COMMISSION DECISION

of XXX

on the notification by the Portuguese Republic of a postponement of the deadline for attaining the limit values for NO₂ in three air quality zones

(Only the Portuguese text is authentic)
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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 NO₂ have been legally binding since 1 January 2010 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(1) of Directive 2008/50/EC, a Member State may postpone the deadline until 2015 at the latest, by which conformity with the limit values for NO₂ shall be achieved, if the Member State demonstrates that conformity with the limit values cannot be achieved by 1 January 2010 and that an air quality plan demonstrating that such compliance will be achieved before the expiry of the new deadline is established.

(3) The Portuguese Republic submitted to the Commission by letter registered on 3 November 2011 a notification of a postponement under Article 22(1) of Directive 2008/50/EC of the deadline for attaining the annual limit value for NO₂ in three air quality zones (Lisbon, Porto, Braga) and of the deadline for attaining the hourly limit value in one zone (Lisbon), as specified in the Annex to this Decision.

(4) 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 Europe³, ("the Communication") and with the Commission Staff Working Paper concerning guidance on preparing a notification of a postponement of the deadline for attaining

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³ COM(2008)403
the limit values for NO\textsubscript{2} under Directive 2008/50/EC\textsuperscript{4}. The notification was submitted using the forms set out in the Staff Working Paper\textsuperscript{5} that accompanied the Communication.

(5) The Commission identified certain relevant information as missing from the original notification and requested the Portuguese authorities by letter dated 22 December 2011 to complete the notification. Since the Portuguese authorities submitted essential additional information by letter registered 31 January 2012, the period for the Commission’s assessment of the notification starts from the day following the date of official receipt of that information.

(6) In the notification the Portuguese authorities have provided data for the year 2010 to be used as reference year and as basis for the assessment of the postponement of the attainment deadline for the NO\textsubscript{2} annual limit value in the three zones. The Commission finds that since the notification was submitted after the initial deadline for attainment the year 2010 is an appropriate basis for the assessment.

(7) The notification was accompanied by air quality plans for all notified zones. As regards Lisbon (hereinafter: zone 1), the air quality plan was adopted in September 2009. As regards Porto (hereinafter: zone 2) and Braga (hereinafter: zone 3), the plans were adopted in February 2009. The air quality plans for zones 1, 2 and 3 fulfill the requirements provided for in Section A of Annex XV to Directive 2008/50/EC.

(8) According to the information submitted by the Portuguese authorities, additional measures were being considered as regards zone 3, but no information was provided on the nature of such measures, the timing of their implementation and their impact in terms of pollution abatement. In this respect it should be noted that a plan is considered as an air quality plan for the purposes of a notification pursuant to Article 22, 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 NO\textsubscript{2} limit values before the new deadline.

(9) In order to assess whether the conditions for the NO\textsubscript{2} postponement 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 Commission finds that the source apportionment provided by the Portuguese authorities for the three notified zones is complete for all scales. The Portuguese authorities have identified road traffic emissions as the main local source contributing to the high NO\textsubscript{2} concentration levels in all zones. At the urban level other sources, including industry, agriculture, commercial and residential sources were identified as significant contributors in addition to traffic. The assessment of the Commission confirms that the identification and quantification of the contributions from the different sources provided by the Portuguese authorities gives a relevant and reasonable basis for the assessment.

\textsuperscript{4} SEC(2011)300
\textsuperscript{5} SEC(2008)2132
(11) The Portuguese Republic has notified a postponement of the deadline for attaining the annual limit value for NO\textsubscript{2} until 1 January 2015 for all the zones. As regards zone 1, the Portuguese Republic has also notified a postponement of the deadline for attaining the hourly limit, until the same date.

(12) In order to assess if conformity with the limit values for NO\textsubscript{2} could not have been achieved by 1 January 2010, it is necessary to consider when an exceedance triggering abatement action pursuant to Directive 1999/30/EC first occurred in each of the zones and whether relevant measures have been taken in relation to the identified sources.

(13) The Commission notes that the relevant sources have been addressed in all the zones. According to the information submitted by the Portuguese authorities, exceedances triggering an obligation to take abatement action with regard to NO\textsubscript{2} concentrations were recorded for the first time in 2008 for all the three zones. The Portuguese authorities presented in their notification an extensive list of measures that addressed traffic and industry sources of pollution in the three zones. The Commission notes that the action was taken by the Portuguese authorities to address the relevant sectors contributing to the high NO\textsubscript{2} concentrations prior to 2010. Based on the documents submitted by the Portuguese authorities the Commission considers that it was likely that despite the abatement actions taken by the Portuguese authorities, conformity with the annual limit value for NO\textsubscript{2} could not be achieved by 1 January 2010 in the three zones.

(14) In order to assess if compliance with the annual limit value for NO\textsubscript{2} can be achieved by the new deadline, it is necessary to consider the concentration levels estimated at that date by the Member State, and the estimated impact of additional measures proposed to ensure compliance in the air quality plan accompanying the notification.

(15) The Commission notes that the Portuguese authorities have requested the maximum permitted postponement for compliance with the annual limit value for NO\textsubscript{2} in all the zones, and for the hourly limit value in zone 1. Given the impacts on public health, the duration of any postponement must be restricted to what is absolutely necessary. An assessment should therefore be made of whether compliance can be achieved earlier than the deadline proposed in the notification.

