



EUROPEAN COMMISSION

Brussels, 15.6.2011
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COMMISSION DECISION

of 15.6.2011

on the request from Ireland for a derogation pursuant to Article 3(4) and (5) of Directive 98/70/EC, as amended by Directive 2009/30/EC

(Only the English text is authentic.)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 98/70/EC, Directive, of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel and amending Council Directive 93/12/EEC,¹ in particular Article 3(4) and (5) thereof,

Whereas:

- (1) By letter to the Commission registered on 5 July 2010, the Republic of Ireland ('Ireland') notified a request for derogation to permit the placing on the market during the summer period of petrol with a maximum vapour pressure derogation of 70 kPa, due to its low ambient summer temperatures, for duration until the end of 2020. A supporting report was submitted in addition to the notification letter.
- (2) According to Article 3(4) of the Directive, Member States with low ambient summer temperatures may, in accordance with the first subparagraph, permit the placing on the market during the summer period of petrol with a maximum vapour pressure of 70 kPa.
- (3) In accordance with Article 3(5) of the Directive, Member States that wish to apply either of the derogations provided for in paragraph 4 shall notify the Commission and provide all relevant information. The Commission shall assess the desirability and duration of the derogation, taking account of both:
 - (a) the avoidance of socioeconomic problems resulting from higher vapour pressure, including time-limited technical adaptation needs; and
 - (b) the environmental or health consequences of the higher vapour pressure and, in particular, the impact on compliance with EU legislation on air quality, both in the Member State concerned and in other Member States.
- (4) Under Article 3(5), the Commission will assess the desirability and the duration of each derogation requested. If, taking into account relevant target values, the

¹ OJ L 350, 28.12.1998, p.58-68.

assessment shows that the derogation will result in a lack of compliance with EU legislation on air quality or air pollution, including limit values and emissions ceilings, the application shall be rejected.

- (5) The Directive had to be transposed into national law by 31 December 2010 and entered effectively into force in the Member States on that date. A failure to comply with the vapour pressure requirements of the Directive after this date would constitute an infringement of EU law, unless a derogation is in place.
- (6) The notification was assessed in line with the Directive and with the general recommendations for assessment set out in the public document ‘Guidance note on notifications of exemptions from the vapour pressure requirements for petrol under Article 3(4) of Directive 98/70/EC relating to the quality of petrol and diesel fuels’ (‘the Guidance’).
- (7) The Commission found that some essential information was missing in the initial notification and supporting report, and asked Ireland by letter dated 18 November 2010 to complete the notification. Ireland submitted additional information by letter registered at the Commission on 18 January 2011.
- (8) The letter of 18 January 2011 concluded the submission of information. The Commission therefore has six months until 18 July 2011 to adopt a decision on the request for a derogation.
- (9) Firstly, the notification will be assessed in accordance with the following information supplied by the Member State, which is common to all evaluation
 - the forecast quantity of petrol to be supplied to retail outlets in the Member State concerned and the proportion this represents of the Member State’s total amount to be produced during each calendar year for which the derogation is sought,
 - the forecast quantity of petrol to be supplied to retail outlets in the Member State concerned, during each year for which the derogation is sought,
 - the quantity of petrol supplied to retail outlets in the previous calendar year in the Member State concerned that cannot currently meet the regulated maximum vapour pressure limit and, if applicable, the associated percentage of bioethanol content of that petrol. The quantity of petrol exported in the previous calendar year by the Member State concerned and the associated average vapour pressure of that petrol, and
 - the quantity of petrol forecast to be supplied to retail outlets in the Member State and, if applicable, the associated percentage of bioethanol content that would not meet the regulated maximum vapour pressure limit during each calendar year for which the derogation is sought.
- (10) To make a reliable assessment, the applicant must submit sufficient, relevant and precise figures and facts regarding the requested quantities and years to evaluate and compare the conditions before and after a possible derogation.

