

COMMISSION RECOMMENDATION**of 21 December 2009****on the safe implementation of the use of low sulphur fuel by ships at berth in Community ports****(Text with EEA relevance)**

(2009/1020/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Article 4b of Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels⁽¹⁾ as amended provides for the maximum sulphur content of marine fuels used by ships at berth in Community ports, including, as of 1 January 2010, the obligations for Member States to ensure that vessels do not use marine fuels with a sulphur content exceeding 0,1 % by mass and that marine gas oils are not placed on the market in their territory if the sulphur content of those marine gas oils exceeds 0,1 % by mass.
- (2) Article 6 of the Directive also provides that Member States shall check by sampling that the sulphur content of marine fuels complies with the relevant provision of Article 4b and that sampling commence from the date of entry into force of the requirement.
- (3) As indicated in the Commission Communication on notifications of postponements of attainment deadlines and exemptions from the obligation to apply certain limit values pursuant to Article 22 of Directive 2008/50/EC on ambient air quality and cleaner air for Europe⁽²⁾, concentrations in more than 40 % of the zones and agglomerations in the Community currently exceed the daily PM₁₀ limit value. Implementation of low sulphur limit on fuel by ships while they are at berth in Community ports is essential to improve ambient air quality, as highlighted in the Communication from the Commission to the European Parliament and to the Council on an EU strategy to reduce atmospheric emissions from seagoing ships⁽³⁾ and the Thematic Strategy on Air Pollution adopted in 2005⁽⁴⁾.
- (4) Requirements were adopted in October 2008 by the International Maritime Organisation (IMO) in the context of the revision of the International Convention for the Prevention of Pollution from Ships (Marpol Convention), to be implemented from 1 January 2015 for ships sailing within emission control areas as defined by Article 2(3e) of Directive 1999/32/EC.
- (5) The Commission, considering the safety risks at stake, deems it necessary to issue appropriate guidance to Member States in order to ensure a high level of safety and effective prevention of pollution from ships in the enforcement of the provisions of that Directive throughout the Community.
- (6) From 1 January 2010, ships using heavy fuel oil while at sea are to switch to lighter marine fuels such as marine diesel or gas oil when at berth in Community ports as heavy fuel oil with a sufficiently low sulphur content is not generally available.
- (7) There may be operational problems and safety risks associated with the use of marine diesel and gas oil in ships that have not been designed to use such fuels or have not undergone the necessary technical adaptation. The Commission has considered the risks associated with the change of fuels and concluded that the main safety risk relates to use in ships' boilers which have not yet been assessed and certified for use with the required type of fuel. While boilers can use heavy fuel oil or distillate fuels, a risk arises because marine diesel and gas oils are less viscous and more volatile and heating of the fuel system, which is required for heavy fuel oil, is not necessary for distillate fuels. The numbers of affected ships and the probability of such occurrences are difficult to assess precisely.
- (8) Directive 1999/32/EC allowed sufficient time for the shipping industry to bring about the technical adaptation to a maximum limit of 0,1 % sulphur by mass for marine fuels used by ships at berth in Community ports. Technical solutions to limit the risks are available. However, to date, there are still ships that have not gone through the necessary modifications and very few ships have undergone the necessary verification and certification process.

⁽¹⁾ OJ L 121, 11.5.1999, p. 13.

⁽²⁾ COM(2008) 403.

⁽³⁾ COM(2002) 595.

⁽⁴⁾ COM(2005) 446.

- (9) Technical solutions are available to mitigate potential consequences of switching fuel at berth. Limited demand from the shipping industry has delayed the development of the necessary technical solutions, resulting in subsequent delays in the verification and certification process.
- (10) The information available to the Commission underlines that, for these ships that have not undergone the technical modifications, completion of the whole process should not take more than eight months.
- (11) There is a need for boiler and engine manufacturers to develop specific recommendations and procedures for the retrofitting of these solutions, while shipowners should develop and implement specific operational procedures and provide appropriate training to crews,
- approved by the ship's classification society or, for ships flying the flag of a Member State, by the organisation having recognition in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council ⁽¹⁾. The retrofit plan should clearly state the date of completion of the adaptation and certification process.
2. Member States may consider the existence of an approved retrofit plan when assessing the degree of penalties to be applied to non-complying ships.
3. Member States should take appropriate measures to raise awareness among owners, operators and seafarers of the safety risk related to fuel changeover in the absence of any necessary technical adaptation to a ship's fuel system and the necessity for training to be provided.

HAS ADOPTED THIS RECOMMENDATION:

1. As part of the Member States enforcement actions against ships which fail to comply with the requirement to use fuels with a maximum permitted sulphur content of 0,1 % while at berth, Member States should request those ships to provide detailed evidence of the steps they are taking to achieve compliance. This should include a contract with a manufacturer and an approved retrofit plan which should be

Done at Brussels, 21 December 2009.

For the Commission
Antonio TAJANI
Vice-President

⁽¹⁾ OJ L 131, 28.5.2009, p. 11.