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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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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 80th session of the International Maritime Organization's Marine Environment Protection Committee proposing to widen the accessibility of data reported to the IMO Data Collection System**

Delegations will find attached document SWD(2023) 130 final.

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SWD(2023) 130 final

COMMISSION STAFF WORKING DOCUMENT

**Union submission to the 80th session of the International Maritime Organization's
Marine Environment Protection Committee proposing to widen the accessibility of data
reported to the IMO Data Collection System**

Union submission to the 80th session of the International Maritime Organization's Marine Environment Protection Committee proposing to widen the accessibility of data reported to the IMO Data Collection System

PURPOSE

This Staff Working Document contains a draft Union submission to the 80th 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 further develops the proposal initially provided in the Union submission ISWG-GHG 13/7 on anonymization and accessibility of data reported to the IMO Data Collection System (DCS).

It proposes new draft amendments to MARPOL Annex VI reflecting an updated compromise proposal aiming at widening the accessibility of IMO DCS data in support of the IMO's work on GHG reduction of ships. At the same time it takes into account the concerns expressed by some delegations during ISWG-GHG 13.

EU COMPETENCE

Regulation (EU) 2015/757¹ (EU MRV Regulation) establishes the legal framework for an EU system to monitor, report and verify (MRV) CO₂ emissions and energy efficiency from shipping. The regulation aims to deliver robust and verifiable CO₂ emissions data, inform policy makers and stimulate the market uptake of energy efficient technologies and behaviours. It does so by addressing market barriers such as the lack of information. It entered into force on 1 July 2015.

Related delegated Commission regulations on verification and accreditation of verifiers and on the refinement of monitoring methods were adopted on 22 September 2016.² Two additional implementing regulations on cargo parameters and templates were adopted by the Commission on 4 November 2016.³

The Energy Efficiency Existing Ship Index (EEXI) and the Carbon Intensity Indicator (CII) values are linked to the MRV Regulation, as the EU Regulation aims to collect and publish information on the technical and operational energy efficiency of ships on a per-ship basis.

Any IMO measure on GHG matters, which will require the monitoring, verification and reporting of GHG emissions from shipping, could affect the EU MRV Regulation. Therefore, the EU has exclusive external competence for GHG emissions in shipping.

The EU Climate Law⁴ sets a binding Union climate target of a reduction of net greenhouse gas emissions—emissions after deduction of removals—by at least 55% by 2030 compared to 1990. It

¹ Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC, OJ L 123, 19.5.2015, p. 55–76

² Commission Delegated Regulation (EU) 2016/2071 of 22 September 2016 amending Regulation (EU) 2015/757 of the European Parliament and of the Council as regards the methods for monitoring carbon dioxide emissions and the rules for monitoring other relevant information, OJ L 320, 26.11.2016, p. 1–4 and Commission Delegated Regulation (EU) 2016/2072 of 22 September 2016 on the verification activities and accreditation of verifiers pursuant to Regulation (EU) 2015/757 of the European Parliament and of the Council on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, OJ L 320, 26.11.2016, p. 5–24

³ Commission Implementing Regulation (EU) 2016/1927 of 4 November 2016 on templates for monitoring plans, emissions reports and documents of compliance pursuant to Regulation (EU) 2015/757 of the European Parliament and of the Council on monitoring, reporting and verification of carbon dioxide emissions from maritime transport, OJ L 299, 5.11.2016, p. 1–21 and Commission Implementing Regulation (EU) 2016/1928 of 4 November 2016 on determination of cargo carried for categories of ships other than passenger, ro-ro and container ships pursuant to Regulation (EU) 2015/757 of the European Parliament and of the Council on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, OJ L 299, 5.11.2016, p. 22–25

⁴ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'); OJ L 243, 9.7.2021, p. 1–17

also includes the aim of climate neutrality by 2050 and an aspirational goal for net negative emissions after this time.

In addition, on 14 July 2021, the Commission adopted the *Fit for 55* package of proposals to reduce GHG emissions. *Fit for 55* includes a number of Commission's proposals that specifically target the shipping sector. This comprises the revision of the EU Emission Trading System (ETS)⁵ to include the maritime transport sector (and the corresponding amendments to the EU MRV Regulation).

In light of all of the above, the present draft Union submission falls under EU exclusive competence, pursuant to article 3(2) TFEU.⁶ 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.

⁵ COM(2021) 551 - Proposal for a directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757

⁶ 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). The present submission, however, does not produce legal effects and thus the procedure for Article 218(9) TFEU is not applied.

ENERGY EFFICIENCY OF SHIPS

Compromise proposal to widen the accessibility of the IMO DCS data

Submitted by Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, 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 further develops the proposal initially provided in document ISWG-GHG 13/7 on anonymization and accessibility of data reported to the IMO Data Collection System (DCS). It proposes new draft amendments to MARPOL Annex VI reflecting an updated compromise proposal aiming at widening the accessibility of IMO DCS data in support of the IMO's work on GHG reduction of ships while at the same time taking into account the concerns expressed by some delegations in the previous discussion.

