

COUNCIL DIRECTIVE 1999/32/EC

of 26 April 1999

relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130s(1) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,Having regard to the opinion of the Economic and Social Committee ⁽²⁾,Acting in accordance with the procedure laid down in Article 189c of the Treaty ⁽³⁾,

(1) Whereas the objectives and principles of the Community's environmental policy as set out in the action programmes on the environment and in particular the Fifth Environmental Action Programme ⁽⁴⁾ on the basis of principles enshrined in Article 130r of the Treaty, aim in particular to ensure the effective protection of all people from the recognised risks from sulphur dioxide emissions and to protect the environment by preventing sulphur deposition exceeding critical loads and levels;

(2) Whereas Article 129 of the Treaty provides that health protection requirements are to form a constituent part of the Community's other policies; whereas Article 3(o) of the Treaty also provides that the activities of the Community should include a contribution to the attainment of a high level of health protection;

(3) Whereas emissions of sulphur dioxide contribute significantly to the problem of acidification in the Community; whereas sulphur dioxide also has a direct effect on human health and on the environment;

(4) Whereas acidification and atmospheric sulphur dioxide damage sensitive ecosystems, reduce biodiversity and reduce amenity value as well as detrimentally affecting crop production and the growth of forests; whereas acid rain falling in cities may cause significant damage to buildings and the architectural heritage; whereas sulphur dioxide pollution may also have a significant effect upon human health, particularly among those sectors of the population suffering from respiratory diseases;

(5) Whereas acidification is a transboundary phenomenon requiring Community as well as national or local solutions;

(6) Whereas emissions of sulphur dioxide contribute to the formation of particulate matter in the atmosphere;

(7) Whereas the Community and the individual Member States are Contracting Parties to the UN-ECE Convention on Long-Range Transboundary Air Pollution; whereas the second UN-ECE Protocol on transboundary pollution by sulphur dioxide foresees that the Contracting Parties should reduce sulphur dioxide emissions in line with or beyond the 30 % reduction specified in the first Protocol and whereas the second UN-ECE Protocol is based on the premise that critical loads and levels will continue to be exceeded in some sensitive areas; whereas further measures to reduce sulphur dioxide emissions will still be required if the objectives in the Fifth Environmental Action Programme are to be respected; whereas the Contracting Parties should therefore make further significant reductions in emissions of sulphur dioxide;

(8) Whereas 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;

(9) Whereas the Commission has recently published a communication on a cost-effective strategy to combat acidification in the Community; whereas the control of sulphur dioxide emissions originating from the combustion of certain liquid fuels was identified as being an integral component of this cost-effective strategy; whereas the Community recognises the need for measures regarding all other fuels;

(10) Whereas studies have shown that 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 and whereas the technology exists and is well established for reducing the sulphur level of liquid fuels;

⁽¹⁾ OJ C 190, 21.6.1997, p. 9, and OJ C 259, 18.8.1998, p. 5.

⁽²⁾ OJ C 355, 21.11.1997, p. 1.

⁽³⁾ Opinion of the European Parliament of 13 May 1998 (OJ C 167, 1.6.1998, p. 111), Council Common Position of 6 October 1998 (OJ C 364, 25.11.1998, p. 20) and Decision of the European Parliament of 9 February 1999 (not yet published in the Official Journal).

⁽⁴⁾ OJ C 138, 17.5.1993, p. 5.

