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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,
C(2009) XXX final

Draft

COMMISSION DECISION

of [...]

on the notifications by Germany of an exemption from the obligation to apply the limit values for PM10

(Only the German text is authentic)

Draft

COMMISSION DECISION

of [...]

on the notifications by Germany of an exemption from the obligation to apply the limit values for PM₁₀

(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 Europe¹, and in particular Article 22(4) thereof,

Whereas:

- (1) Germany notified the Commission by letters registered on 20 November and 12 December 2008 of an exemption under Article 22(2) of Directive 2008/50/EC from the obligation to apply the daily limit value for PM₁₀ in the 10 air quality zones listed in the Annex to this Decision as well as the annual limit value in three of those zones (zones 2, 3 and 10). A notification was also registered on 19 December 2008 for the zones DEZJXX0006A and DEZJXX0007A. Essential information complementing that notification was however included in a subsequent notification registered on 25 February 2009 and as a consequence the Commission considers that date as the initial date of notification for those zones. The air quality limit values for PM₁₀ have been legally binding since 1 January 2005 in accordance with Directive 1999/30/EC of the European Parliament and of the Council of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air².
- (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 PM₁₀ 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 exceedence can be attributed to site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions, and that an air quality plan is established demonstrating conformity with the limit values will be achieved before the new deadline.

¹ OJ L 152, 11.6.2008, p. 1.

² 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 Europe³, ("the Communication"). The notifications were submitted using the forms set out in the Staff Working Paper⁴ that accompanied the Communication.
- (4) The Commission identified certain relevant information as missing from the original notifications, and requested the German authorities by letter dated 23 February 2009 to complete the notifications. The Germany authorities submitted additional information by letter dated 25 March 2009.
- (5) The German authorities have provided data for the years 2005, 2006 or 2007 for the different zones as specified in the Annex to be used as reference years and basis for the assessment. A comparison of the air quality data recorded and reported to the Commission by the German authorities for the years 2005 to 2007 shows that concentration levels were quite stable in those years for the zones concerned. The Commission therefore finds that the reference years are representative of the air quality situation in 2005 and can be used as a basis for the assessment.
- (6) There are some discrepancies between the notifications and the air quality data submitted by the German authorities annually since 2002 as part of their obligations under Directive 1999/30/EC, in particular as regards the concentration levels observed in previous years. In case of discrepancies, the Commission has based its assessment on the first indication of exceedance reported in either the notifications or the annual reports.
- (7) 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.
- (8) In order to assess whether the conditions for the PM₁₀ 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.
- (9) 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 exceedance situations caused by traffic generally occur on limited road stretches, i.e. "street canyons". Transboundary pollution contributes significantly in a few zones.
- (10) 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.

³ COM(2008)403

⁴ SEC(2008)2132

- (11) 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.
- (12) The notifications indicates 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 (zones 1, 2 and 3) and adverse climatic conditions (zones 1 and 2) are also indicated as additional causes.
- (13) The German authorities have demonstrated that the criteria specified in the Communication for site-specific dispersion characteristics are met in zones 5 to 10. In zones 1, 2 and 4, criteria indicating a street geometry other than a street canyon have been used for demonstrating that this condition applies. The Commission finds that the criteria used can be considered equivalent to the criteria defined in the Communication. In zone 3, the exceedances are to a large extent (30%) due to transboundary contributions. The German authorities have demonstrated that once the transboundary contributions have been deducted, the limit values could be achieved in zone 3. As regards zones 1 and 2, the importance of transboundary pollution in causing the exceedance situation can however not be considered sufficiently demonstrated. As regards adverse climatic conditions, the assessment by the Commission does not confirm that the criteria indicated in the Communication are fulfilled in relation to zones 1 and 2.
- (14) Accordingly the Commission finds that the exceedance situations can be chiefly attributed to site specific dispersion characteristics in all zones except zone 3, where the chief cause of the exceedance can be attributed to transboundary pollution.
- (15) 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.
- (16) Exceedances triggering an obligation to take abatement action occurred in all zones prior to 2005 except in zones 8 and 10, where the first exceedances of the daily limit value were recorded in 2005 and 2006 respectively. Measures addressing road traffic were taken in all zones prior to 2005, both at the national and local level. Air quality plans were adopted in most cases in time or close to the deadline resulting from Directives 96/62/EC and 1999/30/EC. 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.
- (17) The Commission considers, taking into account that the measures taken were relevant for addressing the chief sources identified as well as effective in reducing the concentration levels, that on balance the abatement action taken in zones 1 to 7 and 9 prior to the 2005 deadline was appropriate.

