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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,  
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Draft

**COMMISSION DECISION**

**of [...]**

**on the notifications by Germany of an exemption from the obligation to apply the limit values for PM<sub>10</sub> in zones DEZJXX0007A, DEZJXX0006A, DEZCXX0007A and DEZCXX0070S**

Draft

**COMMISSION DECISION**

**of [...]**

**on the notifications by Germany of an exemption from the obligation to apply the limit values for PM<sub>10</sub> in zones DEZJXX0007A, DEZJXX0006A, DEZCXX0007A and DEZCXX0070S**

**(Only the German text is authentic)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard 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 Europe<sup>1</sup>, and in particular Article 22(4) thereof,

Whereas:

- (1) Germany notified the Commission by letters registered on 19 December 2008 and 11 February 2009 of an exemption under Article 22(2) of Directive 2008/50/EC from the obligation to apply the daily and/or annual limit values for PM<sub>10</sub> in 4 air quality zones listed in the Annex to this Decision. Essential information complementing these notifications was submitted by German authorities in a letter registered on 2 July 2009 and as a consequence the Commission considers that date as the initial date of notification of an exemption under Article 22(2) of Directive 2008/50/EC from the obligation to apply the daily and/or annual limit values for PM<sub>10</sub> in those zones. The air quality limit values for PM<sub>10</sub> have been legally binding since 1 January 2005 in accordance with Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air<sup>2</sup>.
- (2) In accordance with Article 22(2) of Directive 2008/50/EC a Member State may be exempt from obligations to apply the limit values for PM<sub>10</sub> if all appropriate abatement measures have been taken at national, regional and local level to achieve compliance by the deadlines in Directive 1999/30/EC, the principal cause of the exceedance can be attributed to site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions, and that an air quality plan is established demonstrating that conformity with the limit values will be achieved before the new deadlines.

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<sup>1</sup> OJ L 152, 11.6.2008, p. 1.

<sup>2</sup> OJ L 163, 29.6.1999, p.41.

- (3) The notifications have been assessed in accordance with the guidance set out in the Commission Communication on notifications of postponements of attainment deadlines and exemptions from the obligation to apply certain limit values pursuant to Article 22 of Directive 2008/50/EC on ambient air quality and cleaner air for Europe<sup>3</sup>, ("the Communication"). The notifications were submitted using the forms set out in the Staff Working Paper<sup>4</sup> that accompanied the Communication.
- (4) The German authorities have provided data for the years 2005 or 2006 for the different zones as specified in the Annex to be used as reference years and basis for the assessment. The Commission notes that 2006 was a year with particularly high concentration levels and has taken that into account in its assessment.
- (5) The German notifications were accompanied by air quality plans for all the zones concerned. The assessment shows that the plans fulfil the requirements laid down in Part A of Annex XV to Directive 2008/50/EC.
- (6) In order to assess whether the conditions for the PM<sub>10</sub> exemption are satisfied, it is necessary to identify the main sources of pollution contributing to the observed concentrations. That source apportionment should be precise enough to allow an understanding of which measures should be taken to address the main sources of pollution.
- (7) The German authorities have provided a detailed analysis of the contributing sources by sector and origin. In all zones traffic is identified as the most important source contributing to high concentration levels in particular at the local level. The main reason for exceedances is the heavy traffic on the roads where the monitoring stations are situated. Industrial activity is also contributing significantly to high concentration levels in zone 1.
- (8) A comparison with the 2005 data collected under the cooperative programme for monitoring and evaluation of the long-range transmission of air pollutants in Europe ("EMEP") supports the proportion of the transboundary contribution as identified by the German authorities in the zones concerned.
- (9) The assessment of the Commission confirms that the identification and quantification of the contributions from the different sources provided by the German authorities give a relevant and reasonable basis for the assessment in all zones.
- (10) The notifications indicate that site specific dispersion characteristics are the principal cause for why conformity with the limit values could not be achieved by the 2005 attainment date in all zones. In some zones transboundary pollution (zone 1) and adverse climatic conditions (zones 3 and 4) are also indicated as additional causes for non-compliance with the PM<sub>10</sub> limit values by the deadlines in Directive 1999/30/EC.
- (11) The German authorities have demonstrated that the criteria specified in the Communication for site-specific dispersion characteristics are met in all zones. In zone 3 partly and zone 4, criteria indicating a street geometry other than a street canyon as defined in the Staff Working Paper have been used for demonstrating that this

