COMMISSION DECISION

of XXX

on the notification by the Republic of Austria of a postponement of the deadline for attaining the annual limit value for NO₂ in nine air quality zones

(Only the German text is authentic)
COMMISSION DECISION

of 12.7.2012

on the notification by the Republic of Austria of a postponement of the deadline for attaining the annual limit value for NO\textsubscript{2} in nine air quality zones

(Only the German 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 Europe\textsuperscript{1}, and in particular Article 22(4) thereof,

Whereas:

(1) The air quality limit values for NO\textsubscript{2} have been legally binding 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 air\textsuperscript{2}.

(2) In accordance with Article 22(1) of Directive 2008/50/EC, a Member State may postpone the deadline until 2015 at the latest, by which conformity with the limit values for NO\textsubscript{2} shall be achieved, if the Member State demonstrates that conformity with the limit values cannot be achieved by 1 January 2010 and an air quality plan is established that demonstrates that such compliance will be achieved before the expiry of the new deadline.

(3) The Republic of Austria submitted to the Commission by letter registered on 3 October 2011 a notification of a postponement under Article 22(1) of Directive 2008/50/EC of the deadline for attaining the annual limit value for NO\textsubscript{2} in 9 air quality zones listed in the Annex to this Decision.

(4) 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 Europe\textsuperscript{3}, ("the Communication") and with the Commission Staff Working Paper concerning guidance on preparing a notification of a postponement of the deadline for attaining the limit values for NO\textsubscript{2} under Directive 2008/50/EC\textsuperscript{4}. The notification was submitted

\textsuperscript{2} OJ L 163, 29.6.1999, p.41.
\textsuperscript{3} COM(2008)403
\textsuperscript{4} SEC(2011)300
using the forms set out in the Staff Working Paper\(^5\) that accompanied the Communication.

(5) The Commission identified certain relevant information as missing from the original notification and requested the Austrian authorities by letter dated 24 November 2011 to complete the notification. Since the Austrian authorities submitted essential additional information by letter dated 15 December 2011 the period for the Commission's assessment of the notification starts from the day following the date of official receipt of that information, i.e. 16 December 2011.

(6) The Austrian authorities have provided in the notification data for the year 2010 to be used as reference year and as basis for the assessment of the postponement of the attainment deadline for the NO\(_2\) annual limit value in all the notified zones. The Commission finds that the year 2010 is a relevant year to be used as basis for the assessment.

(7) The Austrian notification was accompanied by updated air quality plans that fulfil most of the requirements provided for in Section A of Annex XV to Directive 2008/50/EC for all zones except zone 2. As regards zone 2, the Commission notes that the air quality plan from 2006 addressing a wider range of pollutants is currently being updated. As regards zones 2-4 and 6-9, the Commission notes, 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 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 NO\(_2\) limit values before the new attainment date. As regards zone 8 the Commission notes that the projected effects of the measures has been included in the baseline projection for 2015 provided in the forms accompanying the notification. As a consequence the Commission has used that information for its assessment of the notification of zone 8.

(8) In order to assess whether the conditions for the NO\(_2\) postponement 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 Commission finds that the source apportionment provided by the Austrian authorities for zones 1-3 and 7-9 is complete for all scales. As regards zones 4-6, the source apportionment does not add up to 100% and no information is available on the urban background contribution to the exceedance situations in zones 4 and 5. For zone 6 no distinction has been made between the regional and the urban background contribution to the exceedance situations. The Commission notes however that for zones 4-6 the notification contains enough information to identify if relevant measures have been taken in relation to the identified sources of NO\(_2\) pollution. The Austrian authorities have identified traffic as the main source contributing to the high NO\(_2\) concentration levels at the local and urban levels in all zones. The assessment of the

\(^5\) SEC(2008)2132
Commission confirms that the identification and quantification of the contributions from the different sources provided by the Austrian authorities gives a relevant and reasonable basis for the assessment.

(10) In order to assess if conformity with the limit values for NO$_2$ could not have been 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 notified zone and whether relevant measures have been taken in relation to the identified sources.

(11) According to the information submitted by the Austrian authorities, exceedances triggering an obligation to take abatement action with regard to NO$_2$ concentrations were recorded for the first time in 2010 in zones 1 and 2, in 2003 in zones 3-7 and 9, and in 2006 in zone 8. Air quality plans were adopted before or within two years of those exceedances in all notified zones. The Commission notes that the relevant pollution sources have been addressed in all zones. The Austrian authorities explained that compliance in 2010 was initially expected in all zones and that it was only in 2010 for zones 1, 7 and 9 and in 2009 for zones 2-6 and 8 that the competent authorities realised that compliance with the NO$_2$ annual limit value would not be achieved by the 2010 deadline because the real world NOx emissions and the primary NO$_2$ emissions of vehicles were higher than expected. The Commission notes that the time lapse to adapt the air quality plans to those new findings in order to reach compliance in 2010 was relatively short.

