COMMISSION DECISION

of [...] on the notification by the Federal Republic of Germany of an exemption from the obligation to apply the limit values for PM$_{10}$ in zones DEZJXX017A and DEZJXX0018S
COMMISSION DECISION

of [...] on the notification by the Federal Republic of Germany of an exemption from the obligation to apply the limit values for PM$_{10}$ in zones DEZJXX017A and DEZJXX0018S

(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 Europe¹, 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 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 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 26 November 2009³ to the exemption under Article 22(2) of Directive 2008/50/EC from the obligation to meet either one or both of the PM$_{10}$ limit values in three out of four air quality zones as notified by Germany by letters registered on 19 December 2008 and 11 February 2009 and completed by letter registered on 2 July 2009.

(4) By letter registered 27 January 2010 Germany informed the Commission of the split of the air quality zone DEZJXX0007A, on which the Commission had raised objections.

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³ C(2009)9154
to an exemption from the obligation to apply the PM$_{10}$ limit values in its Decision C(2009)9154, into the two zones DEZJXX00017A and DEZJXX0018S.

(5) Germany notified the Commission by letters registered on 9 February and 21 May 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 of the new air quality zones and the daily and annual limit values for PM$_{10}$ in the other new zone, as 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 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 German notifications registered on 9 February and 21 May 2010, the Commission notes that new information has been submitted to the Commission.

(6) 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.

(7) The Commission identified certain relevant information as missing from the original notification. The Commission requested the German authorities by letter dated 4 June 2010 to complete the notification. The German authorities submitted additional information by letters dated 18 June and 8 July 2010.

(8) The German 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.

(9) The Commission notes that the German notification of former zone DEZJXX0007A 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.

(10) 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.

(11) The German authorities have provided a detailed analysis of the contributing sources by sector and origin for the notified zones. Traffic and industrial sources are the main sources contributing to the high PM$_{10}$ concentration levels at the urban and local level in both zones. Off-road machinery and shipping also contribute to the PM$_{10}$ concentration levels on the local level in zone 2. The assessment of the Commission confirms that the identification and quantification of the contributions from the

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$^4$ COM(2008)403
$^5$ SEC(2008)2132
different sources provided by the German authorities give a relevant and reasonable basis for the assessment. The information provided by German authorities on the split between transboundary and contributions coming from within the Member State in both zones also appears reasonable.

(12) 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 information was provided by the German authorities and that therefore Recitals 10 and 11 of Commission Decision C(2009)9154 referring to former zone DEZJXX0007A still apply.

(13) 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 German authorities and that therefore Recital 13 of Commission Decision C(2009)9154 referring to former zone DEZJXX0007A still applies.

(14) In order to assess if compliance with the limit values for 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.

(15) As regards zone 1, it appears from the notification that compliance with the daily limit value was achieved in 2008. The German authorities have in the notification of former zone DEZJXX0007A indicated that the PM$_{10}$ concentration levels in that year were significantly lower as a result of favourable atmospheric dispersion conditions in the whole region of North-Rhine Westphalia. It appears that most of exceedances in the region due to site-specific dispersion characteristics are characterised by ground level inversions and low wind speeds (daily average of wind speed < 1.5 m/s). German authorities have indicated that the low wind speed events contributing to creating high concentration levels were significantly fewer in 2008 than in 2007 and 2009 (based on provisional data for 2009). In view of the information provided, the Commission considers that Germany demonstrated that 2008 was a year with favourable atmospheric dispersion conditions in the region of North-Rhine Westphalia.

(16) 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 zone 1, the Commission considers that in view of the very narrow margin by which compliance is projected, 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 adopted and 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.
As regards zone 2, it appears from the annual air quality reports and the notification submitted to the Commission that compliance with the annual limit value has been achieved since 2005. The Commission finds that in view of the long-term compliance achieved and considering that the annual mean concentration levels must in any case 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 this zone without a margin of tolerance.

As regards the daily limit value for PM$_{10}$ in zone 2, the notification indicates that compliance with the daily limit value is expected to be achieved in 2011. 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. 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. The adjusted air quality plan including those additional measures 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.

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 German authorities and that therefore Recital 21 of Commission Decision C(2009)9154 still applies.

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.

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 PM$_{10}$ limit value in zone 1, 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 within the meaning of Article 24 of Directive 2008/50/EC and no objections should be raised against the application of the exemption from the obligation to apply the daily PM$_{10}$ limit value in zone 2, provided that the air quality plan is adjusted to include the additional measures mentioned in the notification.

Objections should be raised against the application of the exemption from the obligation to apply the annual limit value in zone 2, on the grounds that compliance with that limit value has already been achieved.

During the exemption period the daily limit value continues to apply in zones 1 and 2 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.
In order to ensure that the Commission can check the implementation of the air quality plan and the relevant abatement action, Germany should provide information to the Commission for 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.

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 the 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 notification by the Federal Republic of Germany 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 1 listed in the Annex to this Decision, 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 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, if 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, if appropriate, to adopt the short-term action plan without undue delay. Provided this condition is satisfied, the exemption shall apply until 11 June 2011.

2. No objections are raised against the notification by the Federal Republic of Germany 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 2 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. The adjusted air quality 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 without undue delay. Provided this condition is satisfied, the exemption shall apply until 11 June 2011.

3. Objections are raised against the notification by the Federal Republic of Germany of an exemption from the obligation to apply the annual limit value for PM$_{10}$ set out in Annex XI to Directive 2008/50/EC in zone 2 as listed in the Annex to this Decision.

Article 2

1. The Federal Republic of 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. That data may be provided through the annual submission of the questionnaire referred to 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 Directives 96/62/EC and 1999/30/EC and under Directives 2000/69/EC and 2002/3/EC of the European Parliament and of the Council⁶.

2. The Federal Republic of 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 zones 1 and 2.

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 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, […]

For the Commission
Janez POTOČNIK
Member of the Commission

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⁶ OJ L 156, 30.4.2004, p. 84.
**ANNEX**

Zones covered by the notification

<table>
<thead>
<tr>
<th>Zone number</th>
<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>1</td>
<td>DEZJXX0017A</td>
<td>DLV</td>
<td>Duisburg, Oberhausen, Mühlheim</td>
</tr>
<tr>
<td>2</td>
<td>DEZJXX0018S</td>
<td>DLV+ALV</td>
<td>Krefeld</td>
</tr>
</tbody>
</table>