



EUROPEAN COMMISSION

Brussels, XXX
[...] (2012) XXX

COMMISSION DECISION

of XXX

on the notification by the Republic of Poland of a postponement for attaining the deadline for the limit values for NO₂ in three air quality zones and the limit value for benzene in one air quality zone

(Only the Polish text is authentic)

COMMISSION DECISION

of 5.9.2012

on the notification by the Republic of Poland of a postponement for attaining the deadline for the limit values for NO₂ in three air quality zones and the limit value for benzene in one air quality zone

(Only the Polish 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 NO₂ and benzene 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 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 and benzene 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) The Commission objected on 22 October 2010³ to the postponement of the deadline for attaining the annual limit value for NO₂ under Article 22(1) of Directive 2008/50/EC in two zones (Kraków and Warszawa) and to the postponement of the deadline for attaining the annual limit value for benzene under Article 22(1) of Directive 2008/50/EC in one zone (Kędzierzyn-Koźle) as notified by Poland by letters registered on 4 and 12 January 2010.
- (4) Poland notified the Commission by letter registered on 11 October 2011, of a postponement under Article 22(1) of Directive 2008/50/EC of the deadline for attaining the limit values for NO₂ in three air quality zones (Włocławek, Kraków and Warszawa), two of them (Kraków and Warszawa) being the air quality zones subject to objections by the Commission in its Decision C(2010)7086. Poland also notified the Commission by the same letter of a postponement under Article 22(1) of Directive 2008/50/EC for attaining the deadline for the annual limit value for benzene in one air quality zone (Kędzierzyn-Koźle), which was subject to objections by the Commission in its Decision C(2010)7086. The relevant zones are listed in the Annex to this

¹ OJ L 152, 11.6.2008, p. 1.

² OJ L 163, 29.6.1999, p.41.

³ Commission Decision C(2010)7086.

Decision. The Commission notes that for reasons of legal certainty notifications of the postponement for attaining the deadline for the limit values for NO₂ 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 postponement. As regards the Polish notification registered on 11 October 2011 the Commission notes that new information as regards each of the notified air quality zones has been submitted to the Commission.

- (5) 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"), 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 NO₂ under Directive 2008/50/EC⁵. The notification was submitted using the forms set out in the Staff Working Paper⁶ that accompanied the Communication.
- (6) The Commission identified certain relevant information as missing from the original notification and requested the Polish authorities by letter dated 21 December 2011 to complete the notification. Since the Polish authorities submitted essential additional information by letters dated 9 and 16 February 2012 the period for the Commission's assessment of the notification starts from the day following the date of official receipt of the letter dated 16 February 2012.
- (7) As regards zone 1 (Włocławek), the Polish authorities have provided data for the year 2007 to be used as reference year and the basis for the assessment of the NO₂ postponement in that zone. The Commission finds that since the notification was submitted after the initial deadline for attainment, 2010 should be used as reference year.. The Commission notes that in respect of the reference year for zone 2 (Kraków), zone 3 (Warszawa) and zone 4 (Kędzierzyn-Koźle) no new information has been provided by the Polish authorities and therefore Recitals 9 and 10 of Commission Decision C(2010)7086 still apply.
- (8) The Polish notification was accompanied by air quality plans that fulfil the requirements provided for in Section A of Annex XV to Directive 2008/50/EC for all the zones.
- (9) In order to assess whether the conditions for the benzene and NO₂ postponements 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.
- (10) The Commission finds that the source apportionment provided by the Polish authorities for zones 1, 2 and 3 is complete for all scales. Polish authorities have identified traffic, predominantly local traffic, as the main source contributing to the high NO₂ concentration levels in these three zones.
- (11) As regards zone 4, Polish authorities have identified fugitive emissions from industry as the predominant contributing source to the high benzene concentration levels. The

⁴ COM(2008)403

⁵ SEC(2011)300

⁶ SEC(2008)2132

Commission finds that even though the Polish authorities have submitted some new information on the source apportionment for zone 4 as compared with the previous notification, it is still not sufficient to allow an understanding of which measures should be taken to address the main sources of pollution. As a consequence, the Commission finds that it cannot, on the basis of the information provided, assess whether the abatement measures foreseen by Poland are relevant for reducing benzene concentration levels in zone 4.

