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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Proposal for a

COUNCIL DECISION

on the position to be adopted on behalf of the European Union at the International Maritime Organization during the 70th and 71st session of the Marine Environment Protection Committee on the approval and adoption of amendments to MARPOL Annex VI concerning the designation and taking effect of the Baltic Sea and North Sea as Nitrogen Oxide Emissions Control Area (NECA)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The present Commission proposal concerns the establishment of the Union position at the 70th and 71st session of the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC) in relation to the approval and adoption of the amendments to Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL) concerning the designation and taking effect of the Baltic Sea and North Sea as Nitrogen Oxide Emissions Control Areas (NECA).

In order to prevent, reduce and control nitrogen oxide (NO_x) emissions from ships, MARPOL Annex VI provides the possibility to designate, at the request of the Parties having a common interest in a particular sea area, a NECA. A request for designation needs to be submitted to the IMO which has to consider, approve and adopt the necessary amendments to MARPOL Annex VI such that the proposed designation of a particular sea area as NECA can enter into force and take effect. All EU Member States except for Austria and Hungary have ratified MARPOL Annex VI.

The first NECAs that were designated in the North American Seas and the United States Caribbean Sea areas, took effect on 1 January 2016. When operating in those sea areas, an engine which is installed on a ship constructed after that date will have to comply with the so-called Tier III requirements laid down in MARPOL Annex VI.

The most common available emission abatement technologies that would ensure compliance with the Tier III requirements are exhaust gas recirculation (EGR) systems, selective catalytic reduction (SCR) systems, or engines (partly) fuelled by liquified natural gas (LNG).

In anticipation of the substantial environmental and health benefits, and following the North American example, all the Baltic Sea and North Sea riparian States jointly decided to propose the designation of both seas as NECAs to the IMO in order to significantly reduce the total amount of NO_x emissions from ships over time.

NO_x emissions from ships in the Baltic Sea and North Sea contribute significantly to air pollution, especially in big coastal cities, through particulate matter (PM) formation, ground ozone formation and contribution to nitrogen dioxides (NO₂) concentrations, all having adverse effects on human health. Nitrogen input to the marine and terrestrial environment through atmospheric deposition also contributes to the eutrophication of the sea and land.

Eutrophication is a major problem in the Baltic Sea. NO_x emissions from ships contribute to the total nitrogen input to the marine environment through atmospheric deposition, thus exacerbating the problem of Baltic Sea eutrophication. The application of Tier III regulations resulting from the designation of the Baltic as NECA could reduce eutrophication in several Baltic Sea areas by up to 20-30%.

Without any control measures, NO_x emissions from North Sea shipping will contribute between 7% to 24% to the average annual ambient air concentrations of NO_x in the North Sea riparian states in 2030. Contributions from shipping to nitrogen deposition in the North Sea states range from 2% to 5%. Designation of the North Sea as NECA is expected to reduce these contributions of North Sea shipping emissions by about one-third.

2. DEVELOPMENTS TO DATE

Following the preference expressed by the Baltic Sea and North Sea riparian States to have a parallel, synchronized NECA designation process in both the North Sea and in the Baltic Sea, a 'Roadmap' setting out the steps leading towards such simultaneous designation and taking effect of both seas as NECAs was developed.

The Roadmap¹ envisages the submission of both designation requests to the IMO in July 2016 in view of approval of the MEPC at its 70th session (October 2016), followed by adoption at MEPC 71 (Spring 2017). The proposed date when both NECAs should take effect is set on 1 January 2021 in order to give operators sufficient time to prepare and adapt.

Following comprehensive preparatory work outlining the impacts and benefits of both NECA designations, the draft designation requests were discussed in technical workshops that took place in Russia and in Denmark in May 2016. The (final) draft designation requests were also circulated among the Council's Working Party on Shipping on 19 May 2016 and on 29 June 2016.

In line with the Roadmap, the 50th HELCOM Heads of Delegation meeting that took place in Estonia on 15-16 June 2016 endorsed submitting the NECA designation request to the IMO on 1 July 2016 by the respective riparian States. Following the agreement of HELCOM, the North Sea States could proceed with submitting their designation request in parallel in order to follow the timeframe for simultaneous approval and adoption by IMO as set out in the joint Roadmap.

3. AMENDMENTS TO MARPOL ANNEX VI

In accordance with the criteria and procedure set out in Regulation 13.6 and appendix III to MARPOL Annex VI for proposing the designation of a particular sea area as a NECA, the submission by the Baltic and North Seas riparian States puts forward the necessary amendments to Regulation 13 paragraphs 5.1, 5.2 and 5.3 that would add the North Sea and Baltic Sea to the already designated North American and United States Caribbean Sea Area NECAs, while specifying that the North Sea and Baltic Sea NECAs will take effect on 1 January 2021.

