Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (codification)

DIRECTIVE (EU) 2016/802 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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(codification)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Council Directive 1999/32/EC[(3)] has been substantially amended several times[(4)]. In the interests of clarity and rationality, that Directive should be codified.

(2) The environmental policy of the Union, as set out in the action programmes on the environment, and in particular in the Sixth Environment Action Programme adopted by Decision No 1600/2002/EC of the European Parliament and of the Council[(5)], and in the Seventh Environment Action Programme adopted by Decision No 1386/2013/EU of the European Parliament and of the Council,[(6)] has as one of its objectives to achieve levels of air quality that do not give rise to significant negative impacts on, and risks to, human health and the environment.

(3) Article 191(2) of the Treaty on the Functioning of the European Union (TFEU) provides that Union policy on the environment is to aim at a high level of protection, taking into account the diversity of situations in the various regions of the Union.

(4) This Directive lays down the maximum permitted sulphur content of heavy fuel oil, gas oil, marine gas oil and marine diesel oil used in the Union.

(5) Emissions from shipping due to the combustion of marine fuels with a high sulphur content contribute to air pollution in the form of sulphur dioxide and particulate matter, which harm human health and the environment and contribute to acid deposition. Without the measures set out in this Directive, emissions from shipping would soon have been higher than emissions from all land-based sources.

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(6) Acidification and atmospheric sulphur dioxide damage sensitive ecosystems, reduce biodiversity and amenity value and detrimentally affect crop production and the growth of forests. Acid rain falling in cities may cause significant damage to buildings and the architectural heritage. Sulphur dioxide pollution may also have a significant effect upon human health, particularly among those sectors of the population suffering from respiratory diseases.

(7) Acidification is a transboundary phenomenon requiring Union as well as national or local solutions.

(8) Emissions of sulphur dioxide contribute to the formation of particulate matter in the atmosphere.

(9) Air pollution caused by ships at berth is a major concern for many harbour cities when it comes to their efforts to meet the Union's air quality limit values.

(10) Member States should encourage the use of shore-side electricity, as the electricity for present-day ships is usually provided by auxiliary engines.

(11) The Union and the individual Member States are Contracting Parties to the UN-ECE Convention of 13 November 1979 on Long-Range Transboundary Air Pollution. The second UN-ECE Protocol on transboundary pollution by sulphur dioxide stipulates that the Contracting Parties should reduce sulphur dioxide emissions in line with or beyond the 30 % reduction specified in the first Protocol, and the second UN-ECE Protocol is based on the premise that critical loads and levels will continue to be exceeded in some sensitive areas. Further measures to reduce sulphur dioxide emissions will still be required. The Contracting Parties should therefore make further significant reductions in emissions of sulphur dioxide.

(12) Sulphur, which is naturally present in small quantities in oil and coal, has for decades been recognised as the dominant source of sulphur dioxide emissions, which are one of the main causes of ‘acid rain’ and one of the major causes of the air pollution experienced in many urban and industrial areas.

(13) Studies have shown that the benefits from reducing sulphur emissions by reductions in the sulphur content of fuels will often be considerably greater than the estimated costs to industry in this Directive. The technology exists and is well established for reducing the sulphur level of liquid fuels.

(14) In accordance with Article 193 TFEU, this Directive should not prevent any Member State from maintaining or introducing more stringent protective measures in order to encourage early implementation with respect to the maximum sulphur content of marine fuels, for instance using emission abatement methods outside SO_x Emission Control Areas. Such measures are required to be compatible with the Treaties and are to be notified to the Commission.

(15) A Member State, before introducing new, more stringent protective measures, should notify the draft measures to the Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council[7].

(16) The TFEU requires consideration to be given to the special characteristics of the outermost regions of the Union, namely the French overseas departments, the Azores, Madeira and the Canary Islands.

(17) With regard to the limit on the sulphur content of heavy fuel oil, it is appropriate to provide for derogations in Member States and regions where the environmental conditions so allow.

(18) With regard to the limit on the sulphur content of heavy fuel oil, it is also appropriate to provide for derogations for their use in combustion plants which comply with the emission limit values laid down in Directive 2001/80/EC of the European Parliament and of the Council[(8)], or in Annex V to Directive 2010/75/EU of the European Parliament and of the Council[(9)].

(19) For refinery combustion plants excluded from the scope of point (d) of Article 3(2) or point (c) of Article 3(3) of this Directive the emissions of sulphur dioxide averaged over such plants should not exceed the limits set out in Directive 2001/80/EC, or Annex V to Directive 2010/75/EU, or any future revision of those Directives. In the application of this Directive, Member States should bear in mind that substitution by fuels other than those referred to in Article 2 should not produce an increase in emissions of acidifying pollutants.

(20) In 2008, the International Maritime Organisation (IMO) adopted a resolution to amend Annex VI to the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL), containing regulations for the prevention of air pollution from ships. The revised Annex VI to MARPOL entered into force on 1 July 2010.

(21) The revised Annex VI to MARPOL introduces, inter alia, stricter sulphur limits for marine fuel in SO_x Emission Control Areas (1,00 % as of 1 July 2010 and 0,10 % as of 1 January 2015) as well as in sea areas outside SO_x Emission Control Areas (3,50 % as of 1 January 2012 and, in principle, 0,50 % as of 1 January 2020). Most Member States are obliged, in accordance with their international commitments, to require ships to use fuel with a maximum sulphur content of 1,00 % in SO_x Emission Control Areas as of 1 July 2010. In order to ensure coherence with international law as well as to secure proper enforcement of new globally established sulphur standards in the Union, this Directive should be in line with the revised Annex VI to MARPOL. In order to ensure a minimum quality of fuel used by ships either for fuel-based or technology-based compliance, marine fuel the sulphur content of which exceeds the general standard of 3,50 % by mass should not be allowed for use in the Union, except for fuels supplied to ships using emission abatement methods operating in closed mode.

