

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2010/0195(COD) Procedure completed
Air quality: provisions for engines placed on the market under the flexibility scheme Amending Directive 97/68/EC	1995/0209(COD)
Subject 3.40.03 Motor industry, cycle and motorcycle, commercial and agricultural vehicles 3.70.02 Atmospheric pollution, motor vehicle pollution	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ENVI Environment, Public Health and Food Safety		09/09/2010
		PPE PIETIKÄINEN Sirpa	
		Shadow rapporteur	
		S&D POC Pavel	
	Committee for opinion	Rapporteur for opinion	Appointed
ITRE Industry, Research and Energy	The committee decided not to give an opinion.		
	TRAN Transport and Tourism		02/09/2010
		S&D SEHNALOVÁ Olga	
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	3122	08/11/2011
European Commission	Commission DG	Commissioner	
	Internal Market, Industry, Entrepreneurship and SMEs	TAJANI Antonio	

Key events			
07/07/2010	Legislative proposal published	COM(2010)0362	Summary
07/09/2010	Committee referral announced in Parliament, 1st reading		
16/03/2011	Vote in committee, 1st reading		Summary
29/03/2011	Committee report tabled for plenary, 1st reading	A7-0080/2011	
25/10/2011	Results of vote in Parliament		
25/10/2011	Decision by Parliament, 1st reading	T7-0452/2011	Summary

08/11/2011	Act adopted by Council after Parliament's 1st reading		
16/11/2011	Final act signed		
16/11/2011	End of procedure in Parliament		
23/11/2011	Final act published in Official Journal		

Technical information

Procedure reference	2010/0195(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 97/68/EC 1995/0209(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114-p1
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	ENVI/7/03411

Documentation gateway

Legislative proposal		COM(2010)0362	07/07/2010	EC	Summary
Document attached to the procedure		SEC(2010)0828	07/07/2010	EC	
Document attached to the procedure		SEC(2010)0829	07/07/2010	EC	
Economic and Social Committee: opinion, report		CES1158/2010	16/09/2010	ESC	
Committee draft report		PE454.694	11/01/2011	EP	
Committee opinion	TRAN	PE450.581	26/01/2011	EP	
Amendments tabled in committee		PE458.785	23/02/2011	EP	
Committee report tabled for plenary, 1st reading/single reading		A7-0080/2011	29/03/2011	EP	
Text adopted by Parliament, 1st reading/single reading		T7-0452/2011	25/10/2011	EP	Summary
Draft final act		00045/2011/LEX	16/11/2011	CSL	
Commission response to text adopted in plenary		SP(2011)8697	30/11/2011	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Directive 2011/88](#)
[OJ L 305 23.11.2011, p. 0001](#) Summary

Air quality: provisions for engines placed on the market under the flexibility scheme

PURPOSE: to amend Directive 97/68/EC and adapt the rules applicable to the flexibility scheme provided for in that directive in order to extend the application of that scheme to engines for use in propulsion of railcars and locomotives.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: it is recalled that Directive 97/68/EC regulates the maximum exhaust emissions carbon oxide (CO), hydrocarbons (HC), nitrogen oxides (NOx) 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. The Directive provides for emissions limit stages of increasing stringency with corresponding compliance dates. Manufacturers must ensure that new engines comply with these limits in order that they can be placed on the market.

Directive 2004/26/EC introduced the current applicable stage of emission limits for the majority of diesel engines referred to as Stage III A. These limits will be replaced by the more stringent Stage III B limits progressively as of 1st January 2011. The type approval period for these engines started on 1 January 2010. A great diversity of machinery production (approximately 1500 companies in the EU) is affected.

To comply with Stage III B limits, current engines will need to be substantially modified. Changes to the configuration, size or weight of engines have a knock-on effect for Original Equipment Manufacturers (OEM) who will have to adapt the design of their machines in order to accommodate the modified engines. This process can only start once the engine is fully developed. Technical solutions for complying III B engines are not yet finalised. Thus, OEMs are not in a position to fully redesign the machinery where the engine is to be installed. In addition, compliance costs for manufacturers to cope with the new emission limits are significant. Directive 2004/26/EC also introduced the flexibility scheme to facilitate the transition between the different emission stages. The flexibility scheme allows the 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.

IMPACT ASSESSMENT: a detailed Impact Assessment has been carried out on the basis of technical studies and a stakeholder consultation. It covers the different scenarios for engines covered by the existing flexibility scheme and identifies the need to include railcars. In addition to the conclusions of the Impact Assessment, locomotives have been added to the flexibility scheme.