- (12) In order to assess if conformity with the limit values for NO₂ and benzene 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 zone and whether relevant measures have been taken in relation to the identified sources.
- (13) In zone 1, the first recorded annual exceedance triggering an obligation pursuant to Directive 1999/30/EC to take abatement action with regard to NO₂ concentrations was reported in 2007, while the first hourly exceedance was reported in 2006. The air quality plan for zone 1 was adopted only in 2011. The Commission finds that the information submitted by the Polish authorities is inconsistent. On one hand the Polish authorities state that there are still exceedances of NO₂ limit values in zone 1. On the other hand, according to the air quality reports, compliance with the NO₂ limit values has been achieved in zone 1 in the years 2008-2010. Therefore, the Commission finds that there is not enough information available to assess whether it was not possible to achieve compliance with the NO₂ annual and hourly limit values by 2010.
- (14) In zones 2 and 3, the first recorded exceedances triggering an obligation to take abatement action with regard to NO₂ concentrations were reported in 2004 and air quality plans were prepared for both zones in 2005. The air quality plan for zone 3 was updated in 2007. As regards zone 2, according to the Polish authorities non-compliance in 2010 can be attributed to increases in traffic and adverse climatic conditions in the river valley. The Commission considers, taking into account that no downward trend has been observed and that the compliance gap in 2008 was still large, that it appears likely that despite the abatement action taken, conformity with the annual limit value for NO₂ could not have been achieved by 1 January 2010 in zone 2. Therefore, Recital 20 of Commission Decision C(2010)7086 still applies. As regards zone 3, the Commission notes that the Polish authorities have submitted new information as regards the abatement measures with regard to NO₂ concentrations as compared with the previous notification. However, the information submitted is still not sufficient to allow the Commission to assess whether compliance with the NO₂ annual limit value was possible by 2010 as no information has been provided on the effects of the abatement measures.
- (15) According to the annual air quality reports submitted by the Polish authorities, exceedances triggering an obligation to take abatement action with regard to benzene concentrations were recorded for the first time in 2005 in zone 4. A number of measures mainly addressing the industrial sources in the zone were undertaken since 2000 and an air quality plan was adopted in 2009. The compliance with the benzene limit value could not be reached by 1 January 2010, according to the Polish authorities, due to the imprecise knowledge about the sources contributing to the high concentration levels. The Commission considers that in view of the limited information available, it cannot assess whether compliance could not have been

reached by 2010 in zone 4. Therefore, Recital 19 of Commission Decision C(2010)7086 still applies.