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<sup>3</sup> COM(2008)403

<sup>4</sup> SEC(2008)2132

condition applies. The Commission finds that the criteria used can be considered equivalent to the criteria defined in the Communication. The Commission notes that transboundary contributions also constitute an important part of the annual average PM<sub>10</sub> levels in zone 1. As regards adverse climatic conditions, the assessment by the Commission confirms that the criteria indicated in the Communication are fulfilled in zones 3 and 4. Accordingly the Commission finds that the exceedance situations can be chiefly attributed to site specific dispersion characteristics in all zones.

- (12) In order to assess if all appropriate measures were taken before the 2005 attainment date, it is necessary to consider when an exceedance triggering abatement action pursuant to Directive 1999/30/EC first occurred in the zone, the relevance of the measures taken in relation to the identified sources and the impact of the external factors, such as site-specific dispersion characteristics or transboundary contributions.
- (13) In all the zones the first recorded exceedances triggering an obligation to take abatement action occurred before 2005, respectively in 2003 in zone 1 and 2004 in the other zones. Measures addressing road traffic were taken in all zones prior to 2005, at the national and in some instances also at the local level. Air quality plans were adopted in all cases in 2005. The reasons why compliance could not be achieved are similar in all cases. According to the competent authorities, the concentration levels in the regional background did not decrease as expected, the effect of the retrofitting of emissions control equipment to motor vehicles was not as important as expected and the increase in the number of diesel vehicles in the fleet was higher than anticipated. Therefore, the Commission considers that on balance the abatement action taken in all zones prior to the 2005 deadline was appropriate.
- (14) For the purposes of addressing transboundary pollution, the Commission acknowledges that consultations have been held between German authorities and the competent authorities in the Member States from which the pollution originates as required according to Article 8(6) of Directive 96/62/EC.
- (15) In order to assess if compliance with the limit values for PM<sub>10</sub> can be achieved at the expiry of the exemption period, it is necessary to consider the concentration levels estimated at that date by the Member State, and the estimated impact of the additional measures proposed to ensure compliance in the air quality plans accompanying the notifications.
- (16) As regards zones 1 and 4, an exemption has been asked for both daily and annual limit values. The annual air quality reports submitted to the Commission by the German authorities indicate that the annual limit value has been complied with since 2005 in zone 1 and since 2007 in zone 4. The Commission finds that in view of the compliance achieved and considering that the annual mean concentration levels must in any case be maintained substantially below the annual limit value to ensure that the daily limit value can be achieved, the annual limit value set out in Annex XI to Directive 2008/50/EC should continue to apply in those zones without a margin of tolerance.
- (17) As regards zone 1, it appears that strict and full implementation of the air quality plans may bring the situation in compliance with requested daily limit values for most sites. However, as regards the exceedance situation "Krefeld Hafen", information has not been provided on the estimated impact on air quality of the planned abatement measures. The Commission cannot therefore on the basis of the information provided

assess if compliance can be achieved by the expiry of the exemption period in that exceedance situation. In addition, the Commission notes that the planned termination of leases and clearance of properties close to an industrial site is not relevant for the purposes of this exemption. As the limit values apply also in the vicinity of industrial sites, the Commission underlines that it has to be demonstrated that the conditions for an exemption are met also for that site. In view of the information provided, the Commission can therefore not fully assess if compliance with the daily limit value in zone 1 can be achieved by 2011.