- (11) Whereas, in conformity with the principle of subsidiarity and the principle of proportionality referred to in Article 3b of the Treaty, the objective of reducing the emissions of sulphur dioxide arising from the combustion of certain types of liquid fuels cannot be achieved effectively by Member States acting individually; whereas uncoordinated action offers no guarantee of achieving the desired objective, is potentially counterproductive and will result in considerable uncertainty in the market for the fuel products affected; whereas, in view of the need to reduce sulphur dioxide emissions across the Community, it is therefore more effective to take action at the level of the Community; whereas this Directive limits itself to the minimum requirements necessary to achieve the desired objective;
- (12) Whereas in Council Directive 93/12/EEC of 23 March 1993 relating to the sulphur content of certain liquid fuels ⁽¹⁾ the Commission was asked to submit to the Council a proposal prescribing lower limits for the sulphur content in gas oil and new limits for aviation kerosene; whereas it would be appropriate to lay down limits for the sulphur content of other liquid fuels, in particular heavy fuel oils, bunker fuel oils, marine gas oils and gas oils, on the basis of cost effectiveness studies;
- (13) Whereas, in accordance with Article 130t of the Treaty, this Directive should not prevent any Member State from maintaining or introducing more stringent protective measures; whereas such measures must be compatible with the Treaty and should be notified to the Commission;
- (14) Whereas a Member State, before introducing new, more stringent protective measures, should notify the draft measures to the Commission in accordance with Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations ⁽²⁾;
- (15) Whereas, 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 allow;
- (16) Whereas, 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 Council Directive 88/609/EEC of 24 November 1988 ⁽³⁾ on the limitation of emissions of certain pollutants into the air from large combustion plants; whereas in the light of the forthcoming revision of Directive 88/609/EEC, it may be necessary to review and, if appropriate, to revise certain provisions of this Directive;
- (17) Whereas for refinery combustion plants excluded from the scope of Article 3(3)(i)(c) of this Directive the emissions of sulphur dioxide averaged over such plants should not exceed the limits set out in Directive 88/609/EEC or any future revision of that Directive; whereas, in the application of this Directive, Member States should bear in mind that substitution by fuels other than those pursuant to Article 2 should not produce an increase in emissions of acidifying pollutants;
- (18) Whereas a limit value of 0,2 % for the sulphur content of gas oils has already been established pursuant to Directive 93/12/EEC; whereas that limit value should be changed to 0,1 % until 1 January 2008;
- (19) Whereas, in accordance with the 1994 Act of Accession, Austria and Finland have a derogation for a period of four years from the date of accession regarding the provisions in Directive 93/12/EEC concerning the sulphur content of gas oil;
- (20) Whereas the limit values of 0,2 % (from the year 2000) and of 0,1 % (from the year 2008) for the sulphur content of gas oils intended for marine use in sea-going ships may present technical and economic problems for Greece throughout its territory, for Spain with regard to the Canary Islands, for France with regard to the French Overseas Departments, and for Portugal with regard to the archipelagoes of Madeira and Azores; whereas a derogation for Greece, the Canary Islands, the French Overseas Departments and the Archipelagoes of Madeira and Azores should not have a negative effect upon the market in gas oil intended for marine use and given that exports of gas oil for marine use from Greece, the Canary Islands, the French Overseas Departments and the Archipelagoes of Madeira and Azores to other Member States should satisfy the requirements in force in the importing Member State; whereas Greece, the Canary Islands, the French Overseas Departments and the Archipelagoes of Madeira and Azores should therefore be afforded a derogation from the limit values of sulphur by weight for gas oil used for marine purposes;

⁽¹⁾ OJ L 74, 27.3.1993, p. 81.

⁽²⁾ OJ L 109, 26.4.1983, p. 8. Directive as last amended by Commission Decision 96/139/EC (OJ L 32, 10.2.1996, p. 31).

⁽³⁾ OJ L 336, 7.12.1988, p. 1. Directive as last amended by Directive 94/66/EC (OJ L 337, 24.12.1994, p. 83).

- (21) Whereas sulphur emissions from shipping due to the combustion of bunker fuels with a high sulphur content contribute to sulphur dioxide pollution and problems of acidification; whereas the Community will be advocating more effective protection of areas sensitive to SO_x emissions and a reduction in the normal limit value for bunker fuel oil (from the present 4,5 %) at the continuing and future negotiations on the MARPOL Convention within the International Maritime Organisation (IMO); whereas the Community initiatives to have the North Sea/Channel declared a special low SO_x emission control area should be continued;
- (22) Whereas more profound research into the effects of acidification on ecosystems and the human body is needed; whereas the Community is assisting such research under the Fifth Framework Research Programme⁽¹⁾;
- (23) Whereas in the case of a disruption in the supply of crude oil, petroleum products or other hydrocarbons, the Commission may authorise application of a higher limit within a Member State's territory;
- (24) Whereas Member States should establish the appropriate mechanisms for monitoring compliance with the provisions of this Directive; whereas reports on the sulphur content of liquid fuels should be submitted to the Commission;
- (25) Whereas, for reasons of clarity, it will be necessary to amend Directive 93/12/EEC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Purpose and scope

1. The purpose of this Directive is to reduce the emissions of sulphur dioxide resulting from the combustion of certain types of liquid fuels and thereby to reduce the harmful effects of such emissions on man and the environment.
2. Reductions in the 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 the territory of the Member States.

