



Council of the  
European Union

107691/EU XXVII. GP  
Eingelangt am 06/07/22

Brussels, 6 July 2022  
(OR. en)

11150/22

ENV 732  
TRANS 486  
SAN 444  
DELECT 109

## COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	22 June 2022
To:	General Secretariat of the Council
No. Cion doc.:	COM(2022) 294 final
Subject:	REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2016/802/EU 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)

Delegations will find attached document COM(2022) 294 final.

Encl.: COM(2022) 294 final



Brussels, 22.6.2022  
COM(2022) 294 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**on the exercise of the power to adopt delegated acts conferred on the Commission  
pursuant to Directive 2016/802/EU 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)**

# REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

## on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2016/802/EU 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)

### 1. INTRODUCTION

Directive 1999/32/EC of the European Parliament and of the Council relating to a reduction in the sulphur content of certain liquid fuels<sup>1</sup> has been substantially amended several times, lastly by Directive 2012/33/EU of 21 November 2012 on the sulphur content of marine fuels<sup>2</sup>, which entered into force on 17 December 2012 and had to be transposed by 18 June 2014.

To preserve the clarity and rationale of Council Directive 1999/32/EC following the different substantial amendments, it was codified as Directive (EU) 2016/802 of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels<sup>3</sup> (hereinafter “the Sulphur Directive”).

The Sulphur Directive’s principal aim is to reduce harmful health effects and environmental damage caused by sulphur dioxide (SO<sub>2</sub>) emissions resulting from the combustion of certain types of liquid fuels. This is a key aim to ensure the EU delivers on the Green Deal<sup>4</sup> and on its zero pollution from all sources<sup>5</sup> and sustainable mobility<sup>6</sup> ambitions, including efforts from the maritime sector.

Irrespective of Articles 3 and 4 of the Sulphur Directive which regulate the sulphur content of heavy fuel oil (HFO) and gas oils used in certain combustion plants on land, the Directive currently mostly regulates the sulphur content of liquid fuels used by ships (‘marine fuels’).

Where justified, in the light of scientific and technical progress regarding alternative emission abatement methods and in such a way as to ensure strict consistency with the relevant instruments and standards adopted by the International Maritime Organisation (hereafter ‘IMO’), the Sulphur Directive empowers the Commission to adopt delegated acts to adapt as appropriate:

- ANNEX I: Equivalent emission values for emission abatement methods as referred to in Article 8(2) and Article 8(5)(a);
- ANNEX II: Criteria for the use of emission abatement methods as referred to in Article 8(4) and Article 8(5)(a);
- Article 2 (Definitions):
  - (a) definition of ‘heavy fuel oil’ for land applications;
  - (e) definition of ‘marine gas oil’ grades in accordance with ISO 8217 with the exception of the reference to the sulphur content;
  - (p) definition of ‘ASTM method’ as the methods laid down by the 1976 edition the American Society for Testing and Materials concerning the standard definitions and specifications for petroleum and lubricating products

---

<sup>1</sup> OJ L 121 of 11.5.1999, p. 13

<sup>2</sup> OJ L 327 of 27.11.2012, p. 1

<sup>3</sup> OJ L132 of 21.5.2016, p. 58

<sup>4</sup> COM(2019)640

<sup>5</sup> COM/2021/400 final

<sup>6</sup> COM(2020) 789 final, SWD(2020) 331 final

- Article 13(2) (b)(i) on sampling of the marine fuel for on-board combustion while being delivered to ships for determination of compliance, in accordance with the Guidelines for the sampling of fuel oil for determination of compliance with the revised Annex VI to MARPOL of the IMO<sup>7</sup>, and analysis of its sulphur content;
- Article 13(3) on the following mandatory reference method adopted for determining the sulphur content:
  - ISO method 8754 (2003) or EN ISO 14596:2007 for all fuels, and
  - Appendix VI to Annex VI to MARPOL for marine fuel delivered to<sup>5</sup>, and used on board ships<sup>8</sup>.

## 2. LEGAL BASIS

This report is required under Article 16(2) of the Sulphur Directive. Pursuant to this provision, the power to adopt delegated acts was conferred on the Commission for a period of 5 years beginning on 17 December 2012 (i.e. until 17 December 2017) and then extended for a 5-year period.

