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*****I**

REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directive 97/68/EC as regards the provisions for engines placed on the market under the flexibility scheme
(COM(2010)0362 – C7-0171/2010 – 2010/0195(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Sirpa Pietikäinen

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directive 97/68/EC as regards the provisions for engines placed on the market under the flexibility scheme

(COM(2010)0362 – C7-0171/2010 – 2010/0195(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0362),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0171/2010),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 27 December 2010¹,
 - having regard to Rules 55 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Transport and Tourism (A7-0080/2011),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive - amending act

Recital 1

Text proposed by the Commission

(1) Directive 97/68/EC⁹ concerns exhaust emissions from engines installed in non-road mobile machinery. The current

Amendment

(1) Directive 97/68/EC⁹ concerns exhaust emissions ***and emission limits of air pollutants*** from engines installed in non-

¹ OJ C ... /Not yet published in the Official Journal.

emission limits applicable to type approval of the majority of compression ignition engines under Stage III A are to be replaced by the more stringent limits under Stage III B. Those limits apply from 1 January 2010 as regards the type approval for those engines and from 1 January 2011 with regard to the placing on the market.

road mobile machinery ***while protecting human health and the environment***. The current emission limits applicable to type approval of the majority of compression ignition engines under Stage III A are to be replaced by the more stringent limits under Stage III B. Those limits apply from 1 January 2010 as regards the type approval for those engines and from 1 January 2011 with regard to the placing on the market.

Justification

To be in line with Article 1 of Directive 97/68/EC which sets as objective the approximation of the laws of the Member States relating to emission standards and type-approval procedures for engines to be installed in non-road mobile machinery and which contributes to the smooth functioning of the internal market, while protecting human health and the environment.

Amendment 2

Proposal for a directive – amending act Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) The revision of Directive 97/68/EC is currently under preparation in the Commission in line with the recommendations specified in Article 2 of Directive 2004/24/EC of the European Parliament and the Council.

In order to ensure the revised Directive is in line with the EU standards for good air quality, and in the light of experience, scientific findings and available technologies, the Commission should, in the upcoming revision of Directive 97/68/EC, subject to impact assessment:

- propose the establishment of a new emission stage - Stage V - that should be aligned with the requirements of Euro VI standards for heavy duty vehicles;

- introduce new requirements for the reduction of particulate matter, namely a particulate number (PN) limit that applies for all engine categories so as to ensure an effective reduction of ultra-fine

particles;

- define a comprehensive approach to promote emission-reducing provisions and retrofitting of after-treatment systems on the existing NRMM fleet on the basis of discussions, on harmonised requirements for retrofit emission control devices, that are currently ongoing under the auspices of UNECE. Member States may continue to take measures, in line with state of the art, for the use of those machines before the establishment of this comprehensive approach for the purpose of safety of workers and in zones in which the emission limits laid down under Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe¹ are exceeded, provided that those measures are in accordance with the 'polluter pays' principle, are non-discriminatory and are targeted.

- introduce a method providing for the periodic testing of mobile machinery and vehicles to establish whether their emissions performance complies with the values given at registration;

- look into the possibility of harmonising the specific emission standards for rail with the North American EPA standards so as to ensure the availability of affordable engines complying with the emission limit values set.

¹ OJ L 152, 11.6.2008, p. 1.

Amendment 3

**Proposal for a directive – amending act
Recital 2**

Text proposed by the Commission

(2) The transition to Stage III B involves a step change in technology requiring significant implementation costs for redesigning the engines and for developing advanced technical solutions. ***The transition occurs at the same time when industry faces severe economic difficulties.***

Amendment

(2) The transition to Stage III B involves a step change in technology requiring significant implementation costs for redesigning the engines and for developing advanced technical solutions. ***These costs can be difficult to bear for small and medium-sized manufacturers for which the compliance costs are proportionately higher.***

A global financial and economic crisis can not serve as a reason to water down environmental standards. Investments in environmentally friendly technologies are important for the promotion of future growth, jobs and health security.

Amendment 4

**Proposal for a directive – amending act
Recital 5**

Text proposed by the Commission

(5) During ***the transition from Stage III A to Stage III B***, the percentage of the number of engines used for application other than propulsion of railcars ***and*** locomotives placed on the market under the flexibility scheme, should be increased from 20% to ***50%*** of the equipment manufacturer's annual ***sales*** of equipment with engines in that category. ***The maximum*** number of engines ***that may be placed*** on the market under the flexibility scheme should be ***adapted accordingly.***

Amendment

(5) During Stage III B, the percentage of the number of engines used for application other than propulsion of railcars, locomotives and ***inland waterways vessels*** placed on the market under the flexibility scheme, should be increased from 20% to ***30%*** of the equipment manufacturer's annual ***quantity*** of equipment ***placed on the market*** with engines in that category.

An optional alternative of placing a fixed number of engines on the market under the flexibility scheme should be available. That fixed number of engines should not exceed the values of section 1.2.2. of Annex XIII.

Amendment 5

Proposal for a directive - amending act Recital 6

Text proposed by the Commission

(6) The rules applicable to the flexibility scheme should be adapted to extend the application of that scheme to engines for use in propulsion of **railcars and** locomotives.

Amendment

(6) The rules applicable to the flexibility scheme should be adapted to extend the application of that scheme to engines for use in propulsion of locomotives **for a strictly limited period of time**.

Amendment 6

Proposal for a directive - amending act Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Improving air quality is a pressing need in many Member States, requiring more decisive action in a number of them to comply with Directive 2008/50/EC. Tackling emissions at source is essential for meeting these goals, including reducing emissions from the NRMM sector;

Amendment 7

Proposal for a directive - amending act Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) Enterprises operating with machines that are part of the scope of this Directive should profit from European financial support programmes or respective support programmes provided by Member States. Requiring the beneficiaries of these programmes to apply the best available technologies of their branches should be

considered. Only those enterprises that make use of the technologies with the best emission standards should be supported.