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

- (a) — petroleum derived liquid fuels used by seagoing ships, except those fuels falling within the definition in Article 2(3),
 - marine gas oil used by ships crossing a frontier between a third country and a Member State;
- (b) fuels intended for processing prior to final combustion;
- (c) fuels to be processed in the refining industry.

Article 2

Definitions

For the purpose of this Directive:

1. *heavy fuel oil* means:

- any petroleum-derived liquid fuel falling within CN code 2710 00 71 to 2710 00 78, or
- any petroleum-derived liquid fuel, other than gas oil as defined in points 2 and 3, which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65 % by volume (including losses) distills at 250 °C by the ASTM D86 method. If the distillation cannot be determined by the ASTM D86 method, the petroleum product is likewise categorised as a heavy fuel oil;

2. *gas oil* means:

- any petroleum-derived liquid fuel falling within CN code 2710 00 67 or 2710 00 68, or
- any petroleum-derived liquid fuel which, by reason of its distillation limits, falls within the category of middle distillates intended for use as fuel and of which at least 85 % by volume (including losses) distills at 350 °C by the ASTM D86 method.

Diesel fuels as defined in Article 2(2) of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC⁽²⁾ are excluded from this definition. Fuels used in non-road mobile machinery and agricultural tractors are also excluded from this definition;

3. *marine gas oil* means fuels intended for marine use which meet the definition in point 2 or which have a viscosity or density falling within the ranges of viscosity or density defined for marine distillates in Table I of ISO 8217 (1996);

⁽¹⁾ OJ L 26, 1.2.1999, p. 1.

⁽²⁾ OJ L 350, 28.12.1998, p. 58.

4. *ASTM method* means the methods laid down by the American Society for Testing and Materials in the 1976 edition of standard definitions and specifications for petroleum and lubricating products;
5. *combustion plant* means any technical apparatus in which fuels are oxidised in order to use the heat generated;
6. *critical load* means a quantitative estimate of exposure to one or more pollutants below which significant harmful effects on sensitive elements of the environment do not occur according to current knowledge.

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 within their territory heavy fuel oils are not used if their sulphur content exceeds 1,00 % by mass.
2. Provided that the air quality standards for sulphur dioxide laid down in Directive 80/779/EEC⁽¹⁾ or in any Community legislation which repeals and replaces these standards and other relevant Community provisions are respected and the emissions do not contribute to critical loads being exceeded in any Member State, a Member State may authorise heavy fuel oils with a sulphur content of between 1,00 and 3,00 % by mass to be used in part or the whole of its territory. Such authorisation shall apply only while emissions from a Member State do not contribute to critical loads being exceeded in any Member State.
3. (i) Subject to appropriate monitoring of emissions by competent authorities paragraphs 1 and 2 shall not apply to heavy fuel oils used:

- (a) in combustion plants which fall within the scope of Directive 88/609/EEC, which are considered new plants in accordance with the definition given in Article 2(9) of that Directive and which comply with the sulphur dioxide emission limits for such plants set out in Article 4 of and Annex IV to that Directive;
- (b) in other combustion plants, which do not fall under the scope of (a), where the emissions of sulphur dioxide from the plant are less than or equal to 1 700 mg/Nm³ at an oxygen content in the flue gas of 3 % by volume on a dry basis;
- (c) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all plants in the refinery

(excluding combustion plants which fall under the scope of (a)), irrespective of the type of fuel or fuel combination used, are within a limit to be set by each Member State, which shall not exceed 1 700 mg/Nm³.

- (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 shall not be operated without a permit issued by a competent authority, which specifies the emission limits.

4. The provisions of paragraph 3 shall be reviewed and, if appropriate, revised in the light of any future revision of Directive 88/609/EEC.

5. If a Member State avails itself of the possibilities referred to in paragraph 2, it shall, at least 12 months beforehand, inform the Commission and the public. The Commission shall be given sufficient information to assess whether the criteria mentioned in paragraph 2 are met. The Commission shall inform the other Member States.

Within six months of the date on which it receives the information from the Member State, the Commission shall examine the measures envisaged and, in accordance with the procedure set out in Article 9, take a decision which it shall communicate to the Member States. This decision shall be reviewed every eight years on the basis of information to be provided to the Commission by the Member States concerned in accordance with the procedure set out in Article 9.

