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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 74th session of the Marine Environment Protection Committee (MEPC 74) of the IMO in London from 13 – 17 May 2019 concerning consideration on the enhancement of the implementation of regulation 18 of MARPOL Annex VI
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Delegations will find attached document SWD(2019) 25 final.

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COMMISSION STAFF WORKING DOCUMENT

For the Council Shipping Working party

IMO – Union submission to be submitted to the 74th session of the Marine Environment Protection Committee (MEPC 74) of the IMO in London from 13 – 17 May 2019 concerning consideration on the enhancement of the implementation of regulation 18 of MARPOL Annex VI

COMMISSION STAFF WORKING DOCUMENT
For the Council Shipping Working party

IMO – Union submission to be submitted to the 74th session of the Marine Environment Protection Committee (MEPC 74) of the IMO in London from 13 – 17 May 2019 concerning consideration on the enhancement of the implementation of regulation 18 of MARPOL Annex VI

PURPOSE

The document in Annex contains a draft Union submission to the 74th session of the Marine Environment Protection Committee of the IMO concerning consideration on the enhancement of the implementation of regulation 18 of MARPOL Annex VI, in particular in relation to fuel oil quality and reporting of non-availability of compliant fuel oils, including the enhancement of the GISIS module for data collection and analysis. The implementation of regulation 18 is closely linked to discussions at IMO on the consistent implementation of the global sulphur cap under regulation 14 of MARPOL Annex VI, which comes into force on 1 January 2020. The proposal's aim is to provide a transparent and harmonized method of raising awareness of any issues of fuel oil quality or non-availability. It is also a means of addressing a pertinent issue, while not posing a risk of delays to the implementation of the sulphur cap. 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 8 March 2019¹.

The sulphur-in-fuel-related requirements of the revised MARPOL Annex VI have been reflected in Directive (EU) 2016/802 as regards the sulphur content of certain liquid fuels (codifying Directive 1999/32/EC and all subsequent amendments including Directive 2012/33/EU of 21 November 2012)². While regulating only the sulphur content in marine fuel, the Directive broadly mirrors the IMO legal framework in relation to fuel quality, notably in relation to the definition of marine fuels, including standard ISO 8217, as well as to the sulphur in marine fuel verification procedure aligning with Appendix VI to Annex VI to MARPOL, which was the object of a Union submission to the IMO Intersessional Working Group on Air Pollution, (ISWG-AP 1/3/2) convened in July 2018 to address outstanding issues on the consistent implementation of the global sulphur cap.

¹ 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.

² OJ L 132, 21.5.2016, p. 58.

Moreover, in terms of fuel availability, this is also specifically covered in Article 6(7) and (9) of Directive (EU) 2016/802 and was also the object of a Union submission to the IMO Intersessional Working Group on Air Pollution, dealing with Fuel Oil Non-Availability Reporting (ISWG-AP 1/2/6). Finally, aspects of lack of availability and quality are also linked to the on going work aiming at revising the Port State Control regime (ISWG-AP 1/3/2) to make it more suitable to the enforcement specificities of the global sulphur cap but also able to contribute with relevant data resulting from ship inspection to the collection in question as outlined in the present submission to MEPC 74.

Therefore the said draft Union submission falls under EU exclusive competence.

AIR POLLUTION AND ENERGY EFFICIENCY

Consideration on the enhancement of the implementation of regulation 18 of MARPOL Annex VI

Submitted by the European Commission on behalf of the European Union

SUMMARY

Executive summary: This document presents considerations and concrete proposals on data collection concerning fuel oil quality and reporting of non-availability of compliant fuel oils, including the enhancement of the GISIS MARPOL Annex VI module as requested at MEPC 73/19 paragraph 5.33 with a view to enhance the implementation of regulation 18 of MARPOL Annex VI.

Strategic Direction, if applicable: 1

Output: 1.17

Action to be taken: Paragraph 12

Related documents: MEPC 73/19

Introduction

1. MEPC 73 invited concrete proposals on how to enhance the implementation of regulation 18 of MARPOL Annex VI, in particular on fuel oil quality and reporting of non-availability of compliant fuel oils, including the enhancement of the GISIS module for data collection and analysis.

Enhancement of data collection on fuel oil availability and quality

2. The scope of data collected is to be limited to regulation 18 and 14.2 of MARPOL Annex VI with a view to create transparency and raise awareness on potential issues related to fuel oil quality and availability to ensure consistent enforcement of regulations 14 and 18.

