EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
Directorate C - Quality of Life, Water & Air
The Director

Brussels, 26/06/2014
ENVC.3[redacted]

Subject: **DG ENV response to ISC from DG ENTR with reference Ares(2014)1795436 - Proposal for a Regulation of the European Parliament and of the Council on measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery**

DG Environment welcomes the proposal and can agree with it subject to the following comments designed to improve its environmental performance.

DG ENV welcomes the introduction of Stage V, which offers reduced emission factors for PM, PN and NOx. Based on our internal analysis the revised emission factors can generally be considered compatible with the global objectives of the Air Quality Package, proposed by the Commission in December 2013. Our most important concern relates to issues which would prevent resolving important air quality hotspot problems in the EU, which is an important priority in the newly adopted strategy.

1. There are big differences in emission performance between 'adjacant' sub-categories. As an example, Stage V NRE (non road engines) with a power output between 130 kW and 560 kW is near Euro VI standards[1], but bigger engines (P> 560 kW) may produce 9 times more NOx per kW and 3 times more PM. For the latter sub-category, no PN limit is foreseen, allowing virtually untreated engines to be put onto the market. This can cause a strong local environmental effect which creates a considerable health risk for citizens and for the operators. The current approach will create a loophole as it will encourage engine manufacturers to reduce pollution control on e.g. a 530 kW machine, after which it will fall into a higher power sub-category which is far less regulated in terms of PN, PM, NOx emissions.

   Moreover, this situation is in contrast with the proposed regulations for inland water transport (IWP engines). Here the largest engines (P>1000 kW) are – logically- the cleanest. However, IWP engines below 1000 kW are allowed to emit 3 to 5 times more NOx than engines of the subcategory above 1000 kW. Engines smaller than 300 kW (400 HP!) are totally exempted from PN depollution measures.

   We also note a similar problem with the Gensets' (NRG) PM and PN emission levels (P > 560 KW).

[1] As introduced by Reg 595/2009

DG ENV requests the large discrepancies in emission performance to be removed by aligning the requirements for sub-categories, as the current proposal creates loopholes leading to environmental risks and to market disturbance.

2. In view of creating a comparable emission performance for all transport modes, we request placing the locomotives (RLL) emission requirements on the same level as IWL (water way vessels) or at least on the level of the rail cars (RLR). Also here the discrepancies are too large in our view.

3. We note the total absence of NOx and PM standards for the SMB (snowmobile) category and very weak NOx standards for ATS (all terrain & side by side). We suggest aligning them with the P2W Euro 4/Euro 5 with emission values coming into force respectively in 2017/2020.

In preamble 15 and in Article 17.5 the proposal makes reference to "in-use testing" and "normal operating duty cycles'. We understand this refers to the future introduction of PEMS testing of 'real world emissions' and to in-service-conformity testing on NRMM equipment. We request that the line that will be taken in upcoming delegated acts (Art 17.6) will be specified in more detail in the current proposal. As the technology for PEMS testing is well known, already established pilot programmes (Art 17.5) which aim i.a. at designing real-world test cycles can be continued in the near future and need not wait for the placing on the market of Stage V machines. In this context, a report on this issue to the Parliament and to Council could be submitted at the latest in 2021 rather than in 2025 as proposed. We request that the current proposal foresees that this report will be accompanied by an appropriate legal proposal in view of integrating real world emissions like PEMS testing, real-world running cycles and in service conformity testing.

We would like to extend the scope of Art 59.4 to Art 59 paragraphs 1 to 3. As it stands now, the report and legislative proposals only refer to paragraph 3 (a) and (b).

We have some concerns that Article 30, covering exemptions could open the door to inappropriate use of the regulation:

- Art 30.3: Delivering a machine separately from its exhaust after treatment system is only acceptable if a (future) delegated act specifies the conditions of delivery, installation (equivalence of treatment systems) and operation. This paragraph should not apply as long as a delegating act specifying these details is not in force.
- Art 30.5: Exemptions for ATEX can only be granted if member states set up a mechanism that verifies that the machines are effectively exclusively being used in a hazardous environment, and when relative legislation has been adopted.

Our final comment relates to defeat strategy. Preamble 25 refers to upcoming delegated acts covering tampering without indication of the scope and timing of upcoming anti-tampering regulations. The current proposal should express a more precise view on the approach to defeat strategy which will be developed complementarily to the statement expressed in Art 17 "engine families shall be designed to resist tampering in accordance with the delegated acts".

We remain available to assist you for drafting these provisions, would this be deemed necessary. The responsible policy officer in C3 is [redacted]

[redacted]
Marianne Wenning

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