Amendment 8

Proposal for a directive – amending act Recital 7

Text proposed by the Commission

(7) The measures provided in this Directive reflect a temporary difficulty faced by the manufacturing sector. ***They should therefore be restricted to the transition from Stage III A to Stage III B and expire by 31 December 2013 at the latest.***

Amendment

(7) The measures provided in this Directive reflect a temporary difficulty faced by the manufacturing sector, ***resulting in no permanent adaptation, and as such, these should be restricted to the duration of Stage III B or to 3 years where no subsequent Stage exists.***

Amendment 9

Proposal for a directive - amending act Article 1 – point -1 (new) Directive 97/68/CE Article 2 – new indent

Text proposed by the Commission

Amendment

(-1) In Article 2, the following indent is added:

– exhaust after-treatment system for particle reduction shall mean devices and filter systems with at least 90% particle removal efficiency and a number criterion of 10¹² kWh,

Justification

In Directive 97/68/EC, there is no precise definition of exhaust after-treatment systems for particle reduction which reflects the state of the art. For years, however, diesel particle filter systems have been mandatory - on worker safety grounds - for underground mining (construction) machinery. There is no clear definition in EU law, causing interpretation difficulties for authorities and manufacturers.

Amendment 10

Proposal for a directive - amending act

Article 1 – point 1

Directive 97/68/CE

Article 4 – paragraph 6

Text proposed by the Commission

(6) Compression ignition engines for use other than in propulsion of inland waterway vessels may be placed on the market under a flexibility scheme in accordance with the procedure referred to in Annex XIII in addition to paragraphs 1 to 5.

Amendment

(6) Compression ignition engines for use other than in propulsion of **railcars and** inland waterway vessels may be placed on the market under a flexibility scheme in accordance with the procedure referred to in Annex XIII in addition to paragraphs 1 to 5.

Justification

IIIB -compliant railcars exist already, and the engine solutions are there. The railcars are mostly "borrowing" engines from heavy duty vehicles, for which IIIB solutions exist. Thus, railcars should be left out the flexibility scheme, as legislated in directive 2004/26/EC.

Amendment 11

Proposal for a directive – amending act

Article 1 – point 2 – point -a (new)

Directive 97/68/EC

Article 10 – paragraph 1 a – subparagraph 2

Text proposed by the Commission

Amendment

(-a) In paragraph 1a, the second subparagraph is deleted.

(-ab) The following paragraphs are inserted:

"1b. A replacement engine to be installed in a railcar or locomotive originally equipped with an engine that does not meet Stage III A limits or only meets Stage III A limits shall, as a minimum, comply with the limit values defined in Stage III A, where:

i) the application of Stage III B requirements would give rise to

significant technical difficulties in terms of gauge, axle load, body/chassis design or engine(s) control systems for multiple operation and, as a consequence, compromise the economic viability of the project; or

ii) no Stage III B engines that could be fitted into such a railcar or locomotive are available;

For such engines, points (3g), (3i) and (4a) of Article 9 shall not apply.

1c. Paragraph 1b shall apply for 5 years starting from the date when Stage IIIB becomes applicable.

1d. For engines placed on the market under paragraphs 1a and 1b, the text 'REPLACEMENT ENGINE' shall be attached to a label on the engine or inserted into the owner's manual.

1e. The Commission shall report each year to the European Parliament and Council on progress in the development of locomotives compliant with Stage III B limits."

Amendment 12

Proposal for a directive - amending act
Article 1 – point 2 - point -a c (new)
Directive 97/68/CE
Article 10 - paragraphs 1 d and e

Text proposed by the Commission

Amendment

(-ac) The following paragraphs are inserted:

"1d. By way of derogation, Member States may authorise the production and mounting of replacement engines that do not comply with Stage III A requirements, in the following cases:

(i) for a renewal or upgrading of an existing railcar, train-set or locomotive, when the application of Stage III A

requirements would raise important technical difficulties in terms of gauge, axle load, body/chassis design or engine(s) control systems for multiple operation and, as a consequence, compromise the economic viability of the project; under the condition that the application is accompanied by an impact assessment providing a sufficient justification for the derogation and proving that the overall emission levels when compared to the original engines will be improved.

(ii) where, following a railcar, train-set or locomotive accident or a catastrophic failure of its engine(s), the application of Stage III A requirements would raise important technical difficulties and, as a consequence, compromise the cost-effective repair of the damaged railcar, train set or locomotive. For the engines covered by this paragraph, Article 9 (3g), (3i) and (4a) shall not apply. Where a derogation is granted, the Member State granting the derogation shall, within six months, provide both the Commission and the approval authorities of the other Member States with a document, in both paper form and electronic format, which sets out:

— the unique reference number of the derogation as shown on the label attached to each engine to which it refers,

— the nature of the derogation, including the description of the emission levels compared with Stage III A thresholds and details of the alternative provisions which will be applied,

— a detailed justification for granting the derogation, including the main technical difficulties, with their economic and environmental consequences, and a description of the design efforts made in order to approach Stage III A requirements, and, if need be, other fleet evolution and operating measures,

— the number of engines which are subject to the derogation,— details of the manufacturer and of the types and serial numbers of the engines which are subject to the derogation,

— details of the railway vehicles' series to which the engines will be fitted together with their operational areas,

— any other information helping to justify the request for a derogation

I.e. For engines placed on the market under paragraphs 1a, 1b and 1c, the text 'REPLACEMENT ENGINE' shall be attached to a label on the engine or inserted into the owner's manual."