- (18) As regards zone 2 it appears from the annual air quality reports submitted to the Commission that compliance with the daily limit value was achieved in 2008. The German authorities have in their notification indicated that the PM<sub>10</sub> concentration levels in that year were significantly lower as a result of favourable atmospheric dispersion conditions in the whole region of North-Rhine Westphalia. It appears that most of exceedances in the region due to site-specific dispersion characteristics are characterised by ground level inversions and low wind speeds (daily average of wind speed < 1,5 m/s). German authorities have indicated that the low wind speed events contributing to creating high concentration levels were significantly fewer in 2008 than in 2007 and 2009 (based on provisional data for 2009). In view of the information provided, the Commission considers that Germany demonstrated that 2008 was a year with favourable atmospheric dispersion conditions in the region of North-Rhine Westphalia. Therefore and on the basis of its assessment of the projected concentrations levels indicated by the German authorities and the information provided on the overall air quality management in zone 2, the Commission finds that with the measures already in place, including those foreseen in the air quality plan, the German authorities have demonstrated that compliance with the daily limit value will be achieved in this zone by the expiry of the exemption period provided that all measures in the plan are fully and timely implemented.
- (19) The German authorities have provided projections for zone 3 of the concentration levels in 2011 that indicate that the number of days exceeding the daily limit value will be higher than the permitted 35 days. On the basis of those projections, the Commission also finds, taking into account the very high concentration levels in previous years, that even with the implementation of the abatement measures foreseen, it is not likely that compliance with the daily limit value will be achieved at the expiry of the exemption period for all exceedance situations in the zone. The annual air quality reports submitted to the Commission by the German authorities show however that the annual mean concentration in zone 3 was very close to the annual limit value in 2008. The Commission therefore finds that it is likely that with the implementation of the measures foreseen compliance with the annual limit value will be achieved by 2011 in zone 3. However, it should be noted that it will be necessary to reduce the annual mean concentrations substantially below the annual limit value if compliance with the daily limit value is to be achieved.
- (20) In view of the very narrow margin by which compliance with the daily PM<sub>10</sub> limit value in zone 4 is projected, the Commission considers that there may still be a risk that the daily limit value is exceeded after the exemption period. The Commission therefore finds that no objection should be raised to the exemption, provided that the air quality plan is adjusted to include short-term measures effective for controlling or, where necessary, suspending activities which contribute to the risk of the limit values being exceeded. The competent authorities should ensure that those measures or, if

appropriate, a short-term action plan within the meaning of Article 24 of Directive 2008/50/EC are in place by 1 January 2011 at the latest. The short-term measures or the short-term action plan should be communicated to the Commission by 31 December 2010 at the latest.

- (21) The Commission is satisfied that the implementation by Germany of the Community legislation listed in Part 2 of Section B in Annex XV to Directive 2008/50/EC does not give rise to concerns that could have a negative impact on the assessment of whether compliance can be achieved by the new attainment deadline.
- (22) As regards measures to be considered in accordance with Part 3 of Section B in Annex XV to Directive 2008/50/EC, the German authorities have demonstrated that due account has been taken of those measures.
- (23) Against that background, the Commission considers that no objections should be raised against the application of the exemption from the obligation to apply the daily limit value in zone 2 and the annual limit value in zone 3. As regards zone 4, no objections should be raised against the application of the exemption from the obligation to apply the daily limit value provided that the air quality plan is adjusted to include short-term abatement measures, or if appropriate, it is complemented by a short-term action plan and communicated to the Commission by 31 December 2010 at the latest.
- (24) Objections should be raised against the application of the exemption from the obligation to apply the daily limit value in zones 1 and 3, on the grounds that the notification does not show that compliance with those limit values will be achieved in 2011.
- (25) Objections should also be raised against the application of the exemption from the obligation to apply the annual limit value in zones 1 and 4, on the grounds that compliance with those limit values has already been achieved.
- (26) During the exemption period the respective limit values continue to apply in zones 2, 3 and 4 together with a maximum margin of tolerance in accordance with Article 22(3) of Directive 2008/50/EC. In order to provide the Commission with the means for verifying compliance with that provision, Germany should provide the Commission, on an annual basis, with data confirming that the concentration levels do not exceed the respective limit value plus the maximum margin of tolerance in those zones.
- (27) In order to ensure that the Commission can check the implementation of the air quality plans and the relevant abatement action, Germany should provide information to the Commission for each of the zones covered by the exemption on the assessment of air quality as regards the area in exceedance, the length of road in exceedance and the population exposed in the calendar year following the date of expiry of the exemption period, i.e. in 2012.
- (28) The exemption should apply to the air quality zones as they were defined in the reference year 2005 or 2006 as indicated in the notifications and in the Annex to this Decision. In order to ensure that the exemption applies to the territory as defined in this Decision, any changes to the delimitation of those zones during the exemption period should be subject to prior approval by the Commission,

