

Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 amending Directive 1999/32/EC

*Article 1*

Directive 1999/32/EC is amended as follows:

1. Article 1(2) shall be replaced by the following:
2. Reductions in emissions of sulphur dioxide resulting from the combustion of certain petroleum-derived liquid fuels shall be achieved by imposing limits on the sulphur content of such fuels as a condition for their use within Member States' territory, territorial seas and exclusive economic zones or pollution control zones.

The limitations on the sulphur content of certain petroleum-derived liquid fuels as laid down in this Directive shall not, however, apply to:

- (a) fuels intended for the purposes of research and testing;
  - (b) fuels intended for processing prior to final combustion;
  - (c) fuels to be processed in the refining industry;
  - (d) fuels used and placed on the market in the outermost regions of the Community provided that the relevant Member States ensure that, in those regions:
    - air quality standards are respected,
    - heavy fuel oils are not used if their sulphur content exceeds 3 % by mass;
  - (e) fuels used by warships and other vessels on military service. However, each Member State shall endeavour to ensure, by the adoption of appropriate measures not impairing the operations or operational capability of such ships, that these ships act in a manner consistent, so far as is reasonable and practical, with this Directive;
  - (f) any use of fuels in a vessel necessary for the specific purpose of securing the safety of a ship or saving life at sea;
  - (g) any use of fuels in a ship necessitated by damage sustained to it or its equipment, provided that all reasonable measures are taken after the occurrence of the damage to prevent or minimise excess emissions and that measures are taken as soon as possible to repair the damage. This shall not apply if the owner or master acted either with intent to cause damage, or recklessly;
  - (h) fuels used on board vessels employing approved emission abatement technologies in accordance with Article 4c.;
2. Article 2 shall be amended as follows:
    - (a) the first indent in point 1 shall be replaced by the following:
      - any petroleum-derived liquid fuel, excluding marine fuel, falling within CN code 2710 19 51 to 2710 19 69, or;

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- (b) the first subparagraph of point 2 shall be replaced by the following:
- gas oil means:*
- any petroleum-derived liquid fuel, excluding marine fuel, falling within CN code 2710 19 25, 2710 19 29, 2710 19 45 or 2710 19 49, or
  - any petroleum-derived liquid fuel, excluding marine fuel, of which less than 65 % by volume (including losses) distils at 250 °C and of which at least 85 % by volume (including losses) distils at 350 °C by the ASTM D86 method.;
- (c) point 3 shall be replaced by the following:
3. *marine fuel* means any petroleum-derived liquid fuel intended for use or in use on board a vessel, including those fuels defined in ISO 8217;
- (d) the following points shall be inserted:
- 3a. *marine diesel oil* means any marine fuel which has a viscosity or density falling within the ranges of viscosity or density defined for DMB and DMC grades in Table I of ISO 8217;
- 3b. *marine gas oil* means any marine fuel which has a viscosity or density falling within the ranges of viscosity or density defined for DMX and DMA grades in Table I of ISO 8217;
- 3c. *MARPOL* means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto;
- 3d. *Annex VI to MARPOL* means the annex, entitled “Regulations for the Prevention of Air Pollution from Ships”, that the Protocol of 1997 adds to MARPOL;
- 3e. *Ox Emission Control Areas* means sea areas defined as such by the IMO under Annex VI to MARPOL;
- 3f. *passenger ships* means ships that carry more than 12 passengers, where a passenger is every person other than:
- (i) the master and the members of the crew or other person employed or engaged in any capacity on board a ship on the business of that ship, and
  - (ii) a child under one year of age;
- 3g. *regular services* means a series of passenger ship crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either:
- (i) according to a published timetable, or
  - (ii) with crossings so regular or frequent that they constitute a recognisable schedule;

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- 3h. *warship* means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline;
  - 3i. *ships at berth* means ships which are securely moored or anchored in a Community port while they are loading, unloading or hotelling, including the time spent when not engaged in cargo operations;
  - 3j. *inland waterway vessel* means a vessel particularly intended for use on an inland waterway as defined in Council Directive 82/714/EEC of 4 October 1982 laying down technical requirements for inland waterway vessels<sup>(1)</sup>, including all vessels which carry:
    - (i) a Community inland navigation certificate, as defined in Directive 82/714/EEC,
    - (ii) a certificate issued pursuant to Article 22 of the Revised Convention for the Navigation of the Rhine;
  - 3k. *placing on the market* means supplying or making available to third persons, against payment or free of charge, anywhere within Member States' jurisdictions, marine fuels for on-board combustion. It excludes supplying or making available marine fuels for export in ships' cargo tanks;
  - 3l. *outermost regions* means the French overseas departments, the Azores, Madeira and the Canary Islands, as set out in Article 299 of the Treaty;
  - 3m. *emission abatement technology means* an exhaust gas cleaning system, or any other technological method that is verifiable and enforceable;
  - (e) point 6 shall be deleted;
3. Article 3 shall be replaced by the following:

