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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION STAFF WORKING DOCUMENT for the Council Shipping Working party IMO - Union submission to be submitted to the Intersessional Meeting of the IMO on the Consistent implementation of Regulation 14.1.3 of MARPOL Annex VI in London 9 – 13 July 2018 – development of draft Guidelines for consistent implementation of regulation 14.1.3 of MARPOL Annex VI

Delegations will find attached document SWD(2018) 162 final.

Encl.: SWD(2018) 162 final

Brussels, 24.4.2018  
SWD(2018) 162 final

**COMMISSION STAFF WORKING DOCUMENT**

**For the Council Shipping Working party**

**IMO - Union submission to be submitted to the Intersessional Meeting of the IMO on the Consistent implementation of Regulation 14.1.3 of MARPOL Annex VI in London 9 – 13 July 2018 – development of draft Guidelines for consistent implementation of regulation 14.1.3 of MARPOL Annex VI**

**COMMISSION STAFF WORKING DOCUMENT**  
**For the Council Shipping Working party**

**IMO - Union submission to be submitted to the Intersessional Meeting of the IMO on the Consistent implementation of Regulation 14.1.3 of MARPOL Annex VI in London 9 – 13 July 2018 – development of draft Guidelines for consistent implementation of regulation 14.1.3 of MARPOL Annex VI**

**PURPOSE**

The document in Annex contains a draft Union submission to the Intersession Meeting of the IMO on the Consistent implementation of Regulation 14.1.3 of MARPOL Annex VI, taking place in London 9 – 13 July 2018. It is hereby submitted to the appropriate technical body of the Council with a view to achieving agreement on transmission of the document to the IMO prior to the required deadline of 25 May 2018<sup>1</sup>.

MARPOL Annex VI requirements, with regard to limitation of SO<sub>x</sub> emissions, are implemented in EU law in Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels<sup>2</sup>.

INTERSESSIONAL MEETING ON  
CONSISTENT IMPLEMENTATION OF  
REGULATION 14.1.3 OF MARPOL ANNEX VI

ISWG-AP 2/X  
X May 2018  
ENGLISH ONLY

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<sup>1</sup> The submission of proposals or information papers to the IMO, on issues falling under external exclusive EU competence, are acts of external representation. Such submissions are to be made by an EU actor who can represent the Union externally under the Treaty, which for non-CFSP (Common Foreign and Security Policy) issues is the Commission or the EU Delegation in accordance with Article 17(1) TEU and Article 221 TFEU. IMO internal rules make such an arrangement absolutely possible as regards existing agenda and work programme items. This way of proceeding is in line with the General Arrangements for EU statements in multilateral organisations endorsed by COREPER on 24 October 2011.

<sup>2</sup> OJ L 132, 21.5.2016, p. 58.

**DEVELOPMENT OF DRAFT GUIDELINES FOR CONSISTENT IMPLEMENTATION OF  
REGULATION 14.1.3 OF MARPOL ANNEX VI**

**Submitted by the European Commission on behalf of the EU**

**SUMMARY**

*Executive summary:* This document provides input to agenda item 2 on the development of draft Guidelines for consistent implementation of regulation 14.1.3 of MARPOL Annex VI regarding a standard format for reporting of fuel oil non-availability reports (FONARs). The document also proposes information sharing on FONARs.

*Strategic Direction, if applicable:* 7.3

*Output:* 7.3.1

*Action to be taken:* Paragraph 19

*Related documents:* MEPC 71/17, PPR 4/21 (Annex 13), PPR 5/13/4, PPR 5/13/6, PPR 5/13/10, PPR 5/13/5, PPR 5/WP 6 (Annex 5).

**Background**

1 During MEPC 70, the Committee agreed that the effective date of implementation of the fuel oil standard in regulation 14.1.3 of MARPOL Annex VI should be 1 January 2020. At MEPC 71, the Committee further approved the new output on “Consistent implementation of regulation 14.1.3 of MARPOL Annex VI”, for inclusion in the PPR Sub-Committee’s biennial agenda for 2018/2019 and the provisional agenda for PPR5, with a target completion year of 2019.

2 IMO Assembly 30 approved the request from MEPC 71 for an intersessional working group meeting in 2018 due to the urgency of the matter. PPR 5 agreed the outline of the draft guidelines of consistent implementation of regulation 14.1.3 of MARPOL Annex VI.

