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RÉPUBLIQUE FRANÇAISE

Code des Transports
Décret n° 84-810 modifié
Commission Centrale de Sécurité
Session du 4 mars 2020

Objet : Projet de modification de la division 213 – Prévention de la pollution – Interdiction de rejet des épurateurs de fumées en système ouvert dans l'enceinte des ports français et au mouillage

Références :

1. Avis de la Commission européenne (CE) du 18 Janvier 2016
2. Comité interministériel de la mer du 15 novembre 2018 (CIMER)
3. Note des autorités françaises (NAF) à la Commission européenne (DG MOVE)
4. Article R.333-28 du code des transports
5. MEPC/74/1 - Proposition 28+CE concernant l'évaluation et l'élaboration de règles et de recommandations harmonisées relatives au rejet d'effluents liquides provenant des dispositifs d'épuration des gaz d'échappement
6. Rapport du GESAMP – Décembre 2019 (PPR 7/INF.3)
7. Résolution MEPC.259(68) – Lignes directrices sur les EGCS
8. Directive (UE) 2016/802 du 11 mai 2016 concernant une réduction de la teneur en soufre de certains combustibles liquides (codification)
9. Etudes de l'Institut de recherche environnemental suédois (MEPC 75/INF.10) et de l'Institut de technology du Massachusetts (MIT) (MEPC 75/INF.13)

Annexe :

- Article 213-06.04 - Division 213
- Eléments de contexte
- Note des autorités françaises (NAF) à la Commission européenne (DG MOVE)
- Avis de la Commission européenne (CE) du 18 Janvier 2016

I/ Introduction

La règlementation internationale en matière d'émissions atmosphériques par les navires a évolué de manière significative et historique le 1er janvier 2020 avec l'entrée en vigueur du Global Cap. Les incertitudes sur la disponibilité du combustible à 0,5% et sur son prix ont conduit des armateurs à équiper leurs navires en scrubbers afin de continuer à utiliser un fuel plus soufré, connu et moins cher. On estime à 3000 le nombres de navires équipés de scrubber dans le monde, dont les 2/3 sont en système dit « ouvert » c'est-à-dire qu'ils rejettent dans le milieu marin ce qu'ils ont épuré des fumées d'échappement. Des standards de rejet ont été établi par l'Organisation Maritime Internationale (OMI) via des lignes directrices en 2009, mises à jour en 2015.

Aujourd'hui, et depuis 2016, à l'initiative de la France, les 28 Etats membres et l'Union européenne ont obtenu de l'OMI qu'une réflexion sur ces rejets advienne, menant éventuellement à une modification des lignes directrices voire à une modification de l'Annexe VI de la Convention MARPOL. Depuis, plusieurs études visant à alimenter

cette réflexion ont été menées, présentant des appréciations très différentes de la qualité de l'eau de lavage rejetée dans le milieu.

II/ Effets néfastes sur le milieu marin

Au niveau européen il a été admis par la Commission européenne que les eaux de rejets des scrubbers pouvaient ne pas être en conformité avec la Directive Cadre sur l'Eau, tout en ne niant pas que ces systèmes permettaient de respecter les seuils de la Directive Qualité de l'Air.

Il est avéré que ces eaux de lavage contiennent, en quantité plus ou moins importantes, des métaux lourds et des hydrocarbures aromatiques polycycliques (HAP). Les seuils de rejets de ces polluants sont bien règlementés par l'OMI depuis 2009 et 2015 mais il est reproché avec le recul de ne pas avoir pris en compte l'effet d'accumulation et de concentration dans le milieu, notamment en milieu fermé comme une enceinte portuaire, mais aussi en milieu très fréquenté comme les zones de mouillage.

A ce jour, 14 Etats et 54 ports (dont 31 en UE) ont donc décidé d'interdire les rejets des scrubbers en boucle ouverte dans leurs eaux territoriales ou leurs eaux portuaires.