- (11) Ireland provided information on petrol sales, export and import conditions and distribution in Ireland, which the Commission considers sufficient to evaluate the notification.
- (12) To assess the direct socioeconomic problems (which are any social, financial or economic impact of implementing the regulated vapour pressure of 60 kPa), the Member State must provide information on the impact on petrol producers and/or petrol suppliers of not having the derogation. The information required includes:
- a short description of the technical and market-based difficulties in complying with the regulated maximum vapour pressure of petrol of 60 kPa and the corresponding percentage of Member State petrol to be supplied to retail outlets including, if applicable, information on the expected rate of penetration of bioethanol as a constituent of petrol, as defined by the Directive,
 - the options available to make the necessary technical adaptations to existing infrastructure and installations associated with petrol production and supply, the time it would take to make such adaptations in order to comply with the maximum regulated vapour pressure of 60 kPa and the corresponding percentages of Member State petrol to be supplied to retail outlets. This should include an assessment of imports of fuel of the requisite quality, given that the EU is a net exporter of petrol,
 - a short description of the implications on the economic operation of the refinery and supply infrastructure, including impacts on employment associated with implementing the above technical adaptations, and
 - the potential disruption to petrol production and supply associated with implementing the above technical adaptations. The potential for mitigating such disruption by importing petrol of the requisite quality should be addressed.
- (13) In order to assess the technical and market-based difficulties in complying with the regulated maximum vapour pressure of petrol, the Commission needs access to pertinent information.
- (14) Ireland claims that its, only, refinery is of a simple configuration and would find lower vapour pressure gasoline problematic to produce. It stresses further that the limited complexity of the Irish refinery is insufficient to supply Ireland's demand for gasoline, which necessitates an on-going reliance on trade in petrol and blending components.
- (15) The refinery in Ireland has a simple hydroskimming configuration. In particular, it does not contain fluid catalytic cracking (FCC) conversion facilities, which can provide the important gasoline blending component of cracked gasoline, sometimes referred to as FCC gasoline.
- (16) Irish gasoline trade is significant and consists almost entirely of imported petrol. Domestic consumption is a combination of locally produced product and imported gasoline. Imports are forecast by Ireland to be around 60% of domestic consumption. The imports from UK is forecast to provide over 52% of domestic consumption and are the primary source of gasoline imports to Ireland (between 90-100% for the years 2005-2009). Norway has, until recently also provided sizeable gasoline exports to

Ireland. It would require a significant change in trade flows for Ireland to secure its future gasoline from an alternative EU Member State. Exports from Ireland are negligible.

- (17) It is noticeable that Ireland does not appear to have specific targets for the inclusion of ethanol in gasoline. Ireland would by this way be able to consider focusing most of its use of biofuels within the larger volume of diesel sales sold in Ireland and use a gasoline of 60 kPa without ethanol to be consumed within Ireland.
- (18) Ireland has submitted information concerning the cost of undertaking necessary refinery investment to comply with producing a 60kPa limit petrol, and estimates it to reach around 18€million per year from 2011 and forward.
- (19) Concerning the financial effects for adapting to comply with legislation, the Commission sees the need to underline that it is inevitable that compliance measures will lead to costs, and that this as such is not a valid single ground for granting a derogation. However, the information provided from Ireland about prevailing conditions and costs for complying with vapour pressure legislation and the following impacts are credible and reasonable and the Commission finds these acceptable.
- (20) On the basis of the submitted information, the Commission has no reason to question the notification, as concerns the relevant socio-economic criteria.
- (21) In order to assess the second criterion — compliance with EU air quality and pollution legislation, Member States must provide realistic and reliable estimates of their emissions of non-methane volatile organic compounds (NMVOCs) and state how these predictions compare to the emission ceiling set in Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants² (the NEC-D). These estimates have to:
 - be shown to be consistent with the methodologies permitted by Directive 2001/81/EC to satisfy the obligation for reporting emissions and emission estimates to the Commission, and
 - include an assessment of the proposed derogation on national NMVOC emissions by assessing the changes in emissions in all relevant emitting sectors. As a minimum, this has to cover (1) the storage of petrol at terminals and distribution to service stations; (2) the storage of petrol at service stations; (3) the fuelling of motor vehicles, including accidental spills; (4) evaporative losses for motor vehicles at rest; and (5) evaporative emissions from vehicles in use, ‘running losses’.
- (22) Ireland provided information, where reference is made to its latest 2010 NMVOC emissions projections to 2020 (54kt), indicating that Ireland will comply with its NEC by 2010 (55kt). Furthermore, it is demonstrated that in future inventory calculations with using Corinair, emissions factors will reduce the estimated NMVOC emissions from refining, storage and distribution of petrol by approximately 3 kt per year in 2009.