Justification

Because the space available in most earlier vehicles is not sufficient to accommodate IIIB compliant engines of the same power, the possibility to replace pre-IIIA and IIIA engines fitted in early vehicles with IIIA compliant engines will allow the industry to move forward to the cleaner IIIA emission standards. In a very few cases, derogations to the installation of IIIA will also be necessary because of the gauge, axle load and design limits of the vehicles. The industry agrees that any such derogation shall only be made under strict controls and limitations and with detailed justifications

Amendment 13

Proposal for a directive – amending act

Article 1 – point 2 – point a

Directive 97/68/EC

Article 10 – paragraph 7

Text proposed by the Commission

(7) Member States shall permit the placing on the market of engines, as defined in Section 1 of Annex I under A(i), A(ii), **A(iv)** and A(v), under the flexibility scheme in accordance with the provisions in Annex XIII.

Amendment

(7) Member States shall permit the placing on the market of engines, as defined in Section 1 of Annex I under A(i), A(ii) and A(v), under the flexibility scheme in accordance with the provisions in Annex XIII.

Engines may be placed on the market under the flexibility scheme from the date when Stage IIIB becomes applicable until

the end of that Stage, but not longer than three years from the beginning of that Stage.

Amendment 14

Proposal for a directive - amending act

Article 1 – point 2 – point b

Directive 97/68/CE

Article 10 – paragraph 8

Text proposed by the Commission

Amendment

(b) The following paragraph 8 is added:

deleted

‘(8) The flexibility scheme, in accordance with the provisions of Section 1.2 of Annex XIII, shall apply only for the transition from Stage III A to Stage III B and expire on 31 December 2013.’

Amendment 15

Proposal for a directive – amending act Annex

Directive 97/68/EC

Annex XIII – section 1 – point 1.1

Text proposed by the Commission

Amendment

1.1. With the exception of the transition period between Stage III A and Stage III B, an OEM that wishes to make use of the flexibility scheme shall request permission from any approval authority ***to purchase from his engine suppliers***, the quantities of engines described in sections 1.1.1. and 1.1.2., that do not comply with the current emission limit values, but are approved to the nearest previous stage of emission limits.

1.1. An OEM that wishes to make use of the flexibility scheme, ***with the exception of engines for propulsion of locomotives and railcars***, shall request permission from any approval authority ***for the OEM’s engine manufacturers to place on the market engines intended for the OEM’s exclusive use. With the exception of Stage IIIB***, the quantities of engines ***shall not exceed those*** described in sections 1.1.1. and 1.1.2. that do not comply with the current emission limit values, but are approved to the nearest previous stage of emission limits.

Amendment 16

Proposal for a directive – amending act Annex

Directive 97/68/EC

Annex XIII – section 1 – point 1.1.1

Text proposed by the Commission

1.1.1. The number of engines placed on the market under a flexibility scheme shall, in each engine category, not exceed 20% of the OEM's annual **sales** of equipment with engines in that engine category (calculated as the average of the latest 5 years sales on the EU market). Where an OEM has **marketed** equipment **in the EU** for a **period of** less than 5 years the average **will** be calculated based on the period for which the OEM has **marketed** equipment **in** the EU.

Amendment

1.1.1 The number of engines placed on the market under a flexibility scheme shall, in each engine category, not exceed 20 % of the OEM's annual **quantity** of equipment **placed on the market** with engines in that engine category (calculated as the average of the latest five years sales on the EU market). Where an OEM has **placed** equipment **on the EU market** for less than five years, the average **shall** be calculated based on the period for which the OEM has **placed** equipment **on** the EU **market**.

Amendment 17

Proposal for a directive – amending act Annex

Directive 97/68/EC

Annex XIII - section 1 - point 1.1.2

Text proposed by the Commission

1.1.2. As an optional alternative to section 1.1.1 and with the exception of engines for use in propulsion of railcars and locomotives, the OEM may seek permission for **his** engine **suppliers** to place on the market a fixed number of engines **under the flexibility scheme**. The number of engines in each engine category shall not exceed the following values:

Amendment

1.1.2. As an optional alternative to section 1.1.1. and with the exception of engines for propulsion of railcars and locomotives, the OEM may seek permission for **the OEM's** engine **manufacturers** to place on the market a fixed number of engines **for the OEM's exclusive use**. The number of engines in each engine category shall not exceed the following values:

Amendment 18

**Proposal for a directive – amending act
Annex**

Directive 97/68/EC

Annex XIII – point 1.2

Text proposed by the Commission

1.2 ***During the transition period from Stage III A to Stage III B***, with the exception of engines for use in propulsion of railcars and locomotives, an OEM that wishes to make use of the flexibility scheme shall request permission from any approval authority to ***purchase from his engine suppliers, the*** quantities of engines described in sections 1.2.1. and 1.2.2., that do not comply with the current emission limit values, but are approved to the nearest previous stage of emission limits.

Amendment

1.2 ***By way of derogation from point 1.1, during Stage III B, but no longer than three years after the beginning of that Stage***, with the exception of engines for use in propulsion of railcars and locomotives, an OEM that wishes to make use of the flexibility scheme shall request permission from any approval authority ***for the OEM's engine manufacturers to place on the market engines intended for the OEM's exclusive use. The*** quantity of engines that do not comply with the current emission limit values, but are approved to the nearest previous stage of emission limits, ***shall not exceed those*** described in sections 1.2.1. and 1.2.2.

Amendment 19

**Proposal for a directive – amending act
Annex**

Directive 97/68/EC

Annex XIII – point 1.2.1

Text proposed by the Commission

1.2.1. The number of engines placed on the market under ***such*** flexibility scheme shall, in each engine category, not exceed ***50%*** of the OEM's annual ***sales*** of equipment with engines in that engine category (calculated as the average of the latest 5 years sales on the EU market). ***Where*** an OEM ***has marketed*** equipment ***in*** the EU for ***a period of*** less than 5 years the average ***will*** be calculated based on the period for which the OEM has ***marketed*** equipment ***in*** the EU.

