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date of receipt:	23 March 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject:	COMMISSION STAFF WORKING DOCUMENT Union submission to the <b>80th session of the International Maritime Organization's Marine Environment Protection Committee proposing a regulation/scope of work for the evaluation and harmonisation of rules and guidance on the discharges and residues from Exhaust Gas Cleaning Systems into the aquatic environment, including conditions and areas</b>
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Delegations will find attached document SWD(2023) 69 final.

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Brussels, 23.3.2023  
SWD(2023) 69 final

## **COMMISSION STAFF WORKING DOCUMENT**

**Union submission to the 80th session of the International Maritime Organization's Marine Environment Protection Committee proposing a regulation/scope of work for the evaluation and harmonisation of rules and guidance on the discharges and residues from Exhaust Gas Cleaning Systems into the aquatic environment, including conditions and areas**

## **Union submission to the 80<sup>th</sup> session of the International Maritime Organization's Marine Environment Protection Committee proposing a regulation/scope of work for the evaluation and harmonisation of rules and guidance on the discharges and residues from Exhaust Gas Cleaning Systems into the aquatic environment, including conditions and areas**

### **Purpose**

This Staff Working Document contains a draft Union submission to the 80<sup>th</sup> session of the International Maritime Organization's Marine Environment Protection Committee (MEPC 80). The IMO has indicatively scheduled MEPC 80 from 3 to 7 July 2023.

The draft submission proposes draft regulatory amendments to MARPOL Annex VI to regulate the discharge into the aquatic environment of discharge waters from Exhaust Gas Cleaning Systems (EGCS). It is for the consideration of the Committee in view of reinstating this topic in the provisional agenda of the Pollution Prevention and Response Sub-Committee (PPR) and of completing work by 2025 on regulatory matters of output 1.23 (*Evaluation and harmonization of rules and guidance on the discharge of discharge water from EGCS into the aquatic environment, including conditions and areas*), as recalled by the Committee at MEPC 78.

Several studies and data on the impact of EGCS waters discharges on the environment point at the severe health and environmental impact of such discharges. Therefore, the present document responds Union concerns about the mentioned impacts and addresses the urgent need to conclude on the development of globally harmonised regulations empowering IMO states to restrict the EGCS water discharges as appropriate.

The proposal for the draft amendment builds upon the draft regulation and definitions set out in Annex 3 to the earlier Union document MEPC 74/14/1. It takes into account terminology and scope of the 2022 Guidelines for risk and impact assessment and adopted by IMO at MEPC 78 (Circular MEPC.1/Circ.899). It also addresses the concerns expressed by industry at MEPC 79 on the geographical scope and conditions of application of the draft regulation proposed by the Union.

### **EU Competence**

Article 8 and Annex II of Directive 2016/802/EU relating to a reduction in the sulphur content of certain liquid fuels<sup>1</sup> lay down conditions for the use of EGCS by cross-referencing the 2009 IMO Guidelines on Exhaust Gas Cleaning Systems (adopted as IMO Resolution MEPC.184(59)) and subsequent revisions.

According to these IMO Guidelines, discharge waters from EGCS shall be regulated, including in enclosed ports, harbours and estuaries, unless it is demonstrated by the ship operator that such water discharge has no significant negative impacts on, and does not pose risks to, human health and the environment. Moreover, considering that the EGCS discharge water contains hazardous and contaminant substances, the use of such systems calls into question Article 195 of UNCLOS, under which States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution to another.

Furthermore, in relation to water quality and the release of noxious chemical contaminants into the sea, Member States have to meet the obligations stemming from existing EU rules. These are laid down in the Water Framework Directive (Directive 2000/60/EC)<sup>2</sup>, the Environmental quality standards Directive 9 Directive 2008/105/EC<sup>3</sup>, as well as in the Marine Strategy Framework Directive (Directive 2008/56/EC)<sup>4</sup> and Good Environmental Status Decision (Commission Decision

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<sup>1</sup> OJ L 132, 21.5.2016, p. 58.