- (18) As the first exceedance triggering abatement action occurred only in 2005 in zone 8, there was no legal obligation for the competent authorities to take abatement action prior to 2005. The German authorities have however indicated that certain abatement measures were taken prior to and in 2005 when an air quality plan was drawn up. Therefore, the Commission considers that on balance the abatement action taken in zone 8 prior to the 2005 deadline was appropriate.
- (19) As regards zone 10, the exceedance of the daily limit value was first discovered in 2006, following the taking into operation of a new monitoring station in 2005. It can therefore not be excluded that the exceedance situation existed already prior to 2005, and that it could have been discovered earlier by the competent authorities, had they started monitoring at that site at an earlier date. However, as the minimum assessment requirements were fulfilled and as it falls within the competence of the competent authorities to determine the localisation of the monitoring stations, the Commission accepts that specific abatement action was only taken as from 2007 with the establishment of the air quality plan. Therefore, the Commission considers that on balance the abatement action taken in zone 10 prior to the 2005 deadline was appropriate.
- (20) 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.
- (21) In order to assess if compliance with the limit values for PM₁₀ 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.
- (22) As regards zones 2, 3 and 10, an exemption has been asked for both daily and annual limit values. The annual air quality report submitted to the Commission in September 2008 by the German authorities indicates that compliance with the annual limit value was achieved in 2007 in all three zones. The Commission finds that in view of the compliance achieved and considering that the annual mean concentration levels must 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.
- (23) 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 zones 3 to 6 and 9, the Commission finds that with the measures already in place, including those foreseen in the air quality plans, the German authorities have demonstrated that compliance with the daily limit value will be achieved in those zones by the expiry of the exemption period.
- (24) The projected concentration levels in zones 1, 7 and 10 provided by the competent authorities for 2011 indicate that there will be a high number of days in exceedance of the daily limit value at that date. With the implementation of the measures foreseen in the air quality plans, the Commission finds however that it is likely that compliance will be achieved at the expiry of the exemption period. In view of the important

reductions that must be achieved, it is essential that the competent authorities ensure that the measures foreseen in the air quality plans are implemented strictly and on time to deliver the necessary effect by the expiry of the exemption period.

- (25) In view of the very narrow margin by which compliance in zone 2 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.
- (26) As regards zone 8, it appears from the annual air quality report submitted to the Commission in September 2008 that compliance with the daily limit value was achieved in 2007. As neither the notifications nor the Commission's assessment indicate that the concentration levels in that year were exceptionally low as a result of favourable atmospheric conditions, the Commission finds that it is likely that the concentration levels in this zone can be maintained below the limit values. The Commission finds that in view of the compliance achieved, the daily limit value laid down in Annex XI should continue to apply in that zone without a margin of tolerance.
- (27) 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.
- (28) 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.
- (29) 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 zones 1, 3 to 7, 9 and 10. As regards zone 2, no objections should be raised 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 by 31 December 2010 at the latest.
- (30) Objections should be raised against the application of the exemption from the obligation to apply the annual limit value in zones 2, 3 and 10 and the application of the exemption from the obligation to apply the daily limit value in zone 8, on the grounds that compliance with those limit values have already been achieved.
- (31) During the exemption period the daily limit value continues to apply in zones 1 to 7, 9 and 10 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 daily limit value plus the maximum margin of tolerance in those zones.

- (32) 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.
- (33) The exemption should apply to the air quality zones as they were defined in the reference year 2005, 2006 or 2007 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 PM₁₀ set out in Annex XI to Directive 2008/50/EC in the zones 1, 3 to 7, 9 and 10 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 PM₁₀ in zone 2, 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 following limit values for PM₁₀ set out in Annex XI to Directive 2008/50/EC:
 - (a) the daily limit value for PM₁₀ in zone 8 specified in the Annex to this Decision;
 - (b) the annual limit value in zones 2, 3 and 10 as listed in the Annex.

Article 2 *Reporting*

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 daily limit value plus the maximum margin of tolerance specified in Annex XI to Directive 2008/50/EC.

The data shall be provided at the latest by 30 September of the following year.

2. Germany shall by 30 September 2012 provide the Commission with information confirming that compliance with the daily limit value for PM₁₀ set out in Annex XI to Directive 2008/50/EC has been achieved in the zones 1 to 7, 9 and 10.
3. Changes to the delimitations of the air quality zones as compared to the delimitations that applied in the reference years 2005, 2006 or 2007 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, 2006 and 2007 as specified in the table.

Zone number	Reference year	Zone code	Zone Name	Federal Province
1.	2005	DEZDXX0002A	Ballungsraum Augsburg	Bayern
2.	2005	DEZDXX0001A	Ballungsraum München	
3.	2005	DEZAXX0006S	Orte erhöhter verkehrsbedingter Schadstoffbelastung im Land Brandenburg ab 2005 (Cottbus)*	Brandenburg
4.	2007	DEZEIX0107A**	Ballungsraum Niedersachsen-Bremen (Bremen)	Bremen
5.	2005	DEZJXX0008A	Dortmund	Nordrhein-Westfalen
6.	2005	DEZJXX0009A	Düsseldorf	
7.	2006	DEZJXX0005A	Hagen	
8.	2005	DEZJXX0002A	Wuppertal	
9.	2005	DEZOXX0005S	Aschersleben Harz	Sachsen-Anhalt
10.	2006	DEZPXX0008S	Weimar Gebiet Thüringen 1	Thüringen

*Zone name indicated in notification

**The zone code indicated in the notification was DEZEIX003A. That zone code did however cease to exist in 2004 and was in that year indicated for NO₂ exceedances. The zone code indicated in the table above refers to the zone covering the relevant monitoring station as defined in 2007.