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## COVER NOTE

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2024) 253 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 a regulation under the scope of work for the evaluation and harmonisation of rules and guidance on the discharges and residues from Exhaust Gas Cleaning Systems (EGCSs) into the aquatic environment, including conditions and areas

Delegations will find attached document SWD(2024) 253 final.

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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 a regulation under the scope of work for the evaluation and harmonisation of rules and guidance on the discharges and residues from Exhaust Gas Cleaning Systems (EGCSs) into the aquatic environment, including conditions and areas**

**Union submission to the 12<sup>th</sup> session of the International Maritime Organization's Pollution Prevention and Response Sub-Committee proposing a regulation under the scope of work for the evaluation and harmonisation of rules and guidance on the discharges and residues from Exhaust Gas Cleaning Systems (EGCSs) into the aquatic environment, including conditions and areas**

**Purpose**

This Staff Working Document contains a draft Union submission to the 12<sup>th</sup> 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 proposes regulatory amendments to MARPOL Annex VI aiming to prohibit the discharge into the aquatic environment of discharge waters from Exhaust Gas Cleaning Systems (EGCS) in territorial seas as well as in Emission Control Areas as a first step. It is for the consideration of the Sub-Committee in view of completing work by the end of 2025 on regulatory matters with regard to 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*), following the invitation by the 11<sup>th</sup> session of the Pollution prevention and Response Sub-Committee (PPR11) and ensuing discussions outlined in document MEPC 82/10.

In particular, PPR 11 considered all submitted documents concerning the identification and development, as appropriate, of regulatory measures and instruments on the discharge of discharge water from EGCS (including the Union document MEPC 80/5/5). Given the divergent views, the sub-committee invited interested Member States and international organizations to submit further proposals to PPR 12 on the matter. Nevertheless, several delegations highlighted that:

- 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 which is cause of great concern for the Union,
- the proliferation of local restrictions in more than forty IMO States justified the urgent need for a global regulatory approach to restrict the EGCS water discharges in a uniform and unambiguous manner,
- Union's and global concerns about EGCS discharge impacts call's for the urgent need to conclude on the development of globally harmonised prohibitions including, as a first step, through a set minimum requirements to be included in Annex VI which is the appropriate legal instrument to address the need for action without undue delay.

In light of the above, the current Union's document builds upon the draft regulation proposals outlined in the several earlier Union documents (the last one being MEPC 80/5/5) and sets an EGCS discharge prohibition over a reduced geographical scope as compared to earlier documents. While being more prescriptive on the nature of the proposed regulation (ie a prohibition to discharge) it, however, applies only to ships equipped with EGCS sailing in territorial waters and in Emission Control Areas (not any longer in Exclusive Economic Zones except those which are part of existing Emission Control Areas). In this way, it also addresses the concerns expressed by industry at MEPC 80 and PPR 11 on the compatibility of proposed rules with UNCLOS provisions and aligns with the legal interpretation by the IMO secretariat (MEPC 81/9) on the geographical scope and conditions of application of prohibition of EGCS discharge waters by IMO states. Moreover, the document reflects relevant regional developments, notably in OSPAR and HELCOM which are also discussing similar measures.

Finally draft amendments are also proposed to clarify the obligation of flag states with regards to their efforts to demonstrate that the approved equivalent leads to no '*damage to the environment human health, property or resources or those of other States*'.

## 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 (Directive 2008/105/EC as amended by Directive 2013/39/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 (EU) 2017/848)<sup>5</sup>.

In addition, on-board EGCS are listed in the Commission Implementing Regulation (EU) 2024/1975<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 83..

The EU co-legislators have finalised negotiations on the proposal to review the Ship Source Pollution Directive (2005/35/EC)<sup>8</sup> which if adopted will cover, 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<sup>9</sup>, notably on Sustainable and Smart Mobility<sup>10</sup> and Zero Pollution<sup>11</sup>.

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.<sup>12</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

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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.

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

<sup>6</sup> OJ L, 2024/1975, 26.7.2024,

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

<sup>8</sup> OJ L 255, 30.9.2005, p.11

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

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

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

<sup>12</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).

22 November 2024.

**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, 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 discussions at the 11<sup>th</sup> session of the Sub-Committee related to part 3 of the scope of work on "regulatory matters", 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". Based on those discussions and taking into consideration the subsequent legal advice from the Secretariat, the document proposes a new draft of amendments to MARPOL Annex VI, on first '*minimum requirements*' and clarifying the application of Regulation 4, to be considered for adoption by the end of 2025.

