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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	31 October 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2024) 254 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Union submission to the **12th session of the International Maritime Organization's Pollution Prevention and Response Sub-Committee proposing to finalise the ToRs of GESAMP with the view to conclude work on EGCS's Emission Factors**

Delegations will find attached document SWD(2024) 254 final.

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EUROPEAN
COMMISSION

Brussels, 31.10.2024
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COMMISSION STAFF WORKING DOCUMENT

Union submission to the 12th session of the International Maritime Organization's Pollution Prevention and Response Sub-Committee proposing to finalise the ToRs of GESAMP with the view to conclude work on EGCS's Emission Factors

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Purpose

This Staff Working Document contains a draft Union submission to the 12th session of IMO's Pollution Prevention and Response Sub-Committee (PPR 12). The IMO has indicatively scheduled PPR 12 from 27 to 31 January 2025.

The draft submission follows up on the discussions at the 11th session of the Sub-Committee and the 82nd session of the Marine Environment Protection Committee related to the determination of representative and unified emission factors for Exhaust Gas Cleaning System (EGCSs) which aims at strengthening the 2022 Risk and Impact Assessment Guidelines adopted in 2022 at IMO. The draft submission also aims at making more robust the Terms of Reference for work to be conducted by the Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP), an advisory body that advises the United Nations system on scientific aspects of marine environmental protection The group is re-establishing a Task Team on EGCS and needs to be consulted to conclude this work strand by delivering a robust methodology and existing data with regard to the mentioned emission factors.

EU Competence

Article 8 and Annex II of Directive 2016/802/EU relating to a reduction in the sulphur content of certain liquid fuels[1] 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)[2], the Environmental quality standards Directive (Directive 2008/105/EC as amended by Directive 2013/39/EC)[3], as well as in the Marine Strategy Framework Directive (Directive 2008/56/EC)[4] and Good Environmental Status Decision (Commission Decision (EU) 2017/848)[5].

In addition, on-board EGCS are listed in the Commission Implementing Regulation (EU) 2024/1975[6], which lays down the design, construction, performance requirements and testing standards for equipment falling within the scope of application of Directive 2014/90/EU[7] on marine equipment. This Implementing Regulation also refers to the IMO Resolution MEPC.259(68) on page 83.

[1] OJ L 132, 21.5.2016, p. 58.
[2] OJ L 327, 22.12.2000, p. 1.
[3] OJ L 348, 24.12.2008, p. 84.
[4] OJ L 164, 25.6.2008, p. 19.
[5] OJ L 125, 18.5.2017, p. 43–74
[6] OJ L, 2024/1975, 26.7.2024,
[7] OJ L 257, 28.8.2014, p. 146.

The EU co-legislators have finalised negotiations on the proposal to review the Ship Source Pollution Directive (2005/35/EC)[8] which if adopted will cover in its scope, inter alia, stronger enforcement and penalties in relation pollution from EGCS discharges in alignment with Annex VI relevant guidelines and provisions.

It is also in line with the Union's ambitions as outlined in the European Green Deal[9], notably on Sustainable and Smart Mobility[10] and Zero Pollution[11].

In light of all of the above, the present draft Union submission falls under EU exclusive competence pursuant to article 3(2) TFEU as any amendments to the IMO Resolution on Exhaust Gas Cleaning Systems which, once adopted, risks affecting or altering Union legislation and in particular Directive 2014/90/EU and Directive 2016/802/EU,.[12] 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 22 November 2024.

[8] OJ L 255, 30.9.2005, p.11
[9] COM(2019)640
[10] COM(2020)789 final, SWD(2020) 331 final
[11] COM/2021/400 final
[12] 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).

