EUROPEAN
COMMISSION

Brussels, 25.3.2021
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COMMISSION IMPLEMENTING DECISION

of 25.3.2021

on the request from the Kingdom of Spain for a derogation pursuant to Article 3(4) and (5) of Directive 98/70/EC

(Only the Spanish 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 of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC[1], and in particular Article 3(4) and (5) thereof,

Whereas:

(1) Commission Decision C(2013)7426 of 8 November 2013 on the request from the Kingdom of Spain for a derogation pursuant to Article 3(4) and (5) of Directive 98/70/EC ('the Directive') expired on 31 December 2020.

(2) By letter to the Commission registered on 11 August 2020, the Kingdom of Spain ('Spain') notified a request for derogation to permit the placing on the market during the summer period of petrol containing ethanol, as a biofuel, with a maximum vapour pressure of 60 kPa plus the permitted vapour pressure waiver specified in Annex III of Directive 98/70/EC ('the Directive') for the period until 31 December 2023.

(3) According to Article 3(4) of the Directive, Member States in which the derogation referred to in the first subparagraph of Article 3(4) is not applied may, subject to paragraph 5, permit the placing on the market during the summer period of petrol containing ethanol with a maximum vapour pressure of 60 kPa plus the permitted vapour pressure waiver specified in Annex III[2], on condition that the ethanol used is a biofuel.

(4) 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.

[2] The addition of ethanol to petrol increases the vapour pressure of the blend leading to higher evaporative emissions of volatile organic compounds (VOC). The derogation is introduced to accommodate this increase and to keep the emissions of VOC at the level that is safe for health and environment.

(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.

(5) Under Article 3(5), the Commission shall assess the desirability and the duration of each derogation requested. If, taking into account relevant 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.

(6) Directive 2009/30/EC amending Directive 98/70/EC by i.a. introducing Article 3(2) to (6) had to be transposed into national law by 31 December 2010. 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.

(7) The notification was assessed in line with Directive 98/70/EC 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 note')[3].

(8) The Commission found that some essential information was missing in the initial notification and supporting annexes, and asked Spain by letter dated 5 November 2020 to complete the notification. Spain submitted additional information by letter registered at the Commission on 11 December 2020.

(9) The Commission found the additionally submitted information sufficient to finalise the assessment.

(10) The Guidance note provides that the notification by the Member State is assessed considering the forecast quantity of petrol concerned, the share it represents of the Member State's total produced amount, the quantity of petrol exported, the forecast quantity of petrol for which a derogation is sought and – if relevant – the associated percentage of bioethanol content of that petrol. In addition, the assessment of notifications will be conducted in accordance with the following socioeconomic and environmental criteria:

– Any social, financial or economic impact to implementing the regulated vapour pressure of 60 kPa.

– Compliance with Union legislation on air quality and air pollution encompassing realistic and reliable predictions of their emissions of non-methane volatile organic compounds (NMVOCs), ozone and benzene, including additional measures being considered to outweigh the additional emissions caused by the derogation.

(11) First, the notification was assessed in accordance with information requirements set out under point 4 of the Guidance note. Spain provided information on petrol sales, exports, imports and distribution, which the Commission considers sufficient to evaluate the notification. More specifically, Spain has indicated a progressive increase of maximum estimated volumes of petrol containing ethanol from 1.672 million litres in 2021 to 2.084 million litres in 2023, representing about 23% to 31% of its expected annual petrol consumption in the years 2021 and 2023 respectively. Spain further informed that the planned ethanol content for petrol would be at least 5%,

[3] https://ec.europa.eu/clima/sites/clima/files/transport/fuel/docs/guidance_note_vapour_pressure_en.pdf

corresponding to the requested maximum pressure waiver of 8 kPa in accordance with Annex III of the Directive.

(12) Second, as set out under point 4.1 of the Guidance note, Spain provided information about the direct socioeconomic problems on the impact on petrol producers and/or petrol suppliers of not being granted the derogation. This concerns any social, financial or economic impact of implementing the regulated vapour pressure of 60 kPa.

(13) Spain informed that under the implementation of the Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources a national target of at least 28% share by 2030 of renewable energy in transport sector has been set in the Spanish National Energy and Climate Plan. To comply with this target, Spain will have to use the combined option of both by adding ETBE[4] to petrol and by directly blending petrol and bioethanol to satisfy the increased demand for bioethanol. Spain further informed that this has been the practice used by the logistics operators between 2014 and 2018 where more than 67 000 tonnes of bioethanol were blended with petrol containing ETBE, resulting in an abatement of 104 800 tons of CO2eq.

(14) In its submission, Spain explained that without the derogation, the only viable option would be to introduce a separate manufacturing stream to produce a lower volatility petrol pre-blend in summer that would be blended with bioethanol. In this case, the petrochemical operators would have to manufacture two types of petrol in their refineries: (1) petrol known as "Before Oxygenate Blending", that would not comply with the limits established in the current technical specifications and would only meet the specifications once blended with ethanol (the petrol pre-blend) that would be produced in summer[5]; and (2) petrol ("winter grade") that would comply with current technical specifications.

