

Notification in accordance with Article 95(5) of the EC Treaty**Request for authorisation to adopt national legislation derogating from the provisions of a Community harmonisation measure**

(2006/C 12/04)

(Text with relevance for the EEA)

1. In a letter received on 4 November 2005, the Kingdom of the Netherlands notified under Article 95(5) of the Treaty establishing the European Community a request for derogation to Directive 98/69/EC ⁽¹⁾. The Kingdom of the Netherlands intends to adopt a new decree which would set more stringent emission limits for diesel vehicles of 5 milligrams per kilometre for particulate matter. This new national provision would apply as from 1 January 2007 on diesel passenger cars and some light commercial vehicles (category M₁ and N₁, class 1, as defined by Annex II to Directive 70/156/EC ⁽²⁾).
2. Article 95(5) of the Treaty establishing the European Community stipulates that if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.
3. The Commission shall, within six months of the notification approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.
4. According to the Dutch authorities, their request is justified because new scientific evidence on the environmental and health effects of particulate matter has become available since the adoption of Directive 98/69/EC. According to them, this information shows that excessive particulate matter emissions have harmful effects on human health, such as premature deaths and impaired lung functions. This scientific evidence has led, at Community level, to the provision of a draft proposal (the Euro 5 draft proposal), reducing the particulate matter level for diesel passenger cars and some light commercial vehicles to 5 milligrams per kilometre. However, according to the Dutch authorities, it is likely that this new limit value will not enter into force before 2010.

For the Dutch authorities, particulate matter is a cause of major concern because of the high population density and a more highly concentrated infrastructure than in other European countries. In their view, this situation leads to high emissions per square kilometre. Furthermore, air quality in many areas of the Netherlands does not comply with the European limit values for particulate matter as set out in Directive 1999/30/EC ⁽³⁾.

The envisaged measure is part of a package of measures aimed at improving the air quality in the Netherlands. The Dutch authorities consider that the measure is necessary to improve the quality of the environment and thus protect human health. They also consider that the draft measure is neither a means of arbitrary discrimination nor a disguised restriction on trade between Member States. Furthermore, they believe that the measure is proportionate to attain the desired objectives.

5. The Kingdom of the Netherlands therefore deems it necessary to derogate from Directive 98/69/EC and to introduce new national provisions setting a limit value of 5 milligrams per kilometre for particulate matter emissions from diesel passenger cars and some light duty vehicles entering into force on 1 January 2007.

⁽¹⁾ Directive 98/69/EC of the European Parliament and of the Council of 13 October 1998 relating to measures to be taken against air pollution by emissions from motor vehicles and amending Council Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against air pollution by gases from positive-ignition engines of motor vehicles, OJ L 271, 21.10.1999 p. 47.

⁽²⁾ Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers, OJ L 42, 23.2.1970, p. 1.

⁽³⁾ Directive 1999/30/EC relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air, OJ L 163, 29.6.1999, p. 41.

6. Observations on the notification thus made by the Kingdom of the Netherlands may be submitted to the Commission within 30 days from the date of publication of this notice. Observations submitted later than this deadline may not be taken into consideration.
7. Further information regarding the request from the Kingdom of the Netherlands can be obtained from:

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