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COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

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

{SEC(2008)2132}

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1. INTRODUCTION

1. Article 22 of 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, hereinafter referred to as “the new Directive”, gives Member States the possibility of notifying the Commission that, subject to the Commission's assessment, they intend to postpone the deadline for attaining compliance with the limit values for nitrogen dioxide or benzene in zones or agglomerations where those limit values cannot be complied with by 1 January 2010, or that they meet the conditions for being exempt from the obligation to apply the limit values for particulate matter (PM₁₀). If the Commission considers that the conditions for a postponement or an exemption have not been met, it may raise objections within nine months of receipt of the notification. Member States bear the burden of proof that those conditions are fulfilled and must therefore provide the Commission with all the relevant information that it needs to carry out its assessment.
2. The purpose of this Communication is to facilitate preparation, submission and accurate assessment of the notifications, by indicating the Commission's interpretation of the conditions laid down in Article 22 and providing guidance to Member States on the information to be provided and the format to be used.

2. BACKGROUND

3. A majority of Member States have not yet attained the limit values for PM₁₀ despite the fact that they became mandatory already on 1 January 2005². Estimates suggest that concentrations in more than 40% of the zones and agglomerations in the Community currently exceed the daily PM₁₀ limit value of 50 µg/m³ on more than 35 days per calendar year. In over 15% of those, concentrations also exceed the annual PM₁₀ limit value of 40 µg/m³. Current assessments, trends and modelling projections indicate that a similar situation may arise in 2010, when the limit values for nitrogen dioxide become mandatory³. As regards benzene, for which the limit values will also become mandatory in 2010⁴, projections indicate that the problem is less severe.

¹ OJ L 152, 11.6.2008, p. 1.

² Directive 1999/30/EC of the European Parliament and of the Council relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (OJ L 163, 29.6.1999, p. 4)

³ Directive 2000/69/EC of the European Parliament and of the Council relating to limit values for benzene and carbon monoxide in ambient air (OJ L 313, 13.12.2000, p. 12).

⁴ Idem

4. While deficiencies in implementation of the air quality directives have been identified and discussed with Member States, the scale of the problem indicates that factors beyond the direct or immediate control of Member States may be part of the reason for the non-compliance. Adoption and implementation of Community measures addressing emissions at source, such as progressive implementation of more stringent emission standards for new vehicles, are contributing to improving air quality both today and in the future. However, the Community measures cannot ensure adequate or timely compliance with the limit values throughout the EU on their own. In most cases, further action is required at national, regional and local levels too, in particular in urban areas where human exposure is highest.
5. It is important to ensure equal treatment when it comes to implementation of Community legislation. Zones where significant efforts have been made to comply with the limit values by the date set for attaining them should not be put at a competitive disadvantage against zones where, though needed, no such effort has been made.
6. The Commission will thoroughly assess each notification against the conditions laid down in Article 22 and raise objections if those conditions are not met. Most of the information required for assessing the notifications will come from the air quality plans to be submitted with the notification.
7. A well-established practice for providing the minimum information required in the air quality plans is defined by Commission Decision 2004/224/EC of 24 February 2004 laying down arrangements for the submission of information on plans or programmes required under Council Directive 96/62/EC in relation to limit values for certain pollutants in ambient air⁵. Considering the large amount of information that will have to be processed for the purpose of the notifications, a common format will be an important means of ensuring efficient and equal treatment when assessing the notifications, and Member States are therefore strongly recommended to use the forms set out in Staff Working Paper (SEC(...) ...) when submitting their notifications. Those forms are based on Decision 2004/224/EC and deviate from that Decision only in so far as necessary to ensure that the essential information relating to the specific conditions for the postponements or exemptions is covered. In completing the forms, only information that should reasonably be available for the purposes of the air quality plan or as elements supporting the fulfilment of the conditions in the specific cases needs to be entered. The intention is not to require Member States to develop new data, for instance through modelling. References to the specific forms are set out in this guidance in order to specify the link between the information required and the conditions.

