Draft

COMMISSION DECISION

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

(Only the Spanish texts is authentic)
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of […]

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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) Spain notified the Commission by letters registered on 4, 15 and 19 December 2008 and 15 January 2009 of an exemption from the obligation to apply the daily limit value for PM$_{10}$ in all 10 air quality zones listed in the Annex to this Decision as well as the annual limit value in all zones except zones 4 and 8. 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 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 of 4 December 2008 also referred to zones ES0901 (Àrea de Barcelona) and ES0902 (Vallès – Baix Llobregat). Since the Spanish authorities announced by e-mail of 24 April 2009 that essential information concerning those zones was due to be submitted separately to the Commission, the period for the Commission’s assessment of those zones starts from the day following the date of official receipt of that information, i.e. 5 June 2009.

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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 (the Communication). The notifications were submitted using the forms set out in the Staff Working Paper that accompanied the Communication.

The Commission identified certain relevant information as missing from the original notifications, and requested the Spanish authorities by letter dated 23 February 2009 to complete the notifications. The Spanish authorities submitted additional information by letter dated 21 April 2009.

The Spanish authorities have provided data for the years 2005 and 2006 as specified in the Annex to be used as reference years and basis for the assessment. A comparison of the air quality data reported to the Commission by the Spanish authorities for the years 2005, 2006 and 2007 show that concentration levels were quite stable in those years. The Commission therefore finds that the 2006 reference year is representative of the air quality situation in 2005 and can be used as basis for the assessment.

The Spanish notifications were accompanied by air quality plans for zones 1, 2, 6, 7, 8 and 9. The assessment shows that some information required pursuant to Part A of Annex XV to Directive 2008/50/EC has not been included in those plans, especially the planned effects of certain measures to improve the air quality situation (point 8 of Part A of Annex XV).

For zone 3, the Spanish authorities did not submit an air quality plan complying with the requirements laid down in Directive 2008/50/EC. With regard to zones 4 and 5, a regional air quality plan and a local air quality plans for zone 4 and for one exceedance situation in zone 5 have been developed and were submitted together with the notification. The Spanish authorities have indicated that the regional plan and the local air quality plan for zone 4 have not been officially adopted yet. Consequently, only the air quality plan for one of the two exceedance situations in zone 5 can be regarded as an air quality plan pursuant to Directive 2008/50/EC. The Commission therefore considers that the Spanish authorities have not provided all relevant information necessary for the Commission to assess the notifications for zones 3, 4 and 5. However, on the basis of the information provided, the Commission is able to carry out a partial assessment of whether the conditions are met for those zones.

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 Spanish authorities have provided a detailed analysis of the contributing sources by sector and origin for zones 4, 5, 7, 8, 9 and 10. Traffic and industry are the main domestic anthropogenic sources contributing to the high PM$_{10}$ concentration levels in the urban background and in the local PM$_{10}$ component of those zones. Emissions

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3 COM(2008)403
4 SEC(2008)2132
from commercial and residential sources, as well as emissions from shipping in zone 7, also contribute to the urban background and to the local PM$_{10}$ component. The Commission considers that the identification and quantification of the contributions from the different sources provided by the Spanish authorities with regard to zones 4, 5, 7, 8, 9 and 10 give a relevant and reasonable basis for the assessment.

(11) The source apportionments provided for zones 1 and 2 present important inconsistencies in comparison with the data collected under the cooperative programme for monitoring and evaluation of the long-range transmission of air pollutants in Europe ("EMEP"). Moreover, no data for the urban background is given for those zones.

(12) The source apportionments provided for zones 3 and 6 do not provide a quantitative split between the contributions from the regional background, the urban background and the local PM$_{10}$ component and therefore do not sufficiently describe the different origins of the pollution.

(13) As a consequence the Commission cannot fully assess whether appropriate abatement action has been or will be taken in zones 1, 2, 3 and 6.

