Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 1999/32/EC as regards the sulphur content of marine fuels

(presented by the Commission pursuant to Article 250 (2) of the EC Treaty)
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Article 250(2) of the EC Treaty states that as long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.


1. BACKGROUND


Opinion of the European Economic and Social Committee: 14 May 2003

Opinion of the Committee of the Regions: none

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The aim of the proposal is to reduce the impact of ships’ emissions of sulphur dioxide (SO\(_2\) or SO\(_x\)) and particulate matter (PM) on environmental acidification and human health. Ship emissions of SO\(_x\) and PM are directly related to fuel sulphur content. Marine heavy fuel currently has an average sulphur (S) content of 2.7\% or 27,000 parts per million (ppm), compared with road fuel which has a new sulphur limit of 10 ppm. The proposal contains new limits on the maximum sulphur content of marine fuels, specifically:

- A 1.5\% fuel S limit for all ships in the North Sea, Channel & Baltic Sea, in line with the SO\(_x\) Emission Control Area agreed at the International Maritime Organization. This will help reduce acidification and improve air quality;

- A 1.5\% fuel S limit for passenger vessels on regular services to/from any EU ports, in line with established EU policy of high standards for passenger vessels. This will improve air quality around coasts, and help ensure an EU-wide supply of low S fuel;

A 0.2% fuel S limit for ships at berth in EU ports, and all inland vessels, to reduce local emissions of SOx and PM, and improve local air quality.

3. COMMISSION OPINION ON THE AMENDMENTS ADOPTED BY THE EUROPEAN PARLIAMENT

On 4 June 2003, the European Parliament adopted 36 amendments out of the 44 that were tabled. Two amendments - numbers 13 and 14 - were subject to split votes where only the tighter deadlines were supported by Parliamentarians, not the tighter fuel sulphur limits.

The Commission finds that the majority of the Parliament’s amendments are acceptable in full, as they clarify and improve upon the Commission proposal.

Some of the amendments seek to strengthen the proposal considerably – principally through tighter fuel sulphur limits in a second phase. The Commission believes it is premature to define tighter limits at this stage, so these amendments are not acceptable.

Other amendments introduce new text on the development of abatement technology and economic instruments as an alternative or complement to regulation on fuel sulphur content. These amendments are acceptable in principle.

Amendments 1, 4, 5, 6, 7, 10, 14 (as adopted by split vote), 15, 16, 17, 18, 21, 24, 27, 29, 31, 37, 38 and 40 can be accepted by the Commission in full.

Amendments 2, 3, 8, 23, 30, 33, 39 and 43 can be accepted by the Commission in principle subject to re-wording and/or clarification. Amendments 28 and 41 can be accepted in part, and Amendment 44 can be accepted in part and in principle.

Amendments 13, 22, 25, 26, 32 and 42 are not accepted by the Commission.

The Commission's detailed position with regard to the amendments of the European Parliament is as follows:

3.1. Amendments accepted fully by the Commission

Amendments 1, 4, 5, 6 and 40 propose new and amended recitals which help clarify and justify the objectives of the directive.

Amendment 7 and 18 are linked. Amendment 7 introduces a new recital referring to Article 299 of the Treaty, requiring consideration of the special characteristics of outermost regions (French overseas departments, Azores, Madeira and the Canaries). Amendment 18 exempts these regions from having to ban the sale of high sulphur diesel oil provided local air quality standards are met.

Amendment 10 deletes Article 4, paragraphs 3 and 4 from the existing directive, removing the possibility for Member States to apply for a derogation from the sulphur limit for inland gas oil.

Amendments 14, 15, 16, 17, and 21 bring forward a number of the directive’s provisions, to be implemented 6 months after entry into force; Amendment 16 also adds text requiring bunker delivery notes to be signed by a representative of the receiving ship.
Amendment 37 brings forward the deadline for transposition of the directive from 12 months to 6 months.

Amendment 24 changes the title of the article on Sampling and Analysis to become Monitoring & Penalties. Amendment 27 requires fuel oil samples to be taken while being delivered for use on board ships. Amendment 29 requires Member States to lay down rules on effective penalties which are proportionate and dissuasive.

Amendment 31 corrects an oversight, adding the word “oil” after “heavy fuel”.

Amendment 38 clarifies the definition of ships at berth.

### 3.2. Amendments accepted in part or in principle by the Commission

Amendment 2 introduces a new recital stating that ship emissions contribute to global warming, ozone formation and eutrophication. This is true, but reducing the sulphur content of marine fuel will do little to reduce these impacts. They are however addressed in the Commission’s parallel Communication on an EU strategy to reduce emissions from seagoing ships. The Commission therefore proposes a new Recital 4.a as follows:

“Emissions from shipping other than sulphur dioxide and particulate matter also contribute to global warming, ozone formation and eutrophication. Member States should take actions to reduce these emissions as recommended in the EU strategy to reduce atmospheric emissions from seagoing ships COM(2002)595 Volume I”.