En France, certains grands ports maritimes comme Marseille, Nantes-St Nazaire et La Rochelle ont déjà modifié leur règlement portuaire pour y inscrire une interdiction des rejets, parfois sauf preuve qu'ils ne portent pas atteinte à l'environnement. Le port de Rouen s'apprête à en faire de même. D'autres ports comme Bordeaux et Le Havre ont une interdiction de principe qu'ils diffusent via une information aux navires entrants.

III/ Position de la France

Il ressort donc un besoin d'harmonisation des règles dans les ports français. En outre, ces-derniers déplorent leur manque de formation et de moyens pour contrôler le bon respect de cette interdiction qu'ils ont décidée.

Les inspecteurs des affaires maritimes ne peuvent pas vérifier la bonne application du règlement portuaire, ils ne peuvent que prévenir le commandant du port.

Il est donc proposé de s'aligner sur les Etats et ports qui ont déjà pris position, au regard d'études et/ou du principe de prévention, et d'interdire les rejets des scrubbers open-loop dans l'enceinte des ports français et au mouillage dans les eaux sous souveraineté française. Cette interdiction figurerait dans la Division 213 du règlement annexé à l'arrêté du 23 novembre 1987, à l'article 213.06-04, et tomberait donc dans le champ de compétence des inspecteurs des CSN.

La sanction serait celle prévue à l'article 218-19 du code de l'environnement qui prévoit une amende de 4000 euros pour le capitaine s'il provoque un rejet de substance polluante par imprudence, négligence ou inobservation des lois et règlements.

AVIS DE LA COMMISSION

La commission prend note de cette proposition.
Cette consultation est ouverte jusqu'au I5 mai 2020, durant laquelle les avis seront collectés et intégrés dans la future proposition.

Annexe 1

Article 213-6.04 : Equivalences

1. L'Autorité compétente au titre de l'article 3-1 du décret n°84-810 relatif à la sauvegarde de la vie humaine, à l'habitabilité à bord des navires et à la prévention de la pollution peut autoriser à bord d'un navire battant pavillon français la mise en place d'installations, de matériaux, de dispositifs ou d'appareils ou d'autres procédures, fuel-oils de substitution ou méthodes visant au respect des dispositions, en remplacement de ceux qui sont prescrits par le présent chapitre, à condition qu'ils soient au moins aussi efficaces, du point de vue de la réduction des émissions, que ceux qui sont prescrits par le présent chapitre, y compris les normes énoncées dans les règles 213-6.13 et 213-6.14.

2. Les navires qui recourent à des méthodes de réduction des émissions au lieu d'utiliser des combustibles marins répondant aux exigences énoncées à l'article 213-6.14 bis, doivent prouver qu'ils :

- réalisent en permanence des réductions des émissions de dioxyde de soufre au moins équivalentes à celles qu'ils auraient obtenues, selon les valeurs déterminées à l'annexe 213-6.A11 ;

- répondent aux critères spécifiés dans les instruments visés à l'annexe 213-6.A12 ;

- ne nuisent ni ne portent atteinte à l'environnement, à la santé de l'homme, aux biens ou à ses ressources.

3. Les systèmes de production électrique à quai constituent une mesure alternative visant à réduire les émissions.

4. Seuls les navires qui recourent à des méthodes de réduction des émissions en système fermé sont autorisés à utiliser un combustible marin dont la teneur en soufre dépasse 3,5% m/m. **[à venir]**

5. Dans l'enceinte administrative des ports français et au mouillage dans les eaux sous souveraineté française, les rejets, dans le milieu marin, provenant des méthodes de réduction des émissions fonctionnant en système ouvert sont interdits.

