

Brussels, 6 November 2013  
Case Nos: 70550, 70784  
Event No: 641736  
Dec. No: 427/13/COL

EFTA SURVEILLANCE  
AUTHORITY

Ministry of the Environment  
Myntgata 2  
PO Box 8013 Dep  
N-0030 Oslo  
Norway

Dear Sir or Madam,

**Subject: Letter of formal notice for non-compliance with the limit values for NO<sub>2</sub>, PM<sub>10</sub> and SO<sub>2</sub>; and for non-compliance with the action plan obligation and measurement obligations in Directive 2008/50/EC**

## 1 Introduction

By letter dated 4 November 2011, the EFTA Surveillance Authority (“**the Authority**”) informed the Norwegian Government that it had received a complaint against Norway regarding alleged non-compliance with the limit values set out in EEA legislation on ambient air quality<sup>1</sup>. The complaint came from the Norwegian Asthma and Allergy Association (*Norges Astma- og Allergiforbund – NAAF*), a charity organisation for people with asthma, allergies and other types of hypersensitivities. Concurrently, the Authority had opened an own initiative case on this issue.

According to the obligations set out in 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<sup>2</sup> (“**Directive 2008/50**”) Norway must ensure that emissions of a number of pollutant gases, including sulphur dioxide (SO<sub>2</sub>), particulate matter (PM<sub>10</sub>) and nitrogen dioxide (NO<sub>2</sub>) do not exceed prescribed levels. Further, it is required to report any exceedances of the limit values and/or target values of those gases on an annual basis. Directive 2008/50 entered into force on 1 November 2012. Prior to that date, and before they were repealed by Directive 2008/50, identical obligations existed under Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management<sup>3</sup> (“**Directive 96/62**”) as well as its daughter Directives (together the “**Ambient Air Quality Directives**”).

In its request for information dated 2 November 2011<sup>4</sup>, the Authority provided a summary of limit value exceedances for these gases between 2005 and 2010 as reported by Norway

<sup>1</sup> Event no 614314.

<sup>2</sup> The Act referred to at point 14c in Annex XX of the Agreement on the European Economic Area. The Act was incorporated into the EEA Agreement by Joint Committee Decision No. 121/2011 of 21 October 2011, and entered into force on 1 November 2012.

<sup>3</sup> The Act was incorporated into the EEA Agreement by Joint Committee Decision No. 76/98 of 31 July 1998, which entered into force on 1 January 1999 and was repealed by the entry into force of Directive 2008/50.

<sup>4</sup> Event no 613300.

and asked Norway to confirm that this data was correct. The Authority also asked Norway to submit copies of any action plans indicating the measures to be taken to address any reported exceedances as well as in the short term in cases where the limit values and/or alert thresholds risked being exceeded.

The case was discussed with the Norwegian Government at the package meeting in Oslo on 11 November 2011. At that meeting, the Norwegian Government highlighted that it had made some measurement and reporting errors that needed to be corrected and reflected in the summary data compiled by the Authority. On 16 December 2011, Norway replied to the Authority's request for information and provided an updated table with corrected information, explaining the reasons for its reporting errors<sup>5</sup>. Norway formally submitted its data in relation to 2011 in September 2012. There were further discussions with the Norwegian Government on the case at the package meeting that took place in Oslo on 25-26 October 2012.

On 27 February and 4 March 2013, the Authority received updated Action Plans by email for Bergen (2011-2014)<sup>6</sup> and Stavanger<sup>7</sup> respectively.

On 2 July 2013, the Authority received a request from Norway following the procedure set out in Article 22 of Directive 2008/50 for an extension of the deadline to comply with the limit values of NO<sub>2</sub> in four named zones to 2015<sup>8</sup>. The Authority is currently considering this request.

The Authority recognises that the Norwegian Government, together with the municipalities has, in recent years, taken significant steps to address the issue of air pollution, in particular from traffic. However, it is not yet clear whether all necessary measures can and will be taken in order to comply with Norway's obligations under Directive 2008/50.

After having carefully examined the complaint, the limit value breaches and the Norwegian regional action plans for air quality as well as the arguments set out by Norway in its letter of 16 December 2011, the Authority has reached the conclusion that Norway is in breach of Directive 2008/50 and prior to that date, had been in breach of the Ambient Air Quality Directives up until they were repealed on 1 November 2012, as will be explained below.

## 2 Relevant national law

By way of a Form 1 dated 1 November 2012, the Norwegian Government notified Chapter 7 of Regulation of 1 June 2004 no. 931 *Forskrift om begrensnig av forurensning* (*Forurensningsforskriften*, hereinafter the "**Regulation**") as the implementing measure for Directive 2008/50.

The Regulation assigns the primary responsibility for ambient air quality and management to the municipalities<sup>9</sup>, and makes *Klima og Forurensnings Direktoratet* ("**Klif**"), the

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<sup>5</sup> Event No. 618868, your ref. 200903273.

<sup>6</sup> Event No 664957.

<sup>7</sup> Event No 664956.

<sup>8</sup> Event No 677437. The zones are NO1, NO2, NO3 and NO5.

<sup>9</sup> Section 7-4 of the Regulation.

Norwegian Climate and Pollution Agency, the supervisory authority in certain respects<sup>10</sup>. Municipalities are responsible for measuring the concentration of the pollutant gases in ambient air<sup>11</sup>, as well as for ensuring that action plans are adopted when the concentration of the gases in ambient air exceeds or is at risk of exceeding the health based limit value thresholds<sup>12</sup>. Furthermore, the municipalities may lay down the necessary imperative measures in order to ensure compliance with the limit value thresholds laid down in Section 7-6 and the target values for air quality as laid down in Section 7-7 of the Regulation<sup>13</sup>.

