Council of the European Union

Brussels, 18 May 2021
(OR. en)

8880/21

Interinstitutional File: 2021/0129(COD)

MI 359
ENV 319
ENT 84
CODEC 721
COVID-19 208

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	18 May 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 254 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/1628 as regards the transitional provisions of certain machinery fitted with engines in the power range between 56kW and 130kW, and above 300kW in order to address the impact of COVID-19 crisis

Delegations will find attached document COM(2021) 254 final.

Encl.: COM(2021) 254 final

EUROPEAN
COMMISSION

Brussels, 18.5.2021
COM(2021) 254 final

2021/0129 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) 2016/1628 as regards the transitional provisions of certain machinery fitted with engines in the power range between 56kW and 130kW, and above 300kW in order to address the impact of COVID-19 crisis

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The COVID-19 pandemic has caused major disruption of supply chains, which has had an impact on non-road mobile machinery (NRMM) manufacturers' ability to meet some of the deadlines imposed by Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery.

In response to the COVID-19 pandemic, Regulation (EU) 2020/1040 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EU) 2016/1628 was adopted. It postponed certain deadlines that manufacturers could no longer meet without sustaining serious economic damage due to the unexpected disruptions in the supply chain. This concerned machinery that use so-called "transition engines" in the power range <56kW and >130kW, and whose production had to be completed by 30 June 2020 and placing on the market by 31 December 2020. Manufacturers were provided with an additional 12 months to produce and place on the market the machinery fitted with those engines.

That Regulation only addressed the deadlines occurring in 2020 as those were the ones that needed to be postponed as a matter of urgency and it was too early to assess whether an extension of the deadlines occurring in 2021 was warranted.

Manufacturers have until 30 June 2021 to complete the production of the machines fitted with those engines and until 31 December 2021 to place them on the market.

However, due to the continued supply chain and production disruptions caused by the COVID-19 second and third waves, manufacturers will not be able to meet the 2021 deadlines applicable to the machinery fitted with transition engines in the power range between 56kW and 130kW, and above 300kW without sustaining serious economic damage.

In the light of the continued disruptions, it is therefore necessary to postpone these dates to avoid that the transition engines, whose number is capped, as they had to be manufactured by 31 December 2019 at the latest, can no longer be fitted in the machinery in time and therefore have to be scrapped.

While there are still supply chain and productions distortions, their amplitude and intensity cannot be compared with the ones that prevailed in Spring 2020. For these reasons, a 6-month extension for the manufacture of the machinery fitted with those engines and a 9-month extension for the placing on the market, instead of 12 months for both in 2020, are warranted.

It should be noted that, regardless of the duration of the extension, economic operators will have no interest to delay further the completion and placing on the market of machinery, vehicles and vessels for which they have already incurred costs.

Finally, the proposed extension will also applicable to agricultural and forestry vehicles fitted with transition engines as they are subject to NRMM provisions on pollutant emissions[1].

[1] Article 19 of Regulation (EU) No 167/2013 on the approval and market surveillance of agricultural and forestry vehicles

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 114 of the Treaty on the Functioning of the European Union.

• Subsidiarity (for non-exclusive competence)

The subsidiarity principle applies since the proposal does not fall under the exclusive competence of the Union.

As the proposal involves amendments to existing EU legislation, only the EU can effectively address the issues. Furthermore, the policy objectives cannot be sufficiently achieved by actions of the Member States.

European Union action is necessary to avoid the emergence of barriers to the single market notably in the field of NRMM engines, and because of the transnational nature of air pollution.

The proposal therefore complies with the subsidiarity principle.

• Proportionality

The proposal complies with the proportionality principle because it does not go beyond what is necessary in order to achieve the objectives of ensuring the proper functioning of the internal market while at the same time providing for a high level of public safety and environmental protection. The length of the proposed extension is commensurate with the expected duration of the disruption due to the COVID-19 pandemic.

• Choice of the instrument

Regulation amending a Regulation.

