



ECSA position paper on discharges from exhaust gas cleaning systems

Executive Summary:

- Exhaust gas cleaning systems (EGCS) are one of the solutions to comply with the limits on sulphur content of fuel oil, which aim to improve air quality.
- Legal certainty is necessary for shipowners to make secure investment decisions in new technologies and fuels.
- IMO is the appropriate body to regulate EGCS discharges and the Commission and the EU Member States should support and feed into the IMO process.
- Should scientific evidence indicate that there is a potential need to make the criteria for EGCS discharge waters more stringent, this should be done at the IMO level through the revision of the 2021 EGCS Guidelines.
- The Commission and the EU Member States should use the [2022 IMO Guidelines](#) when they assess potential impacts from EGCS discharges in EU or territorial waters.

The 'Fit for 55' package and the historic recent IMO agreement on greenhouse gas Strategy have set clear targets for shipping, making its energy transition not a question of 'if' but a question of 'how'. The energy transition will require immense quantities of clean and affordable fuels for shipping, which is one of the most difficult sectors to decarbonise. In the energy transition of the sector, exhaust gas cleaning systems (EGCS) are one of the solutions to comply with the reduced limits on sulphur content of fuel oil. In addition, until low- and zero-carbon fuels become widely available, many (onboard) carbon capture and storage (OCCS) technologies depend on the use of EGCS.

ECSA supports the ongoing work on discharge water from EGCS at the IMO, as it ensures a harmonised approach and an international level playing field. European shipowners believe that the IMO is the appropriate body to regulate EGCS discharges and encourage the European Commission and the EU Member States to support and feed into the IMO process.

However, several initiatives at the EU Member States' level have been taken to restrict or prohibit EGCS discharges or even ban completely the use of EGCS. This includes a ban of use of different EGCS technologies within the limit of certain EU ports and restrictions on EGCS discharge water in national territorial waters.

Member States may adopt laws and regulations for the prevention, reduction, and control of marine pollution within their territorial waters and internal waters. However, such laws and regulations shall not hamper the innocent passage of foreign flagged vessels and such laws and regulations shall not apply



to the design, construction, manning, or equipment of foreign flagged vessels unless they are giving effect to generally accepted international rules or standards. In the Exclusive Economic Zone (EEZ), when ships are exercising their right of freedom of navigation, the fundamental principle is also that coastal States cannot impose requirements that are more stringent than international rules and standards i.e. those adopted by the IMO and, particularly in this case, MARPOL Annex VI and its accompanying Guidelines on the use of EGCS as an alternative compliance mechanism. Through these principles, UNCLOS seeks to balance the rights and jurisdiction of coastal States and the rights and jurisdiction of flag States over ships when they are on innocent passage in territorial waters or exercising their rights of freedom of navigation in the EEZ. This balance between flag state jurisdiction and coastal state jurisdiction must be upheld. A decision by a coastal State to summarily ban EGCS discharges by ships on innocent passage or exercising their right of freedom of navigation would therefore constitute an infringement of UNCLOS.

Legal certainty is necessary for shipowners to make secure investment decisions in new technologies and fuels. Retroactively applying restrictive measures on previously accepted emission abatement technologies, like EGCS, which have been invested in, in good faith, would set a negative precedent for early movers. This would come in addition to the great uncertainties regarding the global availability of low- and zero-carbon fuels and the cost implications of taking up new fuels and technologies.

ECSA believes that policies should be based on sound scientific evidence and data. Therefore, ECSA urges the Commission and the EU Member States to use the 2022 IMO Guidelines "*for risk and impact assessments of the discharge water from exhaust gas cleaning systems*"¹ when they assess potential impacts from EGCS discharges in EU or territorial waters, while acknowledging the characteristics of different EGCS technologies.

Should there be clear scientific evidence that the quality of EGCS discharge water falls below the standards set at IMO level, any consequential measures should be proportionate to the level of risk. Furthermore, should scientific evidence indicate that there is a potential need to make the criteria for EGCS discharge waters more stringent, this should be done at the IMO level through the revision of the 2021 EGCS Guidelines² (section 10). The provisions of Regulation 4 of MARPOL Annex VI and associated guidelines would continue to ensure a level playing field by regulating EGCS discharges internationally.

¹ MEPC.1/Circ.899:

<https://wwwcdn.imo.org/localresources/en/OurWork/Environment/Documents/Air%20pollution/MEPC.1-Circ.899.pdf>

² Resolution MEPC.340(77) which were developed to allow for the testing, survey, certification, and approval of EGCSs in accordance with regulation 4 of MARPOL Annex VI.



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