### 3 Relevant EEA law

#### 3.1 Introduction

Under EEA law, ambient air quality is regulated by Directive 2008/50. Prior to the entry into force of Directive 2008/50 on 1 November 2012, air quality was regulated by Directive 96/62 and the following Acts, together referred to as the “**Ambient Air Quality Directives**”: *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 (“Directive 1999/30”)*; *Directive 2000/69/EC of the European Parliament and of the Council of 16 November 2000 relating to limit values for benzene and carbon monoxide in ambient air (“Directive 2000/69”)* and *Directive 2002/3/EC of the European Parliament and of the Council of 12 February 2002 relating to ozone in ambient air (“Directive 2002/3”)*. *Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (“Directive 2004/107”)*<sup>14</sup>. All of these Directives, with the exception of Directive 2004/107 have now been repealed. The continuing validity of Directive 2004/107 does not however affect the analysis of the Authority in this case.

#### 3.2 Air quality thresholds

Directive 2008/50 imposes limit values for certain pollutants in ambient air in order to avoid, prevent and reduce harmful effects on human health and the environment as a whole<sup>15</sup>. It also establishes provisions for the assessment of pollutants as well as measures to maintain good air quality.

Article 2(5) of Directive 2008/50 defines “limit value” as a “*level fixed on the basis of scientific knowledge, with the aim of avoiding, preventing or reducing harmful effects on*”

<sup>10</sup> Section 7-9(4) provides that municipalities obliged to adopt air quality action plans shall forward such action plans to Klif. Furthermore, section 7-11(3) states that municipalities shall send monthly air quality measurement data to Klif, and that Klif might issue guidelines on measuring techniques and air quality action plans. Klif is also the appeal body for municipal decisions regarding necessary imperative measures adopted in accordance with section 7-4 and section 7-12(1) of the Regulation.

<sup>11</sup> Section 7-4(1) of the Regulation, except if measurements or calculations with a ‘regional background’ are required. Such shall be established by Klif, see Section 7-8(2).

<sup>12</sup> Section 7-9(4) of the Regulation.

<sup>13</sup> Section 7-4(2) of the Regulation.

<sup>14</sup> The Act referred to at point 21ak in Annex XX to the EEA Agreement.

<sup>15</sup> Directive 1999/30 set out limit values for the following substances: sulphur dioxide (Article 3); nitrogen dioxide and oxides of nitrogen (Article 4); particulate matter (Article 5) and lead (Article 6). Directive 2000/69 set out limit values for benzene (Article 3) and carbon monoxide (Article 4). Directive 2002/3 set target values for ozone (Article 3) while Directive 2004/107 sets target values for concentrations of arsenic, cadmium, nickel and benzo(a)pyrene (Article 3).

*human health and/or the environment as a whole, to be attained within a given period and not to be exceeded once attained”.*

In order to protect human health, Member States shall ensure that levels of the specified substances do not exceed the limit values set out in Annex XI<sup>16</sup>. According to Article 13 of Directive 2008/50:

*“Member States shall ensure that throughout their zones and agglomerations, levels of sulphur dioxide, PM<sub>10</sub>, lead and carbon monoxide in ambient air do not exceed the limit values laid down in Annex XI.*

*In respect of nitrogen dioxide and benzene, the limit values specified in Annex XI may not be exceeded from the dates specified therein. The margins of tolerance laid down in Annex XI shall apply in accordance with Article 22(3) and 23(1)”.*

The margin of tolerance is defined as being the percentage of the limit value by which that value may be exceeded, subject to the conditions set out in Directive 2008/50<sup>17</sup>.

The difference in treatment between the first two paragraphs quoted above can be explained by the fact that for the gases referred to in paragraph 1, unlike those in paragraph 2, limit values had already taken effect when Directive 2008/50 came into force in the EU.

According to Article 12 of Directive 2008/50, where levels of the specified pollutants are below the limit values, Member States *“shall maintain the levels of those pollutants below the limit values and shall endeavour to preserve the best ambient air quality, compatible with sustainable development”*.

The relevant limit values for SO<sub>2</sub>, NO<sub>2</sub> and PM<sub>10</sub> are as follows:

#### ***I. Sulphur Dioxide (SO<sub>2</sub>)<sup>18</sup>***

##### *Limit values for the protection of human health<sup>19</sup>*

<i>Averaging period</i>	<i>Limit value</i>	<i>Margin of tolerance</i>
<i>One hour</i>	<i>350 µg/m<sup>3</sup>, not to be exceeded more than 24 times a calendar year</i>	<i>150 µg/m<sup>3</sup> (43 %)</i>
<i>One day</i>	<i>125 µg/m<sup>3</sup>, not to be exceeded more than 3 times a calendar year</i>	<i>None</i>

##### *Critical levels for the protection of vegetation<sup>20</sup>*

<sup>16</sup> The substances mentioned in Article 13 are sulphur dioxide, PM<sub>10</sub>, lead, carbon monoxide, nitrogen dioxide and benzene.

<sup>17</sup> Article 2(7), Directive 2008/50.

<sup>18</sup> Identical values were set out in Annex I of Directive 1999/30.

<sup>19</sup> Directive 2008/50, Annex XI, Section B.

<sup>20</sup> Directive 2008/50, Annex XIII. Identical values were set out in Annex I of Directive 1999/30 under the heading “Limit value for the protection of ecosystems”.