<sup>2</sup> OJ L 327, 22.12.2000, p. 1.

<sup>3</sup> OJ L 348, 24.12.2008, p. 84.

<sup>4</sup> OJ L 164, 25.6.2008, p. 19.

(EU) 2017/848)<sup>5</sup>.

In addition, on-board EGCS are listed in the Commission Implementing Regulation 2022/1157<sup>6</sup>, which lays down the design, construction, performance requirements and testing standards for equipment falling within the scope of application of Directive 2014/90/EU<sup>7</sup> on marine equipment. This Implementing Regulation also refers to the IMO Resolution MEPC.259(68) on page 44. Therefore, any amendments to that IMO Resolution will affect the relevant binding requirements contained in Directive 2014/90/EU and Directive 2016/802/EU.

In light of all of the above, the present draft Union submission falls under EU exclusive competence.<sup>8</sup> It is in line with the Union's ambitions as outlined in the European Green Deal<sup>9</sup>, notably on Sustainable and Smart Mobility<sup>10</sup> and Zero Pollution<sup>11</sup>. This Staff Working Document is presented to establish an EU position on the matter and to transmit the document to the IMO prior to the required deadline of 28 April 2023.

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<sup>5</sup> OJ L 125, 18.5.2017, p. 43–74

<sup>6</sup> OJ L 180, 6.7.2022, p. 1

<sup>7</sup> OJ L 257, 28.8.2014, p. 146.

<sup>8</sup> An EU position under Article 218(9) TFEU is to be established in due time should the IMO Marine Environment Protection Committee eventually be called upon to adopt an act having legal effects as regards the subject matter of the said draft Union submission. The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*' (Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64).

<sup>9</sup> COM(2019)640

<sup>10</sup> COM(2020)789 final, SWD(2020) 331 final

<sup>11</sup> COM/2021/400 final

**EVALUATION AND HARMONIZATION OF RULES AND  
GUIDANCE ON THE DISCHARGE OF DISCHARGE WATER FROM EGCS INTO THE  
AQUATIC ENVIRONMENT, INCLUDING CONDITIONS AND AREAS**

**Proposal to further develop part 3 (regulatory matters) on the scope of work for the  
evaluation and harmonisation of rules and guidance on the discharges and residues  
from EGCSs into the aquatic environment, including conditions and areas**

**Submitted by Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark,  
Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania,  
Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia,  
Spain, Sweden and the European Commission, acting jointly in the interest of the  
European Union**

**SUMMARY**

*Executive summary:* This document proposes draft regulatory amendments to MARPOL Annex VI for the consideration of the Committee, related to output 1.23 'Evaluation and harmonization of rules and guidance on the discharge of discharge water from equivalent compliant methods, including Exhaust Gas Cleaning Systems (EGCS), into the aquatic environment, including conditions and areas'. It aims at facilitating the completion of remaining part 3 (regulatory matters) of output 1.23 based on course of action recalled by the Committee at its 78<sup>th</sup> session.

*Strategic direction, if applicable:* 1

*Output:* 1.23

*Action to be taken:* Paragraph XX

*Related documents:* Resolution MEPC.340(77); MEPC 76/9/2; MEPC 77/WP.8; MEPC 78/17; MEPC.1/Circ.899; MEPC 79/5/4; and MEPC 79/INF.4

**Background**

1 MEPC 78 approved the extension of the target completion year to 2025 for output 1.23 ('Evaluation and harmonization of rules and guidance on the discharge of discharge water from EGCS into the aquatic environment, including conditions and areas'). However, the Committee recalled that it would consider reinstating output 1.23 in the provisional agenda of a future session of the PPR Sub-Committee, subject to further proposals to MEPC on remaining part 3 (regulatory matters) and part 4 (database of substances) of the scope of the work output by interested Member States and international organizations.

