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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)
No. Cion doc.:	ST 7475/21
No. prev. doc.:	ST 7762/21
Subject:	Draft submission by Member States and the Commission to the International Maritime Organization's 76th session of the Marine Environment Protection Committee commenting on document MEPC 75/5/3 from the Republic of Korea concerning guidance on Exhaust Gas Cleaning System malfunctioning (draft Circular MEPC.1/Circ.883/Rev.1) – <i>Endorsement</i>

I. INTRODUCTION

1. On 13 April 2021, the Commission transmitted to the Council a Staff Working Document containing a draft submission to the 76th session of the Marine Environment Protection Committee (MEPC 76) of the International Maritime Organization (IMO) commenting on a document submitted to the IMO by the Republic of Korea concerning a guidance on Exhaust Gas Cleaning Systems (EGCS) malfunctioning. The deadline for transmitting the draft commenting submission to the IMO Secretariat is 21 April 2021.
2. EGCS (also known as “scrubbers”) are used as an alternative and cost-effective means of compliance with Regulation 14 of Annex VI to the International Convention for the Prevention of Pollution from Ships, including the 0.5% global cap on sulphur content in maritime fuels in force since 1 January 2020. With EGCS installed onboard, ships may use non-compliant fuel, and the systems reduce the presence of sulphur oxides in the exhaust

fumes which improves air quality. However, guidance is needed on actions to be taken when the EGCS for some reason malfunction including the need to avoid that the ship use high sulphur fuel without EGCS. This requires the ship equipped with EGCS to carry and use also compliant fuel when the EGCS malfunction or break down.

3. The draft submission comments on a document submitted to the IMO by the Republic of Korea and proposes alternative drafting of draft IMO Circular MEPC.1/Circ.883/Rev.1 with the intention to ensure the consistent implementation of the global sulphur cap and to avoid any unintended distortion of competition.

II. WORK WITHIN THE COUNCIL

4. An advance copy of the draft submission was examined by the members of the Shipping Working Party at their informal videoconference on 12 April 2021. A revised version, based on comments made by delegations, was examined at the next meeting on 19 April 2021. At that last meeting, small but important changes were made to the draft submission in order to reach consensus, as highlighted in the Annex. It was also agreed that the Presidency would be allowed to indicate at the time of transmission that the document may be released to the public by the IMO secretariat prior to MEPC 76.
5. However, there is no agreement on who should submit the draft submission. The Commission maintains the view that the draft submission should be made by "the European Commission on behalf of the European Union", while the Member States consider that it should be made by the Member States and the European Commission.
6. Given the importance and urgency of the matter, it was agreed at working party level to propose to transmit the submission in the name of the Member States and the European Commission, while taking good note of the position of the Commission.

III. CONCLUSION

- In the light of the above, the Permanent Representatives Committee is invited to endorse the text of the draft submission in the annex, with a view to its transmission by the Presidency to the International Maritime Organization by 21 April 2021.

MARINE ENVIRONMENT
PROTECTION
COMMITTEE
76th session
Agenda item 5

MEPC 76/5/x
xx xxx 2021
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AIR POLLUTION PREVENTION

Comments on deferred document MEPC 75/5/3 by Republic of Korea and suggested amendments to draft guidance outlined in MEPC.1/Circ.883/Rev.1

Submitted by Austria, Belgium, Bulgaria, Croatia, Cyprus, the 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

SUMMARY

<i>Executive summary:</i>	This document comments on the proposals set out in document MEPC 75/5/3 by Republic of Korea and its annex concerning draft MEPC.1/Circ.883/Rev.1. It also suggests alternative amendments to the draft circular and proposes its possible integration into the draft 2020 EGCS Guidelines to be adopted at this session.
<i>Strategic direction, if applicable:</i>	N/A
<i>Output:</i>	N/A
<i>Action to be taken:</i>	Paragraph 7
<i>Related documents:</i>	PPR 7/22, PPR 7/22/Add.1 (Annex 9 and 10), MEPC 75/5/3

Introduction

1 At MEPC 72, the Committee approved a new circular on “*Guidance on indication of ongoing compliance in the case of the failure of a single monitoring instrument, and recommended actions to take if the exhaust gas cleaning system (EGCS) fails to meet the provisions of the EGCS guidelines*” (MEPC.1/Circ.883) to address the specific issue of EGCS ‘on-going compliance’. The circular was intended to only apply to the just approved 2015 EGCS Guidelines (MEPC 259(68)). It was then understood that MEPC.1/Circ.883, would be further considered and included in any future revision of the EGCS Guidelines, thereby avoiding the necessity for inappropriate and confusing “guidance-about-guidelines”.