Calendar year and winter (1 October to 31 March)	20 µg/m <sup>3</sup>	None
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## II. Limit values for nitrogen dioxide (NO<sub>2</sub>)<sup>21</sup>

### Limit values for the protection of human health<sup>22</sup>

Averaging period	Limit value	Margin of tolerance
One hour	200 µg/m <sup>3</sup> NO <sub>2</sub> , not to be exceeded more than 18 times a calendar year	50% on 19 July 1999, decreasing on 1 January 2001 and every 12 months thereafter by equal annual percentages to reach 0% by 1 January 2010
Calendar year	40 µg/m <sup>3</sup> NO <sub>2</sub>	50% on 19 July 1999, decreasing on 1 January 2001 and every 12 months thereafter by equal annual percentages to reach 0% by 1 January 2010

## III. Limit values for particulate matter (PM<sub>10</sub>)<sup>23</sup>

### Limit values for the protection of human health<sup>24</sup>

Averaging period	Limit value	Margin of tolerance
One day	50 µg/m <sup>3</sup> PM <sub>10</sub> , not to be exceeded more than 35 times a calendar year	50%
Calendar year	40 µg/m <sup>3</sup> PM <sub>10</sub>	20%

Each year, according to Article 27 of Directive 2008/50<sup>25</sup>, the EFTA States are required to submit a summary of any exceeded limit values using the questionnaire provided in *Commission Decision 2004/461/EC*<sup>26</sup>, which is then uploaded to the EIONET Central Data Repository<sup>27</sup>. The most recent data, for 2012, was reported by Norway to the Authority on 30 September 2012<sup>28</sup>.

<sup>21</sup> Identical values were set out in Annex II of Directive 1999/30.

<sup>22</sup> Directive 2008/50, Annex XI, Section B.

<sup>23</sup> Identical values were set out in Annex III of Directive 1999/30.

<sup>24</sup> Directive 2008/50, Annex XI, Section B.

<sup>25</sup> An identical obligation existed under Article 11(1) of Directive 96/62/EC.

<sup>26</sup> The Act referred to at point 21aj in Annex XX to the EEA Agreement; *Commission Decision 2004/461/EC 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.*

<sup>27</sup> <http://cdr.eionet.europa.eu/no>

<sup>28</sup> Event no 685156.

According to the case law of the Court of Justice of the European Union (“CJEU”), the mere exceedance of a certain limit value for pollutants as laid down in Directive 1999/30, constitutes a breach of that Directive<sup>29</sup>.

### 3.3 Action plan obligation

Under Article 24 of Directive 2008/50, where in any given zone or agglomeration there is a risk that the levels of pollutants will exceed either the limit values established *inter alia* in Annex XI or the alert thresholds specified in Annex XII, Member States shall draw up action plans that indicate the relevant measures to be taken in the short term to reduce the risk or duration of such an occurrence<sup>30</sup>. According to the case law of the CJEU, the obligation on the Member States is “clear” in this regard, as was held in Case C-237/07 *Dieter Janecek v Freistaat Bayern*<sup>31</sup>.

In areas where the levels of pollutants in ambient air are higher than the limit values plus a margin of tolerance, Member States are obliged under Article 23 of Directive 2008/50 to prepare and implement air quality plans<sup>32</sup>. These plans or programmes must set out how the Member State intends to reach the limit values within the relevant time limits and they must be made available to the public<sup>33</sup>. Part A of Annex XV of Directive 2008/50 prescribes the information that must be included in plans to be adopted under Article 23<sup>34</sup>. The plans should include, *inter alia*, “details of those measures or projects adopted with a view to reducing pollution following the entry into force of this Directive: (a) listing and description of all the measures set out in the project; (b) timetable for implementation; (c) estimate of the improvement of air quality planned and of the expected time required to attain these objectives”<sup>35</sup>.

In circumstances where the thresholds are designed to protect human health and a failure to observe them potentially endangers human health, the CJEU has made it clear that “the persons concerned must be in a position to rely on the mandatory rules included in those directives (see Case C-361/88 *Commission v Germany*; Case C-59/89 *Commission v Germany*; and Case C-58/89 *Commission v Germany*)”<sup>36</sup>. As such, any natural or legal person directly concerned “must be in a position to require the competent authorities to draw up an action plan where such a risk exists”<sup>37</sup>.

### 3.4 Duty to ensure accurate air quality measurements

In order to ensure compliance with the limit values and to evaluate which measures must be taken to reach them, Article 6 of Directive 2008/50<sup>38</sup> makes the measurement by

<sup>29</sup> See, for example Case C-479/10 *Commission v Sweden* judgment of 10 May 2011 and Case C-365/10 *Commission v Slovenia* judgment of 24 March 2011.

<sup>30</sup> The requirement to draw up action plans where there was a risk of limit values/ alert thresholds being exceeded was found under Article 7(3) of Directive 96/62 when the Ambient Air Quality Directives were in force.

<sup>31</sup> Case C-237/07 *Dieter Janecek v Freistaat Bayern* [2008] ECR I-06221, paragraph 35, which considered the obligation which existed under Article 7(3) of Directive 96/62.

<sup>32</sup> An identical obligation existed under Article 8(3) of Directive 96/62.

<sup>33</sup> Article 26(1)(d), Directive 2008/50.

<sup>34</sup> A broadly identical obligation existed under Annex IV of Directive 96/62.

<sup>35</sup> Annex XV of Directive 2008/50, paragraph 8. An identical obligation existed under Annex IV paragraph 8 of Directive 96/62.

