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THE EUROPEAN UNION**

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REVISED ADDENDUM TO THE "I/A" ITEM NOTE

from : General Secretariat of the Council

to : COREPER / COUNCIL

No. Cion prop.: 12806/11 ENV 612 MAR 100 MI 360 CODEC 1197

Subject : Proposal for a directive of the European Parliament and of the Council amending Directive 1999/32/EC as regards the sulphur content of marine fuels (**first reading**)
- Adoption of the legislative act (**LA + S**)

=Statements

COMMON GUIDELINES

Consultation deadline: 26.10.2012

Statements by the European Commission

1. Recital 27. Commission statement on the revision of Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues

The Commission recalls that the inclusion of scrubber waters collection in a future revision of Directive 2000/59/EC falls entirely under its exclusive right of initiative. While the Commission indeed intends to consider such inclusion, this in no way prejudices the result of its deliberations or the contents of a future proposal, in particular as regards whether or not for waste a 'no special fee policy' should be applied.

2. Commission statement on the procedure of adoption of implementing acts

The Commission considers that in the case of no opinion, Article 5 paragraph 4, subparagraph 2, point a) of Regulation 182/2011 (OJ L 55 of 28.2.2011, p. 13) applies as the aim of the Directive is to protect human health and environment. Therefore, there is no need to make a reference to the fact that the draft implementing act may not be adopted by the Commission where no opinion is delivered.

3. Commission statement concerning the use of dynamic reference to international agreements

The Commission considers that the dynamic reference on the establishment of new Sulphur Emission Control Zones (SECA) to the IMO decision through Art. 2(3e) of the Directive is not legally sound as it results in automatic acceptance of the IMO decision outside the scope of the ordinary legislative procedure.

4. Commission statement concerning the use of implementing acts

The Commission considers that the measures for the frequency of sampling, the definition of a representative sample (Article 6(1b) points (a) and (c)), and the information to be included in a report (Article 7(1a)) are not of an implementing nature and thus shall not fall under Article 291 TFEU. The Commission is of the view that Article 290 is the appropriate procedure in relation to these issues given that they entail measures of general application which would modify or supplement the non-essential elements of the Directive. It reserves all its legal rights in that respect.

5. Commission statement concerning the request to the Commission to develop new measures supporting the implementation of the Directive by end 2012

The Commission recalls that the Commission's Staff Working Paper on the sustainable waterborne transport toolbox was published in September 2011 and that this toolbox contained several measures that could be applied in the short, medium, and long-term and that meanwhile the Commission is actively pursuing further actions and has already moved forward on several actions including short term actions, for example by ensuring increased funding appropriations for existing programmes such as Marco Polo and TEN-T. The Commission considers that it is not realistic, credible, nor possible to develop and propose meaningful new initiatives in the few months remaining before the end of 2012. The Commission regrets that Council and EP rejected the Commission's proposal to report progress by mid 2013 so as to leave space for the Commission and Member States to work more on substance rather than on reporting only.

6. Commission statement concerning ongoing work in the context of reviewing the EU Thematic Strategy on Air Pollution

Without prejudice to the ultimate outcome of the review, the Commission confirms that it is assessing, amongst several scenarios, the costs and benefits of additional measures to reduce air pollution from shipping, including the impacts of applying a maximum fuel sulphur standard of 0.1% in territorial waters.

Statement by Poland

In principle, Poland supports the initiative to review the Directive of the European Parliament and of the Council amending Directive 1999/32/EC as regards the sulphur content of marine fuels with regard to include IMO regulations in the EU law.

However, it is being estimated that both the revised MARPOL Annex VI and the revised directive will lead to significant rise in fuel price and distortions in competitiveness between SECA and non SECA regions. The issue of the competitiveness of maritime transport as an environmentally friendly alternative to the road transport and possible modal shift are of great concern to Poland.

Therefore, the elaboration of the Staff Working Paper “Pollutant emission reduction from maritime transport and the sustainable waterborne transport toolbox” (*The Toolbox document* – art. 7 para. 3), financial measures as in the art. 4f, as well as future legislative proposals (as in art. 7 para. 2) in favour of operators affected by this directive are of very high importance.

Additionally, Poland is of the opinion that the word "operators" covers both ship operators and port operators as ports will be equally affected by the above-mentioned distortions and therefore eligible for financial aid.

Statement by Germany

Germany welcomes the proposal, which brings European law into line with Annex VI of MARPOL as revised by the International Maritime Organization in 2008 (MARPOL Resolution MEPC.176 (58)).

In the interests of marine protection and air quality, in the IMO negotiations Germany voiced strong support for the limits laid down in Annex VI of MARPOL. This particularly applies to the maximum sulphur content of marine fuels which may be used on board ships within sulphur emission control areas (SECAs). This is why Germany transposed the requirements of the revised Annex VI into national law in 2010.

In the negotiations of the Commission's proposal for reasons of environmental protection and to avoid distortions of competition, Germany argued for uniformly applying the SECA limits to the territorial seas and exclusive economic zones of all the Member States.

In addition, due to reasons of air quality and also with a view to compliance with the binding European limit values for particulate concentrations (PM 10) Germany proposed to align the limit value for the sulphur content of marine fuels used by sea-going vessels operating on inland waterways to the limit value for the sulphur content of fuels for inland waterway vessels.

Germany welcomes that the IMO global standard of 0.5% will apply in 2020 in Europe, regardless of the 2018 IMO review.