(15) Spain further indicated that the option of manufacturing two products in refineries have several undesirable implications. Firstly, refining and blending at refineries would not be optimised. The need to reduce the vapour pressure of petrol would entail an exclusion of light components, such as butane, isomerates and light naphthas, from the petrol's formulation, and incorporate high octane and low vapour pressure components instead, such as alkylate and reformate which, according to Spain, are short in supply. This would create an imbalance in availability of the components and require additional investments in the processing capacity and storage. Spain has estimated that the overall cost to refineries would amount between €80 and €200 million a year. Secondly, handling two types of petrol would oblige the distribution system to have duplicate storage and blending facilities, which it does not currently possess. Spain has estimated that the average cost of duplicating facilities would amount to €1.6 million per installation. The main logistics operator in Spain Compañía Logística de Hidrocarburos (CLH) would have to invest in its 33 existing storage centres around €52.8 million, while the other logistics companies (TEPSA, DECAL and DISA) would have to invest about €9.6 million in their 6 storage terminals. Thirdly, the technical adaptations as described above would entail new technical risks for the refining and logistics systems, ultimately affecting the security of supply. In its submission, Spain referred to the national law that requires all petroleum product

[4] Ethyl tert-butyl ether, is commonly used as an oxygenate petrol additive in the production of petrol from crude oil. ETBE does not induce evaporation of gasoline, increases the overall octane numbers and improves combustion efficiency.

[5] The summer period is defined as the period between May 1st and September 30th according to Annex I of the Directive.

operators and CLH to carry out its activities in a way that ensures security of supply. This requirement, as explained in the submission, would oblige the operators to establish new procedures leading to additional operating costs that Spain could not specify at this stage. Finally, manufacturing petrol pre-blend that would comply with the petrol specifications only once blended with 5% ethanol, would have implications on the international market. Spain indicated that the pre-blends that accept 5% of ethanol might be sold only to those countries that have the same requirement of bioethanol content, therefore imposing limitations of selling the product internationally.

(16) Spain further explained that during the last years the investments of the oil sector were focused on other critical needs, such as national and world markets increase of medium distillates in the period of 2013 – 2018, and the environmental and low-carbon agenda. With reference to the latter, Spain indicated that the refinery sector has invested more than €1.800 million during the last 10 years in the abatement of pollutants and GHG emissions and the estimated planned investments in green products and technologies amount to €250 million in the coming years.

(17) In conclusion, the Commission takes note of the additional costs of producing, storing and blending lower volatility pre-blends, difficulties in exporting petrol pre-blend while refineries plan to continue investments to reduce GHG and air pollutant emissions. Based on the submitted information, the Commission can consider as valid and reasonable the arguments brought forward by Spain concerning the socio-economic criteria.

(18) Third, as set out under point 4.2.1 of the Guidance note, Spain provided information concerning the compliance with the national emissions ceilings and reduction commitments for non-methane volatile organic compounds ('NMVOC').

(19) Spain supplied information on its compliance with the emissions ceilings stipulated in the Directive (EU) 2016/2284[6] on National Emission Ceilings ('NEC Directive'). More specifically, Spain informed that the annual NMVOC emissions were below the national emissions ceiling of 662 kilotonnes (kt) based on the reported figures between 2010 and 2018. More specifically, the NMVOC emissions amounted to 629 kt in 2010 and where reduced to 624 kt in 2018.

(20) Spain reported on the inventories of the NMVOC emissions from 1990 to 2018, showing that the share of road transport in total NMVOC emissions experienced a major reduction, from 33% in 1990 to 4% in 2018. In relation to different sectors, Spain indicated that, within the petrol storage and distribution sector[7], the emissions from those activities where changes in vapour pressure have an influence on NMVOC (e.g. distribution chain and service stations) amounted to 3.86 kt or 0.61% of the total NMVOC emissions in 2018. Spain further indicated that within the motor vehicles sector, the emissions from the activities where changes in vapour pressure have an influence on NMVOC (e.g. evaporation from vehicle tanks) amounted to 1.82 kt or 0.28% of total NMVOC emissions in 2018.

(21) In its submission, Spain reported on the effect of changes in summer vapour pressure of petrol blended with ethanol on NMVOC emissions. Spain specified that the increase of NMVOC emissions due to a maximum increase of 8 kPa in the summer

[6] Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants

[7] This includes: storage and handling in refineries, refinery dispatch, transport and depots and final distribution in service stations, including refuelling of cars.

petrol vapour pressure would imply an increase of 0.371 kt of NMVOC emissions or around 0.06% of the total NMVOC emissions, based on the National Emissions Inventory data from 1990 to 2018 (estimation of March 2020).

(22) Finally, Spain provided information on the projections of its compliance with the NMVOC emission reduction commitments for the time period between 2020 and 2030. More specifically, Spain has indicated that the NMVOC emission reduction commitments are projected to be fulfilled for the period between 2021 and 2023, while as from 2024 onwards these commitments are projected to be missed.

