



EUROPEAN COMMISSION

Brussels, **XXX**
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COMMISSION IMPLEMENTING DECISION

of **XXX**

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

(Only the Latvian 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 as amended by Directive 2009/30/EC, amending Directive, of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC, and in particular Article 3(4) and (5) thereof,

Whereas:

- (1) By letter to the Commission registered on 20 July 2011, the Republic of Latvia ('Latvia') notified a request for a 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, at least 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

¹ OJ L 350, 28.12.1998, p.58-68.

- (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 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 amending Directive introducing the possibility for derogation under Article 3(5) 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’)².
- (7) The Commission found that some essential information was missing in the initial notification and supporting report, and asked Latvia by letter dated 20 September 2011 to complete the notification. Latvia submitted additional information by letter registered at the Commission on 27 October 2011.
- (8) The letter of 27 October 2011 concluded the submission of information. The Commission therefore has six months until 27 April 2012 to adopt a decision on the request for a derogation.
- (9) First, the notification will be assessed in accordance with the following information supplied by the Member State, which is common to all evaluations:
- 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

² ARES(2009)100427

- 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) Latvia provided some information on petrol sales, export and import conditions and distribution in Latvia, which the Commission eventually 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) Latvia is totally dependent on imported petrol and it does not have any petrol refining resources of its own. Latvia's total petrol consumption is relatively small, i.e. approximately 290 kt of petrol in 2010. Approximately 90% of this was petrol with 4.5 -5% bioethanol content by volume. On the basis of the latest forecast provided by Latvia, it is anticipated that petrol consumption will rise to 358 kt in 2020. Around 90% of Latvia's petrol is imported from Lithuania (which has a vapour pressure derogation in place), lesser amounts are supplied from Norway, Finland and Denmark.

- (15) Latvia argues that the consequences of not being granted a derogation may lead to an increase of consumer prices for petrol based on a presumption that production of a specific low vapour pressure grade by necessity would only comprise small quantities and therefore raise production costs. It is stated that an additional financial burden on Latvia's consumers is socially undesirable in the current national economic situation.
- (16) On the basis of the submitted information, the Commission raises no objection against the notification, as concerns the relevant socio-economic criteria.
- (17) 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 pollutants³ (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'.
- (18) The request states that Latvia has been using petrol with a vapour pressure of 70kPa historically and that such petrol is currently in use.
- (19) Latvia provided information, referring to its 2009 NMVOC emissions (61kt), and the latest projection for 2010 NMVOC (around 70kt) indicating that Latvia will comply with its NEC in 2010 (136kt).
- (20) The Commission notes that a 'quasi-dynamic' model was employed alongside the COPERT IV model. This methodology is consistent with methodologies permitted by Directive 2001/81/EC.
- (21) The Latvian authorities have submitted supplementary information on the modelling exercise in order to calculate the increase in NMVOC emissions arising from road transport, were the summer vapour pressure to increase from 60 to 70 kPa. The estimated difference is that NMVOC emissions from road transport would increase by only 0.1-0.15%. The accuracy of the data on increases in emissions for each of five sources set out in the Commission guidance note, however, could not be checked because a breakdown was not provided. The Commission notes that the waiver is expected to have a relatively small impact on baseline emissions from the relevant

³ OJ L 309, 27.11.2001, p. 22–30.

sector (11% according to the consultants report to the Commission⁴) but larger than the 0.1 to 0.15% increase predicted in the Latvian submission. Given that projected NMVOC emissions are well under the NEC, i.e. around 48% below NEC, the Commission finds that this impact should not of itself compromise Latvia's ability to meet 2010 NEC.

- (22) In an overall assessment, the Commission finds that Latvia has provided sufficiently reliable information that there is no risk of non-compliance with the 2010 NEC ceiling. The Commission therefore sees no grounds for objecting to this part of the notification.
- (23) 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 Europe⁵ (Directive 2008/50/EC) 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.
 - (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.

⁴ European Commission. Petrol Vapour Pressure Exemptions – Task 1 report, Entec UK Ltd in association with the Norwegian Meteorological Institute, March 2011

⁵ OJ L 152, 11.6.2008, p. 1–44.

