



EUROPEAN COMMISSION

Brussels, XXX
[...](2011) XXX draft

COMMISSION DECISION

of XXX

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

(Only the Estonian text is authentic)

COMMISSION DECISION

of XXX

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

(Only the Estonian text is authentic)

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 13 July 2010, the Republic of Estonia ('Estonia') 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. 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 Estonia by letters dated 21 January 2011, 19 May 2011 and 14 June 2011 to complete the notification. Estonia submitted additional information by letters registered at the Commission on 12 April 2011 and 28 June 2011.
- (8) The letter of 28 June 2011 concluded the submission of information. The Commission therefore has six months until 28 December 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 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) Estonia provided some information on petrol sales, export and import conditions and distribution in Estonia, 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) It is without a doubt clear that Estonia is totally dependent on imports and does not have any petrol refining resources of its own. Estonia's total petrol consumption is relatively small, but is expected to show a yearly growth of approximately 1.5 % until 2015. Imports are mainly sourced from Norway, Lithuania, Finland and Sweden.
- (15) It is noticeable, in the context of import dependency, that Estonia does not appear to have specific policy for the inclusion of ethanol in petrol.

- (16) Further Estonia 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 for the producers.
- (17) On the basis of the submitted information, the Commission raises no objection against the notification, as concerns the relevant socio-economic criteria.
- (18) 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’.
- (19) The request states that Estonia has been using petrol with a vapour pressure of 70kPa historically and that such petrol is currently in use.
- (20) Estonia provided information, where reference is made to its latest 2010 NMVOC emissions projections to 2010 (40kt), indicating that Estonia will comply with its NEC by 2010 (49kt). Details of Estonia’s NMVOC emissions for 2007 (36kt) and 2008 (35kt) have also been provided indicating that Estonia is currently complying with its NEC (49kt). It is stated that NMVOCs from road transport have declined over the past 10 years with data provided for 2008 (3,719t) and 2009 (3,086t), indicating a 17% decrease year-to-year.
- (21) In addition Estonian authorities have submitted supplementary information presenting a worst-case scenario, where petrol with different vapour pressures are compared, with the purpose to show that increased vapour pressure would not lead to exceedance of the NEC limit. In this presentation an estimate is made of NMVOC emissions during the summer period from petrol handling where petrol has a vapour pressure of 60 kPa and 70kPa alternatively. The presentation leads to the assumption that approximately 150kt of petrol with a vapour pressure up to 70 kPa would be consumed during this period. The difference between the two estimates (60 kPa vs 70 kPa) is calculated to reach approximately 40 tonnes of NMVOC emissions.

³ OJ L 309, 27.11.2001, p. 22–30.

- (22) The Commission notes that no information was made available to identify the methodologies employed to estimate the total NMVOC emissions projections employed within the request, but so far appears to be in accordance with the emission projections reported separately under the NEC Directive. The 2008 actual emissions presented in the request are consistent with the emission data for 2008 submitted to the Commission by Estonia under the NEC Directive (35kt). The emission projections for 2010 reported under the NEC Directive (40.7kt) show that Estonia is expected to comply with its NEC of 49kt.
- (23) Concerning the method used in the supplementary information (worst-case) to calculate the emissions it does not seem to be consistent with the EMEP Corinair guidebook approach, as it appears to be much simpler. The Commission though finds that the figures give reasonable estimates of the order of magnitude of the changes.
- (24) In an overall assessment, the Commission finds that Estonia has provided sufficiently reliable information that there is no risk of non-compliance with the 2010 NEC ceiling and forward. The Commission therefore sees no grounds for objecting to this part of the notification.
- (25) 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 Europe⁴ (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.

⁴ 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.
- (26) Estonia has submitted information which includes recent records of exceedences of the target value for ozone. These indicate that Estonia is in compliance with the ozone target value. According to monitoring data, the ozone target value⁵ was not exceeded at any individual monitoring station more than eight times per calendar year averaged over three years (2007, 2008 and 2009). The request states, although there is a lack of quantitative data, that recent years have shown some reduction in occasions where target values ozone in background areas were exceeded.
- (27) The supplementary information provided by Estonian authorities show details of the number of times the target value has been exceeded at the Tallinn monitoring station; two occasions in 2008 and 2009; none in 2007. The maximum 8-hour concentration at the monitoring station was approximately 130µg/m³ in both 2008 and 2009.
- (28) It is to be noted that the impact of the proposed use of petrol with a vapour pressure exceeding 60kPa up to 70 kPa has not been modelled. Neither has any information been provided on the potential impacts of a vapour pressure derogation on ozone levels in Estonia or neighbouring countries.
- (29) As the request indicates the ozone target value was not exceeded over more than 25 days per calendar year in 2008 or 2009. This is confirmed in Estonia's 2008 and 2009 annual reports to the Commission on air quality.
- (30) The Commission finds that essential information is missing. It is however established that the reported exceedances in 2008 and 2009 do not lead to an exceedance of the average target value in total taking into account the current use of petrol with a vapour pressure up to 70kPa.
- (31) The Commission finds further that there are reasonable grounds to conclude that the target value for ozone would not have been 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

⁵ Maximum daily 8-hour average ozone concentration of 120µg/m³. The ozone target value must not be exceeded by more than 25 days each year averaged over a three year period to be compliant with Directive 2008/50.

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) Estonia has submitted information, based on some summary statistics concerning measured benzene concentrations, where it is shown that the benzene annual average concentrations were well below the limit value of $5 \mu\text{g}/\text{m}^3$ for both 2008 and 2009. It is noted that no modelling of the impact of the requested derogation has been submitted.
- (34) Estonia's latest annual report on air quality submitted to the Commission on 17 May 2010 indicates that all zones complied with the benzene limit value in 2009.
- (35) Although Estonia 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.
- (36) The Commission finds that Estonia has not shown any existing problems with complying with the benzene limit value. It is also unlikely to arise by 2010, with or without the application of the derogation. As Estonia 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.
- (37) The Commission finds that considering Estonia's petrol supply situation is entirely depending on imports and taking into account that Estonia has complied with air quality legislation for several years and that exceedances are unlikely to occur a derogation is justified.
- (38) Estonia has not defined any limited period for its derogation sought. In such a case it is for the Commission to decide the duration. 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 Estonia 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 Republic of Estonia.

Done at Brussels,

For the Commission
Connie Hedegaard
Member of the Commission