SUB-COMMITTEE ON POLLUTION
PREVENTION AND RESPONSE
12 session
Agenda item 7

PPR 12/7/X
__ October 2024
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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 and finalise the Terms of Reference for the work of GESAMP with the view to conclude work on EGCS's Emission Factors

Submitted by Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands (Kingdom of the), 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 follows up on the report of initial discussions which took place at the 82nd session of the Marine Environment Protection Committee related to Exhaust Gas Cleaning Systems' (EGCS) emission factors. This document aims to complement those initial discussions regarding the Terms of Reference of the GESAMP task team on EGCS, taking as basis the annex to document MEPC 82/5/3 (ICS and CLIA). It therefore proposes to include some necessary elements on the representativeness and robustness of emission factors for consideration to ensure the task team conduct and conclude work, as appropriate, without undue delay.
Strategic direction, if applicable:	X
Output:	1.23
Action to be taken:	Paragraph 8
Related documents:	PPR 7/INF.23; MEPC 78/9/3 (Germany), MEPC 79/5/1 (CESA), MEPC 81/INF.21 (Finland) PPR 11/ INF. 11 (Finland), MEPC 82/5/3 (ICS and CLIA), MEPC 82/INF.22 (Sweden), PPR 12/X (Report of MEPC 82 from Secretariat)

Background

1 In relation to the development of representative emission factors for use in environmental risk assessments of Exhaust Gas Cleaning Systems (EGCS) discharge water, PPR 11 had invited interested Member States and international organisations to:

.1 submit relevant data to a future session of the Sub-Committee;

.2 submit proposals for terms of reference (ToRs) for the re-establishment of the GESAMP Task Team on EGCS to conduct further work on this matter to MEPC 82; and

.3 consider providing financial contributions to enable the re-establishment of the GESAMP Task Team on EGCS.

2 At MEPC 82, based on report PPR 12/18 (Secretariat), the Committee noted that the Working Group 1, had only started to consider proposals for terms of reference for the re-establishment of the GESAMP Task Team on EGCS taking into account the annex to document MEPC 82/5/3 (ICS and CLIA) and referred the draft terms of reference for the GESAMP Task Team on EGCS to PPR 12 for further consideration, with a view to finalization and providing advice to the Committee accordingly.

Discussion

3 In view of facilitating discussions at PPR 12, the co-sponsors would like to elaborate on the views already expressed during the work of the Working Group on Air Pollution and Energy Efficiency during MEPC 82 which considered the annex to document MEPC 82/5/3 as a basis for further work.

4 The co-sponsors, consider that the GESAMP task team should start conducting assigned work without undue delay. This would require PPR 12 to finalise the ToRs and MEPC 83 to decide on a timely way forward. The aim is that representative EGCS emission factors are included in the *2022 Guidelines for risk and impact assessments of the discharge water from exhaust gas cleaning systems (MEPC* MEPC.1/Circ.899*)* without undue delay.

5 In view of strengthening the process, the co-sponsors would like to ensure that the ToRs clearly define the task of GESAMP and focus on “what” are the questions requiring their expert answer. The co-sponsors think it is important avoiding anticipating the reply on ‘how‘ to answer by specifying upfront which methodology to use, how to conduct the measurements and so on, which is rather for the GESAMP experts to do it. To that end, the co-sponsors would like to recommend the following editorial proposals in view of facilitating the finalisation of the ToRs:

- GESAMP should be tasked to develop not only the methodology underpinning the development of emission factors for EGCS, but also present actual emission factor values. It should be noted that the calculation of emission factors has been already conducted by GESAMP back in 2019 as reported in PPR 7/INF.23. (see proposed revision in paragraph 6).
- Emission factors should be considered not only for the limited list of priority hazardous substances outlined in MEPC.1/Circ.899 but also for any other relevant chemical substances in EGCS discharge water.
- The language of key terminology and evaluation criteria should be revised to be fully aligned with the terminology and criteria MEPC.1/Circ.899 (see proposed revision in paragraph 1).
- Reference to MEPC 82/INF.22 as well as all related IMO documents and scientific publications (even those not submitted to the Organization) should be made in order to ensure achieving a representative set of emission factors with universal geographic application (see proposed revision in paragraph 2);
- In paragraph 4.1, it is important to emphasize the need to consider ambient concentrations for deriving emission factors. Those would be the result not only of the exhaust gas cleaning process, but also of other pollution sources in the operation of the scrubber that could end up in the EGCS discharge water.
- It should be clarified that inlet concentrations cannot simply be assumed as background/ambient concentrations (see proposed revision in new paragraphs 4.4 and 4.5);
- In paragraph 4.3, the application of the upper confidence interval or equivalent measures, when "worst case" emission factors are to be used, should be

clarified, as proposed in paragraph 5.1.2.2 of MEPC.1/Circ.899 (see para. 16 of MEPC 82/INF.22); and

- It is suggested to delete paragraph 3.5 given that statistical methods are proposed to be followed for handling of below Limit of Detection (LOD) values.