<sup>36</sup> See Case C-237/07 *Dieter Janecek v Freistaat Bayern*, cited above, paragraph 38.

<sup>37</sup> *Ibid*, paragraph 39.

<sup>38</sup> A broadly identical requirement was imposed on Member States by Article 6(2) of Directive 96/62.

Member States of ambient air quality mandatory with respect to the specified pollutants<sup>39</sup> in all their zones and agglomerations<sup>40</sup>. In addition, Directive 2008/50 lays down detailed assessment criteria<sup>41</sup> for the pollutants, as well as specific requirements as regards sampling points<sup>42</sup> and reference measurement methods<sup>43</sup>. Member States are required to designate the competent authorities and bodies that shall be responsible for the approval of the measurement systems (including equipment) as well as ensuring their accuracy<sup>44</sup>.

### 3.5 Postponement of deadlines by which limit values are to be met

Where the limit values for either nitrogen dioxide or benzene cannot be achieved by 1 January 2010, Article 22 of Directive 2008/50 gives Member States the possibility of notifying that, subject to the Authority's assessment, they intend to postpone the deadline for attaining compliance with those limit values in zones or agglomerations where these cannot be complied with. The deadline by which such limit values may be met can be extended by a maximum of five years (i.e. until 1 January 2015 at the latest).

In order to obtain such an extension, the Member State must demonstrate through an air quality plan how conformity will be achieved before the new deadline<sup>45</sup>. Article 23 of Directive 2008/50 provides that where there are exceedances, Member States are obliged to set out comprehensive and appropriate measures so that the exceedance period can be kept as short as possible<sup>46</sup>. During the postponement or exemption period, the limit values plus a margin of tolerance set out in Directive 2008/50 continue to apply<sup>47</sup>.

A request to postpone the deadline from when the attainment of limit values will apply will be assessed by the Authority, which shall take into account the estimated effects on ambient air quality in the Member State of the measures already taken, as well as those planned for the future<sup>48</sup>. Where the Authority raises no objections within nine months of the receipt of a completed notification, the conditions required for the extension of the deadline will be deemed to be satisfied<sup>49</sup>.

<sup>39</sup> The specified pollutants subject to the assessment regime are, according to Article 5(1) of Directive 2008/50: sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), lead, benzene and carbon monoxide.

<sup>40</sup> Article 6(2) of Directive 96/62 made the measurement of ambient air quality mandatory in both zones where the limit values are exceeded and those where limit values plus the margin of tolerance are exceeded.

<sup>41</sup> Article 6, Directive 2008/50.

<sup>42</sup> Article 7, Directive 2008/50.

<sup>43</sup> Article 8, Directive 2008/50.

<sup>44</sup> Article 3, Directive 2008/50.

<sup>45</sup> Article 22 paragraph 1, Directive 2008/50.

<sup>46</sup> Article 23 (1), paragraph 2, Directive 2008/50.

<sup>47</sup> Article 22, paragraph 3, Directive 2008/50.

<sup>48</sup> Article 22, paragraph 4, Directive 2008/50.

<sup>49</sup> Article 22, paragraph 4 second indent, Directive 2008/50.

## 4 The Authority's assessment

### 4.1 Non-compliance with the air quality thresholds in Directive 2008/50

#### 4.1.1 Introduction

Norway is divided into seven zones<sup>50</sup> for the purposes of reporting limit value exceedances. In the period 2008 to 2012, the Norwegian Government reported a number of exceedances of the limit values for SO<sub>2</sub>, NO<sub>2</sub> and PM<sub>10</sub>.

In the table below, where a limit value is exceeded, the relevant region is listed. If no exceedance was reported, the relevant cell simply reads "NER" (no exceedance reported).

#### 4.1.2 PM<sub>10</sub>

##### Exceedances in PM<sub>10</sub> limit values ("LV") in Norwegian air quality zones 2008-2011

	LV (One day) St <sup>51</sup> . 1	LV (calendar year) St. 1
2008	NER	NER
2009	NO3	NER
2010	NO2, NO3	NER
2011	NO3	NER
2012	NO3, NO6	NER

PM<sub>10</sub> is particularly associated with serious health risks, as it penetrates into sensitive regions of the respiratory system and can lead to many health problems and premature death. The Authority notes that one of the main sources for PM<sub>10</sub> in Norway is from traffic and that Norway has been successful in attaining limit values for PM<sub>10</sub> in most regions through measures such as reducing speed limits, charging for studded tyres in certain cities and through dust reduction measures. The other source of PM<sub>10</sub> is the use of wood burning stoves, which Norway has attempted to address through programmes to phase out old stoves and replace them with new, clean-burning stoves. However, despite such initiatives, as can be seen from the table above, there are ongoing breaches reported for the one day limit values in zone NO3, a new breach of the one day limit value in zone NO6 in 2012, as well as an exceedance in zone NO2 in 2010.

<sup>50</sup> NO1 is Stor-Oslo, NO2 is Bergen, NO3 is Trondheim, NO4 is Sone Øst ("Eastern Zone"), NO5 is Sone Vest ("Western Zone"), NO6 is Sone Midt ("Middle Zone") and NO7 is Sone Nord/Tromsø ("Northern Zone/Tromsø").

<sup>51</sup> Meaning 'Stage', abbreviated as 'St.'. Directive 1999/30 (Annex III) established an indicative Stage 2 limit values which was to be reviewed in light of further information on health and environmental effects, technical feasibility and experience in the application of Stage 1 limit values. It is not however relevant to this case.

