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#### NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	7906/23
No. Cion doc.:	7795/23
Subject:	Draft submission by Member States and the Commission 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

Following the Shipping Working Party meeting on 18 April 2023, delegations will find attached a Presidency compromise proposal.

Changes compared to the previous document are indicated in **bold underline** (new text) and ~~strikethrough~~ (deleted text).

In the absence of objections from delegations by **Thursday 20 April, 17h00 CET**, the Presidency will transmit the submission to the IMO.

Deadline for transmission to IMO: **28 April 2023**.

MARINE ENVIRONMENT PROTECTION  
COMMITTEE  
80th session  
Agenda item 5

MEPC 80/5/XX  
XX April 2023  
Original: ENGLISH  
Pre-session public release: ☑

## **AIR POLLUTION PREVENTION AND RESPONSE**

### **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, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the European Commission**

#### **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:* Paragraphs 10 and 11

*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, MEPC 79/INF.4; PPR 10/INF.15

## 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 as well that pursuant to UNCLOS (Article 56(1)(b)(iii)), coastal States can further exercise their jurisdiction with regard to the protection and preservation of the marine environment in the Exclusive Economic Zones (EEZ). International legislation, such as MARPOL Annex VI, can furthermore be implemented by coastal States into their national legislation and enforced in accordance with UNCLOS article 211 (5).

6 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.

7 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>1, 2, 3</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>4</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. Nonetheless, when restricting EGCS discharges, investments already made by industry to comply with regulation 14 of MARPOL Annex VI in the most cost-effective manner should also be taken into account.

8 In accordance with paragraphs 7.4.1-2 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 of their coastal/territorial waters (up until 12 nautical miles) as well as the environmental status of their marine waters.

9 According to the 2018 marine strategies' updates (reported upon by the EU Member States under the Marine Strategy Framework Directive 2008/56/EC), it was concluded that in 2020 Good Environmental Status (GES) was not met for contaminants in all European waters. In particular, with respect to ubiquitous and non ubiquitous persistent, bioaccumulative and toxic (PBT) contaminants<sup>5</sup>, in 2020 the EU Member States reported that GES had been achieved in their waters by only 20% and by around 30% respectively. Contaminants<sup>6 7</sup> have serious consequences on the state of the marine environment and the biodiversity and habitats and are, therefore, cause of major concern which calls for urgent action.

### Action requested of the Committee

10 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.

11 The Committee is invited to consider the proposals set out in the annex to this document, for further elaboration at the following session of the PPR Sub-Committee, in order 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>1</sup> [Modelling of discharges to the marine environment from open circuit flue gas scrubbers on ships in the OSPAR Maritime](#)

<sup>2</sup> [EMERGE - waterborne.eu](#)

<sup>3</sup> ImpEx study by Germany (PPR 10/INF.15)

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

<sup>5</sup> <https://water.europa.eu/marine/policy-and-reporting/msfd-reports-and-assessments>

<sup>6</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>7</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 specific areas within the limits of its territorial sea, and may regulate in other sea areas under its jurisdiction beyond the territorial sea, including in the Exclusive Economic Zone, in accordance with the guidelines to be developed by the Organization.

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.

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