



EUROPEAN COMMISSION

Brussels,
C(2010) xxxx final

Draft

COMMISSION DECISION

of [...]

on the notification by the Slovak Republic of a postponement of the deadline for attaining the limit values for NO₂ in one air quality zone and of an exemption from the obligation to apply the limit values for PM₁₀ in nine air quality zones

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on the notification by the Slovak Republic of a postponement of the deadline for attaining the limit values for NO₂ in one air quality zone and of an exemption from the obligation to apply the limit values for PM₁₀ in nine air quality zones

(Only the Slovak text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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) The air quality limit values for PM₁₀ have been legally binding since 1 January 2005 and those for NO₂ since 1 January 2010, 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 air².
- (2) In accordance with Article 22(1) of Directive 2008/50/EC a Member State may postpone the deadlines until 2015 at the latest by which conformity with the limit values for NO₂ shall be achieved if it demonstrates that conformity with the limit values cannot be achieved by 1 January 2010 and an air quality plan is established that demonstrates how compliance will be achieved before the expiry of the new deadline.
- (3) 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 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 deadline.
- (4) The Commission objected on 2 July 2009³ to the exemption under Article 22(2) of Directive 2008/50/EC from the obligation to meet the PM₁₀ limit values in nine air

¹ OJ L 152, 11.6.2008, p. 1.

² OJ L 163, 29.6.1999, p.41.

³ C(2009)5233

quality zones as notified by the Slovak Republic by letter registered on 12 November 2008.

- (5) The Slovak Republic notified the Commission again by letter registered on 25 January 2010, of an exemption under Article 22(2) of Directive 2008/50/EC from the obligation to apply the limit values for PM₁₀ in the nine zones the Commission previously objected to in its Decision from 2 July 2009 and listed in the Annex to this Decision. The Commission notes that for reasons of legal certainty notifications of an exemption from the obligation to meet the PM₁₀ limit values in zones on which the Commission has already adopted a decision will only be assessed if genuinely new information as compared to the previous notification is provided by the Member State notifying the exemption. As regards the Slovak re-notification registered on 25 January 2010, the Commission notes that new information as regards each notified air quality zone in comparison to what has previously been submitted to the Commission has been provided.
- (6) The Slovak Republic notified the Commission by the same letter registered on 25 January 2010, of a postponement of the deadline for attaining the limit values for NO₂ in one air quality zone listed in the Annex to this Decision.
- (7) The notification has 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 Europe⁴, ("the Communication"). The notifications were submitted using the forms set out in the Staff Working Paper⁵ that accompanied the Communication.
- (8) The Commission identified certain relevant information as missing from the original notification and requested the Slovak authorities by letter dated 23 March 2010 to complete the notification. The Slovak authorities submitted additional information on 14 April 2010.
- (9) The Slovak authorities have provided data for the year 2005 to be used as reference year and basis for the assessment of the PM₁₀ exemption. The Commission notes that 2005 is appropriate for the purpose of assessing whether the conditions are fulfilled. In respect of the NO₂ postponement, 2005 has been indicated as reference year in the notification. Regarding the assessment of the condition whether all appropriate measures were taken before the 2010 attainment date, the Commission notes that 2005 is not an appropriate reference year for that purpose. However, as the Slovak authorities have provided information on the NO₂ concentration levels from 2005 to 2008 in zone 2, the Commission considers that an assessment of the condition is still possible.
- (10) The Slovak notification was accompanied by updated air quality plans for all the zones. The Commission notes, however, that the air quality plans do not include information on the projected effect of the measures on concentration levels by the extended deadline. It should be noted that a plan is considered as an air quality plan

⁴ COM(2008)403

⁵ SEC(2008)2132

for the purposes of a notification pursuant to Article 22, if it has been formally endorsed by the competent authorities so that it constitutes a formal commitment to take the necessary abatement action with the view of ensuring compliance with the PM₁₀ limit values in 2011 and/or the NO₂ limit values before the new deadline. The Commission further notes that some information on the projected effects of the measures has been provided in the letter by Slovak authorities replying to the request for additional information. As a consequence the Commission has decided to use that information for its assessment of the notification.