(14) The notifications provide that adverse climatic conditions are the chief causes for the high concentration levels in all zones, with the exception of zone 1. As regards zone 1, the Spanish authorities withdrew the reference to adverse climatic conditions in their response to the Commission's request for additional information, but have not specified whether they consider that the exceedances can be attributed to site specific dispersion characteristics or transboundary contributions instead. As a consequence, the Commission cannot assess whether the exceedance situations in zone 1 can be chiefly attributed to site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions.

(15) The Spanish authorities have demonstrated that concentration levels above the daily limit value in zones 2 and 6 occur to a large extent on days when the low wind-speed criteria indicated by the Commission in the Communication are met. The Commission therefore considers that the correlation between the high concentrations of PM$_{10}$ and the low wind speed has been established for zones 2 and 6.

(16) The wind-speed criteria have also been used by the Spanish authorities to demonstrate that adverse climatic conditions are present in zones 3, 4 and 5. The data provided in the notifications show however that the low wind-speed criteria indicated by the Commission in the Communication are not met in those zones. The Commission therefore considers that the exceedance situations in zones 3, 4 and 5 cannot be chiefly attributed to adverse climatic conditions.

(17) With regard to zones 7, 8 9 and 10, the notifications refers to adverse climatic conditions as the chief cause of the exceedance, namely it attributes PM$_{10}$ exceedances in the bottom of the valleys to the temperature gradient and thermal inversions. However, the criteria indicated by the Commission in the Communication have not been used or have not been met, and the notifications does not specify any alternative particular indicators that could be used to determine whether adverse climatic conditions are present in those zones. Moreover, the data submitted by the Spanish authorities does not show a correlation between the high concentrations of PM$_{10}$ and
the described weather conditions. As a consequence, the Commission cannot assess whether the exceedance situations in zones 7, 8, 9 and 10 can be chiefly attributed to adverse climatic conditions.

(18) 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 adverse climatic conditions.

(19) In zones 3 and 4, the first recorded exceedances triggering an obligation to take abatement action occurred respectively in 2005 and 2006. As a consequence, there was no legal obligation pursuant to Directive 1999/30/EC for the competent authorities to take abatement action prior to 2005 with regard to zone 3 and prior to 2006 with regard to zone 4.

(20) In zones 1 and 5, the first recorded exceedances triggering an obligation to take abatement action occurred respectively in 2001 and 2003. However, according to the notifications no abatement measures were taken by the Spanish authorities in those zones prior to the 2005 attainment date, nor were any air quality plans drawn up before that date. Against that background, the Commission considers that appropriate measures to achieve compliance with the limit values for PM$_{10}$ by the 2005 deadline have not been taken in zones 1 and 5.

(21) In zones 6 to 9, the first exceedances were recorded in 2003 and in zone 2 and 10 in 2004. The Spanish authorities have demonstrated that measures were implemented in those zones prior to 2005 to address emissions from industry and traffic as the main contributors to the high PM$_{10}$ concentration levels. In addition, air quality plans for those zones were established in time or close to the deadline resulting from Directives 96/62/EC and 1999/30/EC. 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, 6, 7, 8, 9 and 10 prior to the 2005 deadline was appropriate.

(22) 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.

(23) As regards zones 2, 6, 7 and 9, the annual air quality reports submitted to the Commission by the Spanish authorities indicate that compliance with the annual limit value was achieved in 2006. As regards zone 5, compliance with the annual limit value was achieved in 2007. Taking into account the concentration levels in previous years as well as the reductions expected in the future, the Commission considers that the concentration levels in those zones should be maintained below the annual limit value in accordance with Article 12 of Directive 2008/50/EC. As a consequence, the Commission finds that the annual limit value should continue to apply without a margin of tolerance in zones 2, 5, 6, 7 and 9.
(24) According to the data provided by the Spanish authorities for the year 2007, the numbers of days above the daily limit value in zones 7, 8 and 9 were slightly above the permitted 35 days. With the implementation of the measures foreseen in the air quality plan through which the most important anthropogenic sources of the high PM$_{10}$ concentrations will be addressed, the Commission considers that it is likely that compliance with daily limit value will be achieved in zones 7, 8 and 9 at the expiry of the exemption period. In zone 10, taking into account the envisaged impact of the planned measures that address the most important anthropogenic sources and the strong contribution from natural sources, such as Sahara dust intrusion and sea salt spray, it is also likely that compliance with annual and daily limit value will be achieved at the expiry of the exemption period.