3 The sulphur content of certain liquid fuels including marine fuels used by ships operating in waters falling under the jurisdiction of EU Member States is regulated through Directive (EU) 2016/802. The main Directive's provisions require stricter sulphur-in-fuel content: 0,10 % on all ships operating in (SOx)-ECAs established in EU waters (since January 2015) and on ships at berth (since January 2010); 0,50 % on all ships operating outside the (SOx)-ECAs as from 1 January 2020 as in regulation 14.1.3 of MARPOL Annex VI.

4 The EU legislation also contains provisions obliging port State to notify the European Commission when a ship has presented evidence of the non-availability of marine fuels which comply with Directive (EU) 2016/802. The EU Member States have started to

work on core items of the draft guidelines and also preliminary discussed with industry the proposals submitted in this document, under the European Sustainable Shipping Forum<sup>3</sup>.

5 Section 4 of the outline of the draft guidelines on consistent implementation of regulation 14.1.3 of MARPOL Annex VI as set out in Annex 5 to PPR 5/WP 6 concerns fuel oil non-availability reports. This document provides comments on the proposal by Republic of Korea in document PPR 5/13/10 on a draft standard format for reporting of fuel oil non-availability. While there is agreement with the need for a standardized format of the FONAR, it is found that there is need for further development of the format in order to promote consistent implementation of regulation 14.1.3 of MARPOL Annex VI.

### **Guidance to ships on fuel oil non-availability**

6 According to regulation 18.2 of MARPOL annex VI, upon receiving of FONAR a competent authority of a Party shall scrutinize the information received and decide what action to take, including taking no action.

7 It should be made clear and communicated to ships / operators that sending a FONAR should not be considered as an exemption. Further, ships/operators should be made aware that in case of unduly and/or repeated claims of non-availability, the competent authority may require additional documentation and substantiation of fuel oil non-availability claims. The ship/operator may also be subject to more extensive inspections or examinations while in port.

### **Ships voyage and bunkering history**

9 According to Regulation 18.2.2 of MARPOL Annex VI, ships are not required to deviate from their planned voyage or to delay unduly its voyage in order to obtain compliant fuel. Ships /operators are, however, required by Regulation 18.1.2 to do their best efforts obtain compliant fuel. In order for the competent authority to evaluate if the ship/operator did their best efforts to obtain compliant fuel, further information should be requested in the FONAR regarding the ship's voyage and bunkering history. This information should be readily available from the ship's logbooks.

10 It is therefore proposed that the standardized FONAR should include information of the ship's voyage (previous [3] ports of call). It is also proposed to request information on the configuration of fuel tanks and bunkering history as an estimate of the fuel used for the trip from the port where non-compliant fuel was bunkered and until the next port of call. This will enable the competent authority to evaluate that the ship did not bunker more fuel than necessary to reach the next port or bunker facility, where compliant fuel can be obtained. A ship should not bunker more non-compliant fuel than necessary in order to reach the next port of call or relevant bunker facility along its planned route, taking into account the operational safety of the ship. If a ship on several occasions bunkers more non-compliant fuel

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<sup>3</sup> The European Sustainable Shipping Forum is an expert group of the European Commission, bringing together 28 EU Member States and 32 maritime organisations. The forum aims at enabling, inter alia, a structured dialogue on the monitoring of compliance with the sulphur regulations with focus on the consistent implementation of the 0.50% sulphur cap, creating the framework conditions for the use of liquefied natural gas (LNG) as a ship fuel, the increasing use of EGCS technology in shipping, in particular its technical, economic, environmental and operational aspects, coordinating research and development activities and encouraging innovation, exploring all available financing opportunities, ensuring compatibility with the EU's broader environmental protection objectives, and on identifying potential improvements in sustainability and competitiveness.

than necessary to reach the next port or bunker hub where compliant fuel can be obtained, it may gain an economic advantage and thereby distort competition.

### **Documentation of actions taken to ensure compliance**

11 According to regulation 18.2.1 of MARPOL Annex VI, the competent authority of the party is entitled to require the ship to present a record of the actions taken to achieve compliance. In order for the competent authority to verify the attempts made to obtain compliant fuel, it is proposed that the FONAR should be accompanied by documentation for the attempts made, (e.g. copy of emails to and from suppliers). The documentation should include the date of contact and answer from the supplier. Further, information on the grade, quantity and quality of the fuel requested and fuel supplied should be included. Confidential information on price ect. may be omitted.