Annexe 2 - Eléments de contexte

1. Eléments de contexte

La réglementation internationale en matière d'émissions atmosphériques par les navires a évolué de manière significative au 1er janvier 2020, en réduisant au niveau mondial les émissions d'oxyde de soufre. D'un niveau de 3,5% en masse, la teneur en soufre autorisée dans les combustibles des navires a été abaissée à 0,5% (appelé le Global Cap). Afin de pouvoir respecter les seuils d'émissions d'oxydes de soufre, les navires ont la possibilité, plutôt que d'utiliser des carburants à faible teneur en soufre (plus onéreux), de s'équiper de systèmes de lavage des gaz d'échappements (dénommés *scrubbers*) dont certaines technologies induisent des rejets de contaminants à la mer (métaux lourds, hydrocarbures aromatiques polycycliques (HAP), etc.)

1.1 Rappel de la réglementation internationale

L'annexe VI (entrée en vigueur en 2005) de la convention MARPOL concerne la prévention de la pollution de l'air par les navires et notamment les rejets de soufre.
Elle mentionne notamment les éléments suivants :

- **dans les SECAs**[1] (Manche/Baltique/mer du Nord), la teneur en soufre dans les carburants marins est passée de 1,5% à 1% en juillet 2010 puis à 0.1% le 1er janvier 2015 ;
- **hors des SECAs**, la teneur en soufre est passée de 4.5% à 3.5% en 2012, et à **0.5% en 2020.**

La Directive consolidée 2016/802 du 11 mai 2016 concernant la teneur en soufre des combustibles liquides, reprend les recommandations internationales et va plus loin en obligeant les navires à se conformer, dans les ports européens, aux mêmes exigences qu'en zone SECA lorsque leur escale dure plus de 2h.

1.2 Présentation des *scrubbers*

Les *scrubbers* sont des dispositifs de nettoyage des fumées d'échappement des navires qui les débarrassent notamment des oxydes de soufre (SOx) et d'une quantité non négligeable de particules. Il existe plusieurs types de *scrubbers* :

- Les *scrubbers* à **boucle ouverte** qui rejettent directement en mer les eaux de lavage des gaz d'échappement.
- Les *scrubbers* à **boucle fermée** qui stockent les résidus de lavage à bord (boues) pour un retraitement à terre. Il faut noter que ces scrubbers génèrent aussi quelques rejets en mer.
- Les *scrubbers* équipés d'un **système hybride** qui peuvent fonctionner en boucle ouverte ou fermée.

Au niveau mondial, environ 3000 navires sont équipés de *scrubbers* ou en passe de l'être (dont 15 français), sur 90 000. Plus des deux tiers sont des systèmes en boucle ouverte.

Si les navires équipés de *scrubbers* peuvent donc utiliser un combustible plus soufré (> 0,5%), la directive précise que seuls les navires équipés de systèmes fonctionnant en boucle fermée sont autorisés à utiliser un fuel à 3,5% de soufre en masse, étant sous-entendu que les systèmes en boucle ouverte, s'ils utilisent un fuel trop soufré, rejetteront dans le milieu des eaux de lavages trop chargées en polluants.

En outre, l'Organisation Maritime Internationale (OMI) a imposé, dès 2015, des seuils de rejets dans l'eau pour les systèmes en boucle ouverte sur des paramètres tels que le pH, la turbidité, les matières particulaires en suspension, les HAP, la température, les nitrates, les additifs et autres substances (10.1 – *Washwater discharge criteria*). Les lignes directrices adoptées le 15 mai 2015[2] indiquent par ailleurs

[1] Sulfur Emission Control Area
[2] Guidelines for exhaust gas cleaning system, Résolution MEPC.259(68)

que les résidus des scrubbers ne devraient pas être déchargés dans la mer mais dépotés dans des installations de réception portuaire (10.4 – *Washwater residues*).

2. Engagements et réflexion en cours

La France s'est très tôt prononcée contre les rejets des eaux de lavage des scrubbers dans le milieu marin et souhaite parvenir à un cadre international harmonisé visant à faire disparaître à terme le report d'une pollution de l'air vers une pollution des eaux marines.