- (11) In order to assess whether the conditions for the NO₂ postponement and 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.
- (12) No specific source apportionment has been provided by the Slovak authorities for the NO₂ concentration levels in zone 2. However in reply to the request for additional information by the Commission, Slovak authorities have identified traffic and off-road machinery as the dominant sources contributing to the high NO₂ concentration levels. The Commission considers this to be reasonable. As regards the split on the urban background, it appears that Slovak authorities only provided information on traffic and industry contributions. No information was provided for the split on the local level. As a consequence the Commission considers that the source apportionment provided for the sources contributing to the NO₂ pollution in zone 2 is sufficient to enable an identification of the major sources of pollution. However the lack of a detailed source apportionment inter alia on the split between traffic and off-road machinery on the local level hampers the quantitative assessment of whether compliance with the limit values for NO₂ is achievable by the original deadline and whether the abatement action foreseen is appropriate for achieving compliance by the new deadline.
- (13) As regards the sources contributing to the high PM₁₀ concentration levels in the different zones, it appears that the Slovak authorities have only provided information for the regional and the urban background. On the urban background, the highest contribution appears to come from sources which are not specified in the notification. Traffic and industry are mentioned as contributing to the high PM₁₀ concentration levels in all zones. Transboundary contributions in all zones are documented and appear reasonable. The Commission finds that the lack of a detailed source apportionment inter alia on the share of domestic heating, local traffic and industry hampers the quantitative assessment of whether the abatement action foreseen is appropriate for achieving compliance by the new deadline.
- (14) The Slovak Republic has notified a postponement until 1 January 2015 of the deadline for attaining the annual limit value for NO₂ for zone 2.
- (15) In order to assess if conformity with the annual limit value for NO₂ cannot be achieved by 1 January 2010, it is necessary to consider when an exceedance triggering abatement action pursuant to Directive 1999/30/EC first occurred in the zone and whether relevant measures have been taken in relation to the identified sources.
- (16) In zone 2, exceedances triggering an obligation pursuant to Directive 1999/30/EC to take abatement action with regard to NO₂ concentrations were recorded for the first

time in 2008. An air quality plan for this zone was established in 2004 and has been updated respectively in 2007 and 2009. According to the air quality plan, first measures were already implemented in 1996. Due to the large gap identified in 2008 between the NO₂ concentration levels and the limit values to be achieved by 2010, it appears likely that the NO₂ limit values will not be achieved by the 2010 attainment date. Considering that the first exceedance occurred in 2008 and taking into account the short period of time to implement the measures, addressing the major sources, included in the updated air quality plan from 2009, the Commission finds that the considerable gap that exists in zone 2 between the concentration levels and the NO₂ annual limit value cannot reasonably be bridged by 1 January 2010.

- (17) In order to assess if compliance with the limit values for NO₂ can be achieved by the new deadline, 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 plan accompanying the notification.
- (18) The Commission notes that the Slovak authorities have requested the maximum permitted postponement until 1 January 2015 for compliance with the annual limit value for NO₂. Given the impacts on public health, the duration of any postponement must be restricted to what is absolutely necessary. An assessment should be made therefore of whether compliance can be achieved earlier than the deadline proposed in the notification.
- (19) The official annual air quality report indicates that the annual limit value for NO₂ was substantially exceeded in zone 2 in 2008. According to the information provided by the Slovak authorities, NO₂ emissions have stayed steady from 2005 to 2007 with a sudden increase which led to an exceedance in 2008. The Slovak authorities have indicated that the high levels in 2008 are due to nearby construction work. The notification submitted by the Slovak authorities indicates that compliance with the limit value will be achieved in zone 2 by 2015. The measures proposed to ensure compliance with the limit values for NO₂ cover industry, land planning, residential heating, and in particular traffic.
- (20) In order to assess whether the projected compliance in 2015 is realistic, the Commission requires precise and detailed evidence on the scale and impact of the abatement action planned including a clear implementation timetable for that action. With the implementation of the measures foreseen in the air quality plan, and in particular the ones addressing traffic, it appears likely that compliance will be achieved by 2015. However, as no information on the projected baseline levels and the levels at the extended deadline as well as on the specific impact of the measures has been provided, the Commission finds that it cannot assess whether the proposed abatement action is sufficient for achieving compliance with the annual limit value for NO₂ by 1 January 2015 or even earlier than the deadline proposed in the notification.
- (21) Against that background, the Commission finds that objections should be raised against the postponement until 1 January 2015 of the application of the annual limit value for NO₂ in zone 2 on the grounds that it cannot be assessed if compliance with that limit value can be achieved by that date.
- (22) The notification indicates that transboundary contributions are the principal causes for why the PM₁₀ limit values have been exceeded in zones 1, 3 and 5. In zones 2, 4 and 9,

the Slovak authorities have claimed adverse climatic conditions and in zones 6 to 8 also transboundary contributions as additional cause for the exceedance of the PM₁₀ limit values.

