EUROPEAN COMMISSION

Brussels,
C(2010) 6850 final

Draft

COMMISSION DECISION

of [...] on the notification by the Republic of Austria of an exemption from the obligation to apply the daily limit value for PM$_{10}$ in one zone
COMMISSION DECISION

of […]

on the notification by the Republic of Austria of an exemption from the obligation to apply the daily limit value for PM$_{10}$ in one zone

(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\(^1\), and in particular Article 22(4) thereof,

Whereas:

(1) The air quality limit values for PM$_{10}$ 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\(^2\).

(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$_{10}$ 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.

(3) The Commission objected on 2 July 2009\(^3\) to the exemption under Article 22(2) of Directive 2008/50/EC from the obligation to meet the PM$_{10}$ limit values in five out of eleven air quality zones as notified by Austria by letter registered on 26 November 2008.

(4) Austria notified the Commission again by letter registered on 9 March 2010, of an exemption under Article 22(2) of Directive 2008/50/EC from the obligation to apply the daily limit value for PM$_{10}$ in one air quality zone, as listed in the Annex to this Decision, out of the five zones against which the Commission had previously raised

\(^3\) C(2009)5247
objections to an exemption from the obligation to apply the PM$_{10}$ limit values. The Commission notes that for reasons of legal certainty, notifications of an exemption from the obligation to meet the PM$_{10}$ 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 Austrian notification registered on 9 March 2010, the Commission notes that new information 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 Europe\(^4\), ("the Communication"). The notification was submitted using the forms set out in the Staff Working Paper\(^5\) that accompanied the Communication.

(6) The Commission identified certain relevant information as missing from the original notification. The Commission requested the Austrian authorities by letter dated 17 May 2010 to complete the notification. The Austrian authorities submitted additional information for the zone AT60 by letter registered 4 June 2010.

(7) The Austrian authorities have provided data for the year 2005 to be used as reference year and basis for the assessment. The Commission notes that 2005 is appropriate for the purpose of assessing whether the conditions are fulfilled.

(8) The Commission notes that the first Austrian notification was accompanied by an air quality plan fulfilling the requirements laid down in Part A of Annex XV to Directive 2008/50/EC. Updated information on new measures was provided in the documents accompanying the notification.

(9) In order to assess whether the conditions for the PM$_{10}$ 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.

(10) The Austrian authorities have provided a detailed analysis of the contributing sources by sector and origin for the notified zone. Traffic and commercial and residential sources are the main sources contributing to the high PM$_{10}$ concentration levels at the urban and local level. The assessment of the Commission confirms that the identification and quantification of the contributions from the different sources provided by the Austrian authorities give a relevant and reasonable basis for the assessment. The information provided by Austrian authorities on the split between transboundary and contributions coming from within the Member State in zone AT60 also appears reasonable.

(11) As regards the assessment of the condition that the PM$_{10}$ limit values cannot be achieved because of site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions, the Commission notes that no new

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\(^4\) COM(2008)403
\(^5\) SEC(2008)2132
information was provided by the Austrian authorities and that therefore Recitals 14 and 15 of Commission Decision C(2009)5247 still apply.

(12) As regards the assessment of whether all appropriate measures were taken before the 2005 attainment date, the Commission notes that no new information was provided by the Austrian authorities and that therefore Recitals 19 and 20 of Commission Decision C(2009)5247 still apply.

(13) In order to assess if compliance with the limit values for \( \text{PM}_{10} \) 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 notification.

