

# AmCham EU position on Air Quality Package proposal

## *Calling for proportionate and predictable measures that support competitiveness*

### Executive summary

Through innovation and investments in abatement techniques and new technologies AmCham EU members have contributed to the decrease of concentration levels of many pollutants, and will continue to do so.

To further improve air quality it is crucial that all sectors emitting into the air truly share efforts. Additional measures must be proportionate, predictable and in line with the need for increased competitiveness.

This document outlines AmCham EU recommendations on the general principles that should guide any further actions on Air Quality, as well as more detailed comments on the MCP proposal and NECD review.

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*AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €2 trillion in 2013 and directly supports more than 4.3 million jobs in Europe.*

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## **Introduction**

AmCham EU members are strongly committed to reducing emissions of NO<sub>x</sub>, SO<sub>x</sub> and dust from operations, for example, through the use of suitable technologies. While industry is making progress towards reducing its environmental footprint, the future Air Quality Package must take into account that some activities take place in conditions that are particularly challenging.

## **General Principles**

- *Ensure proper implementation of existing tools*

Many sectoral policies already tackle emissions into the air. These policies should remain the priority focus for these sectors and greater emphasis should be placed on their implementation and deployment:

- The Industrial Emissions Directive defines Best Available Technologies to deal with industrial emissions
- EURO 6 and VI norms address emissions from passenger and commercial vehicles

- *Devise proportionate measures*

Technical feasibility and the economic implications of new targets must be assessed clearly to guide decisions on where to set the level of ambition and how best to reach the objectives.

- *Support innovation and new technologies*

The Commission's continued and accelerated support for alternative fuels, including natural gas, renewable and new technologies can be an effective instrument in reducing air quality emissions.

- *Predictability*

Poor implementation of existing policy measures has not created the environment which is conducive to new and large-scale investments in air pollution reduction measures. Industry is already complying with existing measures but it being prevented from taking further initiatives because of the uncertainty surrounding the current legal framework. In member states which already have MCP measures, and have recently revised them (such as France and the Czech Republic) installation may have to be updated twice to meet first national obligations, then EU obligations.

Industry needs better oversight of what is likely to be expected of it, and under what timeframe.

### **Medium Combustion Plan Directive (MCPD) proposal**

- *Scope of the proposal*

AmCham EU believes that the sheer number of installations that will fall into the scope of the MCPD proposal, as laid out in its current draft, will make the Directive hard to implement for both industry and for authorities.

We are especially worried in the case of installations which were recently upgraded to meet increased national Emission Limit Values (ELVs), such as in France and in the Czech Republic, and which may require additional investments to comply with new proposed European level ELVs.

AmCham EU has always been a champion of the legislative predictability which goes with the effective implementation of EU laws once these are adopted. As such, we are concerned about the burden on national authorities with large industrial sectors. Managing the paper trail for 145,000 installations across the EU<sup>1</sup> is no mean feat. In a policy area where compliance with EU legislation is already lagging, it is important that the MCPD proposal be implemented by national authorities in a way that is thorough and effective.

If national authorities cannot manage the reporting obligations associated with the MCPD as proposed, it may be worth narrowing the proposals' scope. For example, at the very least, all installations working less than 500 hours per year (for example a backup generator) could be clearly excluded from the scope of this proposal. At the moment these installations '*may be excluded*' by member states, but the uncertainty about whether they will be, or not, is not conducive to the law's effective and harmonized implementation.

- *Remove overlap with other legislation*

The MCPD proposal related emissions are already regulated under the IED when these plants are operated on an installation covered by the IED (via either the IED Annex I 'activity aggregation rule' or via the application of the definition of 'wide installation' where the mere artificial connection between any other IED Annex I activity suffices to include it in the IED permit scope).

The IED derives BAT AEL for all relevant pollutants in a given sector. Where a pollutant is not relevant for a given sector (because it is not emitted from the sources and processes applied, or not emitted in quantities which are deemed to be significant enough to require

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<sup>1</sup> Commission exact estimate is 142, 986, as quoted in Draft Directive 2013/0442 (COD)'s Explanatory Memorandum, page 2.

prevention and control under IED), no BAT AEL is derived. It hence appears contradictory to having to monitor and control emissions for such pollutants under the MCPD proposal, when it is not required under the IED. This would add administrative obligations with no improvement of the environmental performance of the plant.

