

MEMBER ALERT



Shipowners Claims Bureau, Inc., Manager
One Battery Park Plaza 31st Fl., New York, NY 10004 USA
Tel: +1 212 847 4500
Fax: +1 212 847 4599

www.american-club.com

DECEMBER 28, 2009

EUROPEAN UNION ENFORCEMENT OF THE USE OF 0.1% SULPHUR CONTENT FUEL IN PORT PROVISION OF THE EU SULPHUR DIRECTIVE (ARTICLE 4B OF DIRECTIVE 2005/33/EC)

On December 21, 2009, the EU Commission adopted a Recommendation on the safe implementation of the use of low sulphur fuel by ships at berth in EU ports. This invites EU Member States, while enforcing the clause in the Sulphur Directive for use of 0.1% sulphur content fuel by ships at berth, to consider the existence of detailed evidence of the steps taken by ships to ensure safe compliance with Article 4b of Directive 1999/32/EC as amended by Directive 2005/33/EC with effect from January 1, 2010.

Member States may consider the existence of an approved retrofit plan when assessing the degree of penalties to be applied to non-complying ships. Further action will also be proposed at the earliest convenience by the Commission to the Member States, through comitology, in order to allow Liquefied Natural Gas (LNG) carriers to use a mixture of fuels resulting in emissions of sulphur dioxide equal to or lower than that required by the Directive.

It was the Managers' intention to circulate a full text of the Recommendation to Members today with this notice, but a message received from the EU Commission indicates that the Recommendation will first be disseminated to EU Member States and then made public on December 28, 2009. Your Managers will try to get hold of the full text as soon as possible, and revert, and will also post it on the Club's website's home page.

Until then, Members are asked to view some Frequent Asked Questions and formal answers offered by the EU Commission on the application of this provision as attached. These FAQs can also be found at the following website:

http://ec.europa.eu/environment/air/transport/pdf/ships_faq.pdf

Questions and Answers

On the use of fuel containing not more than 0.1% sulphur in ships while at berth

Q: Which are the relevant articles of the Directive 1999/32/EC related to the use of 0.1% sulphur fuel at berth?

A: The relevant articles are:

Article 2

Definitions: for the purpose of this Directive:

3i. ships at berth means ships which are securely moored or anchored in a Community port while they are loading, unloading or hotelling, including the time spent when not engaged in cargo operations;

Article 4b

Maximum sulphur content of marine fuels used by ships at berth in Community ports

1. With effect from 1 January 2010, Member States shall take all necessary measures to ensure that the following vessels do not use marine fuels with a sulphur content exceeding 0.1 % by mass:
 - (b) ships at berth in Community ports, allowing sufficient time for the crew to complete any necessary fuel-changeover operation as soon as possible after arrival at berth and as late as possible before departure.

Member States shall require the time of any fuel-changeover operation to be recorded in ships' logbooks.

2. Paragraph 1 shall not apply:
 - (a) whenever, according to published timetables, ships are due to be at berth for less than two hours;
 - (c) until 1 January 2012 for the vessels listed in the Annex and operating exclusively within the territory of the Hellenic Republic;
 - (d) to ships which switch off all engines and use shore-side electricity while at berth in ports.
3. With effect from 1 January 2010, Member States shall ensure that marine gas oils are not placed on the market in their territory if the sulphur content of those marine gas oils exceeds 0.1 % by mass.

Q: When does the requirement to use fuel not exceeding 0.1% sulphur enter into effect? Can it be postponed?

A: This requirement enters into effect as of 1 January 2010 for ships visiting a Community port. The Directive does not allow for delay, nor for exemptions other than those already included and therefore it cannot be postponed.

Q: Is a ship exempted in case the changeover of fuel is unsafe because the necessary modifications to the ship (or ships boiler) have not yet been implemented?

A: No. The obligation for ships to use 0.1% sulphur content in fuel while at berth is the requirement of Directive 2005/33/EC (amending Directive 1999/32/EC) which was already published in 2005.

