COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,
C(2009) XXX final

Draft

COMMISSION DECISION

of [...] on the notification by Austria of an exemption from the obligation to apply the limit values for PM10

(Only the German text is authentic)
Draft

COMMISSION DECISION

of […]

on the notification by Austria of an exemption from the obligation to apply the limit values for PM$_{10}$

(Only the German text is authentic)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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) Austria notified the Commission by letter registered on 26 November 2008 of an exemption from the obligation to apply the daily limit value for PM$_{10}$ in the 11 air quality zones listed in the Annex to this Decision as well as the annual limit value in one of those zones (zone 10). The air quality limit values for PM$_{10}$ have been legally binding since 1 January 2005 in accordance with Directive 1999/30/EC of the European Parliament and of the Council 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 exceedence can be attributed to site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions, and that an air quality plan is established demonstrating conformity with the limit values will be achieved before the new deadline.

(3) 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$^3$.

---

$^3$ COM(2008)403
The notification was submitted using the forms set out in the Staff Working Paper\(^4\) that accompanied the Communication.

The Commission identified certain relevant information as missing from the original notification, and requested the Austrian authorities by letter dated 3 February 2009 to complete the notification. The Austrian authorities submitted the additional information by letter dated 24 February 2009.

The Austrian authorities have provided data for the year 2005, and for some zones for 2006 (zones 2, 4, 8 and 9), to be used as reference year and basis for the assessment. The Commission notes that 2006 was a year with particularly high concentration levels and has taken that into account in its assessment.

The Austrian notification was accompanied by air quality plans for all the zones concerned. The assessment shows that the plans fulfil the requirements laid down in Part A of Annex XV to Directive 2008/50/EC.

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.

The Austrian authorities have provided a detailed analysis of the contributing sources by sector and origin. Traffic is clearly the dominating domestic anthropogenic source contributing to the high concentration levels in the urban background and at the local level in all zones. However, commercial and residential sources as well as industry also account for substantial contributions to the urban background and at the local level. In zones 1, 3, 4, 9 and 11, the most significant single source is transboundary pollution which accounts for between 40 and 50% of the total contributions. In some zones there is also evidence that winter salting or sanding makes an important impact locally on concentration levels.

A comparison with the 2005 data collected under the cooperative programme for monitoring and evaluation of the long-range transmission of air pollutants in Europe ("EMEP") supports the proportion of the transboundary contribution identified by the Austrian authorities in the zones concerned.

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 notification provides that transboundary pollution and adverse climatic conditions are the principal causes for why conformity with the limit values could not be achieved by the 2005 attainment date.

The Austrian authorities have demonstrated for zone 1 and 4 that the daily limit value is exceeded on less than 35 days per year once the exceedances due to transboundary pollution have been deducted.

\(^4\) SEC(2008)2132
Although transboundary contributions are quite significant in zones 3, 9 and 11, a deduction of those contributions does not show that exceedances of the daily limit value are fully eliminated. In determining the impact of the transboundary contributions, Austria has however not taken into account the possibility to deduct also contributions from natural sources and winter sanding or salting in accordance with Articles 20 and 21 of Directive 2008/50/EC. When taking into account those sources in addition to the transboundary contributions, the exceedances of the daily limit value are eliminated in zones 3 and 11. The Commission therefore finds that the exceedance situations can be chiefly attributed to transboundary contributions in zones 3 and 11. In zone 9 transboundary pollution is important for explaining the exceedances but is not enough to be considered the chief cause by itself.

The notification indicates that the high concentration levels in zones 2 and 5-10 are chiefly due to adverse climatic conditions. The Commission finds that for those zones, the Austrian authorities have demonstrated that concentration levels above the daily limit value occur to a large extent on days when the low wind-speed criteria indicated by the Commission in the Communication are met. In addition to contributions from transboundary pollution, the influence on the concentration levels during some periods of adverse climatic conditions has also been demonstrated for zones 4 and 9. The Commission finds that those periods, in addition to the transboundary contributions occurring in those two zones, together constitute the chief cause of high concentration levels in those two zones.

Accordingly, the Commission considers that the exceedances situations can be chiefly attributed to transboundary contributions in zones 1, 3 and 11. Both transboundary pollution and adverse climatic conditions is considered the chief cause of the exceedances in zones 4 and 9, while adverse climatic conditions alone are the chief cause for the exceedances in zones 2, 5 to 8 and 10.

In order to assess if all appropriate measures 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 transboundary contributions.

In zone 1, the first recorded exceedance of the daily limit value occurred in 2005 and was officially reported to the Commission in 2006. As a consequence there was no legal obligation for the competent authorities to take abatement action prior to 2005. Certain relevant abatement action was however started already in 2003 which had a positive impact on air quality. In addition an air quality plan was established in 2004. Therefore the Commission considers that on balance the abatement action taken in zone 1 prior to the 2005 deadline was appropriate.