- (23) The Slovak authorities have demonstrated in zone 1 the importance of transboundary pollution alone in causing the exceedance situations. As regards zones 3 and 5 more than 35 days remain in exceedance of the PM₁₀ daily limit value after deducting the transboundary contributions. The Commission therefore finds that the Slovak authorities have not demonstrated that the exceedance situations in zones 3 and 5 can be chiefly attributed to transboundary contributions.
- (24) The criteria specified in the Communication for adverse climatic conditions are met in zones 2 and 4, and the Slovak authorities have demonstrated that these conditions alone explain the exceedance situations in those zones. As regards zone 9, the Slovak authorities have provided information showing that the average annual wind speed in that zone is less than or only to a small extent above 1.5m/s. However, as more than 35 days remain in exceedance of the PM₁₀ daily limit value after deducting the days with wind speed below 1.5 m/s, the Commission finds that the Slovak authorities have not demonstrated that the exceedance situations in zone 9 can be chiefly attributed to adverse climatic conditions.
- (25) As regards zones 6 to 8, the Slovak authorities have provided sufficient information to demonstrate that the transboundary contribution together with adverse climatic conditions were the chief causes of the exceedance situations.
- (26) Accordingly the Commission finds that the exceedance situations can be chiefly attributed to transboundary contributions alone in zone 1, to adverse climatic conditions in zones 2 and 4 and to transboundary contributions together with adverse climatic conditions in zones 6 to 8.
- (27) In order to assess if all appropriate measures to comply with the limit values for PM₁₀ 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 adverse climatic conditions or transboundary contributions.
- (28) In zones 1 to 3 and 5 to 9 exceedances of the PM₁₀ limit values were first discovered in 2004. The Commission finds that due to the absence of a source apportionment for the local level, it cannot be fully assessed if the abatement action taken in zones 1 to 3 and 5 to 9 were relevant for addressing the chief sources in those zones. However, taking into account that the exceedances were recorded very close to the 2005 attainment date and considering the short time available for the implementation of effective measures before the original deadline and the fact that an air quality plan was promptly adopted in 2004 in all concerned zones, the Commission considers that the abatement action taken in those zones prior to the 2005 deadline was appropriate.
- (29) As regards zone 4, the first exceedance of the PM₁₀ daily limit value was recorded in 2005. Therefore there was no legal obligation for the competent authorities to take abatement action prior to 2005. Nevertheless, the Commission notes that certain measures addressing emissions were implemented before that date.

- (30) For the purposes of addressing transboundary pollution, the Commission takes note that no consultations have been held between Slovak authorities and the competent authorities in the neighbouring Member States, as required according to Article 25 of Directive 2008/50/EC, on the grounds that no specific transboundary source could be determined by the Slovak authorities.
- (31) 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.
- (32) In zones 1 and 5, it appears from the annual air quality reports submitted to the Commission that compliance with the daily and annual PM₁₀ limit values was achieved in 2008. Compliance with the annual PM₁₀ limit value also appears to have been reached in 2008 in zones 7 to 9. As the notification does not indicate that the concentration levels in that year were significantly lower as a result of atmospheric conditions in zones 1 and 5 and 7 to 9, the Commission finds that it is likely that the concentration levels in those zones can be maintained below the relevant limit value in accordance with Article 12 of Directive 2008/50/EC. The Commission finds that in view of the compliance achieved, the daily and annual PM₁₀ limit values laid down in Annex XI to Directive 2008/50/EC should continue to apply in zones 1 and 5 without a margin of tolerance and the annual PM₁₀ limit value without a margin of tolerance in zones 7 to 9.
- (33) As regards zones 2 to 4 and 6 to 9, although measures addressing industry, land planning, traffic and residential heating are planned, the Commission notes that no information about the projected baseline levels and the levels at the extended deadline as well as any impact of the measures has been provided.
- (34) As regards zone 2, considering the large compliance gap in 2008, the high PM₁₀ concentration levels at the urban traffic station and at the urban background level and that no specific information on the impact of the planned by pass on the urban background has been provided, the Commission finds that it cannot assess whether compliance with the limit values will be achieved in that zone by the 11 June 2011.
- (35) As regards zone 3, the notification indicates that compliance with the PM₁₀ limit values is not expected by the expiry of the exemption period. In view of the estimates and the information provided by the Slovak authorities on the abatement action planned to reduce the high PM₁₀ concentration, the Commission finds that the abatement action proposed is not sufficient for achieving compliance with the limit values for PM₁₀ in zone 3 at the expiry of the exemption period.
- (36) As regards zones 4, 6 and 7, it appears that compliance had already been achieved in 2007 but some exceedances attributed to construction work occurred in 2008. In zone 8, the compliance gap in 2008 was relatively small. On the basis of the information provided by the Slovak authorities on the overall air quality management in zones 4, 6, 7 and 8, the Commission finds that with the measures already in place and with the strict and effective implementation of the additional measures including the ones addressing residential heating which appears to have been a growing source of PM₁₀,

the Slovak authorities have demonstrated that compliance with the PM₁₀ limit values will be achieved at the expiry of the exemption period.