*Strategic direction, if applicable:* 1

*Output:* 1.23

*Action to be taken:* Paragraph 17

*Related documents:* MEPC 79/5/4 (CESA), MEPC 79/INF.4 (Kingdom of the Netherlands), PPR 10/INF.3 (OSPAR Commission), PPR 10/INF.15 (Germany), MEPC 80/5/5 (Austria et al.), MEPC 80/5/6 (Japan), MEPC 80/5/7 (Japan), MEPC 81/9 (Secretariat), MEPC 81/INF.21 (Finland), PPR 11/7 (BIMCO), PPR 11/7/1 (ICS), MEPC 82/INF.22 (Sweden), PPR 11/7/3 (FOEI, et al.), PPR 11/7/4 (New Zealand), PPR 11/ INF. 11 (Finland), PPR 11/18 (Secretariat), MEPC 82/10 (Secretariat)

**Background**

1 At MEPC 78 it was agreed to extend the target completion year of output 1.23 on "Evaluation and harmonization of rules and guidance on the discharge of discharge water from EGCS into the aquatic environment, including conditions and areas" to the end of 2025. The output was thereafter included in the agenda of PPR 11 where discussions took place as reflected in the report of the session in document PPR 11/18. In view of the discussions, the Sub-Committee at PPR11 invited interested Member States and international organizations to submit further proposals to PPR 12 on the identification and development, as appropriate, of regulatory measures and instruments on the discharge of discharge water from EGCS, taking into account discussions that took place at that session.

2 Based on the legal issues raised in document MEPC 79/5/3 (FOEI et al.), MEPC 79 invited the Secretariat to provide a legal opinion on Implications of the United Nations Convention on the Law of the Sea (UNCLOS) for the International Maritime Organization (LEG/MISC.8). Subsequently, PPR 11 noted the legal advice provided on the use of exhaust gas cleaning systems as an alternative compliance mechanism under MARPOL Annex VI and its relationship with the UNCLOS as in document MEPC 81/9 (Secretariat). This document clarified the legal basis for coastal State regulation of the discharge of EGCS discharge water beyond the territorial sea (i.e. in Exclusive Economic Zones) and concluded that regulating in EEZ requires a comprehensive consultation of the MEPC.

## Discussion

3 At PPR 11, several delegations highlighted that there was growing scientific evidence of the harmful impact of EGCS discharge water on the marine environment which justified the application of the precautionary principle to regulate these discharges, notably in enclosed sea areas, shallow waters or archipelagos. Several delegations also noted that the proliferation of local restrictions in more than 40 countries justified the need for a global regulatory approach. Several of these delegations, with reference to documents PPR 11/7/4 and MEPC 80/5/5, expressed the need to urgently develop regulatory amendments to MARPOL Annex VI mandating, or at least inviting, coastal States to regulate the discharge of discharge water from EGCS in national waters, with minimum requirements, to fulfil part 3 of the scope of work for this output. Several other delegations supported using the proposed amendments to MARPOL Annex VI set out in document MEPC 80/5/7 as a basis. Several other delegations expressed the view that the 2021 EGCS Guidelines are of a recommendatory nature.

4 There were many views at PPR 11 that, while diverging on the approach to be followed, expressed support for regulatory measures on the discharge of discharge water from EGCS. This was evidenced by the effort made by the Chair in providing his summing-up observations and suggesting an understanding with a view to identifying a possible common ground which was, however, not supported by a few delegations.

5 The co-sponsors, consider that although a way forward could not be identified at PPR 11, nevertheless sufficient consensus was reached with regard to the following:

- a. There is growing scientific evidence of the harmful impact of EGCS discharge water on the marine environment that justifies the application of the precautionary principle to regulate these discharges, in particular in enclosed sea areas, shallow waters or archipelagos.
- b. Coastal States can regulate the release of discharge water from EGCS within their territorial waters which is evidenced by the fact that more than 40 countries have already applied local restrictions.
- c. There is an urgent need for uniform and unambiguous regulatory measures to better control pollution and reduce the economic impacts both for the industry and administrations.