(14) As regards zone AT60, the notification indicates that compliance with the daily limit value is expected to be achieved in 2011. The Commission notes that the number of days in exceedance appears to have declined steadily from 2005 to 2009. With the strict implementation of the measures foreseen in the air quality plan and of the additional measures mentioned in the notification, the Commission finds that it is likely that compliance will be achieved at the expiry of the exemption period. In view, however, of the important reductions that must be achieved, it is essential that the competent authorities ensure that the additional measures mentioned in the notification are implemented strictly and on time to deliver the necessary effect by the expiry of the exemption period. In view also of the very narrow margin by which compliance with the daily \( \text{PM}_{10} \) limit value in zone AT60 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 objections should be raised to the exemption, provided that the air quality plan is adjusted to include the additional measures mentioned in the notification and to include short-term measures effective for controlling or, where necessary, suspending activities which contribute to the risk of the limit value being exceeded. The adjusted air quality plan including the additional measures mentioned in the notification and the short-term measures or, if appropriate, a short-term action plan within the meaning of Article 24 of Directive 2008/50/EC, should be notified to the Commission as soon as possible, taking into account the time-scale necessary to carry out the appropriate procedures to amend the air quality plan without undue delay.

(15) As regards the status of implementation of the Community legislation listed in Part 2 of Section B in Annex XV to Directive 2008/50/EC, the Commission notes that no new information has been provided by the Austrian authorities and that therefore Recital 28 of Commission Decision C(2009)5247 still applies.

(16) As regards measures to be considered in accordance with Part 3 of Section B in Annex XV to Directive 2008/50/EC, the Commission notes that due account has been taken of these measures.

(17) 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 \( \text{PM}_{10} \) limit value in zone AT60, provided that the air quality plan is adjusted to include the additional measures mentioned in the notification and to include short-term
abatement measures, or if appropriate, it is complemented by a short-term action plan within the meaning of Article 24 of Directive 2008/50/EC.

(18) During the exemption period the daily limit value continues to apply in zone AT60 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, Austria 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 that zone.

(19) In order to ensure that the Commission can check the implementation of the air quality plan and the relevant abatement action, Austria should provide information to the Commission for the zone 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.

(20) The exemption should apply to the air quality zone as it was 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 the zone during the exemption period should be subject to prior approval by the Commission.

HAS ADOPTED THIS DECISION:

Article 1

No objections are raised against the notification by the Republic of Austria of an exemption from the obligation to apply the daily limit value for PM$_{10}$ set out in Annex XI to Directive 2008/50/EC in zone AT60 listed in the Annex to this Decision, provided that the competent authorities adjust the air quality plan to include the additional measures listed in the notification and to include short-term measures effective for controlling or, where necessary, suspending activities which contribute to the risk of the limit values being exceeded. Where appropriate, those short-term measures may be provided in the form of a short-term action plan within the meaning of Article 24 of Directive 2008/50/EC. The adjusted air quality plan and, where appropriate, the short-term action plan shall be notified to the Commission as soon as possible, taking into account the time-scale necessary to carry out the appropriate procedures to amend the air quality plan and, where appropriate, to adopt the short-term action plan without undue delay. Provided this condition is satisfied, the exemption shall apply until 11 June 2011.

Article 2

1. The Republic of Austria 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 zone referred to in Article 1 are below the daily limit value 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 in Article 1 of Commission Decision 2004/461/EC of 29 April 2004 laying down a questionnaire to be used for annual reporting on ambient air quality assessment under Council

2. The Republic of Austria shall by 30 September 2012 provide the Commission with information confirming that compliance with the daily limit value for PM\textsubscript{10} set out in Annex XI to Directive 2008/50/EC has been achieved in zone AT60.

3. Changes to the delimitations of the air quality zone 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 3**

This Decision is addressed to the Republic of Austria.

Done at Brussels, […]

*For the Commission*

*Janez POTOČNIK*

*Member of the Commission*

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ANNEX

Zone covered by the notification in accordance with the delimitations applicable in the annual air quality report for the calendar year 2005

<table>
<thead>
<tr>
<th>Zone code</th>
<th>Daily and/or annual PM$_{10}$ limit value notified (DLV/ALV)</th>
<th>Zone Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>AT60</td>
<td>DLV</td>
<td>Graz</td>
</tr>
</tbody>
</table>