- (37) As regards zone 9, the compliance gap in 2008 remained large and considering that the Slovak authorities have not provided any information on the concentration levels at the monitoring station SK0019A which was showing very high PM₁₀ concentration levels in 2006 and since no information about the impact of the planned measures has been provided, the Commission finds that it cannot assess whether compliance with the PM₁₀ limit values will be achieved by 2011 in zone 9.
- (38) The Commission is satisfied that the implementation by the Slovak Republic of the 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 significant negative impact on the assessment of whether compliance can be achieved by the new attainment deadline.
- (39) As regards measures to be considered in accordance with Part 3 of Section B in Annex XV to Directive 2008/50/EC, it is apparent from the notification that some important abatement measures have not been considered by the Slovak authorities in some of the air quality zones.
- (40) Against that background, the Commission considers that no objection should be raised against the application of the exemption from the obligation to apply the daily limit value in zones 4 and 6 to 8.
- (41) As regards zones 1, 5 and 7 to 9, the Commission finds that objections should be raised against the exemption from the obligation to apply the daily and annual PM₁₀ limit values in zones 1 and 5 and the annual PM₁₀ limit value in zones 7 to 9, on the grounds that compliance has already been achieved.
- (42) As regards zones 2, 3 and 9, the Commission finds that objections should be raised against the exemption from the obligation to apply the PM₁₀ limit values, on the grounds that it has not been demonstrated that compliance with the PM₁₀ limit values can be achieved by the expiry of the exemption period in 2011. Objections should also be raised on the grounds that it has not been demonstrated for zones 3 and 9 that adverse climatic conditions, transboundary contributions and/or site specific conditions can be considered as the chief causes of the exceedances.
- (43) During the exemption period the daily limit value continues to apply in zones 4 and 6 to 8 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, the Slovak Republic 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.
- (44) In order to ensure that the Commission can check the implementation of the air quality plans and the relevant abatement action, the Slovak Republic 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.

- (45) The exemption should apply to the air quality zones as they were defined in the notification 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

Postponement of the deadline for attaining the limit values for NO₂

Objections are raised against the postponement by the Slovak Republic of the deadline for attaining the annual limit value for NO₂ set out in Annex XI to Directive 2008/50/EC in zone 2 as specified in the Annex to this Decision.

Article 2

Exemption from the obligation to apply the limit values for PM₁₀

1. No objection is raised against the notification by the Slovak Republic 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 zones 4 and 6 to 8 listed in the Annex to this Decision. The exemption shall apply until 11 June 2011.
2. Objections are raised against the notification by the Slovak Republic 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 and annual limit values in zones 1 to 3, 5 and 9 listed in the Annex to this Decision;
 - (b) the annual limit value in zones 7 and 8 listed in the Annex to this Decision.

Article 3

Reporting

1. The Slovak Republic 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 2(1) are below the daily limit value plus the maximum margin 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. The Slovak Republic 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 zones 4 and 6 to 8.

3. Changes to the delimitations of the air quality zones as compared to the delimitation that applied in this Decision during the exemption period that may affect the scope of the exemption shall be subject to prior approval of the Commission.

Article 4

This Decision is addressed to the Slovak Republic.

Done at Brussels, [...]

For the Commission
Janez POTOČNIK
Member of the Commission

ANNEX

Zones and agglomerations covered by the notification in accordance with the delimitations applicable in the annual air quality report for the calendar year 2005.

Zone Number	Zone and agglomeration codes	Zone name	Daily and/or annual PM₁₀ and/or hourly and/or annual NO₂ limit values notified (DLV/ALV/HLV)
1.	SKBA01	Aglomerácia Bratislava	PM ₁₀ : DLV + ALV
2.	SKBB01	Zóna Banská Bystrica	PM ₁₀ : DLV + ALV NO ₂ : ALV
3.	SKKO01	Aglomerácia Košice	PM ₁₀ : DLV + ALV
4.	SKKO02	Zóna Košický kraj	PM ₁₀ : DLV
5.	SKNI01	Zóna Nitriansky kraj	PM ₁₀ : DLV + ALV
6.	SKPR01	Zóna Prešovský kraj	PM ₁₀ : DLV
7.	SKTN01	Zóna Trnavský kraj	PM ₁₀ : DLV + ALV
8.	SKTR01	Zóna Trenčiansky kraj	PM ₁₀ : DLV + ALV
9.	SKZI01	Zóna Žilinský kraj	PM ₁₀ : DLV + ALV