3. NOTIFICATION PROCEDURE

8. The initial notifications are expected principally to concern PM₁₀, for which the potential extensions will end three years after the entry into force of the Directive, i.e. on 11 June 2011. In view of the existing levels of non-compliance with the limit values for PM₁₀, it is important to submit notifications as soon as possible after the

⁵ OJ L 68, 6.3.2004, p. 27.

Directive enters into force for zones and agglomerations where Member States consider that the conditions are met. When preparing the notifications, care must, however, be taken to ensure that the data necessary to demonstrate compliance with the conditions are complete.

9. As regards nitrogen dioxide and benzene, the limit values may not be exceeded from 1 January 2010 at the latest. Where the conditions are met, the deadline for achieving compliance may be postponed until such time as is necessary for achieving compliance with the limit values, but at maximum until 2015. The aim must be to keep the postponement period as short as possible. If an exceedance of the limit values for nitrogen dioxide or benzene occurs for the first time only in 2011 or later, postponing the deadline is no longer possible. In those cases, the second subparagraph of Article 23(1) of the new Directive will apply.
10. Postponement or exemption decisions will apply to individual zones or agglomerations. The notifications must, however, be officially submitted to the Commission by the Permanent Representation of the Member State in question⁶, i.e. not directly by the regional or local authorities concerned.
11. The notification to the Commission of an exemption or a postponement and the subsequent assessment by the Commission of such notification are not subject to Article 22 of Directive 2008/50/EC first being transposed into national law.
12. The Commission will have nine months to assess the notifications, starting on the day following official registration by the Commission of an official and complete notification. A letter confirming official registration of the initial notification will be sent to the Member State concerned. Where necessary, a letter will be sent specifying any information which the Commission considers to be missing and which therefore still needs to be submitted within a specified deadline. The assessment period will in that case start to run on the day following official registration by the Commission of the requested information completing the notification. If the requested information is not submitted by the deadline set, the Commission reserves the right to raise objections against the aspects of the notification not sufficiently substantiated, and, for reasons of legal certainty, in any case within nine months as of the official registration of the initial notification. The Commission may also adopt a decision in cases where no objections are raised.
13. A single notification may be submitted for several zones and for several pollutants. However, each zone and pollutant will be assessed individually. It is therefore important that the information provided by the Member State is unambiguously linked to the zone and the pollutant concerned. The same is also true in cases where a single measure taken at national level might address several zones and influence concentrations of several pollutants.

⁶ The notification must be marked “Air quality time extension – Directive 2008/50/EC” and must, in order to be valid as an official notification, be addressed to: European Commission, Secretariat-General, 1049 Brussels. In addition, an electronic copy of the notification should be sent by e-mail to the mailbox: ENV-AIRQUALITYTIMEEXTENSION@ec.europa.eu

4. CONDITIONS AND INFORMATION REQUIREMENTS FOR AN EXTENSION

4.1. Reference year

14. As regards notifications concerning PM₁₀, it is in principle appropriate to take the first year of exceedance, i.e. 2005, as the reference year for assessing whether the conditions are fulfilled. If considered more appropriate, a later year (e.g. 2007) can be taken as the reference year from which projections are made to demonstrate that compliance will be achieved by June 2011. The same year must then also be taken as the reference year in the attached air quality plan. However, to demonstrate that all appropriate measures were taken to achieve compliance by the initial deadline, it is essential to use only data relevant to explaining the exceedance in 2005.
15. For notifications concerning nitrogen dioxide or benzene submitted before the initial deadline for attainment (2010), 2008 will be considered the reference year. For notifications submitted after the initial deadline for attainment, Member States should use 2010 as the reference year.

