

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

Incorporated and adapted by Ministerial Council Decision 2016/15/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive (EU) 2016/802 of the European Parliament and of the Council and Commission Implementing Decision (EU) 2015/253.

*The adaptations made by Ministerial Council Decision 2016/15/MC-EnC are highlighted in **bold and blue**.*

Whereas:

(1) A cost-efficient and coherent implementation and enforcement of Directive 1999/32/EC is of high priority to achieve its projected health and environmental benefits resulting from reduced sulphur dioxide emissions from shipping, thus promoting fair competition and increased sustainability of maritime transport.

(2) In order to implement Articles 3a, 4a and 4b of Directive 1999/32/EC effectively, it is necessary that Member States ensure sufficiently frequent and accurate sampling of marine fuels delivered to ships or used on board ships, including inspections of ships' log books and bunker delivery notes.

(3) Article 6(1) of Directive 1999/32/EC requires Member States to take all necessary measures to check by sampling the sulphur content of the marine fuel being used for on-board combustion while in relevant sea areas and ports. In this context, sampling should be broadly construed as covering all the methods of compliance verification set out in Article 6(1a)(a), (b) and (c) of that Directive.

(4) Physical sampling of marine fuel being used for the purpose of verifying compliance should be carried out either through obtaining and analysing a fuel spot sample from the ship's fuel service system, or by analysing the relevant sealed bunker samples on board.

(5) The frequency of sampling should be determined on the basis of the number of individual ships calling in a Member State, the verification of ship documentation, the use of alternative targeting technologies to ensure a fair share of burden among Member States and cost-effectiveness as well as specific alerts about individual ships.

(6) The sampling of marine fuels while being delivered to ships should be targeted on marine fuel suppliers which have been repeatedly found not to comply with the specification stated on the bunker delivery note, taking into account the volume of marine fuels marketed by the supplier.

(7) In order to implement Directive 1999/32/EC in a cost-effective manner, Member States should be encouraged to comply with the sampling frequency by selecting ships for fuel compliance verification on the basis of national risk-based targeting mechanisms or the use of innovative compliance verification technologies, and to share the collected information with other Member States.

(8) A dedicated Union information system, developed and operated by the European Maritime Safety Agency, available to Member States from 1 January 2015, is to serve as a platform to record and exchange information on the results of individual compliance verifications under Directive 1999/32/EC. Member States should be encouraged to use the system, that can significantly contribute towards ra-

tionalising and optimising the assessment of the compliance with the requirements of that Directive.

(9) In order not to impose a disproportionate administrative burden on Member States without a coast line, on ships flying their flag or on their marine fuel suppliers, certain provisions should not apply to those Member States.

(10) Reporting should take into account the best use of all available and state-of-the-art technologies so that the administrative burden is kept to a minimum, while leaving flexibility to those Member States which might prefer to report in a more traditional way. Therefore, Member States have the possibility to use the Union information system to fulfil the relevant annual reporting obligations under Directive 1999/32/EC.

(11) Not earlier than 1 January 2016, and subject to the availability of common shared data regarding sulphur compliance verifications and sampling, Member States may use the risk-based targeting mechanism integrated into the Union information system to prioritise ship fuel verification in a cost-effective manner.

(12) The measures provided for in this Decision are in accordance with the opinion of the Committee established in accordance with Article 9(1) of Directive 1999/32/EC.

Article 1

Subject matter

This Decision lays down the rules concerning sampling methods and frequency as well as reporting under Directive 1999/32/EC as regards the sulphur content of marine fuels.

Article 2

Definitions

For the purposes of this Decision, the following definitions shall apply:

(1) 'Service tank' means a tank from where fuel is taken to feed the downstream fuel-oil combustion machinery;

(2) 'Fuel service system' means the system supporting the distribution, filtration, purification and supply of fuel from the service tanks to the fuel-oil combustion machinery;

(3) 'Ship's representative' means the ship's master or officer in charge who is responsible for the marine fuels being used, documentation and for agreeing on the alternative fuel sampling point location;

(4) 'Sulphur inspector' means a person duly authorised by the competent authority of a **Contracting Party** to verify compliance with the provisions of Directive 1999/32/EC;

(5) 'Union information system' means a system using the port call data of individual ships within SafeSeaNet, the information management system established by Article 22a of Directive 2002/59/EC of the European Parliament and of the Council ('SafeSeaNet'), to record and exchange information on the results of individual compliance verifications under Directive 1999/32/EC, and operated by the European Maritime Safety Agency. A Union risk-based targeting mechanism is developed on the

basis of those results of individual compliance verifications and associated findings under Directive 1999/32/EC.

