



EUROPEAN COMMISSION

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COMMISSION DECISION

of XXX

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

(Only the Swedish text is authentic)

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

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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 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 17 May 2010, the Kingdom of Sweden (Sweden) notified a derogation to permit the placing on the market during the summer period of petrol with a maximum vapour pressure of 70 kPa, due to its low ambient summer temperatures, for a duration of ten years. 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 assessment shows that the derogation will result in a lack of compliance with EU

¹ OJ L 350, 28.12.1998, p.58-68.

legislation on air quality or air pollution, including limit values and emissions ceilings, the application shall be rejected.

- (5) The Directive must be transposed into national law by 31 December 2010 and is applicable on that date in the Member States. Failure to comply with the vapour pressure requirements of the Directive after this date will 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 document, and asked the Kingdom of Sweden by letter dated 3 November 2010 and e-mail of 24 February 2011 to complete the notification. Sweden submitted additional information by letters registered at the Commission on 20 December 2010 and the 10 March 2011.
- (8) The letter of 10 March 2011 concluded the submission of information. The Commission therefore has six months until 10 September 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
 - 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) The Kingdom of Sweden provided information on petrol sales, export and import conditions and distribution in Sweden, 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) Sweden has provided information that since petrol with a summer vapour pressure of 70 kPa maximum always has been permitted, its refineries are designed for production of petrol with this specification.
- (15) Sweden forecast a 2% per annum decline in petrol consumption, under the assumptions of no significant changes in production or market conditions. Sweden has an active trade in petrol with net exports of petrol to Denmark, Finland and Norway, together with significant imports from these countries and as well as others.
- (16) Further, as the use of E85 in Sweden, representing around 4% of petrol sales, a reduction of the vapour pressure of the pre-blend petrol would make it difficult to meet the minimum vapour pressure specification for E85 and potentially could result in the undesirable reduction of the ethanol content of E85.
- (17) Of the five Swedish refineries there are only three producing petrol, and of these two are relatively small and simple. The third refinery, Preem Lysekil, is the largest and most complex. This one still does not have an alkylation unit, to produce the petrol

blending component alkylate, whose properties are favourable for the production of low volatility petrol, i.e. low sulphur content, low vapour pressure, zero benzene and aromatics.

- (18) Sweden has not contributed any information on blends and recipes, as this is judged to be commercially sensitive information for the refineries. No detailed studies have been conducted regarding the possible measures to reduce vapour pressure from 70kPa to 60 kPa. However, it is indicated that the only viable option in the short term is to exclude volatile components such as butanes and pentanes from petrol blending. It is suggested that these components would need to be exported, although Sweden considers that to be a challenge. In the meantime there would be a need to import other blending components, such as alkylate, MTBE² or ETBE³.
- (19) Sweden has further indicated that the owners of the three petrol producing refineries have estimated that it would take between three and five years to make modifications to the refineries to enable the production of petrol with a lower vapour pressure. The estimated cost for each refinery is €22 – 34 million, at current exchange rates. Sweden points out that these investments may not provide an adequate return on capital.
- (20) The Commission finds that Sweden has provided credible and reasonable information and that the socioeconomic situation in Sweden is addressed in an acceptable manner. The Commission therefore sees no grounds for objecting to this part of the notification.
- (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 pollutants⁴ (the NEC Directive). 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’.

² Methyl tert-butyl ether, is an ether compound added to petrol to provide oxygen and enhance complete combustion.

³ Ethyl tert-butyl ether, is commonly used as an oxygenate petrol additive in the production of petrol from crude oil

⁴ OJ L 309, 27.11.2001, p. 22–30.

- (22) Sweden supplied information referring to its 2010 NMVOC emission projections (168kt), indicating that Sweden will comply with its NEC by 2010 (241kt), together with details of Sweden's NMVOC emissions for 2008 (173kt).
- (23) The request indicates that the emissions data presented have been prepared in accordance with the methodologies required under the NEC Directive and that Sweden provided a link to its submissions under the NEC Directive available from the Eionet Central Data Repository.
- (24) Sweden also submitted details of some measures already taken to limit evaporative emissions from the storage and distribution of petrol have been provided e.g. Stage I and II..
- (25) The Commission recognizes that the emission projections show that Sweden is expected to emit around 70kt less than its ceiling for NMVOCs in 2010. Although the potential impacts of an eventual derogation on total emissions have not been reported, the Commission finds it unlikely that it would have any impact on complying with the 2010 NEC. In addition, the impact of using petrol with a vapour pressure exceeding 60 kPa appears already to have been taken into account in the emission projections submitted, as it has been in practice for many years.
- (26) The Commission finds that Sweden has provided sufficient and reliable information that the 2010 NEC ceiling will not be exceeded.
- (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 Europe⁵ (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:

⁵ OJ L 152, 11.6.2008, p. 1–44.