- (24) Latvia has stated that the monitoring results show that the permitted overrun of 25 exceedances per year of the target value (120µg/m³) has not occurred over the period 2008-2010, but that a higher number of exceedances were observed at transboundary monitoring stations. The Latvian authorities conclude that, while transboundary ozone is present, there is practically no ozone generation in Latvia's atmosphere.
- (25) The supplementary information provided by the Latvian authorities presents a graphical summary of the potential increase in ozone concentrations in Riga and surrounding areas as a result of the waiver over the summer period. It is stated that the effect of continuing to apply the waiver would not compromise Latvia's ability to meet the ozone target value.
- (26) A description of the methodology used to estimate this increase is included. A modelling of the potential impacts of the waiver on ozone concentrations in neighboring Member States, however, has not been provided. The Commission notes that according to its consultants modelling results⁶ at a 50x50km² resolution, Latvia showed the largest percentage increase (2.0%) in the number of exceedance days out of all countries. However, it is concluded that even with a 2.0% increase in the number of days when exceedances are recorded, the maximum permissible number of 25 per year would not be breached.
- (27) The request indicates the ozone target value was not exceeded over more than 25 days per calendar year in 2008, 2009 and 2010. This is confirmed in Latvia's 2008, 2009 and 2010 annual reports to the Commission on air quality.
- (28) While the modelling of the transboundary impact is missing, it is however established that the ozone target value does not appear to have been exceeded in recent years. Latvia already applies petrol with a vapour pressure of up to 70kPa and the estimated increases in ozone concentration in Riga are not expected to lead to exceedances of the ozone target value.
- (29) The Commission finds further that there are reasonable grounds to conclude that the target value for ozone would not have been exceeded from 2010 onwards. The Commission finds no reasons to object to the request in this part.
- (30) 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

⁶ European Commission. Petrol Vapour Pressure Exemptions – Task 1 report, Entec UK Ltd in association with the Norwegian Meteorological Institute, March 2011

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.
- (31) Latvia has submitted graphical information on the benzene limit value in Latvian cities over the period 2004-2009, where it is shown that the benzene annual average concentrations had not been exceeded in any year between 2004-2009. This is substantiated by the reference to the annual reports to the Commission on air quality. The Latvia authorities state that the annual average benzene concentration has not exceeded $3\mu\text{g}/\text{m}^3$ at any monitoring station since 2007, being significantly lower than the limit value $5\mu\text{g}/\text{m}^3$.
- (32) Latvia's latest annual report on air quality submitted to the Commission on 29 September 2011 indicates that all zones complied with the benzene limit value also in 2010.
- (33) Although Latvia does not appear to have assessed the possible impacts of a potential use of petrol with a vapour pressure exceeding 60 kPa up to 70 kPa on benzene concentrations, there are no reported exceedences of the limit value with the use of petrol with a vapour pressure exceeding 60kPa up to 70 kPa already in place.
- (34) The Commission finds that Latvia has not shown any existing problems with complying with the benzene limit value. It is also unlikely to arise in coming years, with or without the application of the derogation. As Latvia is already applying the use of petrol with a maximum vapour pressure exceeding 60 kPa up to 70 kPa and is complying with the limit value, it appears unlikely that any exceedance issues may arise. The Commission raises no objection to this part of the notification.
- (35) The Commission finds that considering Latvia's petrol supply situation is entirely depending on imports and taking into account that Latvia has complied with air quality legislation for several years and that exceedances are unlikely to occur a derogation is justified.
- (36) Latvia has requested the derogation at least until the end of 2020 arguing that its application has to be considered in the same light as the derogation periods granted to the other low ambient temperature countries being source of petrol for Latvia, such as Finland and Lithuania, i.e. until 2020. The Commission finds that the above mentioned conditions altogether justifies a duration of a derogation until the end of 2020.

HAS ADOPTED THIS DECISION:

Article 1

The Commission raises no objection to the notification from the Republic of Latvia 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 the Republic of Latvia.

Done at Brussels,

For the Commission
Connie Hedegaard
Member of the Commission