² OJ L 309, 27.11.2001, p. 22–30.

- (23) In addition, Ireland has also provided an assessment of the impact of the requested derogation on VOC emissions based on the COPERT model using petrol sales data from 2008 and 2009, showing an estimated emissions saving between 0.029-0.045 kt/year.
- (24) Ireland has also submitted details of some measures already taken to limit evaporative emissions from the transport sector, including the introduction in December 2009 of a carbon tax on transport fuels, the active promotion of electric vehicles and the introduction of a CO₂-based road tax system.
- (25) The Commission notes that the methodologies employed appear to be consistent with those required under Directive 2001/81/EC and finds that Ireland has provided sufficient information that there is no risk of non-compliance with the 2010 NEC ceiling and forward.
- (26) The Commission concludes, taking into account the impacts of use of the petrol with vapour pressure of 70 kPa, that NEC-D limits have not been exceeded nor projected to be exceeded. The Commission therefore sees no grounds for objecting to this part of the notification.
- (27) Concerning the ozone criteria, it is necessary to assess whether the Member State has fulfilled its duties pursuant to Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe³ (Directive 2008/50) to ensure compliance as far as possible with the target value for ozone. In addition, emissions of ozone precursors in one Member State can contribute to elevated levels of ozone in other Member States. Given this, the following information must be provided in the notification:
- The impact of the derogation on ozone concentrations in the Member State, in comparison with a scenario where no derogation is implemented. Changes in ozone concentration should, as a minimum, be expressed in a form that enables a simple comparison to be made with the ozone target value in Directive 2008/50/EC. The information is most likely to be in the form of results of recognised air quality models.
 - The impact of the derogation on concentrations of ozone in other Member States.
 - Pursuant to Articles 17(1) and (2) of Directive 2008/50/EC, Member States must take all necessary measures not entailing disproportionate costs to ensure that the target value for ozone is attained by 1 January 2010. Where the target value is exceeded, Member States must ensure that the programme is prepared in line with Article 6 of Directive 2001/81/EC and, if appropriate, an air quality plan is implemented in order to attain the target values, except where not achievable, through measures not entailing disproportionate costs. In their notification, Member States must explain:
 - (a) How the proposed derogation is compatible with the preceding obligations in relation to the attainment of the ozone target value.

³ OJ L 152, 11.6.2008, p. 1–44.

