



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.07.1998
COM(1998) 385 final

97/105 (SYN)

Amended proposal for a

COUNCIL DIRECTIVE

relating to a reduction of the sulphur content of certain liquid fuels

and amending Directive 93/12/EEC

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

- 1) On 12 March 1997, the Commission adopted a proposal for a Council Directive relating to a reduction of the sulphur content of certain liquid fuels and amending Directive 93/12/EEC.

This proposal, one of the eleven actions identified in the Communication on a Strategy to combat Acidification, aims to reduce the emissions of sulphur dioxides (SO₂) by placing maximum limit values on the sulphur content of certain liquid fuels (heavy fuels oils from 1 January 2000 and gasoils from 1 January 1999). The proposal is based on the results of cost effectiveness studies but takes into consideration under the form of derogation, the necessary flexibility for regions where air quality objectives are respected and where emissions of sulphur dioxides do not contribute significantly to problems of acidification.

Unnecessary overlap between the current proposal and the provisions of Directive 88/609/EEC on large combustion plants was also integrated.

The legal basis proposed (Article 130S) will allow for Member States who need to do so, to require more stringent limit values on the sulphur content of these liquid fuels.

Certain liquid fuels (bunker fuels, aviation kerosene) were not proposed for regulation at this stage pending, respectively, the outcome of the Convention on Marine Pollution (MARPOL) revision or taking into account the marginal contribution to the sulphur dioxides emissions.

Finally, the proposal foresees a general review process of the provisions by 31 December 2003.

- 2) The Economic and Social Committee adopted its opinion on 1 October 1997. This opinion was globally supportive of the Commission's proposal.
- 3) The Committee of the Regions adopted its opinion on 11 November 1997. This opinion was globally very supportive of the Commission's proposal.
- 4) Out of the 28 amendments adopted by the Parliament, the Commission can accept 16 amendments totally, partially, or in principle.

The Commission can accept:

- in their entirety, amendments 2, 3 (second part), 5 (first part), 8, 13, 14, 15 (first part), 19 (first part), 28
- partially, amendments 16, 17, 23, 27
- in principle, amendments 3 (first part), 5 (second part), 6, 9 (first part), 15 (second part), 26.

In particular as concerns amendments 6, 13, 17 and 23 concerning the use of heavy bunker fuels by ships, the Commission intends:

- to take steps to ensure that a co-ordinated position of the Community and its Member States can be put forward at the 43rd meeting of the Marine Environment Protection Committee of the International Maritime Organisation in June 1999 with a view to ensure the designation of the North Sea and the Channel as well as of any other European seas in such need as areas sensitive to air pollution
- to consider any Community measures that could be taken to reduce the contribution to acidification of the combustion of marine fuels other than marine gasoils and if appropriate, make a proposal by the end of 2000.

The present proposal therefore is modified accordingly.

5) The remaining amendments have not been accepted by the Commission (amendments 1, 4, 7, 9 (second part), 10, 11, 12, 18, 19 (second part), 20, 21, 22, 24, 25).

- The Commission proposal is based on Article 130S of the Treaty since the goal is the protection of the environment and human health through the reduction of sulphur dioxides emissions associated with the sulphur content of certain fuels. The amendment for a change of the legal base is incompatible with the cost effectiveness approach adopted. In addition, it might leave Austria and Finland in a difficult situation due to the expiry of their current derogation to maintain stricter limit values for gasoils until the end of this year. Accordingly, the Commission cannot accept amendments 1, 4, 7, 11, 22.
- The Commission proposal is based on an extensive assessment of the cost effectiveness of measures which could contribute to the reduction of the acidification problems. It is therefore not necessary to increase the severity of the sulphur content of the liquid fuels proposed for regulation. In addition, Member States who need to do so may always apply a stricter sulphur limit under the legal basis proposed.

Accordingly, the Commission cannot accept amendments 10, 12, 19 (second part), 24 (second part).

- The Commission's proposal aims to treat all the industrial sectors on an equal footing and to take into consideration the need for compliance with environmental requirements present in current Directives, in particular Directive 88/609/EEC dealing with the large combustion plants. The amendment 20 would be a privileged treatment for the refineries sector and an environmental step back since a stricter average emission limit value for some combustion plants in refineries is already in force today in Directive 88/609/EEC.

Accordingly, the Commission cannot accept amendment 20.

- The Community framework for the application of economic instruments of a fiscal nature in order to encourage cleaner fuels through differentiated excise duties is established under Directive 92/81/EEC. Other economic instruments of different nature could be assessed by the Commission in its general review by end 2003. Accordingly, the Commission cannot accept amendment 9 (second part).

- The Commission considers that the information, notification or consultation issues between Institutions represent horizontal issues related to Comitology which it would not be appropriate to deal with in the context of this proposal.

Accordingly, the Commission cannot accept amendments 21 and 25.

- The Commission considers that its reference to the territory and waters of the Member States avoids any unnecessary legal disputes compared with other definitions. Accordingly, the Commission cannot accept amendments 18 (second part) and 24 (first part).
- The Commission proposed dates of application for the regulated fuels which took into account the appropriate lead time for the industries concerned. The introduction of a reduced sulphur content in heavy fuel oil by 1999 would not be realistic.

Accordingly, the Commission cannot accept amendment 18 (first part).