Following the submission of the proposed amendments by the North Sea and Baltic Sea States to the IMO on 1 July 2016, consideration and approval of the proposed amendments is expected at the 70th session of the MEPC (scheduled to take place between 24 to 28 October 2016), following which the amendments are expected to be submitted for adoption to the 71st session of the MEPC (scheduled to take place in Spring 2017).

Once approved and adopted by the Committee, the amendments to MARPOL Annex VI Regulation 13 as set out above will be communicated for acceptance to the MARPOL Annex VI Contracting Parties.

¹ See also: <https://portal.helcom.fi/meetings/HOD-49-2015-247/MeetingDocuments/4-29-Roadmap-for-designating-a-NECA-in-the-Baltic-Sea-in-parallel-with-the-North-Sea.pdf>

4. RELEVANT EU LEGISLATION AND EU COMPETENCE

The designation of NECAs in EU waters would significantly contribute to achieving the objectives set out in Union policy on environment aiming at preserving, protecting and improving the quality of the marine environment and protecting human health by improving air quality. The Commission's impact assessment accompanying the 2013 Clean Air Policy Package² noted that although any decisions on specific Union measures regulating NO_x emissions from shipping would need a separate, more specific analysis, there is clear potential for shipping to cost-effectively deliver NO_x emission reductions which would contribute to improving the quality of the marine environment and the air.

The Marine Strategy Framework Directive³ requires Member States to take the necessary measures to achieve or maintain 'good environmental status' in the marine environment by 2020. Good environmental status means "the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy, and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding, the potential uses and activities by current and future generations" (Article 3(5) of the Marine Strategy Framework Directive). Determining good environmental status requires, inter alia, that human-induced eutrophication is minimised, especially adverse effects thereof, such as losses in biodiversity, ecosystem degradation, harmful algae blooms and oxygen deficiency in bottom waters (all of which especially in the Baltic Sea occur at wide scale). Reducing nitrogen inputs originating from maritime shipping through the application of the Tier III requirements following from the designation of the North Sea and Baltic Sea as NECAs, will support the EU Member States bordering those seas with achieving 'good environmental status' under the Marine Strategy Framework Directive.

The Ambient Air Quality Directive⁴ sets, inter alia, limit values for NO₂ with the aim of avoiding, preventing or reducing harmful effects on human health and/or the environment caused by air pollution. The limit value for the annual mean NO₂ concentration is set at 40 microgram/m³. Especially in the North Sea riparian States this maximum concentration is exceeded in different regions and zones. Shipping emissions can contribute significantly to local air quality problems in Europe, especially when considering that in the North Sea 89% of ship emissions are within 50 nautical mile from shore⁵.

The Ambient Air Quality Directive recognizes that in order to achieve the objectives set out in that Directive, it is particularly important to combat emissions of pollutants at source in particular by measures which would limit the exhaust emissions of the engines of various mobile and stationary sources through engine or fuel quality standards.

The Union has put in place various pieces of legislation regulating emissions by means of engine standards for various road transport modes (cars, trucks and vans through the Euro

² See: http://ec.europa.eu/environment/air/clean_air_policy.htm

³ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive), OJ L 164, 25.6.2008, p. 19

⁴ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, OJ L 152, 11.6.2008, p. 1

⁵ European Environment Agency (EEA), Technical Report No 4/2013, The impact of international shipping on European air quality and climate forcing – 14.3.2013, p. 38

standards⁶) and non-road mobile machinery sources (inland waterway vessels and locomotives through the Non-Road Mobile Machinery Directive⁷). Sulphur emissions from maritime transport in European waters have been regulated through the directive setting out sulphur-content-in-fuel requirements for ships⁸. This directive also transposes the designation of both North Sea and the Baltic Sea as Sulphur Emission Control Areas (SECAs) under MARPOL Annex VI into Union law. The entry into force of low sulphur in fuel requirements on 1 January 2015 in the two SECAs has resulted in reduced concentration of sulphur in coastal regions.

Although NO_x emissions from international maritime shipping have not been regulated at the source by Union legislation, it is recognised that sea transport is a significant contributor to the total of those emissions, and also to the concentration and deposition in the Union, and, these emissions should be reduced⁹. Given that the designation of the Baltic Sea and North Sea as NECAs will prompt reductions of emissions from international maritime transport, as aimed for in Union legislation, the proposed designation requests to IMO should be supported.