2.1 Avis de la Commission européenne (CE) du 18 Janvier 2016

Dans un avis publié en 2016, la CE, saisie initialement par le Forum européen du maritime durable (ESSF), a indiqué qu'à ce stade il était probable que les Lignes Directrices de 2015 ne couvraient pas toutes les substances mentionnées dans la Directive Cadre sur l'Eau (DCE). En l'absence d'études suffisantes, elle invitait alors les Etats à déterminer seuls si les scrubbers compromettaient selon eux le respect des obligations de la DCE et proposait à ce titre un tableau en annexe, récapitulant les positions des Etats.

2.2 Comité interministériel de la mer du 15 novembre 2018 (CIMER)

L'interdiction des rejets des eaux de lavage des gaz d'échappement des navires est inscrite au point 3.1 : « la France s'engage au niveau européen et international pour faire disparaître les pollutions du milieu marin issues des fumées de navires »

2.3 Note des autorités françaises (NAF) à la Commission européenne (DG MOVE)

La France a saisi la CE par une NAF le 23 novembre 2018 pour l'établissement d'un cadre harmonisé au niveau européen visant à faire disparaître, à terme, le report des rejets atmosphériques vers des rejets en mer, selon l'échéancier suivant :

- **à une échéance la plus brève, si possible d'ici 2020, l'interdiction pour tout navire neuf ou nouvellement équipé, de rejeter des eaux de lavages dans les eaux territoriales** ;
- si possible en 2026, en cohérence avec le second cycle de la mise en œuvre de la Directive cadre stratégie pour le milieu marin, l'interdiction de rejet pour les navires neufs comme les existants ;
- à plus long terme l'interdiction de tout rejet d'eaux de lavage des gaz d'échappement en mer.

2.4 Comités environnementaux de l'OMI

Sur la base de cette proposition française, les Etats membres et l'UE ont porté à l'OMI un projet pour développer des règles harmonisées accompagnées d'un guide précisant les conditions et les zones dans lesquelles ces effluents peuvent être rejetés. Ce sujet a été inscrit à l'ordre du jour du comité sur la protection de milieu marin (MEPC) de mai 2019.

Le MEPC a alors décidé de confier au groupe de travail GESAMP (*Group of Experts on the Scientific Aspects of Marine Environmental Protection*) la réalisation d'une évaluation du risque de ces *scrubbers* pour l'environnement marin, d'identifier les limites des études disponibles, de définir les besoins complémentaires et de faire des propositions pour l'écriture de ce guide. Un expert de l'Ifremer participe à ce groupe au titre de la France. Des premières recommandations ont été produites mais des valeurs seuils de risque pour les rejets ne devraient pas être disponibles avant 2021.

Le prochain sous-comité de prévention de la pollution (PPR – Février 2020) a donc reçu pour mandat d'envisager la révision des Lignes directrices de 2015 sur la partie « Rejet des eaux de lavages » et notamment les critères et seuils de rejets, les types de substances et l'état du milieu avant rejet pour établir une comparaison fiable.

Le GESAMP doit se baser notamment sur les études existantes, c'est pourquoi s'affrontent, par études interposées, d'un côté le Japon (pays installateur de *scrubbers*), des industriels et armateurs, et de

l'autre les ONG environnementales, l'Allemagne et la Suède. L'actuel débat à l'OMI se situe donc sur la détermination des bonnes questions à poser pour évaluer l'impact de ces eaux de lavages. Une fois le cadre délimité, le travail de fond pourra être fait.

Carte des interdictions de rejets en Europe

Annexe 3

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EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
Directorate C - Quality of Life, Water & Air
Unit C.1 – Water and Unit C.3 - Air

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Brussels,
ENV.C.3/RH

NOTE TO THE ATTENTION OF THE MEMBERS OF THE EUROPEAN SUSTAINABLE SHIPPING FORUM

Subject: **Commission's views on the discharge of scrubber wash water and the updated table summarising the position of Member States on the acceptability of discharges of scrubber wash water - Agenda item 6.C ESSF of 26/1/2016**

Following the requests made by several members of the European Sustainable Shipping Forum (ESSF) during its meeting of 16 June 2015, this note sets out the views of the Commission on the application of the provisions of the Sulphur Directive (SD) and the Water Framework Directive (WFD).