- (b) Whether the proposed derogation appears in any air quality plan or programme prepared in line with Directives 2008/50/EC or 2001/81/EC.
 - (c) Whether additional measures to reduce VOC emissions are envisaged that would offset any increase in emissions following implementation of the derogation.
- (28) Ireland has submitted information on the results for ozone air quality for 2008. According to the monitoring results the ozone target value was only exceeded in a few locations and in these instances for fewer than 10 days. There has also been provided information on mean temperatures and sunshine hours from two weather stations in Ireland, which has been averaged over the period 1971 to 2000. This information has been provided to evidence that Ireland, due to prevailing summer temperatures, has no conditions which are suitable for creating ozone
- (29) Ireland has further submitted information on average monthly ozone levels for 2009, where it is demonstrated that peak concentrations occur in spring rather than summer, where the requested derogation would have an impact.
- (30) The Commission finds that the use of monitoring data is appropriate for identifying any current or historical problems with achieving the target value. The methods employed appear therefore to be suitable. It is noted that the possible implications of the derogation on ozone concentrations have not been modelled at all. It is however established that there were no reported exceedances in 2008 and 2009 of the target value with the current use of petrol with a vapour pressure up to 70kPa.
- (31) The Commission concludes that it has been shown that the derogation is expected to have a minimal impact on the number of exceedance days in Ireland. The Commission finds that it is unlikely that the target value for ozone will be exceeded in 2010 and forward. The Commission finds no reasons to object to the request in this part.
- (32) In order to assess the benzene criteria, Member States must submit evidence that the air quality limit value for benzene in Directive 2008/50/EC has been attained by 1 January 2010, although this deadline may be extended by 5 years subject to certain conditions set in Directive 2008/50/EC. To ascertain their compliance with this limit value, Member State notifications must contain the following:
- information on any instances when the limit value (or limit value plus margin of tolerance) for benzene in air has been exceeded in recent years. This should be based on assessments and reports pursuant to Directive 2008/50/EC (or earlier legislation),
 - quantification and a short description of the methodology used to quantify the expected increase in benzene concentrations at locations where such concentrations may be higher than the general background levels and where there may be a greater risk of the limit value being exceeded. This should include locations in the vicinity of service stations or other major sources of benzene emissions, such as petrol manufacturing and storage installations,

- an assessment of the impact of the derogation in relation to compliance with the air quality limit value for benzene in 2010, and
 - where there is a risk of non-compliance with the limit value in 2010, what additional measures are being considered to offset the additional emissions caused by the derogation and to ensure compliance.
- (33) Ireland has submitted information according to the monitoring results for 2008 and 2009, where the benzene target value has not been exceeded at any of these sites. From this data it is clear that the impacts of the use of petrol with a vapour pressure exceeding 60 kPa are included, although no modelling of the impact of the requested derogation has been submitted.
- (34) Ireland further states that benzene concentrations have declined progressively in Ireland and are currently approximately 80 % below the EU limit value of 5µg/m³ at the urban monitoring sites in Dublin and Cork. Concerning these two areas it is also stressed that they are the two largest urban areas in Ireland and that they have significant oil storage facilities. The highest annual mean concentration for 2009 was 1.4µg/m³, which is significantly lower than the limit
- (35) It is to be noted that Ireland's latest submission to the Commission under Directive 2004/461/EC on 29 September 2010 indicates that all zones complied with the benzene limit value in 2009.
- (36) The Commission finds that Ireland has no existing problems with complying with the benzene limit value and that any such exceedance is unlikely to arise by 2010, with or without the application of the derogation. As Ireland is already applying the use of petrol containing bio-ethanol with a maximum vapour pressure exceeding 60kPa and is complying with the limit value, it is unlikely that any issues will arise in the immediate future. The Commission raises no objection to this part of the notification.
- (37) The Commission finds that considering Ireland's petrol supply situation is predominantly depending on imports and taking into account the measures taken to comply with air quality legislation and further reduce emissions a derogation is justified. The derogation is granted until the end of 2020.

HAS ADOPTED THIS DECISION:

Article 1

The Commission raises no objection to the notification from Ireland to permit the placing on the market during the summer period of petrol with a maximum vapour pressure of 70kPa (derogation) until the end of 2020.

Article 2

This Decision shall be invalidated in the event of non-compliance with EU legislation on air quality or air pollution, including the relevant limit values and emission ceilings established during the derogation period.

Article 3

This Decision is addressed to Ireland.

Done at Brussels, 15.6.2011

For the Commission
Connie HEDEGAARD
Member of the Commission

CERTIFIED COPY
For the Secretary - General

Jordi AYET PUIGARNAU
Director of the Registry