### *Article 3*

#### **Maximum sulphur content of heavy fuel oil**

- 1 Member States shall take all necessary steps to ensure that, as from 1 January 2003, heavy fuel oils are not used within their territory if their sulphur content exceeds 1 % by mass.
- 2
- (i) Subject to appropriate monitoring of emissions by competent authorities this requirement shall not apply to heavy fuel oils used:
    - (a) in combustion plants which fall within the scope of Directive 2001/80/EC of the European Parliament and of the Council of

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23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants<sup>(2)</sup>, which are considered new in accordance with the definition given in Article 2(9) thereof and which comply with the sulphur dioxide emission limits for such plants set out in Annex IV to that Directive and applied in accordance with Article 4 thereof;

- (b) in combustion plants which fall within the scope of Directive 2001/80/EC, which are considered existing in accordance with the definition given in Article 2(10) thereof, where the sulphur dioxide emissions from these combustion plants are equal to or less than 1 700 mg/Nm<sup>3</sup> at an oxygen content in the flue gas of 3 % by volume on a dry basis, and where, from 1 January 2008, the emissions of sulphur dioxide from combustion plants subject to Article 4(3)(a) of Directive 2001/80/EC are equal to or less than those resulting from compliance with the emission limit values for new plants contained in Part A of Annex IV to that Directive and where appropriate applying Articles 5, 7 and 8 thereof;
  - (c) in other combustion plants which do not fall under (a) or (b), where the sulphur dioxide emissions from those combustion plants do not exceed 1 700 mg/Nm<sup>3</sup> at an oxygen content in the flue gas of 3 % by volume on a dry basis;
  - (d) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all plants in the refinery, irrespective of the type of fuel or fuel combination used, is within a limit to be set by each Member State, which shall not exceed 1 700 mg/Nm<sup>3</sup>. This shall not apply to combustion plants which fall under (a) or, from 1 January 2008, to those which fall under (b).
- (ii) Member States shall take the necessary measures to ensure that any combustion plant using heavy fuel oil with a sulphur concentration greater than that referred to in paragraph 1 is not operated without a permit issued by a competent authority, which specifies the emission limits.

3 The provisions of paragraph 2 shall be reviewed and, if appropriate, amended in the light of any future amendment of Directive 2001/80/EC.

4. Article 4 shall be amended as follows:

- (a) with effect from 1 January 2010:
  - (i) in paragraph 1, the words ‘including marine gas oils’ shall be deleted;
  - (ii) paragraph 2 shall be deleted;
- (b) with effect from 11 August 2005, paragraphs 3 and 4 shall be deleted;

5. The following Articles shall be inserted:

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#### Article 4a

### **Maximum sulphur content of marine fuels used in SO<sub>x</sub> Emission Control Areas and by passenger ships operating on regular services to or from Community ports**

- 1 Member States shall take all necessary measures to ensure that marine fuels are not used in the areas of their territorial seas, exclusive economic zones and pollution control zones falling within SO<sub>x</sub> Emission Control Areas if the sulphur content of those fuels exceeds 1,5 % by mass. This shall apply to all vessels of all flags, including vessels whose journey began outside the Community.
- 2 The application dates for paragraph 1 shall be as follows:
- a for the Baltic Sea area referred to in regulation 14(3)(a) of Annex VI to MARPOL, 11 August 2006;
  - b for the North Sea:
    - 12 months after entry into force of the IMO designation, according to established procedures, or
    - 11 August 2007,whichever is the earlier;
  - c for any other sea areas, including ports, that the IMO subsequently designates as SO<sub>x</sub> Emission Control Areas in accordance with regulation 14(3)(b) of Annex VI to MARPOL: 12 months after the date of entry into force of the designation.
- 3 Member States shall be responsible for the enforcement of paragraph 1 at least in respect of:
- vessels flying their flag, and
  - in the case of Member States bordering SO<sub>x</sub> Emission Control Areas, vessels of all flags while in their ports.
- Member States may also take additional enforcement action in respect of other vessels in accordance with international maritime law.
- 4 From the date referred to in paragraph 2(a), Member States shall take all necessary measures to ensure that marine fuels are not used in their territorial seas, exclusive economic zones and pollution control zones by passenger ships operating on regular services to or from any Community port if the sulphur content of those fuels exceeds 1,5 % by mass. Member States shall be responsible for the enforcement of this requirement at least in respect of vessels flying their flag and vessels of all flags while in their ports.
- 5 From the date referred to in paragraph 2(a), Member States shall require the correct completion of ships' logbooks, including fuel-changeover operations, as a condition of ships' entry into Community ports.
- 6 From the date referred to in paragraph 2(a), and in accordance with Regulation 18 of Annex VI to MARPOL, Member States shall:
- maintain a register of local suppliers of marine fuel,