Annexed to this note is the updated table summarizing the positions of Member States (and Norway) bordering the EU Sulphur Emission Control Areas (SECAs) regarding the acceptability of discharges of wash-water from Exhaust Gas Cleaning Systems (EGCS) in relation to the provisions of the SD and the WFD.

The contents of this note and the attached table have also been shared with the members of the 'Committee on the Implementation on the Sulphur Directive' and the Members of Working Group Chemicals under the 'Common Implementation Strategy for the Water Framework Directive'. This note does not create requirements other than those in the said Directives and is not a binding interpretation of any provision in the SD or WFD, which is the prerogative of the European Court of Justice.

The SD permits the use of scrubbers under the conditions specified by the IMO as a possible means of compliance with the 0,10% sulphur in fuel requirement that entered into force on 1 January 2015 for ships operating in the EU SECAs and for ships at berth in all Union ports.

At the same time, the recitals of the 2012 amendment of the SD and the associated Impact Assessment make it clear that the use of scrubbers needs to be compatible with the EU's broader environmental protection objectives, notably those in relation to the protection of the marine ecosystem and that their use should not lead to a transfer of the pollution problem from air to water. Hence, the use of scrubbers in EU waters, including the discharge of wash water, must not hamper any EU coastal state from complying with the binding obligations set in the WFD. This was also the main conclusion of the document submitted by the Commission to the Water and Marine Directors at their

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meeting in November 2014, and of the Commissions' statement at the ESSF on 16 June 2015.

The Commission believes that at this stage it is still uncertain to what extent the discharge of scrubber wash-water would jeopardize compliance with the WFD obligations. However, there seems increasing evidence from recent studies and analyses of wash-water samples of existing scrubbers that the wash-water contains poly-aromatic hydrocarbons (PAH) and heavy metals (e.g. vanadium, zinc, cadmium, lead and nickel) in potentially larger quantities than initially thought. In this context it should also be recognized that the IMO Exhaust Gas Cleaning System Guidelines do not contain any detailed discharge requirements as regards suspended particulate matter, including heavy metals and ash, rather a general obligation 'to minimize' these pollutants

For the moment the Commission's role is primarily aimed at ensuring that Member States properly assess all possible risks which could affect the obligations set out in the WFD, including the discharge of scrubber wash-water. Those obligations, in particular to achieve good ecological and chemical status, require meeting the so-called environmental quality standards1 and the standards for the river basin specific pollutants. They also require non-deterioration of water status, and the progressive reduction and, for some pollutants, phasing out, of emissions to the water environment.

In line with the rather local (river-basin specific) implementation of the WFD, national authorities are best placed to determine how they can meet the WFD obligations. At the same time, this approach also implies that the possible risk the discharge of scrubber wash-water could pose to achieving the WFD status objectives may vary across the EU depending on the already existing pressures or the sensitivity of certain areas such as estuaries, fjords, bays or ports.

Despite the efforts to collect information (notably through the ESSF) that could support an evidence-based approach to assessing the potential risks of the discharge of scrubber wash-water, it seems that more time is needed to gather enough data for a consensus.

Meanwhile, the Commission will review to what extent Member States are considering the discharge of scrubber wash-water and possible associated risks in their inventories of emissions, discharges and losses, their updated River Basin Management Plans and their 'programmes of measures'. Furthermore, the Commission believes that while the number of existing ships currently equipped with scrubbers is not likely to substantially affect the achievement of the status objectives of the WFD, the likely future increase in the number of ships equipped with scrubbers in view of the entry-into-force of the 2020 0,5% sulphur cap, their possible concentration in certain sensitive sea areas (e.g. ports and estuaries) and the cumulative effect of the wash-water discharge, do require a precautionary approach which should be considered in the forward looking parts of the River Basin Management Plans and 'programmes of measures'.