(12) The Commission finds that it was likely that despite the abatement actions taken by the Austrian authorities conformity with the annual limit value for NO$_2$ could not be achieved by 1 January 2010 in any of the notified zones.

(13) In order to assess if compliance with the annual limit value for NO$_2$ 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 additional measures proposed to ensure compliance in the air quality plan accompanying the notification.

(14) The Commission notes that the Austrian authorities have requested the maximum permitted postponement for compliance with the annual limit value for NO$_2$ in all zones, i.e. until 1 January 2015. Given the impacts on public health, the duration of any postponement must be restricted to what is absolutely necessary. An assessment should therefore be made of whether compliance can be achieved earlier than the deadline proposed in the notification.

(15) In order to assess whether the projected compliance by the new deadline 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.

(16) The Austrian authorities have provided data on projected NO$_2$ concentration levels in 2015 that seem reasonable and realistic for all zones. As regards zones 1 and 8, the notification lists several measures addressing the traffic emissions. The compliance projections in zones 1 and 8 rely on the fact that the most recent Euro standards for vehicle emissions$^6$ will be as effective as planned. The Commission considers that it is

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likely, provided the most recent Euro standards are as effective as predicted, that compliance with the annual NO\textsubscript{2} limit value can be achieved by 1 January 2015 in the air quality zones 1 and 8.

(17) As regards zone 2, the Austrian authorities project compliance with the annual NO\textsubscript{2} limit value by 1 January 2015. The Commission notes that the local exceedance situation is very limited (in 2010 1 \textmu g/m\textsuperscript{3} in exceedance of the annual NO\textsubscript{2} limit value on 0.1 km\textsuperscript{2} of road according to the notification). Projections based on data from the European Monitoring and Evaluation Programme of the long-range transmission of air pollutants in Europe (EMEP) show that the anthropogenic regional background concentrations are decreasing by approximately 0.3 \textmu g/m\textsuperscript{3} per year in zone 2. It is therefore possible that compliance with the annual limit value could be achieved as of 1 January 2013 in that zone. In order to ensure that compliance is achieved by 1 January 2013 in zone 2 and given the obligation to ensure that the period of exceedance shall be kept as short as possible, the Commission finds that the Austrian authorities should ensure a more intensive implementation of the measures already in place in zone 2 as well as the adoption and implementation of additional suitable measures in this zone.

(18) Therefore, the Commission finds that the Republic of Austria has not demonstrated that the maximum period of postponement until 31 December 2014 is necessary for achieving conformity with the annual limit value for NO\textsubscript{2} in zone 2. In order to ensure that the postponement is no longer than is necessary to ensure compliance, the Austrian competent authorities should adjust the relevant air quality plan as appropriate to ensure that compliance with the annual limit value for NO\textsubscript{2} is achieved at the latest by 1 January 2013 in zone 2. The adjusted plan should be notified to the Commission as soon as possible, taking into account the time-scale necessary to carry out the national procedures to amend the plan without undue delay.

(19) As regards zones 3-7 and 9, the notification indicates that the NO\textsubscript{2} annual average in 2015 is expected to remain above the permitted 40\textmu g/m\textsuperscript{3} at the location of the exceedance situations in the reference year, despite the implementation of existing and additional measures. As a result the Commission considers that it would be necessary to include more stringent abatement action in the relevant air quality plans if compliance is to be achieved by 2015 in those zones. The Commission therefore considers that it is not demonstrated that compliance will be achieved in zones 3-7 and 9 at the expiry of the maximum postponement period.

(20) The Commission notes, as regards the status of implementation of the Union legislation listed in Part 2 of Section B in Annex XV to Directive 2008/50/EC, that the Republic of Austria has exceeded the 2010 national emission ceiling set for nitrogen oxides pursuant to Directive 2001/81/EC\textsuperscript{7}. Compliance with the obligations under that Directive is important in order to ensure that the limit values under Directive 2008/50/EC, and in particular the limit values for NO\textsubscript{2}, can be met both in Austria and

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\textsuperscript{7} OJ L 309, 27.11.2001, p. 22.
neighbouring Member States. The Commission therefore expects that the necessary effort is taken to achieve the national emissions ceilings.

(21) The Commission is satisfied that the Austrian authorities have taken into consideration all measures listed in Part 3 of Section B in Annex XV to Directive 2008/50/EC.