4.1.3 NO<sub>2</sub>*Exceedances in NO<sub>2</sub> limit values ("LV") in Norwegian air quality zones 2008-2011*

	NO <sub>2</sub> LV + MoT* (one hour)	NO <sub>2</sub> LV + MoT (calendar year)
<b>2008</b>	NER	NO1, NO2, NO3, NO4, NO5
<b>2009</b>	NO1	NO1, NO3, NO5
<b>2010</b>	NO1, NO2, NO5	NO1, NO2, NO3, NO5
<b>2011</b>	NO1	NO1, NO3, NO5
<b>2012</b>	NO1	NO1, NO2

\* Exceedance of the limit value plus the margin of tolerance.

For NO<sub>2</sub>, non-compliance with limit values across the years 2008-2012 extends to all zones with the exception of NO6 and NO7 as can be seen in the table above. While there have been improvements in the annual value since 2008, these remain consistently problematic across a number of zones.

In its letter of 16 December 2011, the Norwegian Government claimed that exceeding limit values for NO<sub>2</sub> is a relatively new problem. However, the Authority notes that there have been consistent breaches since 2005<sup>52</sup>.

The Authority notes that by letter dated 1 July 2013<sup>53</sup>, the Norwegian Government applied for an extension of the deadline by which the limit values for NO<sub>2</sub> under Directive 2008/50 are to be applied in accordance with Article 22 of Directive 2008/50<sup>54</sup>. This notification by the Norwegian Government relates to zones NO1, NO2, NO3 and NO5 and it is intended that in all 4 zones compliance with the limit value should be postponed until 2015.

The Authority observes that, according to Article 22(1) of Directive 2008/50, a prerequisite for any such application is that comprehensive action plans, fulfilling the criteria in Article 23 and Annex XV of Directive 2008/50, and which demonstrate how compliance will be achieved, should have been implemented in the zones where pollutant limit values exceed the specified levels<sup>55</sup>.

The Authority is currently examining this notification, in particular the relevant action plans for each zone. Notwithstanding Norway's notified intention to postpone the compliance date for NO<sub>2</sub> limit values in the named zones, it is clear however from Article 22(3) of Directive 2008/50, that it shall in any case ensure that the limit value for each pollutant is not exceeded by more than the maximum margin of tolerance specified in Annex XI.

<sup>52</sup> The yearly limit value for NO<sub>2</sub> has been exceeded in zones NO1 and NO3 consistently since 2005.

<sup>53</sup> Event No 677437.

<sup>54</sup> The date by which the limit values are to be met is set out in Annex XI of Directive 2008/50.

<sup>55</sup> The requirements to action plans in Part A of Annex XV to Directive 2008/50 are identical to those in Annex IV to Directive 96/62, and additional requirements are listed in Section B of Annex XV to Directive 2008/50.

#### 4.1.4 SO<sub>2</sub>

##### *Exceedances in SO<sub>2</sub> limit values ("LV") in Norwegian air quality zones 2008-2011<sup>56</sup>*

	LV (One hour)	LV (one day)	LV eco (winter)	LV eco (calendar year)
<b>2008</b>	NER	NER	NER	NER
<b>2009</b>	NER	NER	NO7	NER
<b>2010</b>	NO7	NO7	NO7	NO7
<b>2011</b>	NO7, NO4	NO7	NO7	NO7
<b>2012</b>	NER	NO7	NER	NER

The Authority notes that non-compliance with the limit value for SO<sub>2</sub> is mainly confined to NO7 – Sone Nord/Tromsø (with the exception of an exceedance of the one hour mean value for Zone 4 in 2011).

According to the Norwegian Government, the only source for SO<sub>2</sub> is industrial pollution from Russian industrial sites. The Authority recalls the purpose of setting limit values for potentially harmful substances, namely avoiding, preventing or reducing harmful effects of such on human health and/or the environment as a whole. In light of this, the Authority would like to stress the importance of enacting appropriate measures for the purposes of achieving acceptable pollutant levels in ambient air.

## 4.2 Non-compliance or insufficient compliance with the action plan obligation

### 4.2.1 Introduction

There are certain areas for which no action plans are in place, despite exceedances of limit values for certain pollutants. Furthermore, there are zones in which the action plans appear to be insufficient for the purposes of complying with the various limit values, as will be outlined in the following chapters, zone by zone.

The table below sets out the incidences of non-compliance by the relevant municipality/zone with the action plan obligation<sup>57</sup>. Where the obligation to draw up an action plan has not been respected, the relevant municipality is listed, along with the substance concerned.

<sup>56</sup> The references in the table to "eco" derive from Annex IV to Directive 96/62. In Directive 2008/50, identical limit values are given under the heading "Critical levels for the protection of vegetation" which is found in Annex XIII.

<sup>57</sup> It should be noted that these breaches refer to Articles 7(3) and 8(3) of Directive 96/62 respectively as these were the provisions in force at the time of reporting. Articles 23 and 24 of Directive 2008/50 sets out the action plan requirements for exceedances and risk of exceedances respectively for the legislation now in force, which are broadly identical to the obligations contained in Directive 96/62.

*Non-compliance with the action plan obligation*

	<i>Risk of limit value exceedances</i>	<i>Limit value exceedances</i>
<b>Zone</b>	<b>Action plan in place?</b>	<b>Action plan missing/insufficient?</b>
NO1	NBI	NO <sub>2</sub> (Oslo)
NO2	NBI	NBI
NO3	NBI	NO <sub>2</sub> (Trondheim)
NO4	NBI	SO <sub>2</sub>
NO5	NBI	NO <sub>2</sub> (Stavanger)
NO6	NBI	NBI
NO7	NBI	SO <sub>2</sub> (Karpedalen)

\* NBI means no recent breach indicated.