2 In fact, the MEPC correspondence group addressed the issue of “on-going compliance” in Appendix VI to the draft 2020 Guidelines. However, at PPR 7, the Appendix was amended, and eventually deleted from the guidelines and annexed to the separate draft MEPC.1/Circ.883/Rev.1, despite some opposition both in the Working Group on Prevention of Air Pollution as well as in the PPR 7 plenary. At the same time, the applicability of the revised circular was expanded from the 2015 EGCS Guidelines only to applying to all versions of the EGCS Guidelines.

3 The co-sponsors do not see a justification for a separate Circular qualifying the content already included in the not yet adopted 2020 EGCS Guidelines nor in the extension of its application to all precedent versions of the EGCS Guidelines. In addition, document MEPC 75/5/3 by the Republic of Korea, which was deferred to MEPC 76, already proposes amendments, in its annex, to the above-mentioned circular facilitating the adoption of waivers to the use of high sulphur, non-compliant, fuels. It should be noted that the FONAR regime is very stringent as regards the use of high sulphur fuels for ships using compliant fuels; the same stringency should be applied to ships equipped with EGCSs. All the above is cause for serious concern as regards the consistent implementation of the global sulphur cap and the unintended distortion of competition.

4 Concerning the proposals in paragraphs 8-10 and in the annex of MEPC 75/5/3, while acknowledging potential operational difficulties which may occur in case of malfunctioning, the co-sponsors cannot agree to allow a ship to proceed its intended voyage with non-compliant fuel as it does not comply with the requirements of Regulation 4. It should be noted that the title of Regulation 4 is “Equivalent^{ts}” which is further expanded by the requirement that equivalent means “must be at least as effective in terms of emissions” as stipulated Regulation 14. Therefore, it is a choice of the master of the ship using EGCS whether to carry sufficient reserves of compliant fuel oil to complete the voyage (or to divert to a suitable bunkering port) in the event of a serious breakdown which cannot be fixed by crew on board. Furthermore, ships’ EGCS should be equipped with built-in redundancy of critical components and ships should carry sufficient spares to fix most, if not all, such breakdowns. Consequently, the co-sponsors do not support the proposals outlined in the annex to MEPC 75/5/3.

5 Alternatively, and in light of paragraphs 2 and 3 above, the co-sponsors suggest the following amendments to the draft Resolution (PPR 7/22/Add.1, Annex 10) and its annex for the consideration of the Committee:

- a. the deletion of paragraph 3 of the draft Resolution (PPR 7/22/Add.1, Annex 10) in order to limit the applicability of MEPC Circ.883/Rev.1 to the 2015 and/or 2020 EGCS Guidelines only, as did the original version of the circular (MEPC.1/Circ.883), as follows:

~~“3 ——— Recognizing the need to extend the scope of MEPC.1/Circ.883 to also include the EGCS installed in accordance with resolution MEPC.[...](75), MEPC 75 approved the revised Guidance set out in the annex.”~~

- b. Alternative amendments to the title and to paragraphs 5-12 of the draft circular, as set out in the annex to this document, with a view to take account of quantifiable and verifiable criteria, and operational and technical limitations.

6 With a view to fully address the concerns expressed in paragraph 2 that are still outstanding despite the discussions at PPR 7, the co-sponsors would like to propose for the consideration of the Committee the re-insertion of the revised annex to the circular (Annex 10 to PPR 7/22/Add.1) into the appropriate places in the draft 2020 EGCS Guidelines prior to their adoption at this session to clarify its intent and to ensure that the yet to be approved 2020 EGCS Guidelines fully comply with the Convention requirements.

Action requested of the Committee

7 The Committee is invited to consider the suggestions set out in paragraph 4, 5 and 6 of this document, and its annex, and to take action as appropriate.

ANNEX

DRAFT REVISED MEPC CIRCULAR MEPC.1/Circ.883/Rev.1 OUTLINED IN THE ANNEX TO THE ANNEX 10 TO PPR 7/22/Add.1 'GUIDANCE ON INDICATION OF ONGOING COMPLIANCE IN THE CASE OF THE FAILURE OF A SINGLE MONITORING INSTRUMENT, AND RECOMMENDED ACTIONS TO TAKE IF THE EGCS FAILS TO MEET THE PROVISIONS OF THE [2015] [2020] EGCS GUIDELINES'¹

System malfunction

[No amendments proposed to paragraphs 1-4; not reproduced here]

5 An EGCS malfunction event should be ~~included~~ recorded in the EGCS Record Book including the date and time the malfunction began, the duration of the malfunction and, if relevant, how it was resolved, the actions taken to resolve it and any necessary follow-up actions.