(16) In order to assess whether the projected compliance by the new deadline is realistic, the Commission requires precise and detailed evidence on the scale and impact of the abatement action planned including a clear implementation timetable for that action.

(17) As regards zone 1, according to the information provided by the Portuguese Republic the compliance gap in 2010 was 25 µg/m³, the projected level in 2015 is 52 µg/m³ and compliance with the limit value of 40µg/m³ would be achieved only in 2023, or in 2020 in case of introduction of a Zone of Reduced Emissions. The Commission finds that in view of the large compliance gap, the projections provided and the measures taken or planned, the Portuguese Republic has not demonstrated that compliance with the NO\textsubscript{2} annual limit value can be achieved by 2015. As regards the hourly limit value, the current compliance gap was three hours of exceedances in 2010, but much higher in the previous years, compared to the 18 times a calendar year allowed by the Directive in its Annex XI, section B. The Commission finds that in view of the compliance gap and the measures taken or planned, compliance with the hourly limit value can be achieved by 2015.
As regards zone 2, the compliance gap in 2010 was 11 µg/m³ and projections including additional measures show that compliance could be achieved in three of the four measuring stations. However, information on such additional measures is not available and it is not clear whether and when such measures would be taken. Moreover, even with additional measures, compliance would not be achieved in the fourth measuring station. The Commission finds that in view of the compliance gap, the projections provided and the measures taken or planned, the Portuguese Republic has not demonstrated that compliance with the NO₂ annual limit value can be achieved by 2015.

As regards zone 3, the compliance gap in 2010 was 7.7 µg/m³ and the notification is unclear on how compliance might be achieved in 2015. Postponements of the attainment deadlines are an exception to the general rule and, as any exception, they should be interpreted narrowly. In terms of burden of proof, the Member State concerned has to demonstrate that the conditions laid down in Article 22 are met and in particular, it "shall demonstrate how conformity will be achieved with the limit value before the new deadline". Although the compliance gap in 2010 was relatively small, the Commission finds that the Portuguese Republic has not demonstrated that compliance with the NO₂ annual limit value can be achieved by 2015, as far as zone 3 is concerned.

The Commission is satisfied that the Portuguese authorities have taken into consideration all measures listed in Part 3 of Section B in Annex XV to Directive 2008/50/EC.

Against that background, the Commission finds that objections should be raised against the postponement of the deadline for attaining the annual limit value for NO₂ in zones 1, 2 and 3 on the grounds that the Portuguese Republic has not demonstrated that compliance with that limit value can be achieved by 1 January 2015 at the latest.

As regards zone 1, the Commission finds that no objection should be raised against the postponement of the deadline for attaining the hourly limit value for NO₂ in this zone.

During the postponement period the hourly limit value for NO₂ continues to apply 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, the Portuguese Republic should provide the Commission, on an annual basis, with data confirming that the concentration levels do not exceed the hourly NO₂ limit value plus the maximum margin of tolerance in zone 1.

The postponement should apply to the air quality zone 1 as it was defined in the reference year 2010. In order to ensure that the postponement applies to the territory as defined in this Decision, any changes to the delimitation of those zones during the postponement period should be subject to prior approval by the Commission,
HAS ADOPTED THIS DECISION:

Article 1

1. Objections are raised against the notification by the Portuguese Republic of a postponement of the deadline for attaining the annual limit value for NO\textsubscript{2} set out in Annex XI to Directive 2008/50/EC in zones 1, 2 and 3 as specified in the Annex to this Decision.

2. No objections are raised to the postponement of the deadline for attaining the hourly limit value for NO\textsubscript{2} set out in Annex XI to Directive 2008/50/EC in zone 1 as specified in the Annex to this Decision. The postponement shall apply until 1 January 2015.

Article 2

1. The Portuguese Republic shall, for the calendar years 2010 to 2014 inclusive, provide the Commission with data indicating that the concentration levels in zone 1 are below the hourly limit value for NO\textsubscript{2} plus the maximum margin of tolerance specified in Annex XI to Directive 2008/50/EC. That data shall be provided through the annual submission of the questionnaire referred to in Article 1 of Commission Decision 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 Council\textsuperscript{6}.

2. The Portuguese Republic shall, by 30 September 2016 at the latest, provide the Commission with information confirming that compliance with the hourly limit value for NO\textsubscript{2} set out in Annex XI to Directive 2008/50/EC has been achieved in zone 1.

3. Changes to the delimitation of the air quality zone 1 as compared to the delimitation that applied in the reference year 2010 during the postponement period that may affect the scope of the postponement shall be subject to prior approval of the Commission.

Article 3

This Decision is addressed to the Portuguese Republic.

Done at Brussels,

For the Commission
Janez Potočnik
Member of the Commission

\textsuperscript{6} OJ L 156, 30.4.2004, p.84.
ANNEX

Zones and agglomerations covered by the notification in accordance with the delimitations applicable in the annual air quality report for the reference year 2010.

<table>
<thead>
<tr>
<th>Zone number</th>
<th>Zone code</th>
<th>Zone name</th>
<th>Hourly (h) and/or annual (a) limit value</th>
</tr>
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<tr>
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<td>PT3001</td>
<td>Lisbon</td>
<td>h, a</td>
</tr>
<tr>
<td>2</td>
<td>PT1004</td>
<td>Porto</td>
<td>a</td>
</tr>
<tr>
<td>3</td>
<td>PT1001</td>
<td>Braga</td>
<td>a</td>
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</table>