The Commission is required to prepare a report, on such delegation of power, not later than 9 months before the end of this second 5-year period, i.e. 17 December 2022.

In accordance with Article 16(2) of the Directive, the delegation of power shall be tacitly extended for another 5-years period as from 17 December 2022, unless the European Parliament or the Council opposes such extension no later than 3 months before this date.

Although the Commission could not meet the 9 months deadline, the report was communicated to the European Parliament and the Council as soon as possible in order to ensure the respect of their prerogatives and of the 3-month period indicated in Article 16(2) of the Directive.

## 3. EXERCISE OF THE DELEGATION

The exercise of the empowerment was and is deemed necessary for adapting several provisions foreseen by the Sulphur Directive to scientific and technical progress.

The Commission already reported on such exercise in 2017<sup>9</sup>.

Furthermore, the Commission adopted on 16 April 2018 a *report<sup>10</sup> to the European Parliament and the Council on implementation and compliance with the sulphur standards for marine fuels set out in Directive (EU) 2016/802*, also referring to its exercise of implementing powers which have links with the scope of the delegated powers even if the latter has not been exercised so far.

---

<sup>7</sup> Guidelines for the sampling of fuel oil for determination of compliance with the Annex VI to MARPOL, set out in Resolution 182(59) of the Marine Environment Protection Committee adopted on 17 July 2009.

<sup>8</sup> Directive 2012/33/EU mistakenly refers to the fuel verification procedure set out in Appendix VI to Annex VI to MARPOL for fuel used on board ships. In fact the scope of IMO procedure covered only fuel delivered to ships. On the basis of Implementing Decision (EU) 2015/253, the EU pushed at the IMO the development of guidance which led to the extension of the verification procedure (sampling and analysis) to include also verification of fuel in use. Consequently, the IMO issued document MEPC.1/Circ.864 of 9 December 2016 ‘Appendix VI on the Fuel verification procedure for MARPOL Annex VI fuel oil samples consequential amendments to verification procedures, to cover verification of the representative samples of in-use fuel oil and on board fuel oil.’

<sup>9</sup> COM(2017) 342 final

<sup>10</sup> COM(2018) 188 final

In fact, due to the urgency to ensure a uniform and cost-effective enforcement of the Sulphur Directive's obligations, the Commission prioritised on its implementing power and developed: the technical basis for implementing acts on 'sampling methods' for marine fuels, the definition of a 'representative sample' and the 'frequency of sampling' of marine fuels (under Article 13(4) of the Sulphur Directive).

During the preparatory work of the mentioned acts the Commission carried out appropriate consultations with Member States<sup>11</sup> and relevant stakeholders<sup>12</sup>, including at expert level, and benefitted from the technical assistance of the European Maritime Safety Agency<sup>13</sup>.

Consequently, the Commission adopted, on 16 February 2015, the Implementing Decision (EU) 2015/253<sup>14</sup> which lays down the rules concerning the on-board fuel sampling procedure, the control of bunker suppliers responsible for fuel delivered to ships, as well as a binding number of ship inspections and fuel samples that Member State have to carry out annually to verify the sulphur content of marine fuels being used by ships operating in the waters falling under their competence.

Until today, however, there is not enough new scientific information to justify updating, by means of delegated acts, the relevant annexes and articles to the Sulphur Directive referred to in the previous section. Therefore, it was not considered appropriate to update the technical standards for fossil fuels. This is also in line with the EU's objective to decrease dependence from fossil fuels in order to achieve strategic autonomy and climate neutrality.

No specific updates were established, including by the International Maritime Organisation, with regard to the scope of Annex I on equivalent emission values for emission abatement methods used on board<sup>15</sup>, as the requirements mentioned for sulphur content are the only ones in force.

Concerning the section in Annex II referring to the Exhaust Gas Cleaning Systems, no specific updates on discharge waters criteria were established by the IMO in the Exhaust Gas Cleaning Systems Guidelines referred to in Resolution MEPC.184(59) adopted on 17 July 2009. In view of the ongoing developments in IMO on the evaluation and harmonisation of rules and guidance on discharged water from exhaust gas cleaning systems into the aquatic environment, including conditions and areas, the said guidelines may be revised accordingly in the future.

