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Ref: 2017/Red Diesel/RH/LPH

London, 27 July 2017

Dear Mr. Mackinlay,

Thank you for your letter dated 12th July 2017 regarding the fines levied against British pleasure craft owners visiting or accessing Belgian waters and using red diesel. I understand and regret the unpleasant situation UK private pleasure crafts encountered.

After having consulted the relevant authorities in Belgium I can provide the following clarifications.

As you rightly pointed out, this issue has its origins in **European Union directives 95/60/EC** ('Fiscal marking of gas oils and kerosene') and **2003/96/EC** ('Restructuring the Community framework for the taxation of energy products and electricity'). According to the pieces of legislation, fuels used for certain specific purposes may be taxed at a lower rate but have to be marked by a chemical additive, i.e. the red dye. Any vehicle in the EU using red diesel will be considered having paid a reduced rate on aforementioned fuel.

Unfortunately it seems the current British infrastructure rarely allows owners of pleasure crafts to fill their tanks with anything other than red diesel leaving them exposed to the risk of fines when travelling abroad. Section 189 of the **Finance Act of 2012** tried to make pleasure crafters aware of these risks by adding paragraph (7A) to section 14E of the Hydrocarbon Oil Duties Act of 1979. The Background Notes of section 189 sheds some light on the objective and rationale behind the measure:

*"This section provides that a **relevant declaration made by a person purchasing heavy oil or bioblend for use as fuel for propelling a private pleasure craft must include an acknowledgement that any restrictions and prohibitions under the national laws of another Member State on the use of such fuel outside UK waters are not affected by the UK provisions.***

The changes are being made following a challenge by the European Commission to the UK practice of allowing marked 'red diesel' with the full duty paid to be used in this way, maintaining that it was contrary to EU legislation on the marking of fuels."

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The **European Commission considered in 2011 that the UK legislation was not in line with the European rules** on marked fuel. Pursuant to art. 258 of the Treaty on the Functioning of the European Union it formally notified the UK of this position on 16/06/2011. The exchanges with the United Kingdom led the Commission to subsequently emit a reasoned opinion on 30/05/2013 and finally refer the case to the European Court of Justice on 10/07/2014.

Belgium repeatedly asked the Commission if its **controls were in adherence with EU law**, to which the Commission answered positively.

Nevertheless, according to the website of the Royal Yachting Association we understand that France and the Netherlands have been showing some flexibility towards British pleasure crafts navigating with red diesel. This **discrepancy in application of the European directives** creates confusion amongst yacht owners and sailing clubs. The EU Committee on Excise Duty will therefore address this matter during its September meeting hopefully leading to a common approach accepted by all Member States involved.

Considering the above elements we were informed that in view of the next meeting of the Committee on Excise Duty currently planned for 18/09/2017 **no further fines will be levied until then.**

Yours sincerely,



H.E. Rudolf Huygelen
Ambassador of the Kingdom of Belgium
to the United Kingdom

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