- (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.
- (28) Sweden has submitted a summary of the situation with respect to ozone and indicates that it is in compliance with the target values in the Directive 2008/50.
- (29) In its supplementary information the Swedish authorities indicate that, even when currently using petrol with a vapour pressure exceeding 60 kPa, the target value has only been exceeded on two days per year at the measuring station with the highest background levels in Stockholm. In addition it is stated, but not supported by quantitative information, that ozone concentrations are decreasing at this location as well as other city locations. The Swedish authorities state that the majority of ozone over Sweden is formed elsewhere over Europe.
- (30) The Swedish request further indicates in general terms that measures, which are left unspecified, have been taken to reduce emissions of NO_x and VOCs and that these will help further reduce ozone levels.
- (31) The data provided in the request is based on monitoring data. However the potential impact of the waiver on ozone concentrations has not been assessed in quantitative terms. It is also noted by the Commission that the impact of an eventual derogation has not been modelled.
- (32) The Commission finds that, although Sweden does not appear to have assessed the potential impacts of an eventual derogation on ozone concentrations, it is unlikely that compliance with the ozone target value would be jeopardized, as it has only been exceeded on two days per year even with the current use of petrol with a vapour pressure exceeding 60 kPa.
- (33) 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.
- (34) The Swedish information submitted indicates that there are no exceedences of the benzene target value in Sweden. Its latest submission to the Commission, on 9 April 2010, under Directive 2004/461/EC showed that all zones complied with the benzene limit value in 2008. The background average concentration of benzene in 2008 was $0.76 \mu\text{g}/\text{m}^3$ and the highest measured value was $1.1 \mu\text{g}/\text{m}^3$. In the supplementary information it is further indicated that the highest measured values in Gothenburg and Stockholm are $2.6 \mu\text{g}/\text{m}^3$ and $3.1 \mu\text{g}/\text{m}^3$, respectively, although it is unclear what averaging period these figures relate to. In addition, the Swedish authorities state that benzene concentrations have declined significantly in recent years as a result of the environmental improvement to petrol since 1991, as well as more effective exhaust and evaporative emission controls.
- (35) No modelling of the impact of the requested derogation or withdrawal of the existing use of petrol with a vapour pressure of 70 kPa has been undertaken. Neither has any information been made available to identify the methods employed in relation to any projected future changes in benzene concentrations.
- (36) The Commission finds that although Sweden does not appear to have assessed the potential impacts of the derogation on benzene concentrations in quantitative terms, there are no reported exceedences of the limit value with the current use of petrol with a vapour pressure exceeding 60 kPa, and average concentrations are well below the limit value. It therefore seems unlikely that continuing the current use of petrol with a vapour pressure exceeding 60 kPa will lead to the limit value being breached. The Commission raises therefore no objection to this part of the notification from Sweden.
- (37) Sweden has also pointed out safety issues such as a potential risk of increased fires during refuelling as a result of supplying lower vapour pressure petrol. The Commission, which acknowledges the scientific results, considers the Swedish assertions as being described in general terms and further as ungrounded.
- (38) Sweden has significant petrol trade with neighbouring countries, e.g. Denmark and Finland which use petrol with a vapour pressure of 70 kPa during the summer period. This establishes a strong interdependency between these countries and Sweden. Considering these conditions the Commission finds that if Sweden was not to apply a derogation this could cause a severe disturbance to the petrol supply.
- (39) The Commission finds that these conditions justifies a duration of a derogation limited to the end of 2020.

HAS ADOPTED THIS DECISION:

Article 1

The Commission raises no objection to the notification from the Kingdom of Sweden to permit the placing on the market during the summer period of petrol with a maximum vapour pressure of 70 kPa (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 Kingdom of Sweden.

Done at Brussels,

For the Commission
Connie Hedegaard
Member of the Commission