Strategic direction, if applicable: 3

Output: 3.2

Action to be taken: Paragraph 15

Related documents: MEPC 77/7/11, ISWG-GHG 13/7, MEPC 79/15, ISWG-GHG 14/4

Background

1 At its seventy-eighth session, the Maritime Environment Protection Committee approved a dedicated workstream on the revision of the IMO ship fuel oil Data Collection System (DCS), inviting interested Member States and international organizations to submit concrete proposals to a future session of ISWG-GHG (document MEPC 78/17, paragraph 7.120).

2 Following this, document ISWG-GHG 13/7 (Austria et al.) proposed, in addition to changes to the nature of data collected, some modification specifically related to rounding, anonymization and accessibility of data (see in particular paragraphs 20 to 24 of that submission). Ensuing the discussion on this proposal, MEPC 79 took note of the proposals and "invited the co-sponsors of document ISWG-GHG 13/7 to consult with those delegations that had expressed concerns to work on a possible revised proposal with a view to submission to a future session" (document MEPC 79/15, paragraph 7.36).

3 In response to this invitation, taking into account the comments and concerns raised during the previous discussion, and following the invitation by ISWG-GHG 14 to submit any document related to the DCS to MEPC 80 (document ISWG-GHG 14/WP.1, paragraph 120), this submission proposes further draft amendments to MARPOL Annex VI related to rounding, anonymization and accessibility of data reported to the IMO DCS.

Discussion – Grounds for increasing accessibility of DCS data

4 The co-sponsors believe that the current anonymization and accessibility rules of the IMO DCS, defined in Regulation 27 of MARPOL Annex VI and further specified in the *2022 Guidelines for the development and management of the IMO Ship Fuel Oil Consumption Database* (MEPC.349(78)), should be amended to make the DCS data available to a wider maritime stakeholder community. In particular, the co-sponsors have identified the following advantages to allowing broader access to DCS data:

- .1 it would increase the scope and depth of fuel consumption analysis by the maritime community, thereby benefitting future decision-making and contributing to the general objective of diminishing GHG emissions from ships;
- .2 together with increase in data granularity, data dissemination could lead to better tailoring and targeting of policies in the field of GHG emission reduction.
- .3 in the context of the implementation of the Operational carbon intensity rating (CII), Regulation 28.10 of MARPOL Annex VI reads “*Administrations, port authorities and other stakeholders as appropriate, are encouraged to provide incentives to ships rated A or B*”. The establishment and implementation of possible voluntary incentive schemes based on the CII by relevant stakeholders would benefit from greater accessibility to the DCS data; and
- .4 an increased level of transparency on the fuel consumption of ships would increase the credibility of the shipping industry in achieving its ambitions to reduce GHG emissions and improve the level of trust in the work of IMO on GHG issues, especially when the short-term and mid-term measures will have their plain effect, while acknowledging that this should not lead to market distortion.

5 During discussions at previous sessions, the co-sponsors noted that several delegations expressed reluctance regarding full accessibility to the general public or called for keeping a certain degree of data anonymization, claiming in particular commercial sensitivity reasons. They however noted that some of the same concerned delegations also showed openness to exploring various limited levels of accessibility or possibility to allow some disclosure of data on a voluntary basis.

6 Building upon this discussion, the following paragraphs draw up a possible compromise consisting of a broader, yet controlled and limited, access to IMO DCS data depending on identified stakeholders, as well as providing the possibility for any company to disclose the data of one or several of its ships to the general public on a voluntary basis.

Proposed new rules for enhanced accessibility of IMO DCS data

Proposed rules for differentiated access preserving confidentiality of data

7 The co-sponsors propose that a differentiated access to the data be established, based on stakeholder status. Four categories could be identified by MARPOL Annex VI:

- IMO Secretariat,
- Parties to MARPOL Annex VI,

- recognized organizations (ROs) recognised by parties and
- the general public.