#### 4.2.2 General observations as regards measures to tackle NO<sub>2</sub> emissions

In its response to the Authority's request for information, Norway explained that the increase in NO<sub>2</sub> emissions is linked to the increased number of diesel passenger cars on Norwegian roads. The Authority recognises that Norway is currently developing and enhancing a number of legal instruments to deal with the challenge of reducing NO<sub>2</sub> emissions, including measures as outlined in Annex 2 to the Norwegian Government's letter of 16 December 2011. In that Annex, which is a letter from the Ministry of Transport and Communications to various municipalities, it is explained how Section 7(2) of Act of 18 June 1965 no. 4 relating to road traffic (*Vegtrafikkloven*) entails the necessary competence for municipalities and regional road traffic agencies to temporarily ban driving in certain areas and/or for certain zones and to, for example, limit which cars may be driven on certain days, according to their licence plate number. Other legal instruments that are currently being developed include measures which sanction violations of the temporary measures outlined above, clarifications related to enforcement of environmental speed limits, new low emissions zones and time-differentiated toll rates.

While the Authority recognises that Norway has made significant moves to address NO<sub>2</sub> emissions, it notes that not all of these measures are yet in place and that, in many instances, they require the adoption of new legislation or political willingness to come into force, in particular as regards the introduction of sanctions. As such, it is not clear to the Authority that all necessary measures to meet Norway's ongoing obligations to control NO<sub>2</sub> levels to meet its obligations under Directive 2008/50 (of which it is already in breach), will be adopted imminently.

#### 4.2.3 NO<sub>1</sub> Stor-Oslo

For zone NO1 (Oslo and the surrounding areas), the action plan referred to in the Norwegian Government's letter of 16 December 2011<sup>58</sup> concludes that it is unlikely that the limit values for the NO<sub>2</sub> one hour and calendar year<sup>59</sup> will be met by 2025 *even if* all suggested measures are enacted<sup>60</sup>. In other words, the very purpose of the action plan as

<sup>58</sup> See page 4 of the letter. The new action plan as provided by the Norwegian Government in its letter of 16 December 2011 can be found here: [http://www.luftkvalitet.info/Libraries/Rapporter/NO2-beregninger\\_for\\_2010\\_og\\_2025\\_i\\_Oslo\\_og\\_B%3%a6rum.sflb.ashx](http://www.luftkvalitet.info/Libraries/Rapporter/NO2-beregninger_for_2010_og_2025_i_Oslo_og_B%3%a6rum.sflb.ashx)

<sup>59</sup> Both were exceeded in 2011 and in previous years, see the table in Section 4.1.3 of this letter.

<sup>60</sup> Page 38 of the new action plan, specified NO<sub>2</sub> estimates for 2010 and 2025 in Oslo and

regards compliance with limit values for NO<sub>2</sub> appears void, even where all its proposed measures are enacted.

The Authority recalls that Member States shall ensure that the air quality limit values laid down in Annex XI of Directive 2008/50 are not exceeded<sup>61</sup>. It is to be further recalled that Directive 96/62 placed no limitations on which measures might be enacted for the purposes of complying with the air quality limit values. The CJEU held that “*Directive 96/62 does not place any restrictions on the measures which may be adopted pursuant to other provisions of national law; moreover, it contains wording that is quite specific with regard to planning for the purposes, as stated in the 12th recital in the preamble to the directive, of protecting the environment ‘as a whole’, taking account of all the factors to be considered, such as, in particular, the requirements for the operation of industrial installations or travel*”<sup>62</sup>.

The purpose of an air quality action plan is to attain the limit values required for the protection of human health. An action plan that states that such attainment is not possible must be seen as unsatisfactory for these purposes. The Authority must therefore conclude that Norway has accordingly failed to comply with the obligation under Article 23(1) of Directive 2008/50.

#### 4.2.4 NO<sub>2</sub> (Bergen and the surrounding areas)

An updated action plan for Bergen was sent by the Norwegian Government to the Authority by email dated 27 February 2013<sup>63</sup>. The updated action plan appears to focus on measures which would “*award the use of public transportation and decrease car use for the period 2011-2014*”<sup>64</sup>. The proposed measures in the plan are classified into 4 categories<sup>65</sup>. For each of the four groups of measures aimed at reducing the use of cars by private persons, it is stated that an “*overview and discussion of possible measures*” will be provided under the respective sections outlining them<sup>66</sup>. However, it does not appear that many of the proposed measures have actually been enacted. Instead, several of them are marked as “*under consideration*”. Furthermore, the plan does not contain an estimate of the planned improvement in air quality, nor on the timetable required to attain these objectives, as required by indent 8 (c) of Part A of Annex XV to Directive 2008/50.

Additionally, the plan does not appear to properly target the pollutants concerned, as required by Article 23(1) fourth paragraph of Directive 2008/50, most notably as regards NO<sub>2</sub> (for which breaches of the one hour and calendar year limit values were recorded in 2010). Lastly, the updated action plan provided by Bergen does not seem to adequately address the nature and the assessment of the pollution, in particular the specific concentrations of the pollutants, as required by indent 4 of Part A of Annex XV to Directive 2008/50.

