on the notification by Germany of an exemption from the obligation to apply the limit values for PM$_{10}$ in zones DEZJXX0004A, DEZJXX0011A, DEZJXX0014S, DEZJXX0015A and DEZNXX0001A
Draft

COMMISSION DECISION

of […]

on the notification by Germany of an exemption from the obligation to apply the limit values for PM$_{10}$ in zones DEZJXX0004A, DEZJXX0011A, DEZJXX0014S, DEZJXX0015A and DEZNXX0001A

(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) Germany notified the Commission by letters registered on 12 June and 27 July 2009, 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 3 air quality zones listed in the Annex to this Decision.

(4) By letter dated 30 September 2009 Germany withdraw an earlier notification dated 25 February 2009 of zone DEZJXX0001S and informed the Commission of its intention to change the delimitation of the air quality zone and to split it into 3 smaller zones. The German authorities notified the Commission by letter dated 11 November 2009,

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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 respect of 2 of the newly created air quality zones.

(5) The notifications have 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$^3$, ("the Communication"). The notifications were submitted using the forms set out in the Staff Working Paper$^4$ that accompanied the Communication.

(6) The Commission identified certain relevant information as missing from the original notifications in all zones. As regards zones 1, 2 and 5, the Commission requested the German authorities by letters dated 10 and 28 September 2009 to complete the notifications. The German authorities submitted additional information for those zones by letters dated 29 September and 4 November 2009. As regards zones 3 and 4, the Commission requested additional information by letter dated 25 May 2009, as part of the initial notification of former zone DEZJXX0001S. The German authorities submitted additional information for this former zone by letters dated 29 June and 25 September 2009. The Commission has taken that additional information into account for the assessment of the notification of zones 3 and 4.

(7) The German authorities have provided data for the years 2005, 2006 and 2007 to be used as reference years and basis for the assessment. The Commission notes that 2005 is appropriate for the purpose of assessing whether the conditions are fulfilled in zone 5. Since the first exceedances in zones 1 to 4 were only measured respectively in 2006 (zones 3 and 4) and 2007 (zones 1 and 2), the Commission finds that the respective reference year used, 2006 or 2007, is appropriate 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.

(8) The German notifications were accompanied by air quality or short term action plans for all the zones concerned. As regards zone 1, the Commission notes, however, that the air quality plan published in 2006 projects the zone to be in exceedance of the annual PM$_{10}$ limit value in 2010. The Commission further notes that there are some discrepancies between the information listed in the forms provided in the notification and the information in the air quality plan. It appears that the information provided in the forms is based on more recent and measured data. As a consequence the Commission has decided to use the information in the forms rather than the data mentioned in the air quality plan for its assessment of the notification of zone 1.

(9) As regards zone 3, it appears that only a short-term action plan as laid down in Article 7(3) of Directive 96/62/EC has been adopted. The Commission notes that a plan is considered as an air quality plan for the purposes of a notification pursuant to Article 22 of Directive 2008/50/EC, 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 limit values in 2011. However, in view of the expected reduction of the baseline concentration between 2005 and

$^3$ COM(2008)403
$^4$ SEC(2008)2132
2011 in zone 3 and considering that the short-term action plan in itself has the objective to reduce the duration of the exceedance, the Commission considers that the short-term action plan can be used for the purpose of the notification of an exemption from the obligation to apply the limit values for PM10 in zone 3.

(10) As regards zones 2, 4 and 5, the assessment shows that the plans accompanying the notification fulfil or almost fulfil all requirements laid down in Part A of Annex XV to Directive 2008/50/EC.

(11) In order to assess whether the conditions for the PM10 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.

(12) The German authorities have provided a detailed analysis of the contributing sources by sector and origin for all zones. In zones 1 and 2, road traffic is identified as the predominant source contributing to high PM10 concentration levels, in particular at the local level. Industrial activity and nearby traffic are the main sources contributing to high PM10 concentration levels at the local and urban background scales in zone 3. In zone 4, industrial activity is the main contributing source. In zone 5 industrial activity is the most significant source as regards concentrations in the urban background whilst road traffic also contributes to local concentrations. Transboundary contributions in all zones are also well documented and appear reasonable.

(13) The assessment of the Commission confirms that the identification and quantification of the contributions from the different sources provided by the German authorities for zones 1 to 5 give a relevant and reasonable basis for the assessment.

(14) The notification indicates that site specific dispersion characteristics together with transboundary contributions are the principal causes for why the PM10 daily limit value has been exceeded in zones 1, 2 and 5. In zones 3 and 4, the German authorities have claimed transboundary contributions and in zone 3 also adverse climatic conditions as additional cause for the exceedance of the PM10 daily limit value.

(15) The German authorities have demonstrated that the criteria specified in the Communication for site-specific dispersion characteristics are met in zones 1, 2 and 5 and that these characteristics alone explain the exceedance situations in those zones. As regards zone 3, the German authorities have provided sufficient information to demonstrate that the transboundary contribution together with adverse climatic conditions were the chief causes of the exceedance situations. As regards zone 4, the importance of transboundary pollution alone in causing the exceedance situations has been demonstrated in the notification.

(16) Accordingly the Commission finds that the exceedance situations can be chiefly attributed to site specific dispersion characteristics in zones 1, 2 and 5, to transboundary contributions together with adverse climatic conditions in zone 3 and to transboundary contributions alone in zone 4.

(17) 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 site-specific dispersion characteristics or transboundary contributions.