Concerning the section in Annex II referring to the use of biofuels as an alternative compliance method and relevant definitions set out in Directive 2009/28/EC on the promotion of the use of

---

<sup>11</sup> In accordance with Article 17 of Directive (EU) 2016/802, the Commission established the Committee on the Implementation of the Sulphur Directive to support its coherent and effective implementation. The Committee assists the Commission with exercising its implementing powers, with drafting submissions to the IMO, and reviewing outputs developed by expert groups. Through the active engagement of Member States, the Committee had a key role in ensuring a consistent and cost-effective implementation and enforcement of the Directive across the EU.

<sup>12</sup> The Commission set up in 2013 the European Sustainable Shipping Forum (ESSF) facilitating a structured dialogue and cooperation among different Commission services, Member States and maritime stakeholders to better address environmental sustainability challenges confronting the EU maritime transport sector.

<sup>13</sup> EMSA Sulphur Inspection Guidance under Council Directive 1999/32/EC, revised version december 2019

<sup>14</sup> Commission Implementing Decision (EU) 2015/253 of 16 February 2015 laying down the rules concerning the sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels, OJ L 41 of 17.2.2015, p. 55

<sup>15</sup> Articles 6(1)(b), 6(2)(b), 7(1) of Directive (EU) 2016/802.

energy from renewable sources, the only update is the adoption of Directive (EU) 2018/2001 (RED II)<sup>16</sup> which is a recast of the Directive 2009/28/EC. RED II updates the biofuels definition referred to in Annex II of the Sulphur Directive but their use in the maritime sector is still at a very early stage. However, the proposal for a Fuel EU Maritime Regulation, which is part of the Fit for 55 legislative package tabled by the European Commission in July 2021, also refers to new biofuels as well as other zero and low carbon fuels. The adoption of RED II and Fuel EU Maritime may require a revision of definitions and other relevant aspects concerning biofuels in Annex II of the Sulphur Directive. Furthermore, as the Fuel EU Maritime Regulation is considering onshore power for ships at berth as a zero emission technology in EU ports, the scope of Annex II may be broadened in the future.

Overall, there is at present only limited experience on the provisions contained in Annex II of the Directive, in particular concerning the use of LNG boil-off gas or biofuels as emission abatement methods. It is therefore appropriate to postpone any related technical update through a delegated act.

Furthermore no significant updates are available concerning the definitions in Article 2 for (a) 'heavy fuel oil' for land applications; (e) 'marine gas oil' grades in accordance with ISO 8217, and (p) the 1976 edition of the American Society for Testing and Materials concerning the standard definitions and specifications for petroleum and lubricating products. To date, only few Member States have notified relevant updates in the framework of the notification procedure under the Single Market Transparency Directive (Directive (EU) 2015/1535).

As a general comment, it should be noted that the Directive regulates the sulphur content in oil based products since 1999 for land and marine applications including heavy fuel oils, marine fuels, gas and diesel oils. These are conventional fuel products which did not see significant development in terms of quality standards or concerning the methods to determine the sulphur in fuel content.

New marine fuel blends were produced and introduced on the market in view of the entry into force of the 0.50% sulphur requirement in marine fuels for ships sailing in EU waters<sup>17</sup>. The characteristics of such fuels do not need updates through the adoption of delegated acts under Article 16 of the Directive. These marine fuel blends are covered by the ISO 8217 standard, which has not been updated yet as there is not enough experience with its use. Even when the ISO standard will be updated, it is unlikely that the use of the delegated powers will become necessary as the Sulphur Directive provides for a dynamic reference to the said standard without specifying the year of its revised version.

#### 4. CONCLUSION

The European Commission has, over the past 10 years, not exercised the delegated powers conferred to it under the Sulphur Directive 2016/802/EU. However, the Commission keeps monitoring developments in the IMO framework and carries out appropriate consultations to this

---

<sup>16</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources *OJ L 328, 21.12.2018, p. 82–209* also amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (RED I) sets EU target for the overall share of energy from renewable sources in its gross final consumption of energy in 2030. It also sets sustainability and greenhouse gas emissions saving criteria for biofuels.

<sup>17</sup> Article 6(1)(b) of Directive (EU) 2016/802.

end, including at expert level, in view of future needs for action through either delegated acts or even a full revision of the Directive, should the ongoing transformation of the sector so require.

It invites the European Parliament and the Council to take note of this report.