Article 3

Frequency of sampling of marine fuels being used on board ships

1. **Contracting Parties** shall carry out inspections of ships' log books and bunker delivery notes on board of at least 10% of the total number of individual ships calling in the relevant **Contracting Party** per year.

The total number of individual ships calling in a **Contracting Party** shall correspond to the average number of ships of the three preceding years as reported through SafeSeaNet.

2. As from **1 January 2019**, the sulphur content of the marine fuel being used on board shall also be checked by sampling or analysis or both of at least the following percentage of the inspected ships referred to in paragraph 1:

- (a) 40% in **Contracting Parties** fully bordering SO_x Emission Control Areas (SECAs);
- (b) 30% in **Contracting Parties** partly bordering SECAs;
- (c) 20% in **Contracting Parties** not bordering SECAs.

As from 1 January 2020, in **Contracting Parties** not bordering SECAs, the sulphur content of the marine fuel being used on board shall also be checked by sampling or analysis or both of 30% of the inspected ships referred to in paragraph 1.

Contracting Parties may comply with the frequencies specified in this paragraph by selecting ships on the basis of national risk-based targeting mechanisms and of specific alerts on individual ships reported in the Union information system.

3. The number of individual ships calculated pursuant to paragraph 2 that shall also be checked by sampling or analysis or both can be adjusted, but not reduced by more than 50%, either:

- (a) by subtracting the number of individual ships for which possible non-compliance is verified using remote sensing technologies or quick scan analysing methods; or
- (b) by setting an appropriate number where document verifications in accordance with paragraph 1 are carried out on board of at least 40% of the individual ships calling in the relevant **Contracting Parties** per year.

The adjustment referred to in points (a) and (b) shall be reported in the Union information system.

4. As from 1 January 2016, instead of complying with the annual frequency laid down in paragraphs 1, 2 and 3, a **Contracting Party** may apply an annual frequency of sampling on the basis of the Union risk-based targeting mechanism.

5. This Article shall not apply to the Czech Republic, Luxembourg, Hungary, Austria and Slovakia.

Article 4

Frequency of sampling of marine fuels while being delivered to ships

1. In accordance with Article 6(1a)(b) of Directive 1999/32/EC and taking into account the volume of marine fuels delivered, **Contracting Parties** shall carry out sampling and analysis of marine fuels while being delivered to ships by those marine fuel suppliers registered in that **Contracting Party** that have been found at least three times in any given year to deliver fuel that does not comply with the specification stated on the bunker delivery note on the basis of the reporting in the Union information system or in the annual report referred to in Article 7.
2. This Article shall not apply to the Czech Republic, Luxembourg, Hungary, Austria and Slovakia.

Article 5

Sampling methods for the verification of the sulphur content of the marine fuel being used on board

1. In accordance with Article 3, where the sulphur content of marine fuels being used on board is verified, **Contracting Parties** shall apply the following staged approach to sampling and compliance verification of sulphur standards:
 - (a) inspection of ships' log books and bunker delivery notes;
 - (b) as appropriate, one or both of the following means of sampling and analysis:
 - (i) analysis of the sealed bunker samples on board ships accompanying the bunker delivery note which have been taken in accordance with Regulation 18(8.1) and (8.2) of Annex VI to MARPOL;
 - (ii) on-board spot sampling of the marine fuels for on-board combustion in accordance with Article 6 followed by analysis.
2. At the end of the sulphur content verification and analysis, the sulphur inspector shall record the details of the fuel-specific inspection and findings in line with the requested type of information referred to in Article 7(a).