(23) The Commission notes that the methodologies employed by Spain appear to be consistent with those required under Directive (EU) 2016/2284 and considers that:

– allowing a maximum increase of 8 kPa in the summer petrol vapour pressure would have a very limited impact on the total NMVOC emissions;

– the timeframe for the derogation request is 31 December 2023, which corresponds to a period during which Spain projects compliance with the national NMVOC emission reduction commitments set out under the NEC Directive;

The Commission therefore sees no grounds for objecting to this part of the notification.

(24) Fourth, concerning the ozone criteria, Spain provided information as set out under point 4.2.2 of the Guidance note.

With respect to the ground level ozone, the EU target value of 120 µg/m3 may not be exceeded by more than 25 days a year as from year 2010, under Directive 2008/50/EC[8]. Spain has submitted information on the results for ozone air quality from 2004 to 2019. According to the monitoring results, the ozone target value has been exceeded widely throughout Spain, albeit with some downward trend in the last decade. Based on the submitted data, in 2019, out of 127 assessed zones, 34 zones exceeded the target value.

(25) In the additionally submitted information, Spain explained that the impact of the derogation on the concentration of the ground level ozone would occur due to the additional emissions of NMVOC being one of the precursors of ozone. Spain further explained that the dynamics of ozone formation is very complex depending on several precursors, such as nitrogen oxides (NOx), NMVOC (both biogenic and anthropogenic), methane (CH4) and carbon oxide (CO). Spain indicated that, with the derogation granted, the NMVOC emissions would increase by only 0.06% (as outlined in the point 23 above) representing a limited increase of 0.371 kt out of the total NMVOC emissions. Spain concluded that the estimated impact on the ozone formation would be very limited with the derogation in place.

(26) With respect to the future projections, Spain has explained that with the additional measures established in the National Air Pollution Control Programme (NAPCP) to reduce the emissions, the current exceedances of O3 target values in many of the affected areas (such as the coast of Cantabria, Seville, Jaén and Huesca) are projected to disappear while progressive diminishing is expected in other areas (such as Madrid-Guadalajara, Catalonia and Valencia). Spain further refers to the measures defined by the National Energy and Climate Plan, such as renewal of the car fleet replaced by new technological solutions, demand management and energy efficiency measures in

[8] Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe

the transport sector that would also contribute to further reduce the impact of the O3 concentrations.

(27) Based on the information provided, the Commission considers that the extension of the derogation up to 2023 is expected to have a minimal impact on the number of exceedance days in Spain, with the following underlying considerations: 1) the very limited increase of NMVOC emissions due to a maximum increase of 8 kPa in the summer petrol vapour pressure when applying the derogation; 2) the downward trend of exceedances of ozone target values in the last decade with the vapour pressure derogation already applied in Spain since 2013. Hence, the Commission finds no reasons to object to the request in this part.

(28) Fifth, in order to assess compliance with air quality limit value for benzene, Spain provided information as set out under point 4.2.3 of the Guidance note.

Spain submitted information based on the monitoring results for benzene target values for the years from 2003 to 2019, showing that the limit value of 5 µg/m3 as specified by the Directive 2008/50/EC, has not been exceeded in any area since 2006. Spain has further indicated that the limit value plus margin of tolerance (10 µg/m3) was never exceeded in any area either.

Spain has also provided the mean annual benzene concentrations for the years from 2003 to 2019 showing a downward trend for all type of measurement stations (traffic, industrial and background), as well as for the type of areas (urban and sub-urban). Since 2009, annual mean concentrations for all stations have been below 1 µg/m3 which is well below the EU annual limit value of 5 µg/m3.

(29) The notification explains that there is no available information regarding the effect of the use of bioethanol in petrol on the atmospheric concentrations of benzene at the moment, therefore the impacts to the waiver cannot be fully assessed. Spain has further explained that taking into account the current fulfilment of the limits of benzene concentrations as well as its decreasing trend, an increase with or without waiver generating non-compliance is not expected.

(30) Spain has demonstrated that the limit values for benzene are not exceeded and are showing a downward trend. On this basis, the Commission concludes that the waiver would most likely not lead to the limit value being exceeded. The Commission raises therefore no objection to this part of the notification from Spain.

(31) In conclusion, the Commission finds that these conditions justify a duration of a derogation limited to 31 December 2023.

HAS ADOPTED THIS DECISION:

Article 1

The Commission raises no objection to the notification from the Kingdom of Spain to permit the placing on the market during the summer period of petrol containing ethanol, as a biofuel, with a maximum vapour pressure of 60 kPa plus the permitted vapour pressure waiver specified in Annex III of the Directive, until 31 December 2023.

Article 2

The Commission shall revoke the decision if, based on updated data, the Commission's assessment shows that the derogation will result in a lack of compliance with Union legislation on air quality or air pollution.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 25.3.2021

For the Commission
Frans TIMMERMANS
Executive Vice-President