Amendment

1.2.1. The number of engines placed on the market under ***a*** flexibility scheme shall, in each engine category, not exceed ***30 %*** of the OEM's annual ***quantity*** of equipment ***placed on the market*** with engines in that engine category (calculated as the average of the latest 5 years sales on the EU market). ***In case*** an OEM ***placed on*** the EU ***market*** equipment for less than five years, the average ***shall*** be calculated based on the period for which the OEM has ***placed*** equipment ***on*** the ***EU market***.

Amendment 20

Proposal for a directive – amending act
Annex
Directive 97/68/EC
Annex XIII – point 1.2.2 - introductory part

Text proposed by the Commission

Amendment

1.2.2. As an optional alternative to section 1.2.1., the OEM may seek permission for **his** engine **suppliers** to place on the market a fixed number of engines **under the flexibility scheme**. The number of engines in each engine category shall not exceed the following values:

1.2.2. As an optional alternative to section 1.2.1., the OEM may seek permission for **the OEM's** engine **manufacturers** to place on the market a fixed number of engines **for the OEM's exclusive use**. The number of engines in each engine category shall not exceed the following values:

Amendment 21

Proposal for a directive – amending act
Annex
Directive 1997/68/EC
Annex XIII – point 1.3

Text proposed by the Commission

Amendment

1.3 As regards engines for use in propulsion of railcars, the flexibility scheme as defined in section 1.1.1. shall be applicable as from the transition period between Stage III A and Stage III B.

deleted

Justification

IIIB -compliant railcars exist already, and the engine solutions are there. The railcars are mostly "borrowing" engines from heavy duty vehicles, for which IIIB solutions exist. Thus, railcars should be left out the flexibility scheme, as legislated in Directive 2004/26/EC.

Amendment 22

Proposal for a directive – amending act
Annex
Directive 97/68/EC
Annex XIII – point 1.4

Text proposed by the Commission

1.4 As regards engines for use in propulsion of locomotives, during the transition period between Stage III A and Stage III B an OEM may seek permission for his engine suppliers to place on the market a maximum of **12** engines for use in propulsion of locomotives under the flexibility scheme.

Amendment

1.4 As regards engines for use in propulsion of locomotives, during the transition period between Stage III A and Stage III B an OEM may seek permission for his engine suppliers to place on the market a maximum of **20** engines for use in propulsion of locomotives under the flexibility scheme. ***An OEM may also seek permission for his engine suppliers to place on the market an additional maximum 10 engines to be installed in locomotives which meet the structure gauge requirements of GERT 8073 issue 2 as specified in National Technical Rules notified under Article 17(3) of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community¹.***

This flexibility should only apply when there are technical grounds for not being able to comply with the Stage III B limit values.

¹ *OJ L 191, 18.7.2008, p. 1.*

Amendment 23

Proposal for a directive - amending act

Annex

Directive 97/68/EC

Annex XIII – section 1 - point 1.5. - introductory part

Text proposed by the Commission

1.5. The OEM shall include in ***his*** application to an approval authority the following information:

Amendment

1.5. The OEM shall include in ***the*** application to an approval authority the following information:

Amendment 24

Proposal for a directive

Annex

Directive 97/68/EC

Annex XIII – section 1 - point 1.7

Text proposed by the Commission

1.7. The OEM shall provide any requesting type approval authority in the Member States, with any information that the type approval authority requires in order to confirm that any engines claimed to be, or labelled as being, placed on the market under a flexibility scheme is properly so claimed or labelled.

Amendment

1.7. The OEM shall provide any requesting type approval authority in the Member States, with any information that the type approval authority requires in order to ***verify and*** confirm that any engines claimed to be, or labelled as being, placed on the market under a flexibility scheme is properly so claimed or labelled.

EXPLANATORY STATEMENT

The maximum exhaust emissions of carbon oxide (CO), hydrocarbons (HC), nitrogen oxides (NO_x) and particulates (PM) from diesel engines of non-road mobile machinery are regulated in Directive 97/68/EC. The 2004 revision of the directive (2004/26/EC) introduced the current emission limits of IIIA, and set the deadlines and limits values for the following stage of IIIB. The application of these more stringent limits will start progressively from January 2011 onwards, depending on the power category. Machinery covered by the directive includes various kinds of land-based machinery intended for, e.g., construction, forestry and agriculture. The directive also applies to locomotives, railcars and inland waterway vessels.

The directive covers a great variety of machinery manufacturers (estimated 1500 companies), many of which do not produce the engines used in these machines. The engines are produced by only a few large companies.

The 2004 directive also introduced a so-called flexibility scheme to grant the manufacturers a smoother transition between the different stages. The flexibility scheme allows the manufacturer to place on the market, during the period between two successive stages of exhaust emissions limit values, a limited number of machines fitted with engines that still comply with the exhaust emission limits of the previous stage. The limit is either 20% of the manufacturer's annual sales - this being calculated based on the 5-year average of the manufacturer's overall sales - or a fixed number of machines. The option of fixed numbers has been designed for smaller manufacturers. The flexibility scheme covers agricultural, forestry and construction machinery, whereas locomotives, railcars and inland waterway vessels are not included in the scheme.

The NRMM directive forms an important part of the Union environmental legislation, and its contribution to especially reaching the reduction of targeted emissions is considerable. PM and NO_x emissions form the key air pollution from the sector. The estimated PM emissions from the NRMM in EU 27 are 7% (in comparison to 13% from road transport); and of all NO_x emissions in EU27, 16% is produced by the NRMM sector (compared to 42% from the road sector).

The Commission proposal

The current proposal by the Commission seeks to enlarge the flexibility scheme.

Firstly, the Commission is proposing to increase the percentage from the current 20% to 50%. Also the fixed numbers are modified accordingly.

Secondly, the Commission is proposing to include engines used for the propulsion of railcars and locomotives in the flexibility scheme. For locomotives - due to the relatively small number of the market - the Commission proposes the allowing flexibility for 12 locomotives. For railcars, the proposal is to allow 20% flexibility.

These measures of increased flexibility are proposed to expire 31 December 2013.