(22) Amendments to Annex VI to MARPOL regarding SO_x Emission Control Areas are possible under IMO procedures. In the event that further changes, including exemptions, are introduced with regard to the application of limits for SO_x Emission Control Areas in Annex VI to MARPOL, the Commission should consider any such changes and, where appropriate, without delay make the necessary proposal in

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accordance with the TFEU to fully align this Directive with the IMO rules regarding SO_x Emission Control Areas.

(23) The introduction of any new emission control areas should be subject to the IMO process under Annex VI to MARPOL and should be underpinned by a well-founded case based on environmental and economic grounds and supported by scientific data.

(24) In accordance with Regulation 18 of the revised Annex VI to MARPOL, Member States should endeavour to ensure the availability of marine fuels which comply with this Directive.

(25) In view of the global dimension of environmental politics and shipping emissions, ambitious emission standards should be set at a global level.

(26) The Union will continue to advocate more effective protection of areas sensitive to SO_x emissions and a reduction in the normal limit value for bunker fuel oil at the IMO.

(27) Passenger ships operate mostly in ports or close to coastal areas and their impacts on human health and the environment are significant. In order to improve air quality around ports and coasts, those ships are required to use marine fuel with a maximum sulphur content of 1,50 % until stricter sulphur standards apply to all ships in territorial seas, exclusive economic zones and pollution control zones of Member States.

(28) In order to facilitate the transition to new engine technologies with the potential for significant further emission reductions in the maritime sector, the Commission should further explore opportunities to enable and encourage the uptake of gas-powered engines in ships.

(29) Proper enforcement of the obligations with regard to the sulphur content of marine fuels is necessary in order to achieve the aims of this Directive. The experience from the implementation of Directive 1999/32/EC has shown that there is a need for a stronger monitoring and enforcement regime in order to ensure the proper implementation of this Directive. To that end, it is necessary that Member States ensure sufficiently frequent and accurate sampling of marine fuel placed on the market or used on board ship as well as regular verification of ships' logbooks and bunker delivery notes. It is also necessary for Member States to establish a system of effective, proportionate and dissuasive penalties for non-compliance with the provisions of this Directive. In order to ensure more transparent information, it is also appropriate to provide that the register of local suppliers of marine fuel be made publicly available.

(30) Complying with the low sulphur limits for marine fuels, particularly in SO_x Emission Control Areas, can result in a significant increase in the price of such fuels, at least in the short term, and can have a negative effect on the competitiveness of short sea shipping in comparison with other transport modes, as well as on the competitiveness of the industries in the countries bordering SO_x Emission Control Areas. Suitable solutions are necessary in order to reduce compliance costs for the affected industries, such as allowing for alternative, more cost-effective methods of compliance than fuel-based compliance and providing support, where necessary. The Commission should, based, inter alia, on reports from Member States, closely monitor the impacts of the shipping sector's compliance with the new fuel quality standards, particularly with regard to

possible modal shift from sea to land-based transport and should, if appropriate, propose proper measures to counteract such a trend.

(31) Limiting modal shift from sea to land-based transport is important given that an increasing share of goods being transported by road would in many cases run counter to the Union's climate change objectives and increase congestion.

(32) The costs of the new requirements to reduce sulphur dioxide emissions could result in modal shift from sea to land-based transport and could have negative effects on the competitiveness of the industries. The Commission should make full use of instruments such as Marco Polo and the trans-European transport network to provide targeted assistance so as to minimise the risk of modal shift. Member States may consider it necessary to provide support to operators affected by this Directive in accordance with the applicable State aid rules.

(33) In accordance with existing guidelines on State aid for environmental protection, and without prejudice to future changes thereto, Member States may provide State aid in favour of operators affected by this Directive, including aid for retrofitting operations of existing vessels, if such aid measures are deemed to be compatible with the internal market in accordance with Articles 107 and 108 TFEU, in particular in light of the applicable guidelines on State aid for environmental protection. In this context, the Commission may take into account that the use of some emission abatement methods go beyond the requirements of this Directive by reducing not only the sulphur dioxide emissions but also other emissions.

(34) Access to emission abatement methods should be facilitated. Those methods can provide emission reductions at least equivalent to, or even greater than, those achievable using low sulphur fuel, provided that they have no significant negative impacts on the environment, such as marine ecosystems, and that they are developed subject to appropriate approval and control mechanisms. The already known alternative methods, such as the use of on-board exhaust gas cleaning systems, the mixture of fuel and liquefied natural gas or the use of biofuels should be recognised in the Union. It is important to promote the testing and development of new emission abatement methods in order, among other reasons, to limit modal shift from sea to land-based transport.

(35) Emission abatement methods hold the potential for significant emission reductions. The Commission should therefore promote the testing and development of such technologies, inter alia, by considering the establishment of a co-financed joint programme with industry, based on principles from similar programmes, such as the Clean Sky Programme.

(36) The Commission, in cooperation with Member States and stakeholders, should further develop measures identified in the Commission's Staff Working Paper of 16 September 2011 entitled ‘Pollutant emission reduction from maritime transport and the sustainable waterborne transport toolbox’.

(37) In the case of a disruption in the supply of crude oil, petroleum products or other hydrocarbons, the Commission may authorise the application of a higher limit within a Member State's territory.