8 Based on this differentiation, the co-sponsors propose the following rules for accessibility:

- .1 the **IMO Secretariat** would continue to have access to the full set of non-anonymised and non-rounded data (refer to anonymization and rounding provisions set out the current 2022 Guidelines – resolution MEPC.349(78)), as currently permitted. In addition, it is proposed that, on an ad-hoc basis, the Secretariat may share data with non-commercial research entities, under confidentiality conditions such as non-disclosure agreement, and pursuant to its privacy policy, with a view to supporting IMO’s work. The IMO Secretariat would define the confidentiality conditions;
- .2 **Parties to MARPOL Annex VI** would also, as the Secretariat, have access to the entirety of non-anonymised and non-rounded data, in order to enhance their own analytical work in preparation of submissions, meetings, development of regulations, etc. without depending on the assistance of the IMO Secretariat. However, the data would have to be used strictly for their own analysis and consideration. Such non-disclosure clause would be embedded in MARPOL Annex VI in order to guarantee sufficient legal assurance and opposability to Parties. The precise meaning of the terms “strictly for their own analysis and consideration” could be further developed in the relevant Guidelines;
The co-sponsors also suggest that Parties be allowed to share the non-anonymised and non-rounded data with supranational intergovernmental organisations of which they are members. The supranational organisations in question would be bound by the same strict confidentiality rules and rules on the allowed use of the data as the Parties. This possibility would cater for the need of Member States of the European Union to share the data with the European Commission.
- .3 **ROs recognised by Parties to MARPOL Annex VI** would have access to the data they submitted via delegation by a Party in a non-anonymised form (in addition to having access to the full set of data in an anonymised and rounded form, as the general public – see following point). This would enable the verification and correction , if necessary, of the data that they were responsible for verifying via delegation by the Administration in application of regulation 27.7; and
- .4 The **general public** would have access to anonymised data, such that identification of the ship would not be possible, and annually aggregated data, in order to allow any IMO observer organization, any academic institution, any independent researcher, etc. to conduct analytical work and help IMO and the shipping community in their efforts to build-up knowledge and reduce GHG emissions from ships, while at the same time preserving confidentiality of the data.

Proposed broader access to the DCS data on a voluntary basis

9 In addition, the co-sponsors propose that the possibility be granted for a company, at any time, on a strictly voluntary basis, to make available to the general public the fuel oil consumption reports of their choice of any of the ship(s) they operate, without any modification. As highlighted in paragraph 5.3 above, this would in particular facilitate

implementation of Regulation 28.10 of MARPOL Annex VI, since the obtained CII is part of the content of the whole report.

10 In practice, this could be operationalised by a specific function available to shipping companies through GISIS. Furthermore, considering the complexity of the data and the density of information contained in the fuel oil consumption reports, GISIS could also provide to the general public, in addition to the full fuel oil consumption report of the relevant ships, extract of essential data considered as the most useful use by the general public, e.g. including the aggregated annual emissions and the CII rating of the relevant ship.

11 Considering the specificities of the DCS data, including the CII rating, and in order to ensure their best usage possible and avoid possible misunderstanding or market distortions related to such data, the access to them by the general public could be accompanied by general methodological explanations about their significance and their limits.

12 Such broader access would entail some additional IT management work for the IMO Secretariat, in charge of managing the IMO DCS and the GISIS platform, but the co-sponsors believe that the administrative burden for the Secretariat would be manageable as the functionalities proposed in this paper are now common features in modern IT tools.

Proposal

13 The proposals contained in the previous paragraphs of this document are reflected in the draft amendments to regulation 27 of MARPOL Annex VI provided in annex to this document.

14 Based on the approval and adoption of these amendments by the Committee, the relevant guidelines established in application of paragraph 13 of regulation 27, i.e. the *2022 Guidelines for the development and management of the IMO Ship fuel oil consumption database* (resolution MEPC.349(78)), would need to be amended in order to specify, inter alia, the details of the new accessibility and anonymization rules, the practicalities related to enhanced data access, the practicalities related to a potential simplified view of the data voluntarily displayed to the general public mentioned in paragraph 12 of this document, the content of the possible explanations mentioned in paragraph 13 of this document, etc. The update of these guidelines could be considered at a later stage however well in advance of the entering into force of the amendments.

Action requested of the Committee

15 The Committee is invited to consider the proposals set out in this in this document and to take action as appropriate.

ANNEX

PROPOSED DRAFT AMENDMENTS TO MARPOL ANNEX VI

Regulation 27

Collection and reporting of ship fuel oil consumption data

[...]

12 The Secretary-General of the Organization shall maintain ~~an anonymised a~~ database accessible to Parties, recognized organizations and the general public. The following rules for accessibility shall apply:

- .1 Parties shall have access to the data in a non-anonymised form, to be used strictly for their own analysis and consideration; Parties may share the data, under strict confidentiality rules, with supranational intergovernmental organisations of which they are members;
- .2 recognized organizations recognized by Parties shall have access to the data that they have submitted by delegation of a Party in a non-anonymised form; and
- .3 the general public shall have access to the data in an anonymized form such that identification of a specific ship will not be possible. ~~Parties shall have access to the anonymised data strictly for their analysis and consideration.~~

12bis On an ad-hoc basis, the Secretary-General of the Organization may share data with non-commercial research entities, under strict confidentiality rules.

12ter The Secretary-General of the Organization, on the request of a company, shall grant access to the fuel oil consumption reports of the company's owned ship(s) in a non-anonymised form to the general public.

[...]