6 EGCS's discharge water quality was already addressed via the *2021 Guidelines for exhaust gas cleaning systems (resolution MEPC.340(77))*, but these guidelines were of a recommendatory nature and such kind of effluents should not be "regulated" through this instrument. Following the *2022 Guidelines for risk and impact assessments of the discharge water from exhaust gas cleaning systems*, paragraph 7.4, the adoption of restrictions or a ban on discharge water from EGCSs should be considered in areas where any of the following indicative criteria are full filled:

- .1 environmental objectives in the areas are not met, e.g. good chemical status, good ecological status or good environmental status are not achieved under applicable legislation;
- .2 the discharge of EGCS effluents represents an additional risk of deteriorating the environment and the resiliency of the climate system;
- .3 the EGCS discharge water conflicts with the conventions and regulations formulated to protect the marine environment (see UNCLOS Article 195, etc.); and
- .4 the EGCS discharge effluent represents an increase in the costs of management of dredged materials in ports.

7 In the Baltic Sea, North Sea, English Channel, and the Mediterranean Sea areas, the first two environmental requirements of the *2022 Guidelines for risk and impact assessments of the discharge water from exhaust gas cleaning systems*, sub-paragraphs 7.4 (.1 and .2) are not met. Therefore, Contracting Parties to relevant Regional Sea Conventions such as OSPAR and HELCOM, are giving high consideration on how best to address the issue including through the possible development of regional prohibitions, starting from on '*minimum requirements*', in the relevant maritime areas.

8 In the wider EU context, it was concluded that, in 2020, Good Environmental Status (GES) was not met for contaminants in all European waters.<sup>1314</sup> Contaminants have serious consequences on the state of the marine environment and biodiversity and are, therefore, cause of major concern. It is therefore clear how urgent and needed is to regulate this matter by restrictive rules and not through a recommendatory instrument.

9 As mentioned in PPR 11/7 (BIMCO), a lack of transparency in local regulations has already led to disputes between shipowner and charterers. In parallel, several delegations recalled the right for the coastal States to exercise their sovereign rights in their territorial waters in relation to the regulation of the discharge waters. Moreover, on the basis of the many views at PPR 11 and in line with PPR 11/7/4 (New Zealand) stressing the urgency to develop at least minimum requirements, the co-sponsors propose to adopt, as a first step by the end of 2025, regulatory amendments to MARPOL Annex VI in the territorial seas ('*minimum requirements*'), as otherwise the current situation will continue to lead to global imbalances.

10 The co-sponsors believe that amending IMO MARPOL Annex VI is the right way forward, as also outlined in paragraph 36.2 of the MEPC 82/5 (FOEI, et al). Addressing the matter of sea pollution with an amendment of MARPOL Annex VI has already proven to be an effective method for the implementation of several measures, even when not directly regulating air pollution. Firstly, the reduced deposition of air pollutants into the sea is cause

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<sup>13</sup> The 2018 marine strategies' updates reported upon by the EU Member States under the Marine Strategy Framework Directive 2008/56/EC can be found here: <https://water.europa.eu/marine/policy-and-reporting/msfd-reports-and-assessments> 6 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>14</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



of less pollution of the sea water because of the reduced acidification and eutrophication effects. Secondly, Reg. 4 – Equivalents – and Reg. 17 – Reception Facilities – of MARPOL Annex VI do not refer directly to emission reduction of air pollutants. In fact, Reg. 4 already relates to equivalent technologies used as an alternative to those required by the same Annex at least as effective in terms of emissions reductions. In addition, Reg. 17 relates to Port Reception Facilities with the aim of meeting the needs of ships using a Party's port for the reception of exhaust gas cleaning residues from EGCS.

11 Consequently, MARPOL Annex VI has already been adapted to account for controls of discharges from EGCS. Therefore, the co-sponsors are of the view that the proposed short-term step in Annex VI would not pre-empt the development of longer-term options for additional legal frameworks at later stages, such those related to a fully global ban of the Exhaust Gas Cleaning Systems.

12 In general, a global discharge ban in territorial waters (*'minimum requirements'*) is without prejudice to the UNCLOS exemptions on innocent passage in international straits or archipelagic states. Such exemptions will continue to apply in case such international straits, archipelagic states and they will coexist with the proposed restrictions.

13 Annex VI Regulation 4.4 provides an instruction that Administrations of a Party: *'shall endeavour not to impair or damage its environment, human health, property or resources or those of other States'*. In view of addressing the recurrent question by Parties regarding the application of the phrase *'shall endeavour'*, an existing and common approach should be applied. The IMO Member States have already agreed to a risk assessment framework. It is the view of the co-sponsors that an Administration of a Party, using Regulation 4 to approve an equivalent system, should use that risk and impact assessment process for application and operation to demonstrate no damage to the environment *human health, property or resources or those of other States'*. The mentioned assessment shall be subject to review and approval by the coastal state.