Hence all activities covered under the IED must be excluded from the scope of the MCPD proposal.

Considering the above AmCham EU recommends that the MCPD proposal is amended as follows: Article 2(2)m should read: This Directive shall not apply to the following: [...] medium combustion plants operating within an installation covered by Commission implementing decisions establishing best available techniques conclusions under Directive 2010/75/EU.

The MCPD proposal does not appear to restrict the scope to stationary facilities. Whilst certain categories of mobile combustion plant are excluded – such as those used for propulsion of vehicles, ships and aircraft – this list is not sufficiently comprehensive. Auxiliary combustion plants such as generating sets mounted on vehicles, or those used to provide electrical power for ships and aircraft appear still to be in scope. Moreover other mobile sources such as rail locomotives, large excavators and harvesters, and offshore facilities appear to be in scope. Most are also within scope of other legislation such as the Non Road Mobile Machinery (NRMM) engine emissions directive 97/68/EC or the International Maritime Organisation (IMO) Marpol Annex VI, leading to potential double regulation. An alternative to trying to establish a comprehensive set of exemptions for mobile sources would be to simply and clearly restrict the scope to stationary sources.

An exemption for research and development activities as well as for testing of new products and processes is common practice in the EU and has also been implemented in the IED. Failure to exclude research, development and testing facilities from the scope of the proposed MCPD proposal could stifle innovation within the EU.

- *Avoiding legal uncertainty surrounding the selection of ‘hot spots’*

AmCham EU welcomes the Council’s initiative to replace article 5.4 of the Commission proposal, and remove its related Annex III which laid out stricter ELVs for ‘Hot Spot areas’ meaning ‘*zones not complying with EU air quality limit values*’, unless Member States authorities justified these ELVs would ‘*entail disproportionate costs*<sup>2</sup>.’

Removing this Annex clarifies what was one of the greatest areas of legal uncertainty in the Commission proposal. Having now two sets of ELVs depending on combustion size, makes it much easier for industry to plan with, rather than having different limits being applied, more or less subjectively, by national authorities.

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<sup>2</sup> Quotes extracted from Article 5(4) of the Commission’s MCPD Proposal

The Council's new article 5.4 is more in line with the subsidiarity principle and allows for greater action at local and national level. However, AmCham EU members being active on an EU-wide scale would like to encourage Member States' authorities to coordinate, and to consult with industry so that new stricter ELVs, when justified, are adopted in full transparency and with enough lead time for industry to make the investments needed for compliance.

- *Reducing the Administrative Burden around Compliance Checks and Inspection systems*

Article 7 of the Commission proposal states that: 'Member States shall set up a system of environmental inspections of medium combustion plants, or implement other measures to check compliance with the requirements of this Directive'.

AmCham EU notes that existing EU and national legislation on combustion plants (many of them of medium size) also requires audits, and merging these would be a good example of better regulation. AmCham members are convinced that compliance inspections for the MCPD proposal could be framed in the context of other existing auditing schemes.

In particular, it is worth referencing the annual visits required to verify CO<sub>2</sub> emissions for all installation covered by the ETS directive, as well as the periodical audits mandated by the Energy Efficiency Directive, looking at the efficiency of power generators, which inevitably influence the quality of emissions, and the use of energy.

Creating additional obligations to comply with the MCPD proposal and not taking advantage of these possible synergies would be a misuse of both industry and authorities' resources without improving the quality of the emissions concerned.

Therefore AmCham EU suggests that operators already subject to audits and inspections of their combustion plants, be allowed to demonstrate compliance with the limits of the proposed MCPD proposal by using communication channels already in place, and information already verified by independent parties.

### **National Emissions Ceilings Directive (NECD)**

Absolute emissions reductions by 2025 and 2030 are based on the ambitious hypothesis that a large number of sectors will deliver.

It is crucial that a fair balance is kept to make sure that each of these sectors actively contributes to the objective. Industry cannot be burdened to go beyond what is technologically and economically feasible.

2025 and 2030 objectives also heavily rely on an energy scenario that is not yet agreed. The ability to review the ceilings in case the implementations diverge from the initial assumptions should be foreseen.