In zones 2 to 7 and 9, the first exceedances triggering an obligation to take abatement action were recorded in 2003. In zone 8, exceedances were recorded already in 2002. Regional air quality plans were drawn up in the same year or in 2004 in all zones except zones 3 and 7. Of the latter, it was only in zone 3, in which the regional plan was adopted late, i.e. in 2006, as compared to the requirements of Council Directive
96/62/EC of 27 September 1996 on ambient air quality assessment and management and Directive 1999/30/EC. Measures addressing the chief sources were taken at both local and national level as from 2003. The Commission considers, taking into account that the measures taken were relevant for addressing the chief sources identified as well as effective in reducing the concentration levels, that on balance the abatement action taken in zones 2 to 9 prior to the 2005 deadline was appropriate.

(19) In zones 10 and 11 very important exceedances were recorded in the period prior to and including the attainment date. Abatement measures were taken in that period at both the regional and national level and an air quality plan was established in 2004 in zone 10, and in 2005 for zone 11.

(20) As regards zone 10, abatement measures were implemented at the local and regional level in the period prior to the attainment date in 2005 and important reductions in the number of days in exceedance were achieved in that period. The Commission considers, taking into account that important reductions of the concentration levels were achieved despite the difficulties caused by the severe climatic conditions in zone 10, that on balance the abatement action taken in zone 10 prior to the 2005 deadline was appropriate.

(21) The notification indicates for zone 11 that several source categories contribute to the high concentration levels, including transport, winter sanding and salting as well as wood smoke coming from domestic heating in the neighbouring areas. A wide range of measures were implemented in the time period before 2005, and in particular in the time period 1999 to 2004, that included traffic management and expanded district heating and low emission fuels. The Commission considers, taking into account the multiple sources, the wide range of measures taken at an early stage and the continued efforts as part of the air quality plan, that on balance the abatement action taken in zone 11 prior to the 2005 deadline was appropriate.

(22) The Commission recognises that the transboundary contributions originate in several different Member States and that it may not be possible to identify individual sources in those Member States that contribute significantly to the high concentration levels of PM$_{10}$ in zones 1, 3, 4, 9 and 11. The notification indicates that consultations have not been held between Austrian authorities and the competent authorities in the Member States from which the pollution originates as required according to Article 8(6) of Directive 96/62/EC. The Commission concludes however that in view of the domination of long range transboundary contributions of uncertain and multiple origin, it is likely that bilateral consultations would have had limited effect on reducing the concentration levels. Such reductions will need to be pursued through the further implementation of Directive 2001/81/EC.

(23) 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 plan accompanying the notification.

---

5 OJ L 296, 21.11.1996
As regards zones 1, 4, 5 and 8 it appears from the annual air quality reports submitted to the Commission that compliance with the daily limit value was achieved in 2007. As the notification does not indicate that the concentration levels in that year were significantly lower as a result of favourable atmospheric conditions in those zones, the Commission finds that it is likely that the concentration levels in this zone can be maintained below the limit values in accordance with Article 12 of Directive 2008/50/EC. The Commission finds that in view of the compliance achieved, the daily limit value laid down in Annex XI to Directive 2008/50/EC should continue to apply in zones 1, 4, 5 and 8 without a margin of tolerance.

Considering the well structured and comprehensive air quality management in place in zones 2, 3, 6 and 7, the Commission finds that with the measures already in place as well as the measures foreseen in the air quality plans, the Austrian authorities have demonstrated that compliance will be achieved in zones 2, 3, 6 and 7 at the expiry of the exemption period.

The Commission finds as regards zones 9 and 11 that it is likely that compliance with the daily limit value will be achieved but notes that a significant effort is needed. The competent authorities should therefore ensure that the measures foreseen in the air quality plans are implemented strictly and on time to deliver the necessary effects at the expiry of the exemption period. The competent authorities in the respective zones should also consider the need to complement the air quality plans with short term action plans setting out measures effective for controlling or, where necessary, suspending activities which contribute to the risk of the limit values being exceeded.

In zone 10, the notification indicates that compliance with the annual limit value was achieved in 2007. The Commission considers that concentration levels can be maintained below the annual limit value, provided that the abatement measures foreseen are implemented on time. 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 zone 10 without a margin of tolerance. As regards the daily limit value in that zone, the notification indicates that the number of days exceeding the daily limit value in 2011 is expected to remain significantly above the 35 permitted days, 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 air quality plan if compliance is to be achieved by 2011. The Commission therefore considers that it is not demonstrated that compliance will be achieved in zone 10 at the expiry of the exemption period.