Amendment 3 introduces a new recital 4.b stating that ship emissions should be included in the scope of the National Emissions Ceilings Directive 2001/81/EC. Inland and domestic coastal shipping emissions are already included in the scope of the NEC directive. It is more difficult to quantify ship emissions in international waters, and to allocate these fairly to individual Member States. The Commission therefore proposes a new Recital 4.b as follows:

“Emissions from shipping in international waters should be taken into account in the context of any review of Directive 2001/81/EC setting emission ceilings for atmospheric pollutants”.

Amendment 8 amends Recital 7, to call for uniform fuel sampling and dissuasive penalties. This is desirable, as shipping is an international industry. However the justification of the amendment suggests marine fuels should be sampled not just for sulphur but also for other dangerous substances, and the Commission wishes to make clear that this is outside the scope of the directive.

Amendment 23 introduces a transition period until 2010 before tanker boilers have to comply with the proposed low sulphur fuel limit at berth in ports, in response to safety concerns about switching to low viscosity gas oils in older tanker boilers. Safe fuel switching is possible provided the crew follows procedures carefully. This is essentially a matter of training, and the Commission believes that a shorter transition period - until 2008 – would allow time for this training. The Commission therefore proposes to amend Article 4b, as follows:
1. Member States shall take all necessary steps to ensure that marine fuels are not used by any...ships at berth in Community ports as from:

(i) [...*] if their sulphur content exceeds 0.20% by mass

(ii) 1 January 2008 if their sulphur content exceeds 0.10% by mass

2. Member States shall ensure that marine gas oils are not sold in their territory if the sulphur content of those marine gas oils exceeds the limits set out in Paragraph 1.

3. Paragraph 1(i) shall not apply to fuels used in the boilers of tankers.

[* six months after entry into force of the directive]

Amendment 28 has two parts, of which only Part 1 is acceptable.

- Part 1 brings forward the start of fuel sampling by six months, to begin on the same date as the relevant fuel limits enter into force.

- Part 2 introduces text requiring a minimum of 50% of the samples taken to be inspected. The Commission believes this makes little sense. We assume that for economic and practical reasons competent authorities inspect most if not all of the fuel samples taken.

Amendment 30 states that the European Maritime Safety Agency shall include reporting on air pollution in its mandate, and that it shall assist Member States and the Commission in monitoring the directive’s implementation. However, Article 2 (b) and 2(c) of Regulation 1406/2002 provides for such follow up in the context of the general pollution prevention task of the Agency. The Commission and Member States can request assistance by the Agency on various aspects relating to the implementation of this Directive, including the reporting on air pollution. For clarification, specific changes to the mandate of the Agency are possible only with a modification to Regulation 1406/2002. The Commission therefore proposes the following new recital 10a:

“The European Maritime Safety Agency shall provide assistance to the Commission and Member States, as appropriate, in monitoring the implementation of this Directive.”

Amendments 33 and 43 are linked; 33 deletes the existing text on exhaust gas cleaning in the Article 7 review clause, and 43 introduces a new Article 4ba setting out detailed conditions for trials and subsequent use of exhaust gas cleaning. While the new text has merit, it is lengthy and prescriptive, and is addressed to the Commission rather than the Member States. The Commission therefore prefers the approach set out below, incorporating most of the text on trials in Amendment 43, and adding to the existing text in the review clause.

(i) Introducing a new Article 4c:

“Article 4c

Trials for new abatement technologies

1. Member States may issue permits to vessels within their territories which are involved in trials of emission abatement technologies, including exhaust gas cleaning, provided that
– the Commission is notified in writing at least 6 months before trials begin
– permits for trials do not exceed 18 months in duration
– all vessels involved install tamper-proof equipment for the continuous monitoring of funnel gas emissions and use it throughout the trial period
– there are proper waste management systems in place for any waste generated by the abatement techniques throughout the trial period
– there is an assessment of impacts on the marine environment, particularly ecosystems in enclosed ports, harbours and estuaries throughout the trial period
– full results are provided to the Commission, and made publicly available, within 6 months of the end of the trials.

2. During these trials the use of low sulphur marine fuels, as required under Articles 4a and 4b, shall not be mandatory, provided that Member States can demonstrate that vessels involved in the trials achieve emissions reductions which are at least equivalent to the low sulphur fuel limits in force.

(ii) Amending Article 7, paragraph 3 as indicated:

“3. Taking into account any IMO guidelines on exhaust gas cleaning systems and other technological methods to limit SOx emissions, and the effects of such technologies on the environment, including marine ecosystems in enclosed ports, harbours and estuaries, and the results of any trials conducted under Article 4c, the Commission shall consider which, if any, abatement methods might be permissible as alternatives the use of low sulphur marine fuels required under Articles 4a and 4b and if appropriate, make a proposal.”