### **Disruption of fuel oil supply**

12 In the draft FONAR proposed by Republic of Korea in the annex to PPR 5/13/10, disruption of fuel oil supply is mentioned as a possible cause of fuel oil non-availability. It is proposed to make it possible to document such information in the FONAR, when such situation occurs. It is noted that according to regulation 18.1 of MARPOL Annex VI, each Party shall inform the Organization of compliant fuel oil in its ports and terminals.

### **Operational constraints**

13 The annex to document PPR 5/13/10 includes operational constraints as a possible reason for non-availability of compliant fuel oil. However, as a part of their preparations for 2020, ships/operators should prepare to be able to operate on commercially available fuel oils meeting ISO 8721, including but not limited to fuels with differing viscosities, different sulphur contents  $\leq 0.50$  % (requiring different lube oils) as well as fuel requiring heating and/or other treatment on board.

14 Neither operational constraints nor the fact that the compliant fuels available are not compatible with fuel oil which is already on board, should be regarded as non-availability. It is expected that proper preparations, proactive fuel oil management and advanced planning of bunkering operations would help to avoid mixing of fuel oils

15 If a ship/operator, however, has chosen to bunker non-compliant fuel due to concerns that the quality of the compliant fuel available would cause operational or safety problems on board the ships, the concerns should be thoroughly documented, preferably by a third party.

### **Information sharing on FONARs**

16 According to regulation 18.2.5, a Party shall notify the Organization when a ship has presented evidence of the non-availability of compliant fuel oil. The Party should also inform the coastal State / member State where the ship was not able to purchase compliant fuel in order for them to take action as appropriate. According to regulation 18.1 of MARPOL Annex VI, each party shall take all necessary steps to promote the availability of fuel oils that comply with MARPOL Annex VI, and inform the Organization of the availability of compliant fuel oil.

17 In order to ensure a more efficient sharing of information on FONARs, merits is seen in making the FONAR's available to all Parties, e.g. via a section of the IMO GISIS, once available.

### **Recommendation**

18 Based on the considerations in sections 6 to 17 above, it is recommended that the draft fuel oil non-availability report (FONAR) suggested by Republic of Korea in the Annex to document PPR 5/13/10 is amended as set out in the annex to this document.

### **Action requested by the Intersessional Working Group**

19 The Intersessional Working Group is invited to note considerations in section 6 to 17 and the recommendations in section 18 and take action as appropriate.

## ANNEX

### DRAFT REPORT ON COMPLIANT FUEL NON-AVAILABILITY

Proposed amendments to PPR 5/13/10 are underlined and proposed deletions are ~~striked out~~.

#### ANNEX

#### **DRAFT ~~REPORT ON COMPLIANT FUEL OIL NON-AVAILABILITY~~ REPORT (FONAR Report)**

Note:

1 This report is to be sent to the flag Administration and to the competent authorities port authority in the relevant port(s) of destination with a copy to be sent to the flag Administration in accordance with regulation 18.2.4 of MARPOL Annex VI. The report shall be sent as soon as it is determined that the ship/operator will be unable to procure compliant fuel and preferably before the ship leaves the port/terminal where compliant fuel cannot be obtained. A copy of the FONAR shall be kept on board for inspection for at least [12] months.

2 This report is to be used to provide evidence if a ship is unable to obtain fuel oil compliant with the provisions stipulated in regulations 14.1.3 and 14.4.3.

3 Before filing a FONAR Report, the following should be observed by the ship/operator:

3.1 A fuel oil non-availability report should not be considered to mean an exemption. According to regulation 18.2 of MARPOL annex VI, it is the responsibility of the Party through its competent authority to scrutinize the information provided, including on potential claims already filed during a period of [12] months, and decide what action to take.

3.2 In case of unduly and/or repeated claims of non-availability, the Party may require additional documentation and substantiation of fuel oil non-availability claims. The ship/operator may also be subject to more extensive inspections or examinations while in port.

3.2 Ships/operators are expected to account for logistical conditions and/or terminal/port policies when planning bunker delivery, including but not limited to having to change berth or anchor within a port or terminal in order to obtain compliant fuel.

3.3 Ships/operators are expected to prepare as far as reasonably possible to be able to operate on commercial available fuel oils meeting ISO 8721, included but not limited to fuels with differing viscosities, different sulphur content  $\leq 0.50$  % (requiring different lube oils) as well as fuel requiring heating and/or other treatment on board.