AMENDED PROPOSAL

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

Text proposed by the Commission⁽¹⁾

Amended proposal

(Amendment 2)

Recital 7

(7) Whereas the Community and the individual Member States are Contracting Parties to the UN-ECE Convention on Long-Range Transboundary Air Pollution; whereas under the protocol on further reduction of sulphur emissions established under that convention, Contracting Parties should make significant reductions in emissions of sulphur dioxide;

(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 Member States should reduce sulphur dioxide emissions 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 Contracting Parties should make significant reductions in emissions of sulphur dioxide;

⁽¹⁾ OJ C 190, 21.6.1997, p. 9.

(Amendment 3)

Recital 9a (new)

(9a) Whereas studies have shown that benefits from reducing sulphur emissions by reductions in the sulphur content of fuels will be considerably greater than the estimated costs to industry in this proposal and whereas the technology exists and is well established for reducing the sulphur level of liquid fuels;

(Amendment 5)

Recital 10a (new)

(10a) Whereas in Council Directive 93/12/EEC 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 and whereas it would be appropriate at the same time to lay down limits for the sulphur content of other liquid fuels, in particular heavy fuel oils, bunker fuel oils, marine diesel oils and gas oils, on the basis of cost effectiveness studies;

(Amendment 6)

Recital 11

(11) Whereas it should only be possible to use gas oils and heavy fuel oils within the territory of the Community on condition that their sulphur content does not exceed certain limits set out in this Directive;

(11) Whereas it should only be possible to use gas oils, marine gas oils, bunker fuel oils and heavy fuel oils within the territory of the Community - with the exceptions referred to in this Directive - on condition that their sulphur content does not exceed certain limits set out in this Directive; whereas the Commission should examine the questions relating to bunker fuel oils and, if appropriate, make proposals by 2000;

(Amendment 8)

Recital 12a (new)

(12a) 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 in certain areas such contribution is highly significant and whereas it is therefore necessary to limit the sulphur content of bunker fuels;

(Amendment 9)

Recital 13a (new)

(13a)Whereas in order to facilitate the achievement of the objectives of this Directive it may be appropriate for the European Union and/or the Member States to use economic instruments, such as a tax on sulphur and a system of harbour charges differentiated according to the sulphur content of the fuels used by visiting ships; whereas the Commission should examine this in the context of the review of this directive;

(Amendment 13)

Recital 18a (new)

(18a)Whereas the Community will be advocating more effective protection of areas sensitive to SOx emissions and the reduction of 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 Organization (IMO); whereas the Community initiatives to have the North Sea/Channel declared a special low SOx emission control area should be continued;

(Amendment 14)

Recital 18b (new)

(18b) Whereas more profound research into the effects of acidification on ecosystems and the human body is needed; whereas one of the main aims of such research should be to determine which particles, depending on size, mass or number, are particularly prejudicial to health; whereas such new tasks as the improvement of flue-gas desulphurization and the development of catalysts for ships and of efficient exhaust-gas purification systems for motor vehicles (deNOx catalyst) should be formulated for applied research, as for climate and marine research; whereas the European Community is assisting such research under the 5th Framework Research Programme;

(Amendment 15)

Recital 20

(20) Whereas Member States should establish the appropriate mechanisms for monitoring compliance with the provisions of this Directive; whereas regular reports on the sulphur content of liquid fuels should be submitted to the Commission;

(20) Whereas Member States are to establish the appropriate mechanisms for monitoring compliance with the provisions of this Directive; whereas reports on the sulphur content of liquid fuels are to be submitted to the Commission;

(Amendment 16)

Article 2(2a) (new)

2a. 'Marine gas oils' shall mean fuels intended for marine use which meet the the definition in Article 2.2 or which have a viscosity or density falling within the ranges of viscosity or density defined for marine distillates in table 1 of ISO 8217 (1996).

(Amendment 19)

Article 3(2)

2. Provided that the air quality standards for sulphur dioxide laid down in Council Directive 80/779/EEC and other relevant Community provisions are respected and the contribution to transboundary pollution is negligible, a Member State may authorize heavy fuel oils with a sulphur content between 1 and 2,5 % by weight to be used in part or the whole of its territory.

2. Provided that the air quality standards for sulphur dioxide laid down in Council Directive 80/779/EEC and other relevant Community provisions are respected and the contribution to transboundary pollution is negligible - the Member State concerned must show the Commission that such a deviation will not impede compliance with Community law on air quality, including Directive 96/62/EEC -, a Member State may authorize heavy fuel oils with a sulphur content between 1 and 2.5 % by weight to be used in part of the whole of its territory.

(Amendment 26)

Article 6(1)

1. Member States shall take all the 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.

1. Member States shall take all the 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.

(Amendment 27)

Article 6(2)(a)

(a) ISO method 8754(1992) for heavy fuel oil and marine diesel oil;

(a) ISO method 8754(1992) and prEN ISO 14596 for heavy fuel oil, and marine gasoil;

(Amendment 28)

Article 7(2)

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 2003, submit a report 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), Article 3(3) and Article 4(2).

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 2003, submit a report to the Council and the European Parliament. 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), Article 3(3) and Article 4(2).

(Amendments 17 and 23)

Article 7 (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 2.2 (a) and, if appropriate, make a proposal by the end of 2000.

ISSN 0254-1475

COM(98) 385 final

DOCUMENTS

EN

14 01 12 06

Catalogue number : CB-CO-98-396-EN-C

ISBN 92-78-37283-8

Office for Official Publications of the European Communities

L-2985 Luxembourg