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

This proposal is not accompanied by a separate impact assessment, as an impact assessment for Regulation (EU) 2016/1628 has already been undertaken. This proposal does not alter that Regulation on substance and does not impose new obligations on the concerned parties. It primarily aims at providing, for exceptional reasons in the context of the current COVID-19 pandemic, an extension of 6 months for the manufacture and placing on the market of the machinery equipped with certain transition engines. This proposal has no significant environmental effects since the measures facilitate the placing in the market of goods fitted with engines produced before the pandemic. They also avoid the need to scrap otherwise non-compliant machinery fitted with such engines.

4. BUDGETARY IMPLICATIONS

The proposal does not have a budgetary impact for the EU institutions.

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 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[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Regulation (EU) 2016/1628 of the European Parliament and of the Council[3] lays down requirements relating to emission limits for gaseous and particulate pollutants and EU type-approval procedures for various categories of engines for non-road mobile machinery.

(2) The dates applicable to the new emission limit values, referred to as 'Stage V' in Regulation (EU) 2016/1628, are set out in order to provide manufacturers with clear and comprehensive information and an appropriate period of time for the transition to Stage V, whilst at the same time substantially reducing the administrative burden for approval authorities.

(3) Due to the COVID-19 outbreak and the associated supply chain and production disruptions, non-road mobile machinery manufacturers, referred to as 'original equipment manufacturers' or 'OEMs' had difficulties to meet the deadlines of 30 June 2020 and 31 December 2020 for the production and placing on the market of machinery fitted with those engines that comply with less stringent emission limit values than those of Stage V. In this context, Regulation (EU) 2016/1628 was

[2] OJ C […], […], p. […].

[3] Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC (OJ L 252, 16.9.2016, p. 53).

amended with Regulation (EU) 2020/1040 of the European Parliament and of the Council[4] in order to prolong those deadlines by 12 months.

(4) Considering that the continued supply chain and production disruption caused by the COVID-19 pandemic still leads to delays for the production and placing on the market of machinery fitted with other categories of engines (between 56kW and 130kW, and above 300kW) that comply with less stringent emission limits than those of Stage V it is very likely that OEMs will not be able to meet the deadlines of 30 June 2021 and 31 December 2021 set out in Regulation (EU) 2016/1628 for the production and the placing on the market of the goods without sustaining serious economic damage.

(5) Given the current circumstances and in order to ensure the smooth functioning of the internal market, to provide legal certainty, and to avoid potential market disruption, it is necessary to prolong the transitional provisions of Regulation (EU) 2016/1628 for those categories of engines.

(6) Given that the prolongation of the transitional provisions will have no environmental impact, as the transition engines concerned have already been produced, the extension of the relevant periods should be 6 months for the production of the machinery fitted with those engines and 9 months for the placing on the market.

(7) Since the objective of this Regulation, namely to prolong certain transitional provisions of Regulation (EU) 2016/1628, cannot be sufficiently achieved by the Member States but can rather, 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 ('TEU'). 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.

(8) In view of the urgency entailed by the exceptional circumstances caused by the COVID-19 outbreak, it was considered to be appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the TEU, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

(9) Regulation (EU) 2016/1628 should therefore be amended accordingly.

(10) In view of the fact that the transition period provided for in Regulation (EU) 2016/1628 for certain engine sub-categories is to expire on 31 December 2021 and that OEMs have until 30 June 2021 to produce non-road mobile machinery fitted with transition engines of those sub-categories, this Regulation should enter into force as a matter of urgency on the day of its publication in the *Official Journal of the European Union,*

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2016/1628 is amended as follows:

[4] Regulation (EU) 2020/1040 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EU) 2016/1628 as regards its transitional provisions in order to address the impact of the COVID-19 crisis (OJ L 231, 17.7.2020, p. 1–3).

Article 58 is amended as follows:

(1) in paragraph 5 the following sixth subparagraph is added:

'For engines of all sub-categories for which the date set out in Annex III for the placing on the market of Stage V engines is 1 January 2020, except for the engines referred to in the second and third subparagraphs, the transition period and the 18-month period referred to in the first subparagraph shall be extended by 6 months.';

(2) in paragraph 7, the following point (e) is added:

'(e) 33 months from the applicable date for the placing on the market of engines set out in Annex III, in the case set out in the sixth subparagraph of paragraph 5'.

Article 2

This Regulation shall enter into force on the day 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*