Article 4

Maximum sulphur content in gas oil

1. Member States shall take all necessary steps to ensure that gas oils, including marine gas oils, are not used within their territory as from:

- July 2000 if their sulphur content exceeds 0,20 % by mass,
- 1 January 2008 if their sulphur content exceeds 0,10 % by mass.

2. By way of derogation from paragraph 1, Spain, for the Canary Islands, France, for the French Overseas Departments, Greece, for the whole or part of its territory, and Portugal, for the archipelagoes of Madeira and Azores may authorise the use of gas oils for marine use with a sulphur content in excess of the limits set out in paragraph 1.

⁽¹⁾ OJ L 229, 30.8.1980, p. 30. Directive as last amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

3. Provided that the air quality standards for sulphur dioxide laid down in Directive 80/779/EEC or in any Community legislation which repeals and replaces these standards and other relevant Community provisions are respected and the emissions do not contribute to critical loads being exceeded in any Member State, a Member State may authorise gas oil with a sulphur content between 0,10 and 0,20 % by mass to be used in part or the whole of its territory. Such authorisation shall apply only while emissions from a Member State do not contribute to critical loads being exceeded in any Member State and shall not extend beyond 1 January 2013.

4. If a Member State avails itself of the possibilities referred to in paragraph 3, it shall, at least 12 months beforehand, inform the Commission and the public. The Commission shall be given sufficient information to assess whether the criteria mentioned in paragraph 3 are met. The Commission shall inform the other Member States.

Within six months of the date on which it receives the information from the Member State, the Commission shall examine the measures envisaged and, in accordance with the procedure set out in Article 9, take a decision which it shall communicate to the Member States.

Article 5

Change in the supply of fuels

If, as a result of a sudden change in the supply of crude oil, petroleum products or other hydrocarbons, it becomes difficult for a Member State to apply the limits on the maximum sulphur content referred to in Articles 3 and 4, that Member State shall inform the Commission thereof. The Commission may authorise a higher limit to be applicable within the territory of that Member State for a period not exceeding six months; it shall notify its decision to the Council and the Member States. Any Member State may refer that decision to the Council within one month. The Council, acting by a qualified majority, may adopt a different decision within two months.

Article 6

Sampling and analysis

1. Member States shall take all necessary measures to check by sampling that the sulphur content of fuels used complies with Articles 3 and 4. The sampling shall commence within six months of 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 and in such a way that the samples are representative of the fuel examined.

2. The reference method adopted for determining the sulphur content shall be that defined by:

- (a) ISO method 8754 (1992) and PrEN ISO 14596 for heavy fuel oil and marine gas oil;
- (b) EN method 24260 (1987), ISO 8754 (1992) and PrEN ISO 14596 for gas oil.

The arbitration method will be PrEN ISO 14596. The statistical interpretation of the verification of the sulphur content of the gas oils used shall be carried out in accordance with ISO standard 4259 (1992).

Article 7

Reporting and review

1. On the basis of the results of the sampling and analysis carried out in accordance with Article 6, Member States shall by 30 June of each year supply 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. This report shall include a summary of derogations granted pursuant to Article 3(3).

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 2006, submit a report to the European Parliament and to the Council. The Commission may submit with its report proposals aimed at revising this Directive and in particular the limit values laid down for each fuel category and the exceptions and derogations provided for in Article 3(2) and (3), and Article 4(2) and (3).

3. The Commission shall consider which measures could be taken to reduce the contribution to acidification of the combustion of marine fuels other than those specified in Article 2(3) and, if appropriate, make a proposal by the end of 2000.

Article 8

Amendments to Directive 93/12/EEC

1. Directive 93/12/EEC is amended as follows:

- (a) in Article 1, paragraph 1(a) and paragraph 2 are deleted;

- (b) in Article 2, the first subparagraph of paragraph 2 and paragraph 3 are deleted;
- (c) Articles 3 and 4 are deleted.
2. Paragraph 1 shall apply as from 1 July 2000.

Article 9

Advisory Committee

The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 10

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 July 2000. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 11

Penalties

Member States shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties determined must be effective, proportionate and dissuasive.

Article 12

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 13

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 26 April 1999.

For the Council

The President

J. FISCHER
