representativeness regarding real driving conditions.***

- (8a) *With a view to ensuring that real world emissions are adequately reflected and measured CO<sub>2</sub> values are strictly comparable, the Commission should ensure that those elements in the testing procedure that have a significant influence on measured CO<sub>2</sub> emissions are strictly defined in order to prevent the utilisation of test cycle flexibilities by manufacturers. The deviations between type approval CO<sub>2</sub> emission values and emissions derived from vehicles offered for sale should be addressed, including by considering an in-service conformity test procedure that should ensure independent testing of a representative sample of vehicles for sale, as well as ways for addressing cases of demonstrated substantial divergence between survey and initial type approval CO<sub>2</sub> emission.*
- (9) *The wording of Article 3(2) of Regulation (EC) No 443/2009 **should be adjusted** 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 concentrations<sup>4</sup> 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 CO<sub>2</sub> emissions from light-duty vehicles<sup>5</sup>.*

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<sup>4</sup> OJ L 24, 29.1.2004, p. 1.

<sup>5</sup> 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 1999<sup>6</sup>. 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 powers<sup>7</sup>.

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<sup>6</sup> OJ L 184, 17.7.1999, p. 23.

<sup>7</sup> OJ L 55 of 28.2.2011, p. 13.

- (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 ***amend Annex II as regards data requirements and data parameters***, supplement the rules on ***the interpretation of the eligibility criteria for*** derogations from the specific emissions targets, ***on the content of applications for a derogation and on the content and assessment of programmes for the reduction of specific emissions of CO<sub>2</sub>***; ***adjust the figure of M0 referred to in Annex I to the average mass of new passenger cars in the previous three calendar years, and adapt the formulae in Annex I***. 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) ***The*** approach towards setting the target based on a linear relationship between the utility of the car and its target CO<sub>2</sub> emissions as expressed by the formulae in Annex I ***should be retained***, 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.
- (14a) Greenhouse gas emissions related to energy supply and vehicle manufacturing and disposal are significant components of the current overall road transport carbon footprint which are likely to significantly increase in importance in the future. Policy action should therefore be taken to guide manufacturers towards optimal solutions taking account in particular of greenhouse gas emissions associated with the generation of energy supplied to vehicles such as electricity and alternative fuels, and to ensure that these upstream emissions do not erode the benefits related to the improved operational energy use of vehicles aimed for under this Regulation.***
- (14b) Since the objective of this Regulation, namely to define the modalities for reaching the 2020 target to reduce CO2 emissions from new passenger cars, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.***
- (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:

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

"From 2020 onwards, this Regulation sets a target of 95 g CO<sub>2</sub>/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 **1000** new passenger cars registered in the EU in the previous calendar year. ***This shall apply with effect from the calendar year 2012.***’

- (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 CO<sub>2</sub>/km target**

■ In calculating the average specific emissions of CO<sub>2</sub>, each new passenger car with specific emissions of CO<sub>2</sub> of less than 50 g CO<sub>2</sub>/km shall be counted as ■ :

- 2 passenger cars in 2020,
- 1.67 passenger cars in 2021,
- 1.33 passenger cars in 2022,
- 1 passenger car from 2023,

■ for the *year in which it is registered in the period from 2020 to 2023, subject to a cap of 2.5g of CO<sub>2</sub>/km per year for each* 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 ***shall be empowered to*** 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 *determine the means to collect excess emission* 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 CO<sub>2</sub> 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 CO<sub>2</sub> 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 CO<sub>2</sub> 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 CO<sub>2</sub> 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 *interpretation of the* eligibility criteria for derogations, the content of the applications, and the content and assessment of programmes for the reduction of specific emissions of CO<sub>2</sub>."

**(8a) In Article 12, paragraph 1 is replaced by the following:**

**"Upon application by a supplier or a manufacturer, CO<sub>2</sub> savings achieved through the use of innovative technologies or a combination of innovative technologies ("innovative technology packages") shall be considered.**

**Such technologies shall be taken into consideration only if the methodology used to assess them is capable of producing verifiable, repeatable and comparable results.**

**The total contribution of those technologies to reducing the specific emissions target of a manufacturer may be up to 7 g CO<sub>2</sub>/km."**

(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 or innovative technology packages 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."

**(9a) In Article 12, paragraph 3 is replaced by the following:**

**'(3) A supplier or a manufacturer who applies for a measure to be approved as an innovative technology or innovative technology package shall submit a report, including a verification report undertaken by an independent and certified body, to the Commission. In the event of a possible interaction of the measure with another innovative technology or innovative technology package already approved, the report shall mention that interaction and the verification report shall evaluate to what extent that interaction modifies the reduction achieved by each measure.'**

(10) Article 13 is amended as follows:

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

***"The Commission shall adopt those measures ■ 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 2015, the Commission shall review the specific emissions targets, modalities and other aspects of this Regulation, including whether a utility parameter is still needed and whether mass or footprint is the more sustainable utility parameter, in order to establish the CO<sub>2</sub> emission targets for new passenger cars for the period beyond 2020. The assessment of the necessary rate of reduction shall be in line with the Union's long term climate goals and the implications for the development of cost effective CO<sub>2</sub>-reducing technology for cars. The Commission shall submit a report to the European Parliament and to the Council with the result of that review. That report shall include any appropriate proposals for amending this Regulation, including the possible setting of a realistic and achievable target, based on a comprehensive impact assessment that will consider the continued competitiveness of the car industry and its dependent industries. When elaborating such proposals, the Commission shall ensure they are as neutral as possible from the point of view of competition and are socially equitable and sustainable."***

(d) Paragraph 7 is replaced by the following:

"7. The Commission shall, **by means of an implementing act, determine the correlation parameters necessary** in order to reflect any change in the regulatory test procedure for the measurement of specific CO<sub>2</sub> emissions referred to in Regulation (EC) No 715/2007 and Regulation (EC) No 692/2008. ***That implementing act shall be adopted in accordance with the examination procedure referred to in Article 14(2) of this Regulation.***

***The Commission shall be empowered to adopt delegated acts in accordance with Article 14a and subject to the conditions laid down therein to adapt the formulae in Annex I, using the methodology adopted pursuant to the first subparagraph,*** 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.

3. ***Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) 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 *the second subparagraph of Article 13(7)* ■ shall be conferred on the Commission for *a period of five years* from [the date of entry into force of this Regulation]. *The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.*

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 ***the second subparagraph of*** 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 ***the second subparagraph of*** 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 CO<sub>2</sub> = 95 + a × (M – M<sub>0</sub>)

Where:

M = mass of the vehicle in kilograms (kg)

M<sub>0</sub> = the value adopted pursuant to Article 13(2)

a = 0,0333."

***(13a) In Annex II, Part A, point 1, the following point is added:***

***"(fa) maximum net power (kW);"***

***(13b) In Annex II, Part A, point 1, the following point is added:***

***"(fb) engine capacity (cm<sup>3</sup>)."***



## *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*

*For the Council*

*The President*

*The President*

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