(25) The data provided by the Spanish authorities for the year 2007 indicate that zones 4 and 5 were not very far from compliance with the daily limit value. However, in the absence of an air quality plan the Commission cannot fully assess whether the measures to be taken will effectively ensure compliance with the daily limit value. Therefore the Commission considers that the Spanish authorities have not demonstrated that compliance with the daily limit value in zones 4 and 5 will be achieved in 2011.

(26) With regard to both the daily and annual limit values in zone 1, as well as the daily limit value in zones 2 and 6, the Spanish authorities have estimated in their notifications that compliance will be achieved in 2011. In zone 1, the PM$_{10}$ concentrations were still very high in 2007, however, according to the notification effective measures have been identified and the Spanish authorities expect a substantial emission reduction in 2011. In zones 2 and 6, the numbers of days above the daily limit value in 2007 were close to the permitted 35 days. The notifications for all those zones however do not contain sufficiently detailed information on the estimated impact on air quality of the planned abatement measures. As a consequence, the Commission cannot fully assess if compliance with the daily and annual limit values in zone 1, as well as compliance with the daily limit value in zones 2 and 6, can be achieved at the expiry of the exemption period.

(27) The annual air quality data provided by the Spanish authorities for the years 2006 and 2007 indicate that zone 3 is far from compliance with the daily and the annual limit values. Abatement measures with an immediate strong impact would be necessary in order to bring that zone in compliance with the limit values by the expiry of the exemption period. The Commission notes however that an air quality plan has not been adopted. In the absence of an air quality plan and a reliable source apportionment, the Commission cannot assess whether compliance with both annual and daily limit values for PM$_{10}$ will be achieved in zone 3 by 10 June 2011.

(28) 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 Spain expects the national emission ceiling set for nitrogen oxides and volatile organic compounds pursuant to Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants$^5$ to be exceeded in 2010. Compliance with the obligations under that

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Directive is important in order to ensure that the limit values under Directive 2008/50/EC, and in particular the limit values for PM\textsubscript{10}, can be met both in Spain and neighbouring Member States. The Commission therefore expects that the necessary effort is made to achieve the national emissions ceilings by the attainment date in 2010.

(29) Moreover, according to the information provided by Spanish authorities, several industrial installations falling under Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control\(^6\) are operating without permits that comply with that Directive. Even though the source apportionment tends to suggest that the industrial component is not the major contributor to most of the exceedance situations, several exceedance situations show significant contributions coming from industrial installations covered by that Directive. The Commission therefore expects that the necessary effort is made to implement Directive 2008/1/EC without further delay.

(30) As regards measures to be considered in accordance with Part 3 of Section B in Annex XV to Directive 2008/50/EC, the Commission finds that due account has been taken of these abatement measures for zones 1, 2, 7, 8, 9 and 10. In contrast, some important industrial measures listed in Part 3 of Section B of Annex XV to Directive 2008/50/EC have not been considered by the Spanish authorities in zone 6, although industry accounts for an important source of the pollution in that zone. With regard to zones 3, 4 and 5, due to the absence of air quality plans, the Commission cannot assess whether due account has been taken of the all abatement measures listed in Part 3 of Section B of Annex XV to Directive 2008/50/EC.

(31) Against that background, the Commission finds that objections should be raised against the notifications by Spain of an exemption from the obligation to apply the annual limit value in zones 2, 5, 6, 7 and 9 on the grounds that compliance with that limit value has already been achieved in those zones.