The Impact Assessment analyses different options ranging from the implementation of a scrapping scheme, variations of the flexibility scheme as regards the allowed percentage/number of engines to the set-up of a trading system whereby firms that would not use the entire flexibility could sell their flexibility rights to firms that need additional flexibility. The use of a scrapping scheme has been discarded as it is not suitable for assisting OEMs in financing R&D to make Stage III B machinery available. The set-up of a flexibility trading system was considered as a too complex system in a short time scale and thus disproportionate to the expected results. The option of increasing the existing flexibility scheme and extending it to sectors not yet included has been considered as the best option, balancing the environmental impact and an economic benefit in saved compliance costs for a limited period of time.

LEGAL BASE: Article 114 of the Treaty on the Functioning of the EU. the proposal makes the following amendments to Directive 97/68/EC:

CONTENT: it is proposed to modify the provisions of the flexibility scheme to mitigate further the economic costs of the transition of emission Stages III A to III B by extending its application for some type of non-road mobile machinery while maintaining the entry into force of the exhaust emission limit Stage III B to preserve the objective of the Directive of reducing emissions of gaseous and particulate pollutants in the Union. In addition, some engine manufacturers have progressed in developing compliant IIIB engines for locomotives while OEMs will yet not be entirely ready to place III B compliant locomotives on the market by 1st January 2012 as provided for in the Directive Therefore it appeared necessary to apply the flexibility scheme also to locomotives.

The main amendments to the Directive are as follows:

- 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;
- inclusion of engines used for the propulsion of railcars and locomotives in the flexibility scheme providing the possibility for the OEM to place on the market a limited number of engines under the flexibility scheme;
- these measures will expire on 31 December 2013.

FINANCIAL IMPLICATIONS: the proposal has no implication for the Union's budget.

Air quality: provisions for engines placed on the market under the flexibility scheme

The Committee on the Environment, Public Health and Food Safety adopted the report drafted by Sirpa PIETIKÄINEN (EPP, FI) 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.

It recommends that the European Parliament's position adopted at first reading, under the ordinary legislative procedure, amends the Commission proposal as follows:

Definitions: there is no precise definition of exhaust after-treatment systems for particle reduction which reflects the state of the art. There is no clear definition in EU law, causing interpretation difficulties for authorities and manufacturers.

Percentage of engines: 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.

Railcars: railcars should be left out the flexibility scheme, as legislated in directive 2004/26/EC. The report states that Stage III B - 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.

Replacement engines: 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:

- 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
- no Stage III B engines that could be fitted into such a railcar or locomotive are available.

By way of derogation, Member States may authorise the production and mounting of replacement engines that do not comply with Stage III A requirements. Any such derogation shall only be made under strict controls and limitations and with detailed justifications.

Placing on the market: 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.

The revision of Directive 97/68/EC: 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 United Nations Economic Commission for Europe (UNECE);
- 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.

Air quality: provisions for engines placed on the market under the flexibility scheme

The European Parliament adopted by 572 votes to 68, with 14 abstentions, a 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.

Parliament adopted its position at first reading, under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the Commission proposal as follows:

Percentage of engines: a recital states that during Stage III B, the maximum number of engines used for applications other than the propulsion of railcars, locomotives and inland waterways vessels that may be placed on the market under the flexibility scheme should be increased, in each engine category, from 20% to 37.5% of the annual quantity of equipment with engines in that category that is placed on the market by the equipment manufacturer.

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 also be revised and should not exceed the ceilings laid down in section 1.2.2 of Annex XIII to Directive 97/68/EC.

Railcars: the amended text stipulates that railcars should be left out the flexibility scheme, as legislated in directive 2004/26/EC.

By way of derogation, Member States may authorise the placing on the market of the following engines for railcars and locomotives:

(a) replacement engines that meet the Stage III A limits, where they are to replace engines for railcars and locomotives that: (i) do not meet the Stage III A standard; or (ii) meet the Stage III A standard but do not meet the Stage III B standard;

(b) replacement engines that do not meet Stage III A limits, where they are to replace engines for railcars without driving control and not capable of independent movement, so long as such replacement engines meet a standard no lower than the standard met by engines fitted to existing railcars of the same type.

Authorisations under this paragraph may be granted only in cases where the approval authority of the Member State is satisfied that the use of a replacement engine that meets the requirements of the latest applicable emissions stage in the railcar or locomotive in question will involve significant technical difficulties.

A label bearing the text "REPLACEMENT ENGINE" and bearing the unique reference of the associated derogation shall be affixed to engines covered by this Directive.

The Commission shall assess the environmental impacts of, and possible technical difficulties in respect of compliance. In the light of that assessment, the Commission shall, by 31 December 2016, submit to the European Parliament and the Council a review accompanied, if appropriate, by a legislative proposal including an end date for the application of that provision.

Limited period: the rules applicable to the flexibility scheme should be adapted to extend the application of that scheme to engines for use in the propulsion of locomotives for a strictly limited period of time

Support programmes to enterprises: enterprises operating with machines that fall within the scope of this Directive should benefit from European financial support programmes or any relevant support programmes provided by Member States. Those support programmes should be aimed at favouring the early introduction of the highest emission standards.

