COMMISSION DECISION

of 4 May 2010

concerning Bulgaria's application for protective measures with regard to a derogation from obligations under Directive 2001/80/EC of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from large combustion plants

(notified under document C(2010) 2688)

(Only the Bulgarian text is authentic)

(2010/264/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded [1], and in particular Article 36 thereof,

Having regard to the application by Bulgaria,

Whereas:

(1) Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants [2] aims to limit the emissions into air of sulphur dioxide (SO_2), nitrogen oxides (NO_x) and dust from combustion plants with a rated thermal input of 50 megawatts (MW) or more. To this end, the Directive sets out emission limit values for these plants as well as monitoring and reporting obligations. For existing plants the emission limit values apply since 1 January 2008.

(2) Pursuant to Article 4(4) of Directive 2001/80/EC, certain existing plants can 'opt out'. The precondition for such 'opt out' is that the operator of the plant had to notify the competent authorities that the plant would be operated not more than 20 000 hours between 1 January 2008 and 31 December 2015. For those 'opted out' plants, the emission limit values of the Directive do not apply.

(3) During the accession negotiations Bulgaria obtained derogations from the application of the emission limit values under Directive 2001/80/EC for 4 combustion plants (TPP 'Varna', TPP 'Bobov dol', TPP 'Ruse East' and TPP 'Lukoil Neftochim').

(4) Bulgaria, by letter of 31 December 2009, applied to the Commission for authorisation to invoke Article 36 of the Act of Accession for protective measures, until 31 December 2014, in respect of five combustion plants (TPP 'Bobov dol', Brikel SJSC, Maritza 3 SJSC, TPP 'Republika' and TPP 'Sliven').

(5) TPP 'Bobov dol' has a derogation under the Accession Treaty for two units until 31 December 2011 and 31 December 2014, respectively; the third unit should have complied with the requirements of Directive 2001/80/EC from 1 January 2008 on.

(6) Brikel SJSC and Maritza 3 SJSC are opted out pursuant to Article 4(4) of Directive 2001/80/EC, therefore they cannot operate for more than 20 000 hours between 1 January 2008 and 31 December 2015.

(7) The Bulgarian authorities base their application upon the economic difficulties, which caused substantial delays in the investments required to upgrade or replace the plants concerned. Therefore, the plants would not be able to comply with the requirements of Directive 2001/80/EC in the foreseen time frame (under Directive 2001/80/EC or the Accession Treaty) and their operation would have to be ended. According to the application of Bulgaria, closure of the plants would put at risk the electricity and heat supply for the region of South-eastern and South-western Bulgaria. It would also lead to the closure of adjacent mines, whose operation depends on the coal demand of the combustion plants.

(8) Article 36 of the Act of Accession concerns only serious difficulties that arise as a result of application of internal market rules by the new Member State either for it or for the previous Members. Its aim is to temporarily lighten effects of the rules on the country's economy but it does not allow derogations from the EU's *acquis* in other policy areas such as environmental legislation.

(9) The alleged difficulties of Bulgaria are not a consequence of the EU's internal market rules but relate to compliance with EU environmental legislation. They are not short-term difficulties having arisen during the 3 years after Bulgaria's accession to the EU. They existed already at the time of drafting the Act of Accession, and the Annex VI embodying transitional measures applicable to Bulgaria, including those concerning Directive 2001/80/EC.

[1] OJ L 157, 21.6.2005, p. 203.
[2] OJ L 309, 27.11.2001, p. 1.

(10) Bulgaria's application falls therefore out of the scope of Article 36 of the Act of Accession and should be rejected as inadmissible,

HAS ADOPTED THIS DECISION:

Article 1

The application for protective measures made by Bulgaria pursuant to Article 36 of the Act of Accession, aimed at obtaining a derogation from obligations under Directive 2001/80/EC, is rejected.

Article 2

This Decision is addressed to the Republic of Bulgaria.

Done at Brussels, 4 May 2010.

For the Commission
Janez POTOČNIK
Member of the Commission