6 A system malfunction that cannot be rectified is regarded as ~~an accidental~~ a breakdown. The ship should then change over to compliant fuel oil if the EGCS cannot be put back into a compliant condition within a maximum of one hour. If the ship does not have compliant fuel oil or sufficient amount of compliant fuel oil on board, a proposed course of action, in order to bunker compliant fuel oil or carry out repair works, should be communicated to relevant authorities including the ship's ~~a~~Administration, relevant port State and likely affected coastal State(s) for their agreement.

Short-term exceedances

7 A short-term temporary emission exceedance is an event where the maximum ~~exceedance of the applicable Emissions Ratio is broken for a that may occur due to the EGCS dynamic response when there is a sudden change in the exhaust gas flow rate to the EGCS. There may be a short period during which the measured emission values might indicate that the applicable Emissions Ratio limit has been exceeded. This short period of non-compliance is common behaviour of the monitoring equipment may be due to sudden changes in exhaust gas flow rate and or the EGCS's sensor dynamic response (due to a sudden change in exhaust gas flow rate).~~ A time lapse between when the sensor takes its reading and when the unit responds may trigger an alarm from the continuous emission monitoring device even though the EGCS has not malfunctioned. Thus, very brief transitory periods of emission exceedances and/or isolated spikes in the recorded output in the Emissions Ratio do not necessarily mean non-compliant exceedance of emissions and should therefore not be considered as a breach of the requirements.

8 The typical operating conditions that may result in a short-term temporary emission exceedance and the limits of these exceedances should be specified by the EGCS manufacturer in the EGCS Technical Manual that is approved at the time the EGCS is certified.

¹ Tracked changes are indicated using "strikeout" for deleted text and "grey shading" to highlight all modifications and new insertions, including deleted text.

Interim indication of ongoing compliance in the case of sensor failure

9 When running on a fuel oil with a constant sulphur content and at constant washwater flow rate to engine load ratio, all parameters monitored according to the EGCS Guidelines² (i.e. Emission Ratio, washwater pH, etc.) will be in a certain interrelation, all depending on each other. If one of the parameters changes significantly, some other(s) may will also necessarily also have to change.

10 This interrelation also serves as an indicator of instrumentation malfunction; i.e. if a single sensor signal starts to deviate or even does not display, the effect on the other parameters may indicate whether the change in signal is caused by sensor failure or whether the performance of the EGCS itself has changed. If the other parameters are continuing at the normal levels, it is an possible indication that there is only an instrumentation malfunction rather than a non-compliance with regard to the levels allowed in the exhaust gas and the discharge water.

11 For EGCS under Scheme B certification, if a serious malfunction, lasting more than one hour, occurs in the instrumentation for the monitoring of Emission Ratio or discharge water (pH, PAH, Turbidity), follow-up action should include that the EGCS must be stopped and the fuel oil changed over to a compliant fuel.

For EGCS under Scheme A certification, provided the EGCS itself is otherwise functioning normally, a failure of one of these sensors may not immediately mean non-compliance provided the ship should keeps the fullest possible records of interim indication for demonstrating compliance. The documentation and actions should include (but are not limited to):

- .1 the manual or automatic recording of the data at the time of malfunction may be used to confirm that all other relevant data as recorded for the performance of the EGCS are showing values in line with values prior to the malfunction;
- .2 the ship operator should record the sulphur content of the various grades of fuel oil used in the affected fuel oil combustion units from the time when the malfunction started;

- .3 the ship operator should log the malfunctioning of the monitoring equipment and (for Scheme A) record all parameters that might be suitable to indicate compliant operation. This record could serve as an alternative documentation demonstrating compliance until the malfunction is rectified; and
- .4 the monitoring equipment that has suffered a malfunction should be repaired or replaced as soon as practicable.

Notifications to relevant Authorities

12 Any EGCS or EGCS's instrumentation malfunction that lasts more than 1 hour or repetitive malfunctions should be reported to the Flag Administration, the port State's Administration and likely affected coastal State(s) along with an explanation of the steps the ship operator is taking to address the failure. At their discretion, the Flag and port State's Administration could take such information and other relevant circumstances into account to determine the appropriate action to take in the case of an EGCS malfunction, including not taking action. Should the ship exceptionally need to continue on its intended voyage in a non-compliant condition, this should be communicated to the relevant port State and likely affected coastal State(s) to decide on appropriate action in accordance with the Convention.
