

Directive 2012/33/EU of the European Parliament and of the Council of 21 November 2012 amending Council Directive 1999/32/EC as regards the sulphur content of marine fuels

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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) The environmental policy of the Union, as set out in the action programmes on the environment, and in particular in the Sixth Environmental Action Programme adopted by Decision No 1600/2002/EC of the European Parliament and of the Council⁽³⁾, 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.
- (2) 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.
- (3) Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels⁽⁴⁾ lays down the maximum permitted sulphur content of heavy fuel oil, gas oil, marine gas oil and marine diesel oil used in the Union.
- (4) 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.
- (5) 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.

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- (6) Member States should encourage the use of shore-side electricity, as the electricity for present-day ships is usually provided by auxiliary engines.
- (7) Under Directive 1999/32/EC, the Commission is to report to the European Parliament and the Council on the implementation of that Directive and may submit with its report proposals for amending it, in particular as regards the reduction of sulphur limits for marine fuel in SO_x Emission Control Areas (SECAs), in accordance with the work of the International Maritime Organisation (IMO).
- (8) In 2008, the IMO adopted a resolution to amend Annex VI of 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.
- (9) The revised Annex VI to MARPOL introduces, inter alia, stricter sulphur limits for marine fuel in SECAs (1,00 % as of 1 July 2010 and 0,10 % as of 1 January 2015) as well as in sea areas outside SECAs (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 SECAs 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, Directive 1999/32/EC should be aligned 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.
- (10) Amendments to Annex VI to MARPOL regarding SECAs are possible under IMO procedures. In the event that further changes, including exemptions, are introduced with regard to the application of SECA limits in Annex VI to MARPOL, the Commission should consider any such changes and, where appropriate, without delay make the necessary proposal in accordance with the TFEU to fully align Directive 1999/32/EC with the IMO rules regarding SECAs.
- (11) 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.
- (12) 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.
- (13) In view of the global dimension of environmental politics and shipping emissions, ambitious emission standards should be set at a global level.
- (14) 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

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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.

- (15) 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 SECAs.
- (16) 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.
- (17) Proper enforcement of the obligations with regard to the sulphur content of marine fuels is necessary in order to achieve the aims of Directive 1999/32/EC. 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 that 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' log books 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 Directive 1999/32/EC. In order to ensure more transparency of information, it is also appropriate to provide that the register of local suppliers of marine fuel be made publicly available.
- (18) Reporting by Member States under Directive 1999/32/EC has proved insufficient for the purpose of verification of compliance with that Directive due to the lack of harmonised and sufficiently precise provisions on the content and the format of the Member States' reports. Therefore, more detailed indications as regards the content and the format of the report are necessary to ensure more harmonised reporting.
- (19) Following the adoption of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)⁽⁵⁾, which recasts the Union legislation on industrial emissions, it is necessary to amend the provisions of Directive 1999/32/EC relating to maximum sulphur content of heavy fuel oil accordingly.
- (20) Complying with the low sulphur limits for marine fuels, particularly in SECAs, 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 SECAs. 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 will, based inter alia on reports from Member States, closely monitor the impacts of the shipping sector's compliance with the new fuel quality standards,

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

- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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 (LNG) 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.
- (25) Emission abatement methods hold the potential for significant emission reductions. The Commission should therefore promote the testing and development of these 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.
- (26) 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'.
- (27) Alternative emission abatement methods such as some types of scrubbers could generate waste that should be handled properly and not be discharged into the sea. Pending the revision of Directive 2000/59/EC of the European Parliament and of the

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Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues⁽⁶⁾, Member States should ensure, in accordance with their international commitments, the availability of port reception facilities adequate to meet the needs of ships using exhaust gas cleaning systems. In the revision of Directive 2000/59/EC, the Commission should consider the inclusion of waste from exhaust gas cleaning systems under the principle of no special fee applying to port fees for ship-generated waste provided for in that Directive.

- (28) The Commission should, as part of its air quality policy review in 2013, consider the possibility of reducing air pollution, including in the territorial seas of Member States.
- (29) Effective, proportionate and dissuasive penalties are important for the implementation of Directive 1999/32/EC. Member States should include in those penalties fines calculated in such a way as to ensure that the fines at least deprive those responsible of the economic benefits derived from their infringement and that those fines gradually increase for repeated infringements. Member States should notify the provisions on penalties to the Commission.
- (30) The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the amendment of the equivalent emission values for and the criteria for the use of emission abatement methods in order to adapt the provisions of Directive 1999/32/EC to scientific and technical progress and in such a way as to ensure strict consistency with the relevant instruments of the IMO and in respect of the amendment of points 1, 2, 3, 3a, 3b and 4 of Article 2, point (b) of Article 6(1a) and Article 6(2) of Directive 1999/32/EC in order to adapt the provisions of that Directive to scientific and technical progress. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (31) In order to ensure uniform conditions for the implementation of Directive 1999/32/EC, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁽⁷⁾.
- (32) It is appropriate for the Committee on Safe Seas and the Prevention of Pollution from Ships established by 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)⁽⁸⁾ to assist the Commission in the approval of the emission abatement methods which are not covered by Council Directive 96/98/EC of 20 December 1996 on marine equipment⁽⁹⁾.
- (33) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁽¹⁰⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the

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components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(34) Directive 1999/32/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) OJ C 68, 6.3.2012, p. 70.
- (2) Position of the European Parliament of 11 September 2012 (not yet published in the Official Journal) and decision of the Council of 29 October 2012.
- (3) OJ L 242, 10.9.2002, p. 1.
- (4) OJ L 121, 11.5.1999, p. 13.
- (5) OJ L 334, 17.12.2010, p. 17.
- (6) OJ L 332, 28.12.2000, p. 81.
- (7) OJ L 55, 28.2.2011, p. 13.
- (8) OJ L 324, 29.11.2002, p. 1.
- (9) OJ L 46, 17.2.1997, p. 25.
- (10) OJ C 369, 17.12.2011, p. 14.