Amendment 39 proposes a new definition of inland waterways, in relation to Article 4b which prescribes specific sulphur limits for “ships on inland waterways”. The Commission prefers the following approach, believing it is clearer to define the vessels rather than the waterways:

(i) Introducing a new Article 2, paragraph 3.i:

3.i. inland waterway vessel shall mean a vessel intended for use on inland waterways, including all vessels which carry

– a Community inland navigation certificate, as defined in Directive 82/714/EEC

– a certificate issued pursuant to Article 22 of the Revised Convention for the Navigation of the Rhine

(ii) Amending Article 4b as indicated below:

1. Member States shall take all necessary steps to ensure that marine fuels are not used by any ships on inland waterways inland waterway vessels or by any ships at berth in Community ports as from:

(i) […] if their sulphur content exceeds 0.20% by mass

(ii) 1 January 2008 if their sulphur content exceeds 0.10% by mass
Amendment 41 on first phase fuel sulphur limits can be divided into the following three parts, of which only part 2 is acceptable to the Commission.

- **Part 1** redefines the Commission’s proposed 1.5% sulphur limit in the SOxECA as a “first phase”. This is unnecessary as we do not accept the proposed second phase (Amendment 42).

- **Part 2** brings forward the implementation date to 6 months after entry into force of the directive. This should be feasible, because the shipping and fuel industries have been aware of the proposed SOxECA limit since adoption of Annex VI in 1997.

- **Part 3** extends the 1.5% sulphur limit to apply in the territorial seas and exclusive economic zones outside the SOxECA. The Commission believes this is premature, as the added benefits and costs have not yet been demonstrated. If the measure were subsequently proved necessary, the Commission would prefer it to be agreed internationally by designating an additional SOxECA under MARPOL Annex VI.

Amendment 44 on economic instruments can be divided into the following three parts, of which the Commission can only accept part 1 in principle.

- **Part 1** requires the Commission to submit a report by 2007 with proposals to revise the directive, which may include proposals for economic instruments. The Commission is investigating the feasibility of using economic instruments to reduce ship emissions in future. However, 2007 is too early to submit a report on the directive, given that some of its provisions will not enter into force until 2008. The Commission therefore proposes the following addition to the Reporting & Review Article 7, paragraph 2:

  “On the basis inter alia of the annual reports submitted in accordance with paragraph 1 and the observed trends in air quality and acidification, the Commission shall, by 31 December 2010, submit a report to the European Parliament and to the Council. The Commission may submit with its report proposals for revising this Directive, in particular as regards the limit values laid down for each fuel category, and the Community sea areas where low-sulphur marine fuels are to be used, and the use of economic instruments – including inter alia mechanisms such as differentiated dues and kilometre charges, tradable emission permits and offsetting.”

- **Part 2** already allows for emissions offsetting, linked to the use of exhaust gas cleaning technology, whereby groups of ship operators could effectively trade emissions between those ships which use exhaust gas cleaning and those which do not. The Commission believes that the prospect of trading ship emissions in this way is premature at this stage, but that it should be considered in the 2010 report as set out above.

- **Part 3** introduces further new text on exhaust gas cleaning. The Commission believes this is unnecessary as the issue is adequately addressed in response to Amendments 33 and 43.
3.3. Amendments not accepted by the Commission

Amendments 13 proposes to change the implementation date of the 1.5% fuel sulphur limit for passenger vessels on regular services from 1 July 2007 to 6 months after entry into force. This is likely to be an earlier deadline, and is consequently unacceptable to the Commission.

Amendment 22 is directly related to Amendment 20, which fell during the plenary vote. It is therefore no longer relevant.

Amendments 25 requires fuel monitoring to be extended to all seagoing ships in all Community sea areas. The Commission does not accept this proposed extension, as it relates to parts of amendments 41 and 42 which are also unacceptable, proposing the extension of fuel sulphur limits to all EU territorial waters and exclusive economic zones.

Amendment 26 requires the fuel limits under the proposed new Article 4a(a) to be monitored. The Commission does not accept the amendment introducing the new Article 4a(a). It also removes reference to sampling and sulphur analysis of fuels being used in other Community sea areas. But these fuels do need to be checked, to ensure that new fuel sulphur limits in the SOxECA do not lead to increased sulphur content in fuels used elsewhere.

Amendment 32 brings forward the proposed Commission report to the European Parliament and the Council by 2 years from 2010. This is too early, given that some of the proposed fuel sulphur limits do not enter into force until 2008. It also requires the report to be accompanied by legislative proposals, including full specifications for marine fuel, and requires the Commission to submit a further report on the measures taken to anchor the directive’s provisions in the IMO’s MARPOL Convention. Prescribing the content of the report in this way undermines the Commission’s right of initiative.

Amendment 42 introduces a second phase 0.5% sulphur limit. The Commission believes this is premature, as the added benefits and costs are not presented. The Commission will consider the case for tighter fuel sulphur limits in the context of its report in 2010.

3.4. Amended proposal

Having regard to Article 250(2) of the EC Treaty, the Commission modifies its proposal as indicated above.