(32) The Commission finds that objections should also be raised against the notifications by Spain of an exemption from the daily limit value for PM\textsubscript{10} in zones 7 to 10, as well as against the exemption from the annual limit value in zone 10, on the grounds that it has not been fully demonstrated that conformity with the limit values cannot be achieved because of adverse climatic conditions.

(33) The Commission finds that objections should be raised against the notifications by Spain of an exemption from the daily limit value for PM\textsubscript{10} in zones 2 and 6 on the grounds that it has not been fully demonstrated that compliance with the daily limit value will be achieved at the expiry of the exemption period on 10 June 2011.

(34) The Commission finds that objections should be raised against the notifications by Spain of an exemption from the daily and annual limit values for PM\textsubscript{10} in zone 3 and from the daily limit value for PM\textsubscript{10} in zones 4 and 5 on the grounds that non-conformity with the limit values cannot be chiefly attributed to adverse climatic conditions and that it has not been fully demonstrated that compliance with the daily limit value will be achieved at the expiry of the exemption period on 10 June 2011. In addition, objections should be raised in respect of zone 5 on the grounds that

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appropriate measures were not taken to achieve compliance by the 2005 attainment date.

(35) The Commission finds that objections should be raised against the notification by Spain of an exemption from the daily and annual limit values for PM$_{10}$ in zone 1 on the grounds that appropriate measures were not taken to achieve compliance by the 2005 attainment date, that it has not been demonstrated that conformity with the limit values cannot be achieved because of site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions and that it has not been fully demonstrated that compliance with the daily and annual limit values can be achieved at the expiry of the exemption period on 10 June 2011,

HAS ADOPTED THIS DECISION:

Article 1

Objections are raised against the notifications by Spain 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 all 10 air quality zones as specified in the Annex to this Decision, as well as against the exemption from the obligation to apply the annual limit value in zones 1, 2, 3, 5, 6, 7, 9 and 10.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, […]

For the Commission
Stavros DIMAS
Member of the Commission
ANNEX

Zones and agglomerations covered by the notifications in accordance with the delimitations applicable in the annual air quality report for the calendar years 2005 and 2006 as specified in the table.

<table>
<thead>
<tr>
<th>Zone Number</th>
<th>Reference year</th>
<th>Zones and agglomerations</th>
<th>Zone name</th>
<th>Regions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>2005</td>
<td>ES0108</td>
<td>ZONA INDUSTRIAL DE BAILÉN</td>
<td>Andalucía</td>
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<td>2.</td>
<td>2005</td>
<td>ES0115</td>
<td>ANDALUCÍA – ZONAS RURALES</td>
<td>Andalucía</td>
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<tr>
<td>3.</td>
<td>2006</td>
<td>ES0205</td>
<td>ZARAGOZA</td>
<td>Aragón</td>
</tr>
<tr>
<td>4.</td>
<td>2006</td>
<td>ES0601</td>
<td>BAHÍA DE SANTANDER</td>
<td>Cantabria</td>
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<tr>
<td>5.</td>
<td>2006</td>
<td>ES0602</td>
<td>COMARCA DE TORRELAVEGA</td>
<td>Cantabria</td>
</tr>
<tr>
<td>6.</td>
<td>2005</td>
<td>ES0802</td>
<td>LEÓN Y SAN ÁNDRES DEL RABANEDO</td>
<td>Castilla León</td>
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<td>7.</td>
<td>2005</td>
<td>ES1602</td>
<td>BAJO NERVION</td>
<td>País Vasco</td>
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<td>8.</td>
<td>2005</td>
<td>ES1604</td>
<td>DONOSTIALDEA</td>
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<tr>
<td>9.</td>
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<td>ES1605</td>
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<td>País Vasco</td>
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<td>ES0505</td>
<td>SANTA CRUZE DE TENERIFE – LA LAGUNA</td>
<td>Canarias</td>
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