4.2. Source apportionment

16. Member States must provide information on the origin of pollution contributing to the exceedance. A quantitative source apportionment for the exceedance situation (i.e. exceedance of daily or annual limit value) in the reference year is therefore required for each notified zone or agglomeration. The Commission is aware that the level of detail available may differ between individual zones and Member States, but as source apportionment is a key consideration, both for determining the type and target level of pollution abatement measures and for the Commission's assessment of the conditions for the postponements or exemptions, estimates of the contribution made by individual sources to the exceedance are essential.
17. The source apportionment must, in particular, reflect regional, urban and local contributions within the Member State, but also transboundary contributions. As regards the urban and local contributions, a further split must be given in order to identify any significant sources such as transport (road traffic and shipping, where relevant), industry (including heat and power production), agriculture, commercial and residential sources. For PM₁₀, it is also important to indicate significant natural sources⁷.
18. Member States may choose whether to use nitrogen dioxide or oxides of nitrogen as a basis for source apportionment, as considered appropriate in relation to the exceedance, provided the choice is followed consistently and reflected in the quantification of the impact of individual or groups of measures, allowing adequate assessment of the conditions by the Commission.

4.3. Compliance during the extension

19. In accordance with Article 22(3) of the new Directive, compliance with the limit values in the zones and agglomerations to which a postponement or exemption

⁷ See Form 3A in SEC (..) ...

decision applies will be assessed in relation to the limit values plus the maximum margin of tolerance set in Annex XI during the extension.

20. For 2011, compliance with the annual limit values for PM₁₀ will be assessed against the limit value plus the margin of tolerance for the whole calendar year. As regards the daily limit values, compliance for 2011 will be assessed on a daily basis. More precisely, the total number of exceedances, whether of the limit value plus the margin of tolerance or of the limit value alone, may not exceed the 35 days permitted for that calendar year.

4.4. First condition – measures to achieve compliance by the initial attainment date

21. Article 22(1) of the new Directive provides that the deadlines for attainment of the limit values for nitrogen dioxide and benzene may be postponed where conformity with the limit values cannot be achieved by the attainment date, i.e. 1 January 2010. In order to determine whether compliance cannot be achieved by that date, Member States are requested to indicate the measures taken before 2010 in accordance with Article 4(1) of Directive 1999/30/EC and Article 3(1) of Directive 2000/69/EC and explain the reasons why those measures do not bring about compliance⁸. It follows from the objectives of the air quality legislation in general that appropriate action must be taken in the period preceding the date on which the limit values become mandatory. Only if it can be shown that efforts have been made to achieve compliance, Member States can claim, in accordance with Article 22(1), that conformity with the limit values cannot be achieved by the deadlines.
22. For PM₁₀, Member States must, according to Article 22(2), demonstrate that all appropriate measures have been taken at national, regional and local level to achieve compliance with the limit values by the initial deadline set for attainment, i.e. 1 January 2005. Information must therefore be given of the measures taken with a view to achieving compliance by that date⁸. To enable the Commission to determine whether those measures were appropriate, Member States must identify the pollution sources that those measures were intended to address and explain the extent to which those measures actually contributed to reducing concentrations. Explanations must be given of any remaining exceedance of the limit values⁹. Those explanations must include information on whether the exceedance can be attributed to any of the specific conditions for the exemption, i.e. site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions.
23. In its assessment, the Commission will also take into account the impact of correct transposition and implementation of the Directives listed in Section 2 of Part B of Annex XV¹⁰ and of timely availability of the plan or programme in accordance with Article 8(3) of Council Directive 96/62/EC on ambient air quality assessment and management¹¹.

⁸ See Form 5A, including the Annex, and Form 7, including Annex A; for PM₁₀ see also Form 10, and for nitrogen dioxide and benzene notified before 2010, see Form 4A.

⁹ See Form 3B and 4A (as appropriate).

¹⁰ See Form 8 and, as appropriate, the Annex to Form 8 and Form 9.

¹¹ OJ L 296, 21.11.1996, p. 55.