6 Consequently, the co-sponsors would suggest revising paragraphs 1-6 of the annex to document MEPC 82/5/3 (ISC and CLIA).

7 The co-sponsors would expect that the work of GESAMP delivers a list of unified and representative emission factors of the hazardous substances found in EGCS discharge water based on the data from existing scientific publications and project reports.

Proposal

8 Based on the above, the co-sponsors would like to invite the Sub-Committee to consider the editorial proposals set out in the annex aiming to amend the annex to document MEPC 82/5/3 and where deletions are indicated with strikethrough and new additions with underscored text.

Action requested to the Sub-Committee

9 The Sub-committee is invited to consider this document, in particular the proposals contained in paragraph 8, and take action as appropriate.

ANNEX

DRAFT TERMS OF REFERENCE FOR GESAMP TASK TEAM ON EGCS

Summary

1 Emission factors enable ports and port States to complete a key step in developing EGCS-related environmental risk assessments, as recommended by MEPC.1/Circ.899. However, ~~to enable the development of a universal~~ a set of unified and representative emission factors ~~a standard method~~ should be determined based on a standard method ~~identified or developed~~, which should ~~also~~ include certain best practices and calculation methods.

Instructions for GESAMP

2 Compare methods used in MEPC 78/93, MEPC 79/5/1 ~~and~~ PPR 11/7/5, and MEPC 82/INF.22 as well as related IMO documents and scientific publications to set out the best approach to achieving a representative set of emission factors with universal geographic application.

3 Evaluate best practices for developing the data set and methods, ~~including~~ considering:

.1 size and geographic diversity of sample data set ~~needed~~ in order to achieve representative emission factors;

.2 direct ship sampling measurements using an established protocol with appropriate QA/QC ~~vs. literature reviews or other sources~~;

.3 standard onboard sampling locations, e.g. seawater inlet, post-tower, overboard discharge and environmental data of the surrounding water*;*

.4 minimum onboard specific data needed to make each sample eligible for use, e.g. seawater flow rate, engine load, engine MCR, fuel sulphur level, fuel type, date/time/location; and

.5 ~~use laboratories with low detection limits to achieve as many detections as possible and avoid artificially inflating the values of non-detects~~.

Evaluate considerations for calculating Emission Factors, including:

.1 ~~removing~~ handling background concentrations, targeting the substances ~~calculating only those~~ from the exhaust gas cleaning process, ~~making the derived emission factors universally useful~~, with full disclosure of the raw data from all analyses that are included;

.2 ensuring data quality by using statistical analysis ~~(i.e. a 95% confidence interval)~~ to avoid the skewing effect from data outliers; ~~and~~

.3 ~~using 50% of laboratory detection limits as assigned values for non-detects.~~ applying of the upper confidence interval or equivalent measures when "worst case" emission factors are to be used, as proposed in MEPC.1/Circ.899;

.4 (NEW) applying the treatment of censored values (reported as <Limit of Detection (LOD) or <Limit of Quantification(LOQ-), for instance by statistical methods; and

.5 (NEW) calculating of emission factors for any relevant chemical substance identified in EGCS discharge water, i.e. not limited to the substances currently listed in MEPC.1/Circ.889.

5 ~~Determine local total environmental loading for a site-specific risk assessment by adding the local ambient seawater background concentrations to the emissions from the exhaust gas cleaning process~~ Calculate emission factors for any relevant chemical substance identified in EGCS discharge water.

GESAMP deliverables/output

6 Based on consideration of the elements above, propose a standard methodology ~~for development of the~~ derive a data set ~~and calculation~~ of ~~the~~ concrete unified and representative emission factors for adoption to complement MEPC.1/Circ.899~~a unified, representative and universal set of emission factors~~, including best practices.