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Delegations will find attached document COM(2014) 83 final.

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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 66th session of the Marine Environment Protection Committee on the adoption of amendments to MARPOL Annex VI concerning the delay of the Tier III NO_x emission standards

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The present Commission proposal concerns the establishment of the Union position at the 66th session of the IMO Marine Environment Protection Committee in relation to amendments to MARPOL Annex VI. These amendments to MARPOL Annex VI, regulation 13, paragraph 5.1 introduce a 5-year postponement of the introduction of Tier III NO_x emission standards. The changes are set out in Annex 12 of the MEPC report (MEPC 65/22). Para 4.64 of this report indicates that these amendments will be adopted at MEPC 66.

2. ADOPTION OF THE IMO AMENDMENTS

2.1. Adoption of amendments to MARPOL Annex VI concerning the postponement of the Tier III NO_x emission standards.

These draft amendments were approved at the 65th session of the Marine Environment Protection Committee meeting between 13 – 17 May 2013 and are to be submitted for adoption to the 66th session of that Committee between 31 March – 4 April 2014.

2.2. Acceptance and entry into force.

Once approved and adopted by the Marine Environment Protection Committee, the above amendments will be submitted to the respective contracting parties in order for them to express their consent to be bound by the said amendments.

3. RELEVANT EU LEGISLATION AND EU COMPETENCE

EU Policy

Environmental protection, which is the subject-matter of the amendments to MARPOL, is a shared competence under the EU Treaty and is in very large measure regulated by Union legislation. The EU has extensively exercised its competence in the area of air and water quality policy, both through legislation and agreed policy objectives. The environment policy includes a clear commitment of the Union to improve air and water quality, including at international level.

The aim and design of the EU's air quality policy framework, as set out for example in the Thematic Strategy on Air Pollution¹, is to make substantial progress towards the long-term EU objectives of preserving, protecting and improving the environment and protecting human health (art 191 (1) TFEU), i.e. "*to achieve levels of air quality that do not result in unacceptable impacts on, and risks to, human health and the environment*". This objective, first set out in the Sixth Environment

¹ COM(2005) 446 final

Action Programme² a decade ago, is confirmed in the 7th Environmental Action Programme recently agreed by the EU, which guides the development of EU policy until 2020³, most recently reflected in the Clean Air Programme for Europe adopted by the Commission.⁴

These policy objectives would be adversely affected by the postponement of the stricter NOx standards applicable in NOx Emission Control Areas (NECAs).

EU legislation

Existing legislation covers a wide range of pollutants, including NOx, and a wide range of sources including all modes of transport.

The National Emission Ceilings Directive (2001/81/EC)⁵ and the Ambient Air Quality Directive (2008/50/EC)⁶ provide for limit values of NOx in the air. The NEC Directive requires that emissions from maritime shipping be quantified and reported. Emissions from national maritime shipping and international shipping on inland waterways count towards the NEC's national emission ceilings. However, other emissions from international maritime shipping do not count towards the ceilings, even though they impact substantially on air quality in the EU. This exclusion is in view of the IMO's role in regulating these emissions. For this reason the need to act externally on those emissions is explicitly recognised by Article 11 of the NEC Directive which states that *"To promote the achievement of the objective set out in Article 1, the Commission and Member States, as appropriate, shall, without prejudice to Article 300 of the Treaty, pursue bilateral and multilateral cooperation with third countries and relevant international organisations such as the United Nations Economic Commission for Europe (UNECE), the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO), including through the exchange of information, concerning technical and scientific research and development and with the aim of improving the basis for the facilitation of emission reductions"*

Moreover, the Clean Air Quality Package⁷, adopted by the Commission on 18 December 2013, confirms the shipping emissions' impact on air quality on land and the cost-effectiveness of further measures in this sector. NOx emissions from shipping are a direct contribution to eutrophication of inland and marine waters and terrestrial habitats, and to the formation of (secondary) particulate matter affecting health. Thus failing to address this source would impair the possibility for Baltic and North Sea riparian states to meet the objectives set in the Water Framework Directive (2000/60/EC)⁸, the Marine Strategy Directive (2008/56/EC)⁹, the Habitats Directive (92/43/EEC)¹⁰ and the Birds Directive (79/409/EEC)¹¹ to limit adverse impacts on

² OJ L 242, 10.9.2002, p. 1

³ A General Union Environmental action Programme, "Living well, within the limits of our planet", COM (2012)710 final.

⁴ COM(2013)918 final

⁵ OJ L 309, 27.11.2001, p.22

⁶ OJ L 152, 11.6.2008, p.1

⁷ All relevant documents are available at: http://ec.europa.eu/environment/air/clean_air_policy.htm

⁸ OJ L 327, 22.12.2000, p.1

⁹ OJ L 164, 25.6.2008, p.19

¹⁰ OJ L 206, 22.7.92, p.7

aquatic and terrestrial ecosystems including from eutrophication. It would likewise impair their possibility to meet the limit values for PM₁₀ and PM_{2,5} of the Ambient Air Quality Directive 2008/50/EC set to protect human health.