To determine the possible risks properly more data are needed, and all involved parties should support this process. The Commission has already actively engaged in dialogue with the Member States and industry, but for the sake of legal certainty especially in view of future investments, all involved stakeholders should speed-up the process of collecting more sampling data and sharing the results of local studies. The first results of a sampling exercise (involving eight ships) were only presented in the ESSF Subgroup

[1] Directive 2008/105/EC, as amended by Directive 2013/39/EU, on environmental quality standards in the field of water policy

on Exhaust Gas Cleaning Systems in September (see also the ESSF Plenary document '6b'). Its results are currently being analysed by its members.

The Joint Research Centre (JRC) has been asked by DG Environment to draw up an initial scoping report on the potential impact of EGCS on the water quality in SECAs. The purpose of this work is to identify whether, and where, problems could occur in achieving Good Environmental Status as defined in the Marine Strategy Framework Directive. If it finds potential problems (e.g. in certain hot spots) it will attempt to identify the necessary modelling work in order to fully determine those problems. The JRC has completed a literature review and is currently preparing for a limited modelling exercise in order to fulfil these tasks. A report is expected for April 2016.

The Commission is aware of the on-going research and development programmes aiming at the reduction of air pollution from ships, beyond current legislation, and has also understood that certain technological developments could considerably limit the presence of particles in the wash-water. The Commission would welcome new installations to consider those possibilities to reduce the impact of the abatement technology on the aquatic environment.

The Commission is looking forward to continue the cooperation with the ESSF on this matter and calls on all experts to share any relevant findings.

Requests to the Plenary:

- To take note of the Commission's views on the application of the provisions of the Sulphur Directive and the Water Framework Directive on the discharge of scrubber wash water;

- To take note of the updated table on position of EU Member States bordering the EU SECA on EGCS/scrubber wash water discharges – presenting the most recent state of play in reply to requests for clarity;

- To endorse further cooperation in the ESSF, notably by extending the discussion to non-SECA EU Member States and by sharing the findings of any relevant national/local studies.

Annex I: Position of EU Member States bordering the EU SECA on EGCS/scrubber wash water discharges as per Directive 1999/32/EC ("Sulphur Directive" - SD) and Directive 2000/60/EC ("Water Framework Directive" - WFD) - Summary of reporting by Member States in September 2015

Annex II: Statement of the Commission at the meeting of the Water and Marine Directors in November 2014.

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Annex I

Position of EU Member States bordering the EU SECA on EGCS/scrubber wash water discharges as per Directive 1999/32/EC ("Sulphur Directive" - SD) and Directive 2000/60/EC ("Water Framework Directive" - WFD)

Summary of reporting by Member States in **September 2015 (information in this table may have changed since then)**