The justification given by the Commission for the proposal is largely based on the economic crisis. From autumn 2008 onwards most of the EU-based industry producing non-road mobile machinery has been affected by the crisis, and especially the construction and agricultural sectors have suffered from steep decreases in sales. The Commission argues that the compliance costs required to reach the new stage IIIB are too high to bear for an industry severely hit by the crisis.

The Commission also states the lack of technical solutions for complying IIIB-engines as a justification for increased flexibility, since the manufacturers cannot start redesigning the body of the machine before they have the complying engine. The Commission sees this as the biggest reason for the difficulties of locomotive manufacturers to comply.

The Commission is coming forward with this proposal very late, the first stage of new emission limits being applied as of January 2011 onwards.

As the Commission is also preparing a revision of the whole Directive 97/68/EC, your rapporteur proposes bringing this revision forth and refraining from agreeing harmful piecemeal legislation.

The rapporteur's proposal

The rapporteur considers there existing numerous problems with the Commission proposal. The biggest issue is of the principle, as the proposal seriously risks setting a dangerous precedence for watering down environmental legislation based on generic economic claims.

Also the principle of encouraging compliance and rewarding first movers is violated should this proposal be adopted. The directive came into force in 2004, giving the industry considerable time to move into the direction set in it. The companies that did not comply within this timeframe should not be rewarded for non-action; neither should the companies that did their homework be punished for acting on time.

Though a relatively limited proposal, the direction set in it regarding implementation of agreed environmental legislation is seriously questionable. Legislation should provide certainty for the industry of level playing field and of all the actors abiding with the rules - a principle violated by this proposal.

Health and environment

Emission limits set in the Directive are for PM around 90% and for NO_x around 30% lower in stage IIIB than in stage IIIA. The Commission estimates in its impact assessment that, assuming all the manufacturers would use the full percentage of flexibility in the first year, the emissions would increase for the first year by around 0.3% should the flexibility be increased from 20% to 50%.

This estimation however overlooks the long-term impact of the decision. The lifetime of the machinery in question is relatively long: for construction engines this is around 16 years or 10.000 hours¹, and for locomotives even longer. Thus, the harmful effects of increased flexibility will be carried on for possibly decades.

It is worth noting that a great number of member states have difficulties in complying with the directives setting standards for air quality, namely the Air Quality and National Emission Ceilings directives. For example, the IIASA projections for NEC report estimate that the share of NRMM of overall NOx emissions may grow up to 20% by 2020. Tackling emissions at source is of great importance for reaching the air quality standards, and loosening up the requirements for one of the most important sources cannot be treated lightly.

In addition, the overall estimate does not take into account the local effect of the emissions in question. Very often the NRMM are operated in urban or semi-urban environments, and close to workers. Studies show considerable savings in health costs when these harmful emissions are being cut, something which needs to be taken into consideration when calculating the costs of measures such as proposed here.

In calculating the possible savings from the increased flexibility the Commission overlooks this complex interplay between health, environment and more stringent emissions standards. Where the economic gains might be enjoyed by the industry, the external costs are in fact being borne by the society as a whole.

In this respect the case of the construction sector is illustrative :every day many hundred thousands of workers in the EU are exposed to emissions on building sites.It would be interesting to see a study on the consequences on their health and our health systems.

Economic estimates

The economic crisis is a reality, but there are already signs of recovery. As the sales are picking up, the rationale for the Commission proposal is diminishing. As for some of the bigger producers, for whom the data is more readily available, the sales seem to be smaller when compared to the years which could be called a sort-of a boom for the industry - the current sales numbers are however not much smaller when compared to years preceding the boom. All in all, as the legislation and the limit values for new stage IIIB has been in place since 2004, followed by some considerably strong years for the industry, the claim of lacking resources for development loses ground.

It is worth noting that the Commission cannot present any estimates of the proportion of the industry that has difficulties to comply.

Enlarging the picture somewhat, there are also companies that are losing from increased flexibility that should also be taken into consideration: in Europe there are many large and smaller companies producing after-treatment systems and particle filters. For these companies, legislation setting up more stringent emission standards is only beneficial.

¹ http://ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=5017

Your rapporteur would also like to contest the Commission's idea of manufacturers losing their competitiveness should they need to comply with stricter environmental legislation. Green innovations and low-emission technologies can only spring up with the help of supportive legislative framework. To reach the EU2020 targets and to enable the move towards low-carbon society, steps must be taken forward across the line, not backwards.

However, as the situation can be especially difficult for the small and medium sized manufacturers for which the compliance costs are relatively higher, the rapporteur suggests enlarging the SME-specific flexibility, i.e. increasing the fixed numbers contained in the table of Art. 1.2.2. of Annex XIII as suggested by the Commission.

This will enable the SMEs to reduce the peak efforts of R&D and other redesigning costs whilst offering the possibility to apply these costs over an extended time period.

As for locomotives, the rapporteur acknowledges the difficulties of the sector to comply, as only a very limited number of manufacturers offer IIIB -compliant locomotives, and as there are serious difficulties to retrofit new, bulkier IIIB -engines in the bodies of older locomotives. However, as the market is relatively limited, as IIIB-compliant solutions already exist and as the meaning of flexibility is to grant only a limited possibility of using engines from the earlier stage, the rapporteur suggests increasing the number of locomotives to 20.

In addition, as the progress in developing IIIB-compliant solutions seems to have been particularly slow for the locomotives, the Rapporteur feels the Commission should pay particular attention to this sector, and report to the European Parliament on the developments.

In addition, as the revision of the directive 97/68/EC is forthcoming, the Rapporteur is suggesting the Commission takes a forward-looking approach to the possible new stages for the locomotives, and a concerted effort to align the requirements with corresponding United States legislation.