4.5. Second condition – measures to achieve compliance before the new deadline

24. Member States must provide realistic and reliable predictions of how concentrations are likely to decline with a view to achieving compliance with the limit values before the new deadline. Those predictions should also indicate that exceedances during the extension will remain below the limit value plus the maximum margin of tolerance provided for in Annex XI to the Directive.
25. The predictions must be based on a comparison between the limit values to be achieved and projected baseline levels for the exceedance situation in a zone or agglomeration. The baseline must indicate the estimated concentrations by the new deadline if no additional abatement measures are taken, apart from those taken to achieve compliance by the initial deadline and the existing and planned Community measures. The gap between the applicable limit value and the baseline will serve as an indicator for the expected impact and timing of the additional measures required in order to close that gap by the new deadline¹².
26. When identifying the measures required, consideration must be given to the measures listed in Section 3 of Part B of Annex XV as provided for in the Directive. If any of those measures are not to be implemented, even though they are relevant to the sources identified, a due justification must be given¹³.
27. When assessing the predictions, account will also be taken of the potential impact, in the zone concerned, of existing and planned Community measures, and Member States are asked to include their estimate of that impact in the baseline. The planned Community measures are those indicated in the Declaration by the Commission published together with the Directive. The Commission intends to assess the quantification provided by the Member States and, where necessary, the underlying assumptions, and to carry out its own assessment of this criterion on that basis. As regards the existing measures, the assessment will focus on the status of implementation of the Directives listed in Part B of Annex XV¹⁴.

4.6. Specific condition for PM₁₀: site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions

4.6.1 Site-specific dispersion characteristics

28. Site-specific dispersion characteristics are factors affecting pollutant dispersion on local scale, principally at street level. Local buildings or small-scale topographical structures result in locally emitted pollutants accumulating in a limited area, which causes high concentrations. Such areas can normally be found in so-called “street canyons”. Site-specific dispersion characteristics may be claimed only where it can be demonstrated that the exceedance occurs locally in such specific areas and not elsewhere, such as in the urban background or along less densely built-up streets in the same air quality zone or agglomeration.

¹² See Form 4B and Form 5B, including the Annex.

¹³ See Form 6.

¹⁴ See Form 9.

29. In areas where there are situations such as the following, site specific dispersion characteristics are considered to be present:
- (a) continuous multi-storey buildings along both sides of the street;
 - (b) the average height of the buildings over a length of at least 100 metres must be greater than the total width of the street divided by 1.5¹⁵.
30. To demonstrate that the exceedance is restricted to an area in which site-specific dispersion characteristics are present, data from appropriate urban traffic monitoring stations outside that area must be used or, where appropriate, results from small-scale dispersion modelling¹⁶. A map of the zone, indicating the different measuring stations and the area of exceedance, should, where available, also be supplied¹⁷.
31. If other indicators are used to demonstrate that the exceedance is restricted to an area in which site-specific dispersion characteristics are present, reasons must be given and it must be demonstrated that the use of those indicators produces equivalent results.
- 4.6.2 *Adverse climatic conditions*
32. Adverse climatic conditions are considered to exist when the long-term meteorological conditions and the topographical conditions affect dilution of locally emitted pollutants, thereby causing high concentrations.
33. In areas where the presence of factors such as the following can be shown, adverse climatic conditions are considered to be present:
- (a) the local to regional topography, i.e. locations in valleys or where surrounded by high mountains;
 - (b) poor dilution of locally emitted pollutants due to low wind speeds;
 - (c) vertical mixing, i.e. dilution, triggered by meteorological parameters related to mechanical and thermal turbulence of the atmosphere;
 - (d) air masses of oceanic versus continental origin; continental air masses are usually linked to adverse dispersion characteristics (temperature inversion and low wind speed).
34. General climatic conditions, such as temperature, precipitation or snowfall, which do not directly influence pollutant dispersion but may induce specific human activities and thereby influence the level of emissions, such as domestic heating, power generation for heating or air conditioning, or use of studded tyres, are not considered adverse climatic conditions for the purposes of the new Directive.