3. It is suggested for consideration to broaden the reporting scope of the following data and to add to current obligations the collection of new relevant data as follows:

- Data already subject to reporting in accordance with MARPOL:
 - Information on worldwide average sulphur content of residual fuel, cf. reg. 14.2
 - Information on fuel availability, cf. reg. 18.1
 - Information on compliant fuel oil unavailability (number of FONAR submitted including where the unavailability occurred), cf. reg. 18.2.5

- Information of cases where fuel oil suppliers have failed to meet the requirements specified in regulations 14 or 18, cf. reg. 18.9.6
- Data not subject to reporting in accordance with MARPOL:
 - Cases where the competent authority of a party has taken steps to verify the contents of a Bunker Delivery Note (BDN) (reg. 18.7.1).
 - Cases where a Party has taken action against fuel oil suppliers that have been found to deliver fuel oil that does not comply with that stated on the Bunker Delivery Note (BDN) (reg 18.9.4).
 - Inspections by the competent authority where sulphur in fuel has been tested including where the inspection has taken place
 - Verifications by the competent authority where a representative fuel sample has been analyzed (reg 18.8.2).
 - Number of detentions related to or based on sulphur compliance including where these detentions have taken place (IMO Res. A.1119(30) Procedures for Port State Control, Paragraph 4.1.5.).

4. The scope of data collection on fuel quality could be further broadened by including the information currently provided by companies, on a commercial basis, based on testing and sampling services of bunker fuels delivered to ships for the purpose of assessing quality parameters of these fuels. These companies already provide data on the average sulphur content in residual fuel to the IMO pursuant to reg. 14.2 cf. the 2017 Guidelines for monitoring the worldwide average sulphur content of fuel oils supplied for use on board ships (resolution MEPC.192(61)). The results of IMO's sulphur monitoring programme were reported to the Committee in 2017 and were based on 141,175 residual fuel oil samples accounting for a total of 121,428,910 tonnes of fuel supplied for use on board ships. The total number of distillate fuel samples tested was 72,286, corresponding to 12,173,450 tonnes of distillate fuels supplied to ships. These cover between 25% and 35% of all deliveries. Only 0.33% of the tested residual fuel oils exceeded 3.50% sulphur, the current global limit, down from 0.53% in 2016.

5. These reported data should also cover information about the quality of the fuel tested beyond the sulphur content. This could provide a basis for determining fuel oil quality, also considering that the results are coming from companies accredited and experienced in testing the content of marine fuels (*ISO 8217*, *ISO 17025*). However, issues such as the degree of the validation process of reported results on off specification fuels in particular -as well as on all other reported data- would need to be addressed. A dedicated reporting template could be developed to ensure uniform and unambiguous provision of quality data focusing on deviation from required specification affecting the handling and usability of the fuel by ships.

6. The current obligation for administration to report on availability could be made more effective by requiring testing agencies to contribute to the monitoring programme by providing information not just about the Sulphur content but also about the ports, dates and quantity of the fuels supplied. Such information should be provided on a more regular basis for example quarterly in the first year and then bi- annually for the duration of the collection period.

7. Synergies should be explored in relation to any future work at the MSC Committee as discussed at its 100th session on 'development of measures to enhance safety of ships

relating to the use of fuel oil' which may also require a potential collection of data focusing on fuel oil quality.

Existing mechanisms such as GISIS as data collection point

8. Existing joint platforms for data collection and sharing such as GISIS could be enhanced for reporting the data mentioned in paragraphs 3 to 6. The use of a one-point-of-entry for collecting data into play for the purpose of enhancing the implementation of regulation 14 and 18 of MARPOL Annex VI will provide certainty for competent authorities and facilitate data calibration and analysis to provide consistent enforcement. In particular, GISIS data management should as well be enhanced to allow for more filtering features of the reported data (i.e. display notifications from country or port of call, etc). This would require for example greater harmonization of the reported data, like mandatory fields or guidance to obtain relevant data for further analysis.

Life span and purpose of the data collection period

9. Data collection for greater transparency on fuel oil availability and fuel oil quality to ensure consistent enforcement should take place within a time frame of approximately 3 to 5 years. This will ensure that collection of data is strongly encouraged and that, therefore, the collected data depicts a true and fair picture of the status of availability and enforcement, while at the same time absorbing fluctuations of the data set that might be present in the post-shift phase of the new fuel types. However a preliminary picture taking stock of data on fuel quality and availability currently available in GISIS as well as an overview of the current use of GISIS with reference to obligations under Regulation 18 and 14 should be provided by the IMO secretariat by the end of 2019.

10. When the data collection period ends, the data should be analyzed with a view to assessing the consistent enforcement of regulation 18 of MARPOL Annex VI. Annual reviews of the data set could be useful.

Recommendations

11. Based on the considerations set out in paragraphs 3 and 8 above, it is recommended that:

- The IMO secretariat should provide a preliminary overview of data on fuel quality and availability currently available in GISIS as well as an overview of the current use of GISIS with reference to obligations under Regulation 18 and 14 by the end of 2019.
- An overall data collection period should further be set to 3 to 5 years.
- The scope of existing data collection as in para 3 should be enhanced taking into account para 4 and 5.
- The collection of additional data as in paragraph 3 should be carried out to effectively complement the existing reporting of information required.
- A more extensive use of GISIS by parties should be encouraged for reporting the data mentioned in paragraphs 3. Competent authorities of parties should commit to populate GISIS as one-point-of-entry for collecting data.
- New GISIS modules should be developed to collect data that are not currently reported (or collected).

Action requested at the MEPC74

12. The Committee is invited to consider recommendations in paragraph 11 taking into account the considerations in paragraphs 3 to 8 and take action as appropriate.