HAS ADOPTED THIS DECISION:

*Article 1*

1. No objections are raised against the notifications by Germany of an exemption from the obligation to apply the daily limit value for PM<sub>10</sub> set out in Annex XI to Directive 2008/50/EC in zone 2 and the annual limit value for PM<sub>10</sub> in zone 3 as listed in the Annex to this Decision. The exemption shall apply until 10 June 2011.
2. No objections are raised against the notifications by Germany of an exemption from the obligation to apply the daily limit value for PM<sub>10</sub> in zone 4, provided that the competent authorities adjust the air quality plan to include short-term measures effective for controlling or, where necessary, suspending activities which contribute to the risk of the limit values being exceeded. If appropriate, those measures may be provided in the form of a short-term action plan within the meaning of Article 24 of Directive 2008/50/EC. Those short-term measures, or if appropriate, the short-term action plan shall be communicated to the Commission by 31 December 2010 at the latest. Provided this condition is satisfied, the exemption shall apply until 10 June 2011.
3. Objections are raised against the notifications by Germany of an exemption from the obligation to apply the daily limit values for PM<sub>10</sub> set out in Annex XI to Directive 2008/50/EC in zones 1 and 3 as specified in the Annex to this Decision, as well as against the exemption from the obligation to apply the annual limit value in zones 1 and 4.

*Article 2*

1. Germany shall for the period 11 June to 31 December 2008, the calendar years 2009, and 2010, and for the period 1 January to 10 June 2011 provide the Commission with data indicating that the concentration levels in the zones referred to in Article 1(1) and (2) are below the respective limit values plus the maximum margins of tolerance specified in Annex XI to Directive 2008/50/EC. This data may be provided through the annual submission of the questionnaire specified in Commission Decision 2004/461/EC.
2. Germany shall by 30 September 2012 provide the Commission with information confirming that compliance with the limit values for PM<sub>10</sub> set out in Annex XI to Directive 2008/50/EC has been achieved in zones 2, 3 and 4.
3. Changes to the delimitations of the air quality zones as compared to the delimitations that applied in the reference years 2005 or 2006 during the exemption period that may affect the scope of the exemption shall be subject to prior approval of the Commission.

*Article 3*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, [...]

*For the Commission*  
*Stavros DIMAS*  
*Member of the Commission*

## ANNEX

Zones and agglomerations covered by the notifications in accordance with the delimitations applicable in the annual air quality reports for the calendar years 2005 and 2006 as specified in the table.

Zone number	Reference year	Zone code	Zone Name	Federal Province
1.	2005	DEZJXX0007A	Duisburg	Nordrhein-Westfalen
2.	2005	DEZJXX0006A	Essen	
3.	2006	DEZCXX0007A	Ballungsraum Stuttgart	Baden-Württemberg
4.	2006	DEZCXX0007S	Gebiet (ohne Ballungsräume) mit PM10-Werten > GW	