- (16) In order to assess if compliance with the limit values for NO₂ and benzene 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.
- (17) The Commission notes that the Polish authorities have requested the maximum permitted postponement until 31 December 2012 for compliance with the hourly and annual limit values for NO₂ in zone 1 and until 1 January 2015 for compliance with the annual limit values for NO₂ and benzene in zones 2, 3 and 4. 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.
- (18) 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.
- (19) As regards zone 1, it appears from the annual air quality reports submitted by the Polish authorities to the Commission that the daily and annual NO₂ limit values were achieved in 2008-2010. However, the notification of the postponement for attaining the deadline for the limit values for NO₂ suggests that there are still exceedances of NO₂ limit values in zone 1. The Polish authorities provided information on additional abatement measures to reach compliance in zone 1 by the end of 2012. The assessment of the Commission indicates that the impact of these measures, which suggest a reduction of traffic emissions by 70% by the new attainment date, is unrealistic. Therefore, taking into account the inconsistency of information and unrealistic projections of NO₂ levels provided by the Polish authorities, the Commission finds that there is not enough information available to assess whether it is possible for Poland to achieve compliance with the NO₂ limit values by the new deadline in zone 1.
- (20) With regard to zones 2 and 3, according to information provided by the Polish authorities there is still a large compliance gap in these zones and no downward trend can be observed in the recent years. No information on the detailed effects of individual measures has been provided for these zones. As regards zone 3, the Polish authorities have provided projections based on the assumption that a bypass road will be built and that consequently traffic will be reduced. However, it is not clear from the notification if that measure will be completed in time as no clear timetable has been indicated for its implementation. As regards zone 2, the Polish authorities have provided data on the projected NO₂ concentration levels in 2015 that are very close to the limit value (39.97 µg/m³), but no background information on how this value has been calculated was submitted and it cannot be excluded that the limit value will be exceeded in that year. Therefore, the Commission finds that it cannot, based on the information available and taking into account model uncertainties, assess whether the proposed abatement actions are sufficient for achieving compliance with the NO₂ limit values by 2015 or earlier in zones 2 and 3.
- (21) As regards zone 4, the Commission considers, taking into account the lack of knowledge about specific sources and the lack of implementation of abatement measures that would ensure compliance and noting that the projected concentration at

the extended attainment date is above the limit value for benzene, that the Polish authorities have not demonstrated that conformity with the annual limit value for benzene will be achieved by 1 January 2015 or earlier in zone 4.

- (22) The Commission is satisfied that the implementation by Poland 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.
- (23) The Commission is satisfied that the Polish authorities have taken into consideration all measures listed in Part 3 of Section B in Annex XV to Directive 2008/50/EC in zones 2, 3 and 4 and accepts the explanation by the Polish authorities that for zone 1 the only reasonable measures to be considered are traffic measures.
- (24) Against this background, the Commission finds that objections should be raised against the postponement until 1 January 2015 of the application of the annual and hourly limit values for NO₂ in zone 1, the annual limit value for NO₂ in zones 2 and 3 and the annual limit value for benzene in zone 4 on the grounds that it has not been demonstrated that compliance with those limit values can be achieved by 1 January 2015 at the latest in zones 1-4.

HAS ADOPTED THIS DECISION:

Article 1

Objections are raised to the postponement by the Republic of Poland of the deadline for attaining the following limit values for NO₂ set out in Annex XI to Directive 2008/50/EC:

- (a) the hourly and annual limit values in zone 1 as specified in the Annex to this Decision;
- (b) the annual limit value in zones 2 and 3 as specified in the Annex to this Decision.

Article 2

Objections are raised to the postponement by the Republic of Poland of the deadline for attaining the annual limit value for benzene set out in Annex XI to Directive 2008/50/EC in zone 4 as specified in the Annex to this Decision.

Article 3

This Decision is addressed to the Republic of Poland.

Done at Brussels,

For the Commission
Janez POTOČNIK
Member of the Commission

ANNEX

Zones and agglomerations covered by the notification.

Zone number	Zone code	Zone name	Hourly (h) and/or annual (a) limit value for NO₂ and benzene notified
1	4.04.06.64 (2004-2006) PL.04.04.m.01 (2007-2009) PL0403 (2010)	Miasto Włocławek	a; h (NO ₂)
2	4.12.17.00 (2004-2006) PL.12.01.a.01 (2007-2009) PL1201 (2010)	Aglomeracja Krakowska	a (NO ₂)
3	4.14.22.65 (2004) 4.14.22.00 (2005-2006) PL.14.01.a.01 (2007-2009) PL1401 (2010)	Aglomeracja Warszawska	a (NO ₂)
4	4.16.23.03 (2004-2006) PL.16.01.p.01 (2007-2009) PL1602 (2010)	Powiat kędzierzyńsko-kozielski	a (benzene)