2 The co-sponsors, concerned by the urgent need for uniform and unambiguous regulatory measures to better control pollution and reduce the economic impacts both for the industry and administrations, submitted document MEPC 76/9/2 containing draft amendments to MARPOL Annex VI (annex 3 therein) in line with part 3 of the scope of work.

3 Subsequently, at MEPC 79, document MEPC 79/5/4 (CESA) commented on annex 3 of the mentioned draft amendments to MARPOL Annex VI regarding the water areas under the scope of application as well as questioning the aim of the related regulations. In particular, CESA raised concerns on the scope of application bearing in mind the terminology already used in Circular MEPC.1/Circ.899, which includes the terms “Marine waters (open waters)” and “Coastal waters”. It should be noted that the referred MEPC Circular also includes other territorial waters (within 12 nm from the coastline), estuarine, large harbour and small-enclosed harbour environments and areas in the vicinity of dense shipping routes. In addition, CESA indicates potential legal conflicts with the geographical scope of UNCLOS regulations whereby a state may impose environmental requirements on international shipping when a ship is operating in a state’s internal or territorial sea area. In this vein, CESA proposed changes to the draft amendments to restrict their geographical scope and impose conditions on their application.

4 The co-sponsors consider, however, that there is ample legislative basis on the protection of the marine environment from pollution sources to enable IMO Member States to be able to regulate discharges of discharge water from Exhaust Gas Cleaning Systems (EGCS) in sea areas under their jurisdiction, i.e. also beyond a coastal state’s territorial waters, while still satisfying UNCLOS requirements, in particular Article 195 under which States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution to another. In addition, EGCSs are currently used not only within SOx Emission Control Areas, but also to comply with the MARPOL Annex VI requirements on the global sulphur cap which entered into force in 2020.

5 The co-sponsors would like to recall Directive (EU) 2016/802 relating to a reduction in the sulphur content of certain liquid fuels that already imposes such obligations on EU Member States. The latter have to take all measures necessary to ensure that certain marine fuels are not used in the areas of their territorial seas, exclusive economic zones and pollution control zones, depending on their sulphur content. In its Article 8, the Directive further requires EU Member States to allow the use of emission abatement methods by ships of all flags in their ports, territorial seas, exclusive economic zones and pollution control zones, as an alternative to using marine fuels, subject to certain conditions.

6 The co-sponsors would like to recall as well that pursuant to UNCLOS (Article 56, 1 (a)), coastal States can further exercise their sovereignty and jurisdiction, holding the right to exploit, manage and conserve the existing living and non-living natural resources, from the waters overlying the seabed, the seabed and its subsoil, including the exploration and exploitation of renewable energy resources, like wind, waves and sea currents in the Exclusive Economic Zones (EEZ).

7 However, the co-sponsors see merit in further clarifying the conditions and the process under which an IMO Member State should regulate the discharges of discharge water from EGCS depending in the different sea areas under its jurisdiction. In view of enlarging the geographical scope of the draft regulation, this document proposes that in sea zones adjacent to territorial seas (i.e. the EEZ), the IMO Member States may take into account the ‘2022 Guidelines for risk and impact assessments of the discharge water from exhaust gas cleaning systems’ (circular MEPC.1/Circ.899) as approved at MEPC 78.

8 The co-sponsors further reiterate the urgent need for uniform and unambiguous regulatory measures to better control potential pollution from EGCS and reduce the

economic impacts both for the industry and administrations. There is increasing scientific evidence<sup>12,13,14</sup> on the potential toxicity of EGCS water discharges based on knowledge and experience in the EU obtained through the sampling and analyses of EGCS discharge waters. There is also increasing evidence on the need to clarify and strengthen the enforcement of Regulation 14 on ships equipped with EGCS<sup>15</sup>. The objective being to achieve a mandatory emission reduction and avoid competitive disadvantage for the majority of ships opting for fuel-based compliance under Regulation 14.