However, stricter fuel standards for passenger ships, especially for passenger ships on a regular service, which operate mostly in ports or close to shore, would ensure improvement of air quality in coastal areas. Germany finds it regrettable that the requirements for passenger ships in the compromise are not ambitious.

Germany also objects that the possibility of granting state aid is no longer strictly linked to exceeding the requirements of the directive. Germany therefore considers that state aid may only be granted in cases where the standards laid down in the directive are implemented at a considerably earlier stage, or where the sulphur content is significantly lower than the prescribed maximum. In Germany's view, the fact that meeting the required limit values for sulphur can lead to reductions of other emissions cannot be used to justify the granting of state aid.

Therefore, taken as a whole, Germany does not support the proposal.

Statement by Finland

Finland welcomes the Directive on the sulphur content of marine fuels as well as the revised MARPOL Annex VI in order to improve air quality and gain positive impacts on health and environment. However, the new rules will have a severe effect on the shipping sector and industries relying on sea transportation, due to the estimated costs of low-sulphur fuel and vessel conversions when abatement technology is installed.

The geographical location of Finland within the SECA area, but very far from the main European market area, together with the timetable for implementation constitute a huge challenge in respect of the new rules.

Finland therefore considers it of utmost importance for the Member States to be able to adopt financial measures, in an interim period, to reduce the negative impact on operators affected in order to avoid competition distortion otherwise caused by the new rules. These measures should be in line with the state aid rules applicable and to be adopted by the Commission in this area as stated in article 4f of the Directive. Also, the elaboration of the Staff Working Paper “Pollutant emission reduction from maritime transport and the sustainable waterborne transport toolbox” (*The Toolbox document*– art. 7 para. 3) is paramount.

Joint statement by Bulgaria, Spain, France, Greece, Italy, Malta, Portugal and Romania

Bulgaria, Spain, France, Greece, Italy, Malta, Portugal and Romania are prepared to endorse the compromise. We would however like to express our reservations regarding the 2013 review clause provided for in Article 7(2) and (3) of the revised Directive as well as regarding the new recital concerning air quality policy review in 2013, that specifically targets the issue of air pollution in EU territorial waters.

We feel that before embarking on any form of review process it is essential to evaluate initial results from the implementation of the new standards, which are only due to come into force in the SECAs as of 2015.

The chosen date of 2013 is highly premature and we would like to emphasise that we are opposed to the principle of a new legislative initiative that would go against the European Commission's "better regulation" strategy, and the objectives of legal certainty and proportionality.

This premature measure would in fact disturb the stability of the legal framework that is needed by maritime operators and industrial stakeholders in marine fuel supply so that they can make the necessary investments.

We would like to highlight that should the IMO make use of the 2018 review clause on justified grounds, in particular technical ones, such as a compliant fuel not being available, in view of current supply and demand on the global fuel market, market trends or any other relevant factors, the European Union will have to take into account this particular situation if it wants to preserve the competitiveness of the European maritime industry. In this instance, the Commission should propose relevant provisions including the necessary development of the legal framework and its implementation schedule.

Joint statement by France, Italy and Malta

In the context of intermodal competition, France, Italy and Malta feel that care should be taken to ensure that the European maritime transport sector is not excessively weakened.

We therefore call on the Commission to develop its work on the toolbox, in particular incorporating European financial instruments and the legal monitoring framework for State aid into its reflection.

Statement by Latvia and Sweden

Latvia and Sweden recognize the importance in achieving the compromise on the draft Directive to align the European Union law with the Annex VI of MARPOL as revised by the International Maritime Organization in 2008.

In the negotiations Latvia and Sweden argued for uniformly applying the requirements applicable within sulphur emission control areas (SECAs) to the territorial seas and exclusive economic zones of all the Member States. Such an approach would have ensured significant environmental and human health benefits, as well as would have helped to avoid potential distortion of competition. Latvia and Sweden are also of the opinion that for reasons of environmental protection and to avoid distortions of competition further work is necessary in supporting the establishment of new SECAs within the framework of the International Maritime Organization.

Latvia and Sweden support the adoption of the draft Directive since it provides the framework for further consideration of the potential economic impact of the requirements of the draft Directive, especially in relation to the distortion of competition and potential risk of modal backshift from sea to land based transport resulting in an increased harm to the environment.

In order to avoid the above mentioned risks, Latvia and Sweden would like to invite the European Commission to pay particular attention to the elaboration of the appropriate measures which would substantially minimize the negative impacts and closely cooperate with Member States in this regard.

Statement by Estonia

Estonia supports the aim of the Directive on the sulphur content of marine fuels and the revised MARPOL Annex VI. Estonia welcomes the steps taken to improve air quality and strengthen marine protection. We believe that policies outlined in the Directive will have significant positive impact both on human health and the environment. Good ecological status and adequate protection of the Baltic Sea area are of particular interest for Estonia.

However, Estonia stresses that these important policy objectives must be realistic and achievable. We are concerned about the ambitious timetable set in the Directive in the context of the remaining issues of fuel availability and technological challenges. We are confident that the Directive will accelerate much needed technological innovation, but it will take time for the results to emerge. Therefore, it has been Estonia's position during the negotiations that 2020 would be a more appropriate deadline for the new rules to enter into force.

In addition, Estonia supports uniform application of the requirements applicable within the sulphur emission control areas (SECAs) to the territorial seas and exclusive economic zones of all the Member States. This would have significantly increased the positive impact of the Directive both in terms of health and environmental benefits. It would also have ensured fairer competition conditions all over the European Union.