In view of the links between the proposed amendments to MARPOL Annex VI designating the North Sea and Baltic Sea as NECAs and the objectives and requirements set out in the various instruments of Union legislation whose aim is to contribute to preserving, protecting and improving the quality of the marine environment as well as protecting human health by improved air quality, the approval and adoption of the amendments to MARPOL Annex VI may frame the future development of EU legislation in this area.

5. CONCLUSION

The provisions of Article 218(9) of the Treaty on the Functioning of the European Union also apply to the adoption of the amendments to MARPOL Annex VI by the IMO, and therefore a Council Decision on the position to be adopted on behalf of the European Union for the amendments to MARPOL Annex VI designating the North Sea and Baltic Sea as NECAs to be approved and adopted at the 70th and 71st session of MEPC respectively is required.

⁶ E.g. Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, OJ L 171, 29.6.2007, p. 1 or Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information

⁷ Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery, OJ L 59, 27.2.1998, p. 1

⁸ Directive (EU) No 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels, OJ L132, 21.5.2016, p.58

⁹ Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants, OJ L 309, 27.11.2011, p. 22

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In order to prevent, reduce and control nitrogen oxide (NO_x) emissions from ships, Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL) provides the possibility to designate, at the request of the Parties having a common interest in a particular sea area, a NO_x Emission Control Area (NECA).
- (2) The International Maritime Organization (IMO) has to consider, approve and adopt the necessary amendments to MARPOL Annex VI such that the proposed designation of a particular sea area as NECA can enter into force and take effect.
- (3) The Parties to MARPOL Annex VI bordering the North Sea and the Baltic Sea jointly decided to prepare two proposals for designation of the respective seas as NECAs taking effect from 1 January 2021.
- (4) Preparatory work on the submission requesting the designation of the Baltic Sea as NECA has been undertaken by the Baltic Marine Environment Protection Commission (or Helsinki Commission, short HELCOM) in the framework of the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area. The meeting of the HELCOM Heads of Delegations on 16 June 2016 agreed to submit the proposal for designation of the Baltic Sea as NECA for consideration by the IMO Marine Environment Protection Committee (MEPC) at its 70th session.
- (5) Preparatory work on the submission requesting the designation of the North Sea as NECA has been undertaken between the North Sea riparian States at Ministerial level.
- (6) The Council's Working Party on Shipping has been informed on 19 May 2016 and on 29 June 2016 of the (final) draft proposals requesting the designation of the North Sea

and Baltic Sea as NECAs to be submitted to the IMO for consideration at the 70th session of the MEPC.

- (7) Approval of the amendments to Annex VI to MARPOL designating the North and Baltic Seas as NECAs is expected at the 70th session of the Marine Environment Protection Committee (MEPC), while adoption is expected at the 71st session to be held in May 2017.
- (8) The approval and adoption of the proposed amendments to Annex VI to MARPOL by the IMO's MEPC designating the North and Baltic Seas as NECAs would have a legal effect within the meaning of Article 218(9) TFEU.
- (9) The seventh Environment Action Programme¹⁰ confirms the Union's long-term objective for air policy, to achieve levels of air quality that do not give rise to significant negative impacts on and risks to human health and the environment, and calls, to that end, for full compliance with the current air quality legislation of the Union, post-2020 strategic targets and actions, enhanced efforts in areas where the population and ecosystems are exposed to high levels of air pollutants and reducing the levels and deposition of acidifying and eutrophifying air pollutants as well as the level of ozone air pollution below critical loads and levels.
- (10) In 2013 a total of 19 of the 28 Member States recorded exceedances of the annual limit value for nitrogen dioxide (NO₂) as set in Directive 2008/50/EC of the European Parliament and of the Council¹¹ at one or more monitoring stations. Of the EU-28 urban population, 9% lives in areas in which the annual EU limit value and the WHO's air quality guidelines for NO₂ were exceeded in 2013¹².
- (11) Ship emissions are known to have impacts on human health, ecosystems and air quality in the Union, as a result of the emissions that it generates, such as nitrogen oxides (NO_x), sulphur oxides (SO_x), methane (CH₄), particulate matter (PM) and black carbon (BC).
- (12) According to the impact assessment accompanying the Clean Air Policy Package of December 2013¹³, the sulphur emissions from maritime transport are set to reduce significantly following the revision of the Directive on sulphur content of marine fuels¹⁴, while engine-related PM and NO_x emissions from vessels will continue to

¹⁰ Decision (EU) No 1386/2013 of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet", OJ L 354, 28.12.2013, p.171

¹¹ Directive 2008/50/EC of the European Parliament and of the Council on Ambient Air Quality and Cleaner Air for Europe, OJ L 152, 11.6.2008, p. 1

¹² European Environment Agency (EEA), Report No 5/2015, Air quality in Europe – 2015 report, 30.11.2015, p.30, p. 40

¹³ Commission Staff Working Document No 531/2013, Impact Assessment accompanying the Communication from the Commission a Clean Air Programme for Europe, the proposal for a Directive of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from medium combustion plants, the proposal for a Directive of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants and amending Directive 2003/35/EC, the proposal for a Council Decision on the acceptance of the Amendment to the 1999 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-level Ozone.