#### **1 Particulars of ship**

- 1.1 Name of ship: \_\_\_\_\_
- 1.2 IMO number: \_\_\_\_\_
- 1.3 Flag: \_\_\_\_\_
- 1.4 Port of registry: \_\_\_\_\_
- 1.5 Gross tonnage: \_\_\_\_\_
- 1.6 Sulphur content of the fuel in use: \_\_\_\_\_

#### **2 Description of ship's voyage ~~plan~~ and bunkering history**



## 2.1. Voyage history

2.1.1 For the previous [3] ports of the ship's voyage ~~Last port of departure~~ (Including the last port of call where fuel was not available), please provide the following information:

	Port name	Date of arrival	Date of departure	Sulphur content of fuel used from this port to next
Last port (where compliant fuel was not available)				Not applicable.
Port before the one above				
Port before the one above				

2.1 Last port of departure \_\_\_\_\_

2.2 Date of departure from last port (DD/MM/YYYY): \_\_\_\_\_

2.2 Next Port of call: \_\_\_\_\_

2.1.3 Date of arrival at next port of call (DD/MM/YYYY): \_\_\_\_\_

2.1.4 Date ship expects to departure from the next port of call (DD/MM/YYYY): \_\_\_\_\_

2.2.3 Sulphur content of fuel oil in use: \_\_\_\_\_

## 2.2 Bunkering history and fuel use

Grade, quantity and sulphur content of the fuel requested: \_\_\_\_\_

Grade, quantity and sulphur content of the fuel received: \_\_\_\_\_

For the trip from the last port of departure (where compliant fuel was not available) to next port of call (where compliant fuel is expected to be available), taking into account the operational safety of the ship, please supply the following information:

Distance from last port of departure to port of call

- Engine (kW)
- Speed
- Voyage duration
- Total expected daily fuel oil consumption (Mt), all uses
- Sulphur content of fuel used (% m/m)

For each fuel tank, please supply the following information:

- Volume of tank

- Volume of fuel in tank
- Sulphur Content
- Last bunkering port / terminal
- Last bunkering (date)
- Amount bunkered in tank

### **3 Evidence of attempts to purchase compliant fuel**

3.1 Description of all actions taken to attempt to achieve compliance, including attempts to locate alternative sources for compliant fuel oil

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3.2 Description of the reason why, despite best efforts, compliant fuel oil was not ~~available~~ obtained:

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3.3 Name and addresses of suppliers contacted, date of contact

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Please attach copies of communication with suppliers (e.g. e-mails to and from suppliers)

### **4. Plans to obtain compliant fuel**

Describe availability of compliant fuel oil at the next port of call/bunker facility, and plans to obtain it:

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If compliant fuel oil is not available at the port of call, list the lowest sulphur content of available fuel oil(s) or the lowest sulphur content of available fuel oil at the next port of call:

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## **5. Special circumstances**

### **5.1 In case of fuel oil supply Disruption in the supply of fuel oil in a member State or region.**

In case of disruption in the fuel oil supply, this should be documented by copy of communication with the competent authorities of the member State in question.

Name of port at which vessel was scheduled to receive compliant fuel oil: \_\_\_\_\_

Name of the fuel oil supplier that was scheduled to deliver: \_\_\_\_\_

Contact details of the competent authority of the member State in question:  
\_\_\_\_\_

### **5.2 Operation constraints**

If non-compliant fuel has been bunkered due to concerns that the quality of the compliant fuel available would cause operational or safety problems on board the ships, the concerns should be thoroughly documented, preferably by a third party.

~~Describe any operation constraints that prevented using available compliant fuel oil (e.g. with respect to viscosity or other fuel oil parameters):~~ \_\_\_\_\_

Please describe, the steps the ship has taken, or is taking, to resolve these operational constraints, if applicable, that will allow ship to use all commercially available residual fuel oils \_\_\_\_\_ ~~blends:~~

\_\_\_\_\_  
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### **5-6 Company information**

Name of Company (as named on ISM DOC): \_\_\_\_\_

Address (street, city, country, postal/zip code): \_\_\_\_\_

ISM Designated Person Ashore (DPA): \_\_\_\_\_

Telephone number/email: \_\_\_\_\_

Local agent(s) in the port of call(s): \_\_\_\_\_

Print name: \_\_\_\_\_ Date (DD/MM/YYYY): \_\_\_\_\_

**Signature of Master:** \_\_\_\_\_