26.1.2011

OPINION OF THE COMMITTEE ON TRANSPORT AND TOURISM

for the Committee on the Environment, Public Health and Food Safety

on the proposal for a directive of the European Parliament and Council amending Directive 97/68/EC as regards the provisions for engines placed on the market under the flexibility scheme

(COM(2010)0362 – C7-0171/2010 – 2010/0195(COD))

Rapporteur: Olga Sehnalová

SHORT JUSTIFICATION

Summary of the Commission's proposal

Directive 97/68/EC (non-road mobile machinery) regulates the maximum exhaust emissions carbon oxide (CO), hydrocarbons (HC), nitrogen oxides (NO_x) and particulates (PM) from diesel engines installed in construction, agricultural and forestry machinery, railcars & locomotives, inland waterway vessels, constant speed engines and small petrol engines used in different types of machinery.

Currently valid limits (Stage III A) will be replaced by the more stringent Stage III B limits progressively as of 1 January 2011. The type approval period for these engines has started from 1 January 2010. A great diversity of machinery production (approximately 1500 companies in the EU) is affected.

Flexibility scheme

Directive 2004/26/EC introduced the so-called flexibility scheme to facilitate the transition between the different emission stages. The flexibility scheme allows the Original Equipment Manufacturers (OEM) to place on the market, during the period between two successive stages of exhaust emissions limit values, a limited number of non-road mobile machines which are fitted with engines that still comply with the exhaust emission limits of the previous stage. The flexibility scheme applies to compression ignition (diesel) engines used in construction, agricultural and forestry machinery, generator sets and pumps using constant speed engines, but not to locomotives, railcars and inland waterway vessels. It allows the OEM either to place on the market (1) for each engine power category a limited number of machines not exceeding 20% of the OEM's annual sales of machinery or (2) a fixed number of machines. This second option is intended for smaller enterprises producing lower volumes of engines.

Economic aspects and competitiveness

Compliance costs for manufacturers to cope with the new emission limits are significant. These costs include for example research and development costs, equipment redesign costs, after treatment devices costs, documentation and labelling costs, etc. Moreover, the EU industry producing non-road mobile machinery has been unexpectedly and severely hit by the global financial and economic crisis, namely construction equipment and agricultural machinery are heavily affected. Significant falls in sales (by 42% in 2009) caused a large decrease in income and available capital to finance the necessary technology research and development for machinery with Stage III B compliant engines in all power categories and applications within the time limits in the Directive 97/68/EC. These circumstances are particularly affecting smaller enterprises of OEM.

Regarding railcars and locomotives the Commission concluded, after expert consultations, that some engine manufacturers have progressed in developing compliant III B engines for locomotives while OEMs will yet not be entirely ready to place III B compliant locomotives on the market by 1 January 2012 as foreseen in the Directive 97/68/EC. The directive does not provide a Stage III B for inland waterway vessels, therefore there is no need for applying the flexibility regime to them.

World-wide, only the EU, the U.S., Canada and to a lesser degree Japan have similar ambitions with regard to engine emission legislation for the non-road mobile machinery sector. Apart from the EU, flexibility measures have also been introduced in the U.S. and Canada and it is assumed that they provide greater flexibility for manufacturers compared to the system currently in place in the EU.

In other important geographical areas such as China, India, Russia or Latin-America, these requirements do not exist. Consequently, EU producers of the non-road mobile must struggle with unfair competition of producers from third countries as control measures for machinery imports into the European Union are not efficient.

Environmental aspects

The key air pollutants from the sector to overall air pollution are particulates and nitrogen oxides emissions. According to the Commission's impact assessment, the estimated PM10 emissions from the non-road mobile machinery sector for EU27 are 7% compared to 13% for road transport. In terms of NOx emissions, the non-road mobile machinery sector is responsible for 16% of all NOx emissions in the EU27 while the road sector contributes to 42% of all NOx emissions.

The overall non-road mobile machinery compression ignition (diesel) engine emissions would increase for the first year under the proposed 50% flexibility by around 0.3% compared to the current 20% scheme. It must be noted that the amendment foresees only a longer phasing-in period for the new stringent emissions limits. The level of these limits remains unchanged. Lastly, it should be taken into account that emissions have declined due to the significant drop in sales caused by the economic crisis.

The Commission therefore proposes:

- 1) An increase of the percentage of the number of engines used for application in land-based machines, placed on the market under the flexibility scheme in each engine category from 20% to 50% of the OEM's annual sales of equipment and an adaptation of the maximum number of engines that may be placed on the market under the flexibility scheme as an optional alternative, in the period between emission Stage III A to emission Stage III B.
- 2) An inclusion of engines used for the propulsion of railcars and locomotives in the flexibility scheme.
- 3) These measures will expire on 31 December 2013.

Rapporteur's point of view

The Rapporteur considers that it is necessary to safeguard both development and competitiveness of the industry on the one side and environmental protection on the other side. In this regard, the Rapporteur believes that the proposed amendment to Directive 97/68/EC is a balanced proposal aiming at mitigating, at the best possible point, the impacts of the current economic crisis for engine and machinery manufacturers to maintaining competitiveness and employment while at the same time limiting as much as possible negative environmental impacts stemming from a later replacement of a defined number of existing engines that do not yet comply with the new more stricter emission limit.

At the same time, the Rapporteur would like to draw attention to the issue of fair competition in global market and the prohibition of imports of non-ecological machinery into the EU. In this regard, the Commission should be invited to provide information about how it plans to ensure that non-EU producers comply with EU rules on engine emissions in the non-road mobile machinery sector.

AMENDMENTS

The Committee on Transport and Tourism calls on the Committee on the Environment, Public Health and Food Safety, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act Recital 7

Text proposed by the Commission

(7) The measures provided in this Directive reflect a temporary difficulty faced by the manufacturing sector. They should therefore be restricted to the transition from Stage III A to Stage III B and expire by 31 December 2013 at the latest.

Amendment

(7) The measures provided in this Directive reflect a temporary difficulty faced by the manufacturing sector. They should therefore be restricted to the transition from Stage III A to Stage III B and expire by 31 December 2013 at the latest. ***Taking into account the special characteristics of***

the UK network and the additional time and cost of developing Stage III B solutions, the expiry date in respect of the UK should be 31 December 2015.