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

- establishing a new emission stage - Stage V - that should be based, subject to technical feasibility, on the requirements of Euro VI standards for heavy-duty vehicles;
- introducing new requirements for the reduction of particulate matter, namely a particulate number limit that applies for all compression ignition engine categories, where technically feasible, so as to ensure an effective reduction of ultra-fine particles;
- taking a comprehensive approach to promoting emission-reducing provisions and retrofitting of after-treatment systems on the existing fleet of non-road mobile machinery on the basis of the currently ongoing discussions under the auspices of the United Nations Economic Commission for Europe regarding harmonised requirements for retrofit emission control devices; this approach should support Member States' efforts to improve air quality and to promote the protection of workers;
- establishing a method providing for the periodic testing of non-road mobile machinery and vehicles, in particular to establish whether their emissions performance complies with the values given at registration;
- the possibility of authorising, under certain conditions, replacement engines that do not comply with Stage III A requirements for railcars and locomotives;
- the possibility of harmonising the specific emission standards for rail with relevant standards at international level so as to ensure the availability of affordable engines that comply with the emission limits set.

The text stipulates that the current global financial and economic crisis or any conjunctural economic fluctuations should not lead to a lowering of environmental standards. This revision of Directive 97/68/EC should therefore be considered to be exceptional.

Air quality: provisions for engines placed on the market under the flexibility scheme

PURPOSE: to amend Directive 97/68/EU and adapt the rules applicable to the flexibility scheme provided for in that Directive in order to help engine manufacturers in view of the temporary difficulty faced by the manufacturing sector.

LEGISLATIVE ACT: Directive 2011/88/EU 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.

CONTENT: following an agreement at first reading with the European Parliament, the Council adopted a directive amending Directive 97/68/EC as regards the provisions for engines placed on the market under the flexibility scheme in order to help engine manufacturers to adapt progressively to stricter environmental requirements and cope with the difficulties resulting from the financial crisis. The Danish delegation voted against.

Directive 97/68/EC regulates the maximum exhaust emissions of carbon oxide (CO), hydrocarbons (HC), nitrogen oxides (NO_x) and particulates (PM) from diesel engines installed in non-road mobile machinery and contributes to the protection of human health and the environment.

Directive 97/68/EC also provided that emission limits applicable to type approval of the majority of diesel engines under Stage IIIA were to be replaced by the more stringent limits under Stage IIIB. Those limits apply from 1 January 2010 as regards the type approval for these engines and from 1 January 2011 with regard to their placing on the market.

The flexibility scheme allows equipment manufacturers to purchase, during the emissions stage in force, a limited number of engines that do not comply with the emissions limits applicable during that stage, but which are approved in accordance with the requirements of that stage immediately preceding the applicable one.

The new Directive amends the provisions of the flexibility scheme provided for in Directive 97/68/EC:

- by increasing the percentage of engines which can be placed on the market while complying with the previous stage emission limits, from 20% to 37.5% of the manufacturers annual sales;
- by extending such flexibility to engines used in locomotives;
- by providing for a limited exemption for replacement engines in railcars and locomotives.

Authorisations may be granted only in cases where the approval authority of the Member State is satisfied that the use of a replacement engine that meets the requirements of the latest applicable emissions stage in the railcar or locomotive in question will involve significant technical difficulties.

A label bearing the text REPLACEMENT ENGINE and bearing the unique reference of the associated derogation shall be affixed to engines covered by this provision.

The Commission shall assess the environmental impacts of, and possible technical difficulties in respect of compliance. In the light of that assessment, it shall, by 31 December 2016, submit a report accompanied, if appropriate, by a legislative proposal including an end date for the application of that provision.

The revision of Directive 97/68/EC: in order to ensure that the revised Directive is in line with Union 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 and subject to impact assessment, consider:

- establishing a new emission stage Stage V that should be based, subject to technical feasibility, on the requirements of Euro VI standards for heavy-duty vehicles ;
- introducing new requirements for the reduction of particulate matter, namely a particulate number limit that applies for all

compression ignition engine categories, where technically feasible, so as to ensure an effective reduction of ultra-fine particles ;

- taking a comprehensive approach to promoting emission-reducing provisions and retrofitting of after-treatment systems on the existing fleet of non- road mobile machinery ;
- establishing a method providing for the periodic testing of non-road mobile machinery and vehicles, in particular to establish whether their emissions performance complies with the values given at registration;
- the possibility of authorising, under certain conditions, replacement engines that do not comply with Stage III A requirements for railcars and locomotives ;
- the possibility of harmonising the specific emission standards for rail with relevant standards at international level so as to ensure the availability of affordable engines that comply with the emission limits set.

ENTRY INTO FORCE: 13/12/2011.

TRANSPOSITION: 24/11/2012.