(18) In zones 1 to 4 the exceedance of the daily limit value was first discovered in 2006 (zones 3 and 4) and 2007 (zones 1 and 2), following the putting into operation of new monitoring stations. It can, therefore, not be excluded that the exceedance situations in those zones existed already prior to 2005, and that they could have been discovered earlier by the competent authorities, had they started monitoring at those sites at an earlier date. However, as the minimum assessment requirements have been fulfilled in those zones and as it falls within the competence of the competent authorities to determine the localisation of the monitoring stations, the Commission acknowledges that specific abatement action was only taken as from 2006 in zones 1, 3 and 4 and from 2008 in zone 2, with the establishment of short-term action plans or air quality plans.

(19) As regards zone 5, the first exceedance of the PM$_{10}$ daily limit value was recorded in 2003. Taking into account that the exceedance was recorded very close to the 2005 attainment date and considering the short time available for the implementation of effective measures before the original deadline and the fact that an air quality plan was promptly adopted in 2005, the Commission considers that the abatement action taken in zone 5 prior to the 2005 deadline was appropriate.

(20) For the purposes of addressing transboundary pollution, the Commission acknowledges that consultations have been held between German authorities and the competent authorities in the Netherlands, the Czech Republic and Poland, the Member States from which the pollution originates, as required according to Article 8(6) of Directive 96/62/EC.

(21) 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 notifications.

(22) As regards zones 1 to 4, it appears from the annual air quality reports submitted to the Commission that compliance with the daily limit value was achieved in 2008 in those zones. The German authorities have in their notification 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 occur during periods characterised by ground level inversions and low wind speeds (daily average of wind speed < 1.5 m/s). German authorities have indicated that the occurrence of low wind speed and ground level inversion events responsible for high concentration levels was significantly less frequent in 2008 than in 2007 and 2009 (based on provisional data for 2009). In view of the information provided, the Commission finds that the concentration levels achieved in 2008 can be attributed to exceptionally favourable atmospheric dispersion conditions and that it is unlikely that such levels can be maintained.

(23) As regards zone 1, on the basis of the projected concentration levels indicated by the German authorities in the forms, the Commission finds that with the measures already in place and with the strict and effective implementation of the additional measures, it
is likely that compliance with the PM$_{10}$ daily limit value will be achieved at the expiry of the exemption period.

(24) 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 2, the Commission finds that with the measures already in place, including those foreseen in the air quality plan, the German authorities have demonstrated that compliance with the daily limit value will be achieved in this zone by the expiry of the exemption period.

(25) As regards zones 3 and 4, according to the German authorities a substantive reduction of the baseline is expected between 2005 and 2011 in both zones. As a consequence, the Commission finds that the envisaged reduction of the baseline makes it reasonable to assume that compliance with the daily limit value will be achieved by 2011 in those zones, provided that the measures foreseen in the plans are implemented on time.

(26) On the basis of its assessment of the projected concentration levels indicated by the German authorities and the information provided on the overall air quality management in zone 5, the Commission finds that with the measures already in place, including the most ambitious ones foreseen in the updated air quality plan, the German authorities have demonstrated that compliance with the daily limit value will be achieved in zone 5 by the expiry of the exemption period.

(27) The Commission is satisfied that the implementation by Germany 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, provided that the competent authorities ensure that all the necessary measures to achieve compliance with the requirements of Directive 2001/81/EC$^5$ are taken.

(28) As regards measures to be considered in accordance with Part 3 of Section B in Annex XV to Directive 2008/50/EC, the German authorities have demonstrated that due account has been taken of those measures in all zones.

(29) Against that background, the Commission considers that no objection should be raised against the application of the exemption from the obligation to apply the daily limit value in all zones.

(30) During the exemption period the daily limit value continues to apply in all zones 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.

(31) In order to ensure that the Commission can check the implementation of the air quality plans and the relevant abatement action, Germany 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

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$^5$ OJ L 309, 27.11.2001, p. 22
population exposed in the calendar year following the date of expiry of the exemption period, i.e. in 2012.

(32) 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 those zones during the exemption period should be subject to prior approval by the Commission.

HAS ADOPTED THIS DECISION:

Article 1

No objection is raised against the notification by 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 zones 1 to 5 listed in the Annex to this Decision. The exemption shall apply until 11 June 2011.

Article 2

1. 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 are below the daily limit value plus the maximum margin of tolerance specified in Annex XI to Directive 2008/50/EC. This data may be provided through the annual submission of the questionnaire specified in Commission Decision 2004/461/EC.

2. Germany 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 zones 1 to 5.

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
## ANNEX

### Zones and agglomerations covered by the notifications

<table>
<thead>
<tr>
<th>Zone number</th>
<th>Zone code</th>
<th>Reference year</th>
<th>Daily and/or annual PM$_{10}$ limit value notified (DLV/ALV)</th>
<th>Zone Name</th>
<th>Federal Province</th>
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<tbody>
<tr>
<td>1</td>
<td>DEZJXX0004A</td>
<td>2007</td>
<td>DLV</td>
<td>Köln</td>
<td>Nordrhein-Westfalen</td>
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<td>DLV</td>
<td>Aachen</td>
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<td>DEZJXX0014S</td>
<td>2006</td>
<td>DLV</td>
<td>Warstein</td>
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<td>4</td>
<td>DEZJXX0015A</td>
<td>2006</td>
<td>DLV</td>
<td>Grevenbroich (Ballungsraum Rheinisch Braunkohlerevier)</td>
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<tr>
<td>5</td>
<td>DEZNXX0001A</td>
<td>2005</td>
<td>DLV</td>
<td>Leipzig</td>
<td>Sachsen</td>
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