Justification

The requirements of the Directive, as currently drafted, do not take into account either the constraints imposed by the gauge and weight specifics of the UK rail network or the constraints imposed by the small, niche market that exists for these types of engines. This risks stumping the growth of the rail freight and preventing the modal shift from road onto rail, one of the priorities of EU transport policy.

Amendment 2

Proposal for a directive – amending act

Article 1 – point 2 – point -a a (new)

Directive 97/68/EC

Article 10 – paragraph 1a – subparagraph 2

Text proposed by the Commission

Amendment

(-aa) In paragraph 1a, the second subparagraph is deleted.

Amendment 3

Proposal for a directive – amending act

Article 1 – point 2 – point -a a (new)

Directive 97/68/EC

Article 10 – paragraphs 1 b, 1 c and 1 d (new)

Text proposed by the Commission

Amendment

(-aa) The following paragraphs are added:

"1b. A replacement engine to be installed in a railcar, train-set or locomotive originally equipped with an engine not meeting Stage III A limits or only meeting Stage III A limits shall, as a minimum, comply with the limit values defined in Stage III A. For such engines, Article 9 (3g), (3i) and (4a) shall not apply.

1c. By way of derogation, Member States

may authorise the production and the mounting of replacement engines that do not comply with Stage III A requirements, in the following cases:

i) for a renewal or upgrading of an existing railcar, train-set or locomotive, when the application of Stage III A requirements would raise important technical difficulties in terms of gauge, axle load, body/chassis design or engine(s) control systems for multiple operation and, as a consequence, compromise the economic viability of the project;

ii) where, following a railcar, train-set or locomotive accident or a catastrophic failure of its engine(s), the application of Stage III A requirements would raise important technical difficulties and, as a consequence, compromise the cost-effective repair of the damaged railcar, train-set or locomotive.

For these engines, Article 9 (3g), (3i) and (4a) shall not apply.

Where derogation is granted, the Member State granting the derogation shall, within six months, provide both the Commission and the approval authorities of the other Member States with a document, in both paper form and electronic format, which sets out:

— the unique reference number of the derogation as shown on the label attached to each engine to which it refers,

— the nature of the derogation, including the description of the emission levels compared with Stage III A thresholds and details of the alternative provisions which will be applied,

— a detailed justification for granting the derogation, including the main technical difficulties, with their economic and environmental consequences, and a description of the design efforts made in order to approach Stage III A

requirements, and, if need be, other fleet evolution and operating measures,

— the number of engines which are subject to the derogation,

— details of the manufacturer and of the types and serial numbers of the engines which are subject to the derogation,

— details of the railway vehicles' series to which the engines will be fitted together with their operational areas,

— any other information helping to justify the request for a derogation

1d. For engines placed on the market under paragraphs 1a, 1b and 1c, the text 'REPLACEMENT ENGINE' shall be attached to a label on the engine or inserted into the owner's manual."

Justification

"Because the space available in most earlier vehicles is not sufficient to accommodate IIIB compliant engines of the same power, the possibility to replace pre-IIIA and IIIA engines fitted in early vehicles with IIIA compliant engines will allow the industry to move forward to the cleaner IIIA emission standards. In a very few cases, derogations to the installation of IIIA will also be necessary because of the gauge, axle load and design limits of the vehicles. The industry agrees that any such derogation shall only be made under strict controls and limitations and with detailed justifications."

Amendment 4

Proposal for a directive – amending act

Article 1 – point 2 – point b

Directive 97/68/EC

Article 10 – paragraph 8

Text proposed by the Commission

(8) The flexibility scheme, in accordance with the provisions of Section 1.2 of Annex XIII, shall apply only for the transition from Stage III A to Stage III B and expire on 31 December 2013.

Amendment

(8) The flexibility scheme, in accordance with the provisions of Section 1.2 of Annex XIII, shall apply only for the transition from Stage III A to Stage III B and expire on 31 December 2013. ***By way of exception, for locomotives capable of operating on the UK rail network, the flexibility scheme shall expire on 31***

December 2015.

Justification

The requirements of the Directive, as currently drafted, do not take into account either the constraints imposed by the gauge and weight specifics of the UK rail network or the constraints imposed by the small, niche market that exists for these types of engines. This risks stumping the growth of the rail freight and preventing the modal shift from road onto rail, one of the priorities of EU transport policy.

Amendment 5

Proposal for a directive - amending act

Annex

Directive 97/68/EC

Annex XIII – section 1 - point 1.1

Text proposed by the Commission

1.1. With the exception of the transition period between Stage III A and Stage III B, an OEM that wishes to make use of the flexibility scheme shall request permission from any approval authority to purchase from his engine suppliers, the quantities of engines described in sections 1.1.1. and 1.1.2., that do not comply with the current emission limit values, but are approved to the nearest previous stage of emission limits.

Amendment

1.1. With the exception of the transition period between Stage III A and Stage III B, an OEM that wishes to make use of the flexibility scheme shall request, ***and receive without unnecessary delay,*** permission from any approval authority to purchase from his engine suppliers, the quantities of engines described in sections 1.1.1. and 1.1.2., that do not comply with the current emission limit values, but are approved to the nearest previous stage of emission limits.

Amendment 6

Proposal for a directive -amending act

Annex

Directive 97/68/EC

Annex XIII – section 1 - point 1.4

Text proposed by the Commission

1.4 As regards engines for use in propulsion of locomotives, during the transition period between Stage III A and Stage III B an OEM may seek permission for his engine suppliers to place on the

Amendment

1.4 As regards engines for use in propulsion of locomotives, during the transition period between Stage III A and Stage III B an OEM may seek permission for his engine suppliers to place on the

market a maximum of **12** engines for use in propulsion of locomotives under the flexibility scheme.

market a maximum of **40** engines for use in propulsion of locomotives under the flexibility scheme.

