II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 17 December 2002

on a request from Greece for authorisation to use heavy fuel oils with a maximum sulphur content of 3 % by mass in part of its territory

(notified under document number C(2002) 2475)

(Only the Greek text is authentic)

(2003/3/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EC [1], and in particular the second subparagraph of Article 3(5) thereof,

Whereas:

(1) Pursuant to Article 3(1) of Directive 1999/32/EC Member States are required to take all necessary steps to ensure that as from 1 January 2003 within their territory heavy fuel oils are not used if their sulphur content exceeds 1 % by mass.

(2) Pursuant to Article 3(2), of that directive a Member State may, under certain conditions, authorise heavy fuel oils with a sulphur content of between 1 % and 3 % by mass to be used in part or the whole of its territory.

(3) Greece applied on 17 December 2001 for the Commission's approval for the authorisation of the use of heavy fuel oil with a maximum sulphur content of 3 % by mass in the whole of its territory, except for the Attica Basin. Greece states that a maximum sulphur content of 3 % by mass is 10 % lower than that of the heavy fuel oil currently in use.

(4) The Commission requested additional information from the Greek authorities on 23 January 2002. Greece submitted this information on 19 February 2002 and subsequently revised its request on 4 June 2002 to seek a time-limited derogation until 2008 with a review for the remaining period.

(5) Greece provided data stating that the relevant Community ambient air quality standards for sulphur dioxide set down in Council Directive 80/779/EEC of 15 July 1980 on air quality limit values and guide values for sulphur dioxide and suspended particulates [2] and Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air [3], as amended by Commission Decision 2001/744/EC [4], are complied with. In addition, on the basis of indicative measurements taken at three representative points, which coincide with ecosystem zones, concentrations for sulphur dioxide in ambient air are below the 20 $\mu g/m^3$-limit value for the protection of ecosystems set out in Directive 1999/30/EC. Greece states that in general concentrations of sulphur dioxides in ambient air within its territory are low, nevertheless, in areas surrounding major thermal stations powered with lignite concentrations are higher. However, measurements provided by Greece, from monitoring stations several kilometres from the lignite-powered stations are within the relevant limit values set out in Directive 80/779/EEC as amended by Directive 89/427/EEC [5].

(6) Greece states that emissions of sulphur dioxide presently amount to approximately 483 000 tonnes per annum. However, the level of emissions is expected to fall to 300 000 tonnes per annum due to increasing use of natural gas in the thermal power generation sector and due to measures that will be required to comply with

[1] OJ L 121, 11.5.1999, p. 13.

[2] OJ L 229, 30.8.1980, p. 30.
[3] OJ L 163, 29.6.1999, p. 41.
[4] OJ L 278, 23.10.2001, p. 35.
[5] OJ L 201, 14.7.1989, p. 53.

Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants [1].

(7) Greece states that while it makes virtually no contribution to the deposition of sulphur or the critical loads for acidity being exceeded in other Member States, it acknowledges that it contributes 1 % of the sulphur deposition in Italy.

(8) The Commission requested the help of the cooperative programme for monitoring and evaluation of the long range transmission of air pollutants in Europe (EMEP), which conducted a more detailed analysis of the Greek contribution to sulphur deposition, in particular in Italy, where critical loads for acidity are exceeded in 5 % of the ecosystems that are sensitive to acidification.

(9) The results of this analysis by EMEP, contained in reports of 22 February and 22 March 2002 show that approximately 57 % of the Greek sulphur dioxide emissions originate outside the Attica Basin and that the geographical area affected by these emissions extends over the whole of Europe as a consequence of the long range transport.

(10) In the case of Italy, the EMEP analysis shows that Greek emissions contribute to critical loads for acidity being exceeded in at least six grid squares where exceedances of critical loads were established. In those grid squares the contribution from Greece does not exceed 0,5 %. EMEP concludes that this analysis is in agreement with calculations that assign 1 % of the total sulphur deposition in Italy to Greece.

(11) On 5 July 2002, the Greek authorities announced that the already submitted notification was incomplete and that additional information would be submitted by the end of July. By letter of 15 July 2002, the Commission took note of the above and requested the Greek authorities to provide the announced information as soon as possible, indicating that the period of six months set up in Article 3(5) of the Directive would start to run when such information was received.

(12) On 30 July 2002 the Greek authorities submitted data on sulphur dioxide emissions in Greece for the year 2000 and suggested that the Greek request should be examined on the basis of this data. On 3 October 2002, they also submitted a recent assessment of the protection level of ecosystems in Italy with a view to the Greek contribution to exceedance of critical loads for acidity.

(13) The Commission requested EMEP to evaluate the additional information provided by Greece on 30 July and 3 October 2002, respectively. Supported by the Coordination Centre for Effects on Mapping of Critical Levels and Loads (CCE) EMEP confirmed the former conclusion that Greek emissions of sulphur dioxide as reported by Greece for the year 2000 contribute to the exceedance of critical loads for acidity in Italy. The results are summarised in a report of 19 November 2002, according to which it is substantiated beyond any reasonable doubt that Greek emissions do contribute to excess deposition above the critical loads for acidification in other Member States, particularly Italy.

(14) In light of the information provided by Greece on ambient air quality and the analysis conducted by EMEP supported by CCE on the Greek contribution to critical loads being exceeded, the Commission considers that the condition, as adopted by the Council, regarding critical load exceedance, that must be complied with for a Member State to be permitted to authorise the use of heavy fuel oils with a sulphur content of between 1 % and 3 % by mass in part or the whole of its territory, is not met and therefore the Commission cannot grant the derogation requested by Greece.

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

HAS ADOPTED THIS DECISION:

Article 1

The request by Greece to authorise the use of heavy fuel oils with maximum sulphur content of between 1 % and 3 % by mass in part of its territory from 1 January 2003 is denied.

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 17 December 2002.

For the Commission

Margot WALLSTRÖM

Member of the Commission

[1] OJ L 309, 27.11.2001, p. 1.