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- ensure that the sulphur content of all marine fuels sold in their territory is documented by the supplier on a bunker delivery note, accompanied by a sealed sample signed by the representative of the receiving ship,
- take action as appropriate against marine fuel suppliers that have been found to deliver fuel that does not comply with the specification stated on the bunker delivery note,
- ensure that remedial action as appropriate is taken to bring any non-compliant marine fuel discovered into compliance.

7 From the date referred to in paragraph 2(a), Member States shall ensure that marine diesel oils are not placed on the market in their territory if the sulphur content of those marine diesel oils exceeds 1,5 % by mass.

8 The Commission shall notify Member States of the application dates mentioned in paragraph 2(b) and publish them in the *Official Journal of the European Union*.

#### *Article 4b*

#### **Maximum sulphur content of marine fuels used by inland waterway vessels and ships at berth in Community ports**

1 With effect from 1 January 2010, Member States shall take all necessary measures to ensure that the following vessels do not use marine fuels with a sulphur content exceeding 0,1 % by mass:

- a inland waterway vessels; and
- b ships at berth in Community ports, allowing sufficient time for the crew to complete any necessary fuel-changeover operation as soon as possible after arrival at berth and as late as possible before departure.

Member States shall require the time of any fuel-changeover operation to be recorded in ships' logbooks.

2 Paragraph 1 shall not apply:

- a whenever, according to published timetables, ships are due to be at berth for less than two hours;
- b to inland waterway vessels that carry a certificate proving conformity with the International Convention for the Safety of Life at Sea, 1974, as amended, while those vessels are at sea;
- c until 1 January 2012 for the vessels listed in the Annex and operating exclusively within the territory of the Hellenic Republic;
- d to ships which switch off all engines and use shore-side electricity while at berth in ports.

3 With effect from 1 January 2010, Member States shall ensure 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.

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#### Article 4c

### **Trials and use of new emission abatement technologies**

- 1 Member States may, in cooperation with other Member States, as appropriate, approve trials of ship emission abatement technologies on vessels flying their flag, or in sea areas within their jurisdiction. During these trials the use of marine fuels meeting the requirements of Articles 4a and 4b shall not be mandatory, provided that:
  - the Commission and any port State concerned are notified in writing at least six months before trials begin,
  - permits for trials do not exceed 18 months in duration,
  - all ships involved install tamper-proof equipment for the continuous monitoring of funnel gas emissions and use it throughout the trial period,
  - all ships involved achieve emission reductions which are at least equivalent to those which would be achieved through the limits on sulphur in fuel specified in this Directive,
  - there are proper waste management systems in place for any waste generated by the emission abatement technologies 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, and
  - full results are provided to the Commission, and made publicly available, within six months of the end of the trials.
- 2 Emission abatement technologies for ships flying the flag of a Member State shall be approved in accordance with the procedure referred to in Article 3(2) of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS)<sup>(3)</sup>, taking into account:
  - guidelines to be developed by the IMO,
  - results of any trials conducted under paragraph 1,
  - effects on the environment, including achievable emission reductions, and impacts on ecosystems in enclosed ports, harbours and estuaries,
  - feasibility of monitoring and verification.
- 3 Criteria shall be established for the use of emission abatement technologies by ships of all flags in enclosed ports, harbours and estuaries in the Community in accordance with the procedure referred to in Article 9(2). The Commission shall communicate these criteria to the IMO.
- 4 As an alternative to using low sulphur marine fuels meeting the requirements of Articles 4a and 4b, Member States may allow ships to use an approved emission abatement technology, provided that these ships:
  - continuously achieve emission reductions which are at least equivalent to those which would be achieved through the limits on sulphur in fuel specified in this Directive,
  - are fitted with continuous emission monitoring equipment, and

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- document thoroughly that any waste streams discharged into enclosed ports, harbours and estuaries have no impact on ecosystems, based on criteria communicated by the authorities of port States to the IMO.

6. Article 6 shall be amended as follows:

(a) the following paragraph shall be inserted:

- 1a. Member States shall take the necessary measures to ensure that the sulphur content of marine fuels complies with the relevant provisions of Articles 4a and 4b.