¹⁵ Meta-data management and transmission in accordance with Decision 97/101/EC on the exchange of information.

¹⁶ See f Form 10.

¹⁷ See Annex to Form 2.

35. Accumulation of pollution in areas affected by adverse climatic conditions usually occurs during calms. An indication of low annual average wind speed, below 1.5 m/s, in such areas is therefore appropriate for demonstrating that this condition is met. Other indicators than average wind speed may also be used provided that a justification is given.
36. In order to claim adverse climatic conditions, Member States must demonstrate that the daily limit values are exceeded principally when the adverse climatic conditions described occur. Such a correlation can be demonstrated by the PM₁₀ concentrations and average wind speeds measured on days when the limit value was exceeded, at least for the reference year¹⁸.

4.6.3 *Transboundary contributions*

37. Transboundary contributions occur where the meteorological and topographical conditions permit the transport of anthropogenic pollution originating outside the Member State, thereby causing high concentrations. Such contributions may originate either in close proximity to zones and agglomerations close to a national border (short-range transboundary pollution) or at longer distances of some 100 kilometres or more (long-range transboundary pollution).
38. Long-range transboundary pollution occurs mainly in flatlands or non-mountainous terrain often subject to accumulation of pollutants advected in continental air masses. High concentrations in basins or valleys or leeward of mountains are generally not affected by such contributions.
39. Pollution can originate from a single source across the border, from one or more Member States together, from shipping or from sources outside the Community.
40. Member States claiming a transboundary contribution must indicate whether consultations have been held with the Member State in which the pollution originates, in accordance with Article 8(6) of Directive 96/62/EC (Article 25 of the new Directive). If no such consultations have taken place, despite the origin of the pollution being known, the Member State concerned may be considered not to have taken all appropriate measures to meet the original deadline. If the pollution originates in several Member States or in third countries and it is clear that effective solutions could not be found by bilateral consultations, the Member State's right to an extension will not be affected by the lack of consultations¹⁹.
41. Transboundary contributions can be assessed either by measurements or by modelling. Such assessments must, where appropriate, be supplemented by backward trajectory analysis and source apportionment of individual exceedances. Methods such as the following have proven efficient in demonstrating transboundary contributions:
- (a) atmospheric dispersion modelling with appropriate spatial and daily temporal resolution;

¹⁸ See Form 10.

¹⁹ See Form 10.

- (b) analysis of daily measurement data, identifying transboundary contributions by means of measurements from representative monitoring sites, e.g. rural background sites located upwind in the area surrounding the zone or agglomeration in which the exceedance has been observed;
 - (c) EMEP model²⁰.
42. In order to claim transboundary contributions as a cause for the exceedance it must be demonstrated that, in cases where the annual limit value is exceeded, once the transboundary contribution is subtracted, the annual average concentration is below the limit value. If the daily limit value is exceeded, it must be demonstrated that, once the transboundary contribution on specific days is subtracted, the daily average concentrations remain below the limit value²¹.
43. If other indicators are used to demonstrate that transboundary contributions are the cause of the exceedance, reasons must be given and it must be demonstrated that use of those indicators produces equivalent results.

5. Air quality plan and additional information requirements

44. Notifications must be accompanied by an air quality plan for the zone or agglomeration concerned. The plan must comply with the requirements laid down in Article 23 and in Part A of Annex XV to the new Directive. The information requested under the new Directive is largely similar to that requested under Directive 96/62/EC. As a consequence, Member States which already have a plan or programme in place can use it for the purposes of the notification, provided it meets the criteria laid down in Part A of Annex XV to the new Directive and is appropriately updated to ensure that conformity will be achieved with the limit values before the new deadline.

²⁰ Model developed by the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP).

²¹ See Forms 3A and 10.