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Bærum - Contributions from diesel cars and other possible measures (Original title: NO<sub>2</sub>-beregninger for 2010 og 2025 i Oslo og Bærum - Bidrag fra dieseldiler og mulige tiltak), accessible on:

[http://www.luftkvalitet.info/Libraries/Rapporter/NO2-beregninger\\_for\\_2010\\_og\\_2025\\_i\\_Oslo\\_og\\_B%3c3%a6rum.sflb.ashx](http://www.luftkvalitet.info/Libraries/Rapporter/NO2-beregninger_for_2010_og_2025_i_Oslo_og_B%3c3%a6rum.sflb.ashx)

<sup>61</sup> Article 13(1), Directive 2008/50.

<sup>62</sup> Case C-237/07 *Dieter Janecek v Freistaat Bayern*, cited above, paragraph 41.

<sup>63</sup> Event no 664957.

<sup>64</sup> See Section O and I of the action plan - unnumbered pages 1 and 2 respectively.

<sup>65</sup> See section 4 of the action plan under the heading “*Tiltaksplan*”.

<sup>66</sup> Sections 4.1, 4.2, 4.3 and 4.4., respectively.

In light of these deficiencies in the updated action plan, the current version does not fulfil the requirements of Directive 2008/50. The Authority must therefore conclude that Norway has failed to comply with the obligation under Article 23(1) of Directive 2008/50. The Authority moreover notes that the updated action plan is not accessible on the website run by the Norwegian Institute for Air Research (*Norsk Institutt for Luftforskning*), "NILU", on behalf of KLIF, on which older air quality action plans have been uploaded under the following link: <http://www.luftkvalitet.info/Rapporter/Tiltaksutredning.aspx>, nor was the Authority able to find the updated plan elsewhere online. The Authority notes that the Norwegian Government is under an obligation under Article 26(1)(c) of Directive 2008/50 to make the action plan available to the public in an adequate manner.

#### 4.2.5 NO3 Trondheim

In zone NO3 (Trondheim), the current action plan focuses exclusively on measures targeting limit values for PM<sub>10</sub>, but lacks a timetable for implementation, as well as an estimate of when an improvement of air quality is to be expected, as required under point 8(c) of Part A of Annex XV of Directive 2008/50. PM<sub>10</sub> exceedances for the one hour limit values were reported by Norway in both 2011 and 2012.

As regards the measures related to reaching limit values for NO<sub>2</sub> annual mean in Trondheim (which were exceeded in 2010, 2011 and 2012), in its letter of 16 December 2011 the Norwegian Government informed the Authority that an integrated action plan aiming at reducing the limit values for NO<sub>2</sub> was to be adopted in 2012. The Authority has not yet received such a plan. In any case, this information does not change the fact that, as far as the Authority is aware, at present there is no action plan in place for these purposes, as required under Article 23 of Directive 2008/50. The Norwegian Government has been aware of the deadline to attain the limit values for NO<sub>2</sub> since Directive 1999/30 was incorporated into the EEA Agreement in 2001, but has nonetheless failed to comply with its obligations in zone NO3.

The obligation under Article 23(1) of Directive 2008/50 has therefore, in respect of both PM<sub>10</sub> and NO<sub>2</sub>, in the Authority's opinion, not been met.

#### 4.2.6 NO4 Sone Øst ("Eastern Zone")

In zone 4, the city of Lillehammer has implemented various measures to address the issue of PM<sub>10</sub> pollution of which exceedances were recorded in 2005 and 2006. In the city of Kristiansand, the annual NO<sub>2</sub> limit value was exceeded from 2005-2008. Although no formal action plan exists, a number of measures have been proposed and there have been no exceedances of NO<sub>2</sub> in recent years.

However, in light of the breach in 2011 of the one hour limit value for SO<sub>2</sub>, an action plan should be drawn up to specify those measures that will be taken to ensure that the levels of this pollutant do not exceed the limit values in future years. The Authority is not aware of any such plan and must therefore conclude that the obligation under Article 23(1) of Directive 2008/50 has therefore not been met in this regard.

#### 4.2.7 NO5 Sone Vest (“Western Zone”)

In zone NO5 (Stavanger), there was until recently no air quality action plan in place, although limit values for NO<sub>2</sub> (calendar year) were exceeded in 2011, and limit values for both the one day and calendar year were exceeded for NO<sub>2</sub> in 2010.

The Norwegian Government informed the Authority, in its letter of 16 December 2011, that an integrated action plan aiming at reducing the limit values for NO<sub>2</sub> was to be completed in 2012.

The updated action plan for Stavanger was finally received by the Authority by email from the Norwegian Government of 4 March 2013<sup>67</sup>. The updated action plan appears to focus on “possible measures” rather than concrete measures to be enacted, see page 7 onwards of the action plan. A number of these “possible measures” are proposed for further assessment, for example on pages 9-10 of the action plan. Similarly, some of these “possible measures” are not recommended as (immediate) measures to be enacted at all. A number of the measures in the action plan therefore appear not to be at a stage at which they are capable of being executed as part of an air quality action plan.

On page 20 onwards of the action plan, different ‘phases’ are listed alongside with measures that are proposed to be enacted for each phase. However, the action plan states that “the criteria for initiating and executing the measures should be further assessed”<sup>68</sup>. In light of this, the measures in this part of the plan also appear to be of a rather vague nature, and are not accompanied by a timetable for implementation as required by indent 8 (b) of Part A of Annex XV of Directive 2008/50.