(22) Against that background, the Commission finds that objections should be raised to the postponement of the deadline for attaining the annual limit value for NO\textsubscript{2} in zones 3-7 and 9 on the grounds that the Austrian authorities have not demonstrated that compliance with the annual limit value for NO\textsubscript{2} can be achieved by 1 January 2015 or earlier.

(23) No objections should be raised against the postponement of the deadline for attaining the annual limit value for NO\textsubscript{2} until 1 January 2015 in zones 1 and 8. As regards zone 2, the Commission finds that no objections should be raised to the postponement of the deadline for attaining the annual limit value for NO\textsubscript{2} provided that the respective air quality plan is adjusted as appropriate to ensure that compliance with the annual NO\textsubscript{2} limit value is achieved at the latest as of 1 January 2013.

(24) During the postponement period the annual limit value for NO\textsubscript{2} continues to apply in zones 1, 2 and 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 Republic of Austria should provide the Commission, on an annual basis, with data confirming that the concentration levels do not exceed the annual NO\textsubscript{2} limit value plus the maximum margin of tolerance in zones 1, 2 and 8.

(25) In order to ensure that the Commission can check the implementation of the air quality plan and the relevant abatement action, the Republic of Austria should provide information to the Commission for zones 1, 2 and 8 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 postponement period.

(26) The postponement should apply to the air quality zones 1, 2 and 8 as they were defined in the reference year 2010. In order to ensure that the postponement applies to the territory as defined in this Decision, any changes to the delimitation of those zones during the postponement period should be subject to prior approval by the Commission.

HAS ADOPTED THIS DECISION:

\textit{Article 1}

1. No objections are raised to the postponement of the deadline for attaining the annual limit value for NO\textsubscript{2} set out in Annex XI to Directive 2008/50/EC in zones 1 and 8 specified in the Annex to this Decision. The postponement shall apply until 1 January 2015.

2. No objections are raised to the postponement of the deadline for attaining the annual limit value for NO\textsubscript{2} in zone 2 specified in the Annex to this Decision, provided that
the relevant air quality plan is adjusted with a view to ensuring that compliance with
the annual limit value for NO\textsubscript{2} is achieved by 1 January 2013. The adjusted plan shall
be notified to the Commission as soon as possible, taking into account the time-scale
necessary to carry out the national procedures to amend the plan without undue
delay.

3. Objections are raised to the notification by the Republic of Austria of a
postponement of the deadline for attaining the annual limit value for NO\textsubscript{2} set out in
Annex XI to Directive 2008/50/EC in zones 3-7 and 9 as specified in the Annex to
this Decision.

Article 2

1. The Republic of Austria shall, for each calendar year until the date of expiry of the
respective postponement period, provide the Commission with data indicating that
the concentration levels in zones 1, 2 and 8 are below the annual limit value for NO\textsubscript{2}
plus the maximum margin of tolerance specified in Annex XI to Directive 2008/50/EC. That data may be provided through the annual submission of the
questionnaire referred to in Article 1 of Commission Decision of 29 April 2004
laying down a questionnaire to be used for annual reporting on ambient air quality
assessment under Council Directives 96/62/EC and 1999/30/EC and under Directives

2. The Republic of Austria shall, for the calendar year following the date of expiry of the
respective postponement period, provide the Commission with information
confirming that compliance with the annual limit value for NO\textsubscript{2} set out in Annex XI
to Directive 2008/50/EC has been achieved in zones 1, 2 and 8.

3. Changes to the delimitation of the air quality zones 1, 2 and 8 specified in the Annex
to this Decision as compared to the delimitation that applied in the reference year
2010 during the postponement period that may affect the scope of the postponement
shall be subject to prior approval of the Commission.

Article 3

This Decision is addressed to the Republic of Austria.

Done at Brussels,

\textit{For the Commission}

\textit{Janez Potočnik}

\textit{Member of the Commission}

\textsuperscript{8} OJ L 156, 30.4.2004, p.84.
**ANNEX**

*Zones and agglomerations covered by the notification in accordance with the delimitations applicable in the annual air quality report for the reference year 2010*

<table>
<thead>
<tr>
<th>Zone number</th>
<th>Zone code</th>
<th>Zone name</th>
<th>Hourly and/or annual limit value notified</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>AT02</td>
<td>Kärnten</td>
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<tr>
<td>2</td>
<td>AT03</td>
<td>Niederösterreich</td>
<td>a</td>
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<tr>
<td>3</td>
<td>AT04</td>
<td>Oberösterreich ohne AG Linz</td>
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<td>4</td>
<td>AT05</td>
<td>Salzburg</td>
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<td>5</td>
<td>AT07</td>
<td>Tirol</td>
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<td>6</td>
<td>AT08</td>
<td>Vorarlberg</td>
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<td>9</td>
<td>AT60</td>
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