### **Consideration of other control methods in existing special areas**

14 As stated above, document MEPC 81/9 (Secretariat) clarified that regulating beyond territorial waters requires a comprehensive consultation of the MEPC. However, the co-sponsors think that the case of Emission Control Areas (ECAs) would not require such consultation procedure, while for Particularly Sensitive Sea Areas (PSSAs) such a procedure should be straightforward.

15 Emission Control Areas are designated under MARPOL Annex VI. Designation requests are based on assessment of impacts and must fulfil Section 3 of Appendix III to MARPOL Annex VI which include the following two criteria:

- 'a description of the human populations and environmental areas at risk from the impacts of ship emissions (Criterion 3.1.3).
- impacts of the relevant emissions on human health and the environment, such as adverse impacts to terrestrial and aquatic ecosystems, areas of natural productivity, critical habitats, water quality, and human health (Criterion 3.1.4).

Therefore, the designation of ECAs, which are supported by a demonstrated need to prevent, reduce, and control air pollution from ships in view of avoiding impacts on human health and on the marine environment (linked to air pollution deposition), have already been subject to approval by the appropriate IMO body (MEPC). Consequently, the co-sponsors consider that relevant mitigating measures should also control pollution to the marine environment from equivalent emission compliance methodologies (i.e. EGCSs), which present a risk of deteriorating water quality and the resiliency of marine ecosystems in ECAs, without needing a further consultation of MEPC.

16 Particularly Sensitive Sea Areas are defined in Resolution A. 982 (24), *Revised guidelines for the identification and designation of PSSAs*, as areas that need special protection through action by IMO because of their significance for recognized ecological, socio-economic, or scientific attributes where such attributes may be vulnerable to damage by international shipping activities. Paragraph 7.3 of this resolution states that “additional associated protective measures may also be introduced to address identified vulnerabilities”. Among these optional associated protective measures, this document also referred to the application of special discharge restrictions to vessels operating in a PSSA. So, in a PSSA already designated as such, the Parties whose EEZs are included in the PSSA shall submit to an appropriate IMO body a request for the implementation of a new associated protective measure, such as the EGCS water discharges ban. Nevertheless, the consideration by the appropriate IMO body should be straight forward taking into account the vulnerability of the already approved PSSAs.

### **Proposal**

17 Based on the above, the co-sponsors invite the Sub-Committee to consider the proposals set out in the annex to this document containing draft of amendments to MARPOL Annex VI -i.e. a new draft regulation setting out ‘minimum requirements’ and a proposal to revise Regulation 4 with an addition to provide a common methodology for the term ‘*shall endeavour*’.-, in order to complete output 1.23 within the extension period approved by MEPC 78.

### **Action requested by the Sub-Committee**

18 The Subcommittee is invited to consider this document, in particular the proposals contained in paragraph 17, and take action as appropriate.

## ANNEX

### DRAFT AMENDEMENTS TO MARPOL ANNEX VI

#### Regulation 2

##### *Definitions*

1. A new definition is added to the list set out in regulation 2.1, 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 new regulation XX**

2. Discharge of discharge water from an equivalent compliant method under regulations 4 and 14:
  1. [As of 1 January 2027] Parties shall prohibit the discharges of discharge water from a ship sailing in territorial waters (a port or ports, harbours, estuaries or other territorial waters) taking into account the risk and impact assessment based on the guidelines developed by the Organization\*.
  2. [As of 1 January 2030] Parties shall prohibit the discharges of discharge water from a ship sailing in Emission Control Areas taking into account the risk and impact assessment based on the guidelines developed by the Organization\*.
  3. A Party, having evidence-based grounds for believing that a particular, clearly defined area within sea areas under its/their jurisdiction beyond the territorial sea require(s) special mandatory measures to regulate discharge of discharge water from a ship, shall consult with the Organization.
  4. Parties shall notify the Organization of local regulations on the discharges of discharge water as defined in regulation 2.1; and
  5. 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.

#### Regulation 4

The following new point 5 is proposed for inclusion:

##### **5 (new)**

The Administration of a Party that allows the use of an equivalent as set forth in paragraph 1 of this regulation shall conduct a methodology specific risk and impact assessment based on the guidelines developed by the Organization and submit the outcome of that assessment with risk mitigation measures shall be subject to review and approval by the coastal States.

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\* Refer to the 2022 Guidelines for risk and impact assessments of the discharge water from exhaust gas cleaning systems (MEPC.1/Circ.899).