The Tier III NO_x emission standards, which are at issue in the present action, have not yet been the explicit subject of specific Union legislation, but their current regulation under the IMO, in accordance with the 2008 Amendment of MARPOL Annex VI, is considered necessary and consistent with the overall agreed EU policy objectives. In particular, extending the application date will undermine the scope for Member States to make use of NECAs for the purpose of addressing air pollution and its impacts.

Council Decision

Article 218(9) TFEU is an appropriate legal basis for the establishment of the EU position to be expressed at the meeting as it relates to acts having legal effects. The MEPC 66 decision on the date of entry into force of the Tier III NO_x emission standards has a binding legal effect as it will determine a date from which the NO_x Tier III standards will apply in the areas designated as NECA to ships of all IMO's MARPOL Annex VI Parties.

Summary

In view of the relevant EU policy and acquis referred to above, the Commission considers that the issue covered by the above-cited amendments expected to be adopted at MEPC 66 meeting is of EU relevance requiring a common position to be taken by the EU, to be expressed by all Member States represented in the MEPC in the interest of the Union.

4. CONCLUSION

The Commission therefore proposes a Council Decision on the position to be adopted on behalf of the European Union for the amendments cited in para 2.1 above to be adopted at the 66th session of the Marine Environment Protection Committee.

¹¹ OJ 103, 25.4.79, p.1

Proposal for a

COUNCIL DECISION

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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 Articles 192(1) and 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The initial 2008 Amendment of MARPOL Annex VI set a date of 2016 for the date of application of Tier III NOx emission standards applying to ships built after that date and sailing through Nitrogen Oxide Emission Control Areas (NECAs)]
- (2) The International Maritime Organization Marine Environment Protection Committee at its 65th session in May 2013 approved [draft] amendments to MARPOL Annex VI, Regulation 13, paragraph 5.1. Those amendments are expected to be adopted in the 66th session of the MEPC, to be held from 31 March to 4 April 2014.
- (3) The amendments to the MARPOL Annex VI, regulation 13, paragraph 5.1 concerning the postponement of the Tier III NOx emission standards will introduce a 5-year delay in their entry into force and will become binding upon the Parties to MARPOL Annex VI 6 months after the date of its acceptance in accordance with Article 16, paragraph 2 of the MARPOL Convention.
- (4) Environmental protection, which is the subject-matter of the proposed measures, is in very large measure regulated by Union legislation. The EU has extensively exercised its competence in the area of air and water quality policy, both through legislation and agreed policy objectives. Current legislation covers a wide range of pollutants, including Nitrogen Oxide (NOx) and a wide range of sources including all modes of transport. Directive 2000/60/EC establishing a framework for Community action in the field of water policy¹², Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy¹³, Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora¹⁴ and Directive

¹² OJ L 327, 22.12.2000, p.1

¹³ OJ L 164, 25.6.2008, p.19

¹⁴ OJ L 206, 22.7.92, p.7

79/409/EEC on the conservation of wild birds¹⁵ set objectives to limit adverse impacts on aquatic and terrestrial ecosystems including from eutrophication, of which NOx is a principle driver. Directive 2008/50/EC on ambient air quality and cleaner air for Europe¹⁶ sets limit and target values for particulate matter and ozone for which NOx is a precursor.

- (5) Directive 2001/81/EC on National Emission Ceilings¹⁷ requires that emissions from maritime shipping be quantified and reported, while recognising that regulation of emissions from international maritime shipping (other than in internal waters) is a matter for the IMO.
- (6) Article 11 in combination with Article 1 of Directive 2001/81/EC requires the Commission and the Member States to pursue cooperation at international level with the aim of reducing emissions of certain atmospheric pollutants, including NOx.
- (7) In view of the overall agreed EU policy objectives and acquis, the postponement of the Tier III NOx emission standards to be adopted at MEPC 66 meeting is of EU relevance requiring a common position to be taken by the EU, to be expressed by all Member States represented in the MEPC in the interest of the Union.
- (8) The Union is neither a member of the IMO nor a contracting party to the conventions and codes concerned. It is therefore necessary for the Council to authorise Member States to express the position set out below, acting in the interest of the Union.

HAS ADOPTED THIS DECISION:

Article 1

1. The position of the Union at the 66th session of the IMO Marine Environment Protection Committee shall be to oppose the adoption of the amendments to MARPOL Annex VI, Regulation 13, paragraph 5.1 as laid down in Annex 12 of the IMO document MEPC 65/22.
2. The position of the Union as set out in paragraph 1 shall be expressed by the Member States, which are members of IMO, acting jointly in the interest of the Union.
3. Minor changes to this position may be agreed without requiring that position to be amended.

¹⁵ OJ L 103, 25.4.79, p.1

¹⁶ OJ L 152, 11.6.2008, p.1

¹⁷ OJ L 309, 27.11.2001, p.22

Article 2

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*