Article 6

On-board spot sampling

1. **Contracting Parties** shall take the on-board spot sample of marine fuel through a single or multiple spot sample at the location where a valve is fitted for the purpose of drawing a sample in the fuel service system, as indicated on the ship's fuel piping systems or arrangement plan and as approved by the Flag Administration or Recognised Organisation acting on its behalf.
2. In the absence of the location referred to in paragraph 1, the fuel sampling point shall be the location where a valve is fitted for the purpose of drawing a sample and shall fulfil all of the following conditions:
 - (a) be easily and safely accessible;
 - (b) take into account different fuel grades being used for the fuel-oil combustion machinery item;
 - (c) be downstream of the fuel in use from the service tank;

(d) be as close to the fuel inlet of the fuel-oil combustion machinery item as feasible and safely possible taking into account the type of fuels, flow-rate, temperature, and pressure behind the selected sampling point;

(e) be proposed by the ship's representative and accepted by the sulphur inspector.

3. **Contracting Parties** may take a spot sample at more than one location in the fuel service system to determine whether there is a possible fuel cross-contamination in the absence of fully segregated fuel service systems, or in case of multiple service tank arrangements.

4. **Contracting Parties** shall ensure that the spot sample is collected in a sampling container from which at least three sample bottles can be filled which are representative of the marine fuel being used.

5. **Contracting Parties** shall take measures to ensure the following:

(a) that the sample bottles are sealed by the sulphur inspector with a unique means of identification installed in the presence of the ship's representative;

(b) that two sample bottles are taken ashore for analysis;

(c) that one sample bottle is retained by the ship's representative for a period of not less than 12 months from the date of collection.

Article 7

Information to be included in the annual report

The annual report to be submitted by the **Contracting Parties** to the **Secretariat** on the compliance with sulphur standards for marine fuels shall include at least the following information:

(a) the total annual number and type of non-compliance of measured sulphur content in examined fuel, including the extent of individual sulphur content non-conformity and the average sulphur content determined following sampling and analysis;

(b) the total annual number of document verifications, including bunker delivery notes, location of fuel bunkering, oil record books, log books, fuel change-over procedures, and records;

(c) claims of non-availability of marine fuels as referred to in Article 4a(5b) of Directive 1999/32/EC, including the ship details, bunkering port and **Contracting Parties** where the non-availability occurred, number of claims made by the same ship, and type of bunker unavailable;

(d) notifications and letters of protest with respect to the sulphur content of fuels against marine fuel suppliers in their territory;

(e) a list containing the name and address of all marine fuel suppliers in the relevant **Contracting Party**;

(f) the description of the use of alternative emission abatement methods, including trials and continuous emission monitoring, or alternative fuels and compliance checks of continuous achievement of SO_x reduction in accordance with Annexes I and II to Directive 1999/32/EC of the ships flying the flag of the **Contracting Party**;

(g) where applicable, description of national risk-based targeting mechanisms, including specific alerts, and the use and outcome of remote sensing and other available technologies for prioritising

individual ships for compliance verification;

(h) total number and type of infringement procedures initiated or penalties or both, the amount of fines imposed by the competent authority to both ship operators and marine fuel suppliers;

(i) for each individual ship, following the inspection of its log books and bunker delivery notes or sampling or both:

(i) ship particulars, including IMO number, type, age of ship and tonnage;

(ii) reports on sampling and analysis, including the number and type of samples, the sampling methods used, and sampling locations, for compliance verification of the ship type;

(iii) relevant information on bunker delivery notes, location of fuel bunkering, oil record books, log books, fuel change-over procedures, and records;

(iv) enforcement action and legal procedures initiated at the national level or penalties or both against that individual ship.

Article 8

Format of the report

1. **Contracting Parties** may use the Union information system to record directly after the verification all relevant fuel-specific inspection details and findings, including sampling related information, into the system.

2. A **Contracting Party** using the Union information system to record, exchange and share data on the compliance verification may use the annual aggregated compilation of enforcement efforts provided by the Union information system to fulfil their reporting obligations laid down in Article 7 of Directive 1999/32/EC.

3. **Contracting Parties** not using the Union information system shall either facilitate a connection between the Union information system and their national system that can at least record, where applicable, the same fields as those in the Union information system, or report electronically on all items referred to in Article 7.

Article 9

Entry into force

This Decision shall enter into force on the day of its adoption.¹

¹ The text displayed here corresponds to Article 5 of Decision 2016/15/MC-EnC.