Justification

Locomotive manufacturers do not design and built diesel engines themselves but buy them from suppliers. Currently however suppliers do not offer IIIB compliant engines for the entire range of locomotive types. IIIB compliant engines only start to become available for the highest power segment. However, no engines are yet on the market for various other types of locomotives, and information is still insufficient for the locomotive manufacturers to be able to adapt their design to potentially new engines layouts. This situation will persist beyond 2012. Without available engines, manufacturers cannot offer locomotives, which would have negative consequences for rail market opening, the replacement of rolling stock and could lead to a modal shift from rail to road. Under the current proposal the unavailability of engines will lead to a serious disruption of the flow of orders and put at risk the economic viability of these medium size manufacturers that have already been severely hit by the economic crisis. The typical yearly production of one of these manufacturers would be in the range of 50 to 100 locomotives. These locomotives are sold to a highly fragmented market, answering to many different needs and requests. A number of 40 locomotives in total in the flexibility scheme, for the two years duration of the transition period (2012-2013) would hopefully allow the manufacturers to continue production of their diverse portfolio of locomotives and to satisfy market demand. The number of 40 was originally proposed by the French and the British representatives in the Commission's supporting group of experts (GEME).

Amendment 7

Proposal for a directive

Annex

Directive 97/68/EC

Annex XIII – section 1 - point 1.7

Text proposed by the Commission

1.7. The OEM shall provide any requesting type approval authority in the Member States, with any information that the type approval authority requires in order to confirm that any engines claimed to be, or labelled as being, placed on the market under a flexibility scheme is properly so claimed or labelled.

Amendment

1.7. The OEM shall provide any requesting type approval authority in the Member States, with any information that the type approval authority requires in order to **verify and** confirm that any engines claimed to be, or labelled as being, placed on the market under a flexibility scheme is properly so claimed or labelled.

PROCEDURE

Title	Amendment of Directive 97/68/EC as regards the provisions for engines placed on the market under the flexibility scheme	
References	COM(2010)0362 – C7-0171/2010 – 2010/0195(COD)	
Committee responsible	ENVI	
Opinion by Date announced in plenary	TRAN 7.9.2010	
Rapporteur Date appointed	Olga Sehnalová 2.9.2010	
Discussed in committee	9.11.2010	24.1.2011
Date adopted	25.1.2011	
Result of final vote	+: –: 0:	35 4 0
Members present for the final vote	Inés Ayala Sender, Georges Bach, Izaskun Bilbao Barandica, Antonio Cancian, Michael Cramer, Christine De Veyrac, Saïd El Khadraoui, Ismail Ertug, Carlo Fidanza, Jacqueline Foster, Mathieu Grosch, Jim Higgins, Juozas Imbrasas, Ville Itälä, Dieter-Lebrecht Koch, Georgios Koumoutsakos, Werner Kuhn, Eva Lichtenberger, Marian-Jean Marinescu, Gesine Meissner, Hella Ranner, Vilja Savisaar-Toomast, Olga Sehnalová, Brian Simpson, Keith Taylor, Silvia-Adriana Țicău, Giommaria Uggias, Thomas Ulmer, Peter van Dalen, Dominique Vlasto, Artur Zasada, Roberts Zīle	
Substitute(s) present for the final vote	Philip Bradbourn, Spyros Danellis, Anne E. Jensen, Petra Kammerevert, Guido Milana, Dominique Riquet, Janusz Władysław Zemke	

PROCEDURE

Title	Amendment of Directive 97/68/EC as regards the provisions for engines placed on the market under the flexibility scheme	
References	COM(2010)0362 – C7-0171/2010 – 2010/0195(COD)	
Date submitted to Parliament	7.7.2010	
Committee responsible Date announced in plenary	ENVI 7.9.2010	
Committee(s) asked for opinion(s) Date announced in plenary	ITRE 7.9.2010	TRAN 7.9.2010
Not delivering opinions Date of decision	ITRE 29.9.2010	
Rapporteur(s) Date appointed	Sirpa Pietikäinen 9.9.2010	
Discussed in committee	25.1.2011	17.2.2011
Date adopted	16.3.2011	
Result of final vote	+: 51 -: 5 0: 2	
Members present for the final vote	Elena Oana Antonescu, Kriton Arsenis, Pilar Ayuso, Paolo Bartolozzi, Sandrine Bélier, Sergio Berlato, Martin Callanan, Nessa Childers, Chris Davies, Bairbre de Brún, Bas Eickhout, Edite Estrela, Elisabetta Gardini, Julie Girling, Satu Hassi, Jolanta Emilia Hibner, Dan Jørgensen, Karin Kadenbach, Christa Kläß, Holger Krahmer, Jo Leinen, Corinne Lepage, Peter Liese, Linda McAvan, Radvilė Morkūnaitė-Mikulėnienė, Miroslav Ouzký, Vladko Todorov Panayotov, Gilles Pargneaux, Antonyia Parvanova, Andres Perello Rodriguez, Sirpa Pietikäinen, Pavel Poc, Vittorio Prodi, Frédérique Ries, Anna Rosbach, Oreste Rossi, Dagmar Roth-Behrendt, Daciana Octavia Sârbu, Carl Schlyter, Horst Schnellhardt, Richard Seeber, Theodoros Skylakakis, Bogusław Sonik, Salvatore Tatarella, Åsa Westlund, Glenis Willmott, Sabine Wils, Marina Yannakoudakis	
Substitute(s) present for the final vote	João Ferreira, Jutta Haug, Miroslav Mikolášik, Bill Newton Dunn, Bart Staes, Eleni Theocharous, Thomas Ulmer, Marita Ulvskog, Anna Záborská	
Substitute(s) under Rule 187(2) present for the final vote	Francesco Enrico Speroni	
Date tabled	29.3.2011	