



**COUNCIL OF  
THE EUROPEAN UNION**

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## **REPORT**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)
No. Cion doc.:	6714 MAR 28 ENV 162
Subject:	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 NOx emission standards - Consideration of the outcome of discussions within the Shipping Working Party

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## **Introduction**

1. The above-mentioned Commission proposal, which was transmitted to the Council on 18 February 2014, concerns the establishment of the Union position at the 66th session of the IMO Marine Environment Protection Committee (MEPC 66) in relation to the adoption of amendments to MARPOL Annex VI, regulation 13, paragraph 5.1. These amendments introduce a 5-year postponement of the introduction of Tier III NOx emission standards, which enter into force in 2016 and will be applicable in NOx Emission Control Areas (NECAs). The Commission proposal is reflected in the annex to this report.

## Content of the proposal

2. Against the background of extensive EU acquis on the general subject-matters of air and water quality policy, the draft Council Decision proposes to oppose the adoption of the aforementioned amendments and tasks the Member States to express this opposition at IMO.

## Work in the Council

3. The Shipping Working Party considered the Commission proposal on 25 February and 4 March 2014. At a preliminary level, a significant number of delegations raised concerns as regards the necessity for a Council Decision on this matter given what they considered an absence of exercised Union competence in this area (ie NOx emissions from international shipping). Neither could they identify any direct effect of the said amendments on existing EU legislation. One delegation also raised concerns with regard to the legal base chosen by the Commission (Art 218(9) TFEU).
4. The Council Legal Service, invited to provide guidance, confirmed that the issue under discussion falls under unexercised Union competence and recalled the conclusions of Coreper of 11 September 2013 in relation to a proposal for a Council Decision on a position to be taken at HELCOM and IMO on the establishment of a Baltic Sea NECA. On that occasion Coreper did not endorse the Council Decision, as a vast majority of delegations did not want the Union, by designating the Baltic Sea as a NOx emission control area, to exercise competence on the issue of NOx emissions from international maritime transport. The Council Legal Service recalled again that by adopting the present draft Council Decision, Union competence would then be exercised. The Council was, however, free to decide whether it wanted to exercise such competence for the first time or not. In addition, in the absence of such a Council decision, Member States, in exercising their competence, could still coordinate their positions on the issue in question.

5. The Commission Legal Service shared the Council Legal Service's view as regards unexercised Union competence and confirmed that it was at the Council's discretion to act on the proposal or not. The Commission Legal Service also argued that by adopting the Council decision, the Union would exercise only a very narrow part of the shared competence in the area of the NOx emissions in shipping, and would not exercise the competence on this matter in full, leaving the freedom to regulate the subject matter possibly by an EU legal instrument. However, against the background of existing Union legislation in the field of air and water quality, the Commission Legal Service sees sufficient interest and legal ground to reject the amendments to MARPOL Annex VI and considers the proposed Council Decision as the right instrument to do so. It also considers that Article 218(9) TFEU is the correct legal base under which to adopt such a Council Decision given that the amendments to MARPOL Convention, if adopted, would have legal effects.
6. At the Shipping Working Party meeting on 4 March 2014, a vast majority of delegations confirmed that, despite of the merits of the amendments, they were opposed to the draft Council Decision being adopted, given that the amendments related to unexercised Union competence which they did not wish to exercise. They were also in favour of clearly indicating that they do not wish to continue to work on the proposal on the aforementioned legal and procedural grounds. PL and UK entered parliamentary scrutiny reservations, EE and FI general scrutiny reservations on the whole proposal. The Commission entered a formal reservation against the non-adoption of the Council Decision and announced that it will present an oral statement at Coreper.
7. Against this background, the Working Party chairman concluded that a majority of delegations seemed to be against the adoption of a Council Decision on this matter. The Presidency would consequently seek to formalise and confirm this outcome in time for the 66th session of the IMO Marine Environment Protection Committee.

## Conclusion

8. In light of the above, the Permanent Representatives Committee is invited to confirm the outcome of the discussions at the Shipping Working Party and to recommend to the Council not to work further on the Commission proposal.
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2014/0042 (NLE)

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 NOx emission standards**

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 policy<sup>1</sup>, Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy<sup>2</sup>, Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora<sup>3</sup> and Directive 79/409/EEC on the conservation of wild birds<sup>4</sup> 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 Europe<sup>5</sup> sets limit and target values for particulate matter and ozone for which NOx is a precursor.
- (5) Directive 2001/81/EC on National Emission Ceilings<sup>6</sup> 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.

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<sup>1</sup> OJ L 327, 22.12.2000, p.1

<sup>2</sup> OJ L 164, 25.6.2008. p.19

<sup>3</sup> OJ L 206, 22.7.92, p.7

<sup>4</sup> OJ L 103, 25.4.79, p.1

<sup>5</sup> OJ L 152, 11.6.2008, p.1

<sup>6</sup> OJ L 309, 27.11.2001, p.22

- (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 NO<sub>x</sub>.
- (7) In view of the overall agreed EU policy objectives and acquis, the postponement of the Tier III NO<sub>x</sub> 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.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council*

*The President*

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