The Commission notes, 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, that Austria expects the national emission ceiling set for nitrogen oxides pursuant to Directive 2001/81/EC to be significantly exceeded in 2010. 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 NO₂ and PM₁₀, can be met both in Austria and neighbouring Member States. The Commission therefore expects that the necessary effort is taken to achieve the national emissions ceilings by the attainment date in 2010.
As regards measures to be considered in accordance with Part 3 of Section B in Annex XV to Directive 2008/50/EC, the Austrian authorities confirmed in their reply to the Commission's request for additional information that due account has been taken of these measures.

Against that background, the Commission finds that objections should be raised against the exemption from the obligation to apply the daily limit value in zone 1, 4, 5 and 8 on the grounds that compliance with that limit value has been achieved in 2007.

The Commission finds that no objections should be raised against the application of the exemption from the obligation to apply the daily limit value in the zones 2, 3, 6, 7, 9 and 11.

As regards zone 10, the Commission finds that objections should be raised against the notification by Austria of an exemption from the annual limit value for PM$_{10}$ on the grounds that compliance with that limit value has been achieved in 2007, and against the exemption from the daily limit value for PM$_{10}$ on the grounds that it has not been demonstrated that compliance with that limit value will be achieved at the expiry of the exemption period.

During the exemption period the daily limit value continues to apply in zones 2, 3, 6, 7, 9 and 11 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 limit values plus the maximum margin of tolerance.

In order to ensure that the Commission can check the implementation of the air quality plans and the relevant abatement action, Austria 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.

The exemption should apply to the air quality zones as they were defined in the reference year 2005 or 2006 as indicated in the notification. 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

1. No objections are raised against the notification by 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 the zones 2, 3, 6, 7, 9 and 11 listed in the Annex to this Decision. The exemption shall apply until 10 June 2011.
2. Objections are raised against the notification by Austria of an exemption from the obligation to apply the following limit values for PM$_{10}$ set out in Annex XI to Directive 2008/50/EC:

(a) the daily limit value for PM$_{10}$ in zones 1, 4, 5, 8 and 10 listed in the Annex to this Decision;

(b) the annual limit value in zone 10 listed in the Annex to this Decision.

Article 2
Reporting

1. 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 zones referred to in Article 1(1) are below the daily limit value plus the maximum margin of tolerance specified in Annex XI to Directive 2008/50/EC.

The data shall be provided at the latest by 30 September of the following year.

2. Austria shall by 30 September 2012 provide the Commission with information confirming that compliance with the daily limit value for PM$_{10}$ set out in Annex XI to Directive 2008/50/EC has been achieved in the zones 2, 3, 6, 7, 9 and 11.

3. Changes to the delimitations of the air quality zones as compared to the delimitations that applied in the reference years 2005 or 2006 during the exemption period that 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
Stavros DIMAS
Member of the Commission
Zones and agglomerations covered by the notification in accordance with the delimitations applicable in the annual air quality report for the calendar years 2005 and/or 2006 as specified in the table.

<table>
<thead>
<tr>
<th>Zone Number</th>
<th>Zones and agglomerations</th>
<th>Reference year</th>
<th>Exceedance situations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>AT01</td>
<td>2005</td>
<td>Eisenstadt, Kittsee, Illmitz</td>
</tr>
<tr>
<td>2.</td>
<td>AT02</td>
<td>2005/2006</td>
<td>Klagenfurt, Wolfsberg, Villach</td>
</tr>
<tr>
<td>3.</td>
<td>AT03</td>
<td>2005</td>
<td>Amstetten, St. Pölten, Wiener Umland Süd and Wiener Umland Nord</td>
</tr>
<tr>
<td>4.</td>
<td>AT04</td>
<td>2005/2006</td>
<td>Wels, Enns,</td>
</tr>
<tr>
<td>5.</td>
<td>AT05</td>
<td>2005</td>
<td>Salzburg, Hallein</td>
</tr>
<tr>
<td>6.</td>
<td>AT06</td>
<td>2005</td>
<td>Steiermark ohne Graz, Sanierungsgebiet Mur-Mürz-Furche, mittleres Murtal and Mittelsteiermark&lt;</td>
</tr>
<tr>
<td>7.</td>
<td>AT07</td>
<td>2005</td>
<td>Imst, Innsbruck, Hall i.T., Lienz, Vomp</td>
</tr>
<tr>
<td>8.</td>
<td>AT08</td>
<td>2005/2006</td>
<td>Feldkirch, Dornbirn, Lustenau Zollamt, Höchst</td>
</tr>
<tr>
<td>9.</td>
<td>AT40</td>
<td>2005/2006</td>
<td>Linz</td>
</tr>
<tr>
<td>10.</td>
<td>AT60</td>
<td>2005</td>
<td>Graz</td>
</tr>
<tr>
<td>11.</td>
<td>AT09</td>
<td>2005</td>
<td>Wien</td>
</tr>
</tbody>
</table>