9 In accordance with paragraphs 7.4.1-3 of circular MEPC.1/Circ.899, the adoption of restrictions or a ban on discharge water from EGCSs should be considered in areas where mandatory environmental objectives are not met (good chemical, ecological, environmental status) or where an EGCS discharge 'represents an additional risk of deteriorating the environment and the resiliency of the climate system'. In this context, it should be noted that EU Member States shall carry out regular assessments of chemical and ecological status in accordance with the Water Framework Directive (2000/60/EC) of their coastal/territorial waters (up until 12 nautical miles) as well as the environmental status of their marine waters in accordance with the Marine Strategy Framework Directive (2008/56/EC).

10 According to the 2018 updates on the EU Member States' marine strategies under Directive 2008/56/EC, it was concluded that in 2020 Good Environmental Status (GES) was not met for the chemical contaminants in all European waters. With respect to ubiquitous Persistent, Bioaccumulative and Toxic (PBT) contaminants<sup>16</sup>, in 2020 the EU Member States reported that GES had been achieved in their waters by only 20% and by around 30% for non-ubiquitous PBT contaminants. Contaminants<sup>17,18</sup> have serious consequences on the state of the marine environment and the biodiversity and habitats and are, therefore, cause of major concern which call for urgent action.

### Action requested of the Committee

11 Based on the above, the co-sponsors would like to seek agreement from the Committee to reinstate output 1.23 in the agenda of the following session of the PPR Sub-Committee.

12 The Committee is invited to consider for further action the following proposals set out in the annex to this document, with a view to complete output 1.23 within the extension period approved by MEPC 78:

- .1 the inclusion of a draft definition of discharge waters in Regulation 2 and
- .2 the inclusion of a new regulation in MARPOL Annex VI on the *Discharge of discharge water from an equivalent compliant method under Regulation 4 and 14*

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<sup>12</sup> [Modelling of discharges to the marine environment from open circuit flue gas scrubbers on ships in the OSPAR Maritime](#)

<sup>13</sup> [EMERGE - waterborne.eu](#)

<sup>14</sup> IMPEX study by Germany (to be added)

<sup>15</sup> Experience by The Netherlands with Inspections of ships equipped with exhaust gas cleaning systems (MEPC79/INF.4)

<sup>16</sup> <https://water.europa.eu/marine/policy-and-reporting/msfd-reports-and-assessments>

<sup>17</sup> SWD(2020) 61 final: [https://commission.europa.eu/system/files/2020-06/swd202061final\\_part\\_3-3.pdf](https://commission.europa.eu/system/files/2020-06/swd202061final_part_3-3.pdf)

<sup>18</sup> European Environment Agency (EEA). Contaminants in Europe's seas - Moving towards a clean, non-toxic marine environment, EEA Report No. 25/2018, doi:10.2800/511375.



## ANNEX

### DRAFT AMENDMENTS TO MARPOL ANNEX VI

#### Regulation 2

##### *Definitions*

1 A new definition is inserted in the list set out in Regulation 2, as follows:

"() *Discharge water*: Any water to be discharged overboard from the operation of a compliant abatement method for emission reduction as defined in Regulation 4 and as required by the standards set forth in Regulation 14."

#### Draft Regulation XX

##### ***Discharge of discharge water from an equivalent compliant method under Regulation 4 and 14***

- 1 A Party should regulate discharges of discharge water from compliant methods for emission reductions, as defined in Regulation 2, from a ship in a port or ports, harbours, estuaries or other sea areas enclosed or not in its territorial sea, and may regulate those discharges in accordance with the guidelines to be developed by the Organization in other sea areas under its jurisdiction adjacent to the territorial sea.
- 2 Parties shall notify the Organization of local regulations on the discharges of discharge water as defined in Regulation 2.
- 3 The Organization shall circulate and make publicly available a list of the sea areas, including a port or ports, harbours and estuaries, subject to local regulations on the discharges of discharge water.