Furthermore, the plan does not contain an estimate of the improvement of air quality planned and the expected timeframe required to attain these objectives, as required by indent 8(c) of Part A of Annex XV of Directive 2008/50. Additionally, the plan does not appear to properly target the pollutants concerned, most notably not NO<sub>2</sub>, as required by Article 23(1) fourth paragraph of Directive 2008/50.

The obligation under Article 23(1) of Directive 2008/50 has therefore, in the Authority’s opinion, not been met in this regard.

The Authority moreover remarks that the updated action plan is not accessible on the website run by the Norwegian Institute for Air Research (*Norsk Institutt for Luftforskning*), “NILU”, on behalf of KLIF, on which older air quality action plans have been uploaded under the following link: <http://www.luftkvalitet.info/Rapporter/Tiltaksutredning.aspx>. The Authority notes that the Norwegian Government is under an obligation under Article 26(1)(c) of Directive 2008/50 to make the action plan available to the public in an adequate manner.

#### 4.2.8 NO7 Sone Nord/Tromsø (“Northern Zone/Tromsø”)

In zone NO7 (Karpedalen), there is currently no air quality action plan in place, although limit values for SO<sub>2</sub> (one hour and calendar year) were exceeded in 2011. The limit values for SO<sub>2</sub> ecosystems winter and calendar year were exceeded in 2010 and no data was

<sup>67</sup> Event no 664956.

<sup>68</sup> See page 21 of the Action Plan.

reported in these categories by Norway for 2011, with the result that the Authority is unable to determine whether there were any exceedances.

According to the Norwegian Government, the only source for SO<sub>2</sub> in Norway is industrial pollution from Russian industrial sites. The Authority respectfully recalls the purpose of setting limit values for potentially harmful substances and imposing an action plan obligation when such are not met; namely to protect human health and/or the environment as a whole. The Norwegian Government has not mentioned any action plan or other actions taken<sup>69</sup> to ensure that limit values for SO<sub>2</sub> are attained.

The obligation under Article 23(1) of Directive 2008/50 has therefore, in the Authority's opinion, not been complied with.

#### 4.2.9 Concluding remarks

As shown above, Norway has failed to meet its obligation to draw up ambient air quality action plans that comply with the criteria for such established in Article 23(1) of Directive 2008/50 and Annex XV thereto, in several of the Norwegian air quality zones.

The Authority recalls that the purpose of setting limit values for potentially harmful gases in ambient air is to avoid, prevent or reduce their harmful effects on human health and/or the environment as a whole. As the Authority has received a complaint regarding the non-compliance of limit values, the situation must be seen as particularly pressing. In light of this, the Authority would like to stress the importance of enacting appropriate measures for the purposes of achieving acceptable pollutant levels in ambient air, bearing in mind the potentially harmful consequences for human health.

#### 4.3 Non-compliance with the duty to conduct accurate measurements

The Authority notes that in order to ensure that the limit values for the various pollutants regulated by Directive 2008/50 as well as Directive 2004/107 are met, it is essential that accurate and detailed measurements of air quality can be made.

In its letter of 16 December 2011, the Norwegian Government listed a number of measurement errors and shortcomings and, consequently, reporting errors as regards primarily NO<sub>2</sub> and PM<sub>10</sub>. According to the Norwegian Government, the measurement shortcomings are due to "insufficient data quality" or "insufficient data capture" and concern zones NO1 (2005 and 2007), NO4 (2005) and NO7 (2009 and 2010).

The duty to conduct measurements of pollutant concentrations in ambient air in accordance with Directive 2008/50, and before November 2012 under Directive 96/62, is fundamental to ensure proper ambient air quality and management, as well as for the purposes of properly fulfilling the action plan obligation and identifying suitable measures for attaining the limit values.

The Authority would like to underline that compliance with the duty to ensure accurate air quality measurements with a sufficiently high quality and data capture, according to Article 3 of Directive 2008/50, must be seen as an essential prerequisite for the purposes of ensuring a satisfactory ambient air quality and management in Norway.

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<sup>69</sup> The Norwegian Government mentioned that "the station 'Karpedalen' is part of the environmentally cooperation between Norway and Russia" in its letter of 16 December 2011.

The obligation under Articles 3 of Directive 2008/50 has therefore, in the Authority's opinion, not been complied with.

## 5 Conclusion

Accordingly, as its information presently stands, the Authority must conclude that Norway has failed to fulfil its obligations arising from the act referred to at point 14c of Annex XX to the EEA Agreement, 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* in particular and, until 31 October 2012 with the obligations arising from 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* and Council Directive 96/62/EC *of 27 September 1996 on ambient air quality assessment and management*; by:

- i. surpassing the limit values for PM<sub>10</sub>, NO<sub>2</sub> and SO<sub>2</sub> in ambient air during the years 2008-2012 variously in the zones NO1, NO2, NO3, NO4, NO5, NO6 and NO7 referred to in Articles 3 to 5 of Directive 1999/30; now Article 13 of Directive 2008/50/EC;
- ii. not complying with the action plan obligation as set out in Article 8(3) of Directive 96/62/EC, now Article 23 of Directive 2008/50/EC; and
- iii. not complying with the duty to conduct accurate measurements in areas in which measurement is mandatory according to Articles 3 and 6(2) of Directive 96/62/EC, now Article 3 of Directive 2008/50/EC.

In these circumstances, and acting under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Authority invites the Norwegian Government to submit its observations on the content of this letter *within two months* following receipt thereof.

After the time limit has expired, the Authority will consider, in the light of any observations received from the Norwegian Government, whether to deliver a reasoned opinion in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

For the EFTA Surveillance Authority



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College Member