The time that has been available to prepare does not justify such claim for exemption based on alleged emergency situations.

Q: In which ports does the requirement to use fuel not exceeding 0.1% sulphur apply?

A: This requirement applies in all Community ports, including inland ports, but excepts ports in the French overseas departments, the Azores, Madeira and the Canary Islands.

Q: The ship is entering in a Community port or manoeuvring inside the port. Does this ship have the obligation to use fuel not exceeding 0.1% sulphur?

A: No, this fuel requirement only applies on ships at berth, meaning securely moored or anchored in a port.

Q: If a ship already has marine gas oil on board, exceeding 0.1% sulphur, can it continue using this fuel after 31 December 2009, until it needs to refuel?

A: No. As of 1 January 2010 only fuel not exceeding 0.1% sulphur can be used. It is not allowed to burn non-compliant fuel, even if that fuel was bunkered before the date of entry into force.

Q: At which moment does a ship has to changeover fuel?

A: The requirement applies on ships at berth, meaning as from the moment when the ship is securely moored or has anchored in port. But the Directives give a margin of sufficient time for the crew to complete the necessary fuel-changeover operations as soon as possible after arrival at berth. The changeover of fuel has to be done in all engines and boilers onboard the ship which are kept running while at berth.

Q: What if the ship intends to stay at berth for less than two hours?

A: Only ships operating on a published timetable AND staying in a port for less than two hours are exempt. Other ships, regardless of total time foreseen to stay at berth, shall comply with the fuel obligation and start fuel-changeover when at berth, meaning as soon as possible after being securely moored at berth or at anchor in the port.

Q: If a ship is anchored outside the port, does it have to use 0.1% sulphur fuel?

A: No. The requirement only applies to ships at berth, meaning securely moored or anchored in a Community port.

Q: What should be considered as "port" and when is a ship outside of a port?

A: Directive 1999/32/EC does not contain a definition of port area. Article 11 of the UN Convention on the Law of the Sea, UNCLOS, does define ports as:

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast. Off-shore installations and artificial islands shall not be considered as permanent harbour works.

However, as the delimitations (area) of the port is established by the Competent Authority in each single Member State and not by the Directive, any further consultation should be done with the respective authorities.

Q: Can LNG-carriers comply with the standard while burning a mixture of boil off gas and heavy fuel oil?

A: The current text of the Directive does specify that no use of fuel containing more than 0.1% sulphur is allowed. However, as an alternative to using this low sulphur fuel, Member States may allow ships to use an approved emission abatement technology. The Commission is of the opinion that the technology to use both *liquid natural gas* (LNG) and *heavy fuel oil* (HFO) does constitute such equivalent, provided that the mixture is such that the resulting emissions of sulphur dioxide are equal to or lower than when only burning 0.1% sulphur fuel. The Commission therefore intends to propose to Member States to allow for this equivalent. The Member States will decide on this matter in a designated Committee, which will be called together at the earliest convenience.

Q: If a ship has made arrangements to install the necessary modifications to its boilers before it is able to switchover fuel safely but the modifications are not yet implemented, is it allowed to continue using HFO at berth exceeding 0.1% sulphur in the meantime?

A: No, the Directive has no exemptions. However, the Commission intends to publish a Recommendation which will be aimed at the Member States and will invite them while enforcing the Directive, to request those ships which fail to comply with the Directive to provide detailed evidence of steps taken for arrangements to install the necessary modifications, including the approval by a Recognized Organization or Class. The Member States may consider the existence of an approved retrofit plan when assessing the degree of penalties to be applied to non-complying ships.

Q: When does the requirement to use fuel with a sulphur content not exceeding 0.1% sulphur end?

A: This requirement continues to apply while the ship is at berth or at anchor until as late as possible before departure, when it is allowed to start fuel changeover to be ready for departure.

Q: Does the requirement to use fuel with a sulphur content not exceeding 0.1% still apply to a ship which has left berth or anchorage but is still sailing in the port area?

A: No. The requirement does not apply to ships manoeuvring or on their way to enter or leave the port.