¹⁴ Directive (EU) No 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (codification), OJ L132, 21.5.2016, p. 58

affect air quality levels in the Union. NO_x emissions from international maritime transport in European waters could be equal to land-based sources in the Union by 2020 onwards¹⁵.

- (13) The progressive reduction of air pollution in the Union builds on the reductions delivered by substance-specific source based air pollution legislation defining (NO_x) emission limits, inter alia by means of fuel and engine standards, for various stationary and mobile emission sources.
- (14) While the Union has set marine fuel standards as well as emission monitoring, reporting and verification obligations with the objective of protecting and improving the quality of the environment and human health from SO_x and CO₂ emissions to air generated by maritime transport, there is currently no source specific Union legislation addressing NO_x emissions from international maritime shipping.
- (15) The 2013 Clean Air Programme for Europe Communication¹⁶ emphasises that emissions from shipping will continue to impact air quality on land, and that reductions by the shipping sector could be cost-effective. It also notes that considering the international character of shipping, in principle preference must be given to policy development at the international level, such as designation of NO_x Emission Control Areas and enforcement of NO_x emission standards already agreed by the IMO. According to the accompanying impact assessment there is clear potential for shipping to cost-effectively deliver NO_x emission reductions. Designating NECAs in the EU sea areas would deliver substantial environmental and health benefits
- (16) Directive 2001/81/EC of the European Parliament and of the Council¹⁷ provides that the Commission and Member States, as appropriate, shall without prejudice to Article 218 of the Treaty on the Functioning of the European Union, pursue bilateral and multilateral cooperation with third countries and relevant organizations such as the International Maritime Organization (IMO) with the aim of improving the basis for the facilitations of emissions reductions.
- (17) From the above it is clear that the approval and adoption of the amendments to Annex VI to MARPOL may frame the future development of EU legislation in this area.
- (18) A Council decision based on Article 218(9) TFEU should be adopted in order to set out the Union position regarding the adoption of those amendments.
- (19) Member States should support adoption of the proposed amendments to Annex VI to MARPOL designating the North and Baltic Seas as NECAs at the 70th session of the MEPC (October 2016), and their subsequent approval in MEPC 71 (Spring 2017).
- (20) The Union is neither a member of the IMO nor a contracting party to MARPOL. It is therefore necessary for the Council to authorise the Member States to express the position of the Union and express their consent to be bound by these amendments,

¹⁵ European Environment Agency (EEA), Technical Report No 4/2013, The impact of international shipping on European air quality and climate forcing – 14.3.2013

¹⁶ COM(2013/0918) final

¹⁷ Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emissions ceilings for certain atmospheric pollutants, OJ L 309, 27.11.2001, p. 22

HAS ADOPTED THIS DECISION:

Article 1

1. The position of the Union at the 70th session of the Marine Environment Protection Committee of the International Maritime Organization shall be to support the approval of the amendments to Annex VI to MARPOL designating the North and Baltic Seas as Nitrogen Oxide Emission Control Area.
2. This position shall also be valid at any other meetings of the IMO MEPC should the amendments not be approved at the 70th session of the Marine Environment Protection Committee.

Article 2

1. The position of the Union at the 71st session of the Marine Environment Protection Committee of the International Maritime Organization shall be to agree to the adoption of the amendments to Annex VI to MARPOL designating the North and Baltic Seas as Nitrogen Oxide Emission Control Area.
2. This position shall also be valid at any other meetings of the IMO MEPC should the amendments not be adopted at the 71st session of the Marine Environment Protection Committee.

Article 3

1. The position of the Union as set out in Articles 1 and 2 shall be expressed by the Member States, which are members of IMO, acting jointly in the interest of the Union.
2. Minor changes to the amendments referred to in Articles 1 and 2 may be supported and agreed to by the representatives of the Union without further decision of the Council.

Article 4

Member States are hereby authorized to give their consent to be bound, in the interest of the Union, by the amendments referred to in Articles 1 and 2.

Article 5

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*