Each of the following means of sampling, analysis and inspection shall be used as appropriate:

- sampling of the marine fuel for on-board combustion while being delivered to ships, following IMO guidelines, and analysis of its sulphur content;
- sampling and analysis of the sulphur content of marine fuel for on-board combustion contained in tanks, where feasible, and in sealed bunker samples on board ships;
- inspection of ships' log books and bunker delivery notes.

Sampling shall commence on the date on which the relevant limit for maximum sulphur content in the fuel comes into force. It shall be carried out with sufficient frequency, in sufficient quantities, and in such a way that the samples are representative of the fuel examined, and of the fuel being used by ships while in relevant sea areas, ports and inland waterways.

Member States shall also take reasonable measures, as appropriate, to monitor the sulphur content of marine fuels other than those to which Articles 4a and 4b apply.;

(b) in paragraph 2, point (a) shall be replaced by the following:

- (a) ISO method 8754 (1992) and PrEN ISO 14596 for heavy fuel oil and marine fuels;

7. Article 7 shall be replaced by the following:

*Article 7*

**Reporting and review**

- 1 On the basis of the results of the sampling, analysis and inspections carried out in accordance with Article 6, Member States shall by 30 June of each year provide the Commission with a short report on the sulphur content of the liquid fuels falling within the scope of this Directive and used within their territory during the preceding calendar year. That report shall include a record of the total number of samples tested by fuel type and shall indicate the corresponding quantity of fuel used, and the calculated average sulphur content. Member States shall also report the number of inspections made on board ships, and record the average sulphur content of marine fuels used in their territory which do not fall within the scope of this Directive on 11 August 2005.



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- 2 On the basis, *inter alia*, of:
- a annual reports submitted in accordance with paragraph 1;
  - b observed trends in air quality, acidification, fuel costs and modal shift;
  - c progress in reducing emissions of sulphur oxides from ships through IMO mechanisms following Community initiatives in this regard;
  - d a new cost-effectiveness analysis, including direct and indirect environmental benefits, of measures contained in Article 4a(4) and of possible further emission reduction measures; and
  - e the implementation of Article 4c,

the Commission shall, by 2008, submit a report to the European Parliament and to the Council.

The Commission may submit with its report proposals for amending this Directive, in particular as regards:

- a second stage of sulphur limit values laid down for each fuel category, and
- taking account of work within the IMO, the sea areas where low sulphur marine fuels are to be used.

The Commission shall give particular consideration to proposals for:

- (a) the designation of additional SO<sub>x</sub> Emission Control Areas;
- (b) the reduction of sulphur limits for marine fuel used in SO<sub>x</sub> Emission Control Areas possibly down to 0,5 %;
- (c) alternative or complementary measures.

- 3 By 31 December 2005, the Commission shall report to the European Parliament and to the Council on the possible use of economic instruments, including mechanisms such as differentiated dues and kilometre charges, tradable emission permits and offsetting.

The Commission may consider submitting proposals on economic instruments as alternative or complementary measures in the context of the 2008 review, provided that environmental and health benefits can be clearly demonstrated.

- 4 Any amendments necessary to make technical adaptations to Article 2, points 1, 2, 3, 3a, 3b and 4 or Article 6(2) in the light of scientific and technical progress shall be adopted in accordance with the procedure referred to in Article 9(2). Such adaptations shall not result in any direct changes to the scope of this Directive or to limits on sulphur in fuel specified in this Directive.;

8. Article 9 shall be replaced by the following:

#### *Article 9*

#### **Committee procedure**

- 1 The Commission shall be assisted by a committee.

- 2 Where reference is made to this paragraph, Articles 5 and 7 of Council Decision 1999/468/EC<sup>(4)</sup> shall apply, having regard to the provisions of Article 8 thereof.

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The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3 The Committee shall adopt its Rules of Procedure.

9. The text set out in the Annex to this Directive shall be added.

*Article 2*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 11 August 2006. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

*Article 3*

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 4*

This Directive is addressed to the Member States.

Done at Strasbourg, 6 July 2005.

*For the European Parliament*

*The President*

J. BORRELL FONTELLES

*For the Council*

*The President*

J. STRAW

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- (1) [OJ L 301, 28.10.1982, p. 1](#). Directive as last amended by the 2003 Act of Accession.
- (2) [OJ L 309, 27.11.2001, p. 1](#). Directive as amended by the 2003 Act of Accession.
- (3) [OJ L 324, 29.11.2002, p. 1](#). Regulation as amended by Commission Regulation (EC) No 415/2004 ([OJ L 68, 6.3.2004, p. 10](#)).
- (4) [OJ L 184, 17.7.1999, p. 23](#)