MS	**EGCS discharge allowed when complying with IMO Guidelines + Annex I and II of SD, subject to conditions below and in the next column**	**Local rules and other conditions including the meeting of WFD objectives**	**Additional WFD/MSFD considerations,** including how, if EGCS discharges are allowed, obligations will be met as regards chemical status, river basin specific pollutants and the phase-out of emissions of priority hazardous substances	**Additional studies needed**	**Discussion between authorities still on-going**	**Other comments**
BE	☑: **only** in **coastal and open seawaters** (off the limit of the base line)	• Discharge in coastal and open seawaters is **only** allowed if does not imperil WFD objectives. • Discharge from ships is **not** allowed in ports or inland waters. It should be noted that according to the law on protection of surface waters, a permitting system is in force for land-based installations with appropriate procedures for obtaining a permit (and taxation depending on the amount of pollution).*	• To date, no data indicating that discharges in coastal and open seawaters should be forbidden • Studies show a very quick dilution of discharge without effects on the environment at sea. In the case the contrary should be proved, rules might become more strict and discharge could be forbidden to protect the marine environment.	• Important to have enough data on the composition, concentration and volumes of wash water to estimate the effects on the environment with confidence, and to be able to set the conditions to allow discharge from ships, should that be estimated as feasible.	☑ From February 2015, discussions are ongoing between all relevant national and regional authorities in order to achieve a coordinated position and to implement this position in an appropriate way. So far we didn't come to final conclusions, but when discussing this complex issue, following concerns popped up: The importance to have enough data (see left); Every port is unique (closed/open docks, amount of ships, type of ships, amount of ships with scrubbers,...) and a common approach might be hard to find; The absence of harmonized rules in Europe might distort the market for ports (ports with more stringent regulations	Competencies shared between maritime and environmental administrations and federal and regional authorities. Common position aimed at. The federal government is competent for the SD directive and the part of the WFD covering open sea waters and coastal waters below the base line. Regional governments are competent for ports, inland waters and coastal waters above the base line. In relation to the environmental aspects, the positions of the federal and regional administrations are different inasmuch as the situation of inland and sea waters is different. Dilution plays a larger role in sea waters than in inland waters, which allows for a more flexible position for the federal environmental administration considering discharge of washwater from scrubbers. *** Additional information of 14 January 2016:** The full title of the applicable legislation is: "**Wet van 26 maart 1971 op de bescherming van de oppervlaktewateren tegen verontreiniging (Vlaams Gewest), as amended.**"

Annex I

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					might lose traffic to other ports without prohibitions); Can grandfathering be allowed and under what conditions? There is a considerable risk that land-based installations get stricter conditions (from implementation of the WFD) than the conditions that are set for ships (in the case the discharge should be allowed). How can we set similar rules for ships as for land-based industry? Can they be compared (concentrations, loads, frequency of discharges,...)? Does it make sense to treat them equally and how can we treat them on an equal basis? For the maritime industry a clear position on what is allowed is very important.	

Annex I

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DK	• ☑ • **Additional information of 14 January 2016:** At present, no additional restrictions of discharge are in place. The Danish Authorities are following the developments in order to ensure that discharge do not prevent the objectives of the WFD. See also column to the right.	• Discharges must not prevent the objectives of the WFD	• In order to ensure that discharge from scrubbers will not lead to deterioration of the affected waters or prevent the waters to obtain the objectives of the WFD, we will follow up on the development in the use of scrubbers in Danish waters and seek more knowledge on the composition of wash water. • In case a demonstrated need arises in the future, the discharge of wash water may be restricted in selected areas (i.e. ports) to comply with the objectives of the WFD. The process will be coordinated between the relevant authorities (environment, maritime and transport). Possible restrictions should seek not to punish early movers.	• See left		The position on discharge of wash water has been discussed between the involved authorities: Environment, maritime and transport (responsible for the regulation of ports). Based on an assessment from 2012[1] we do not see any reason to expect measurable effects of scrubbers on the parts of Danish waters covered by the WFD. Against this background, we do not envisage further regulation of the discharge from scrubbers to the marine environment as a consequence of the WFD at this point in time. 1 Assessment of possible impacts of scrubber water discharges on the marine environment, Danish EPA 2012: http://www2.mst.dk/Udgiv/publications/2012/06/978-87-92903-30-3.pdf It is the view of Denmark, that in case Member States choose to restrict the use of scrubbers which comply with the IMO guidelines, they should notify the EU-Commission and the IMO.
EE	*Final answer still awaited to clarify apparent contradiction.*	• Ports can set rules for themselves, but haven`t done yet. BUT • Our Water Act states that	It does not make real sense if to purify sulphur from exhaust-gas in order to achieve cleaner air and then directly release sulphur into surface water		☑ This topic is under discussion	Discharging of scrubber wash water into surface water should be considered in the same way as discharging waste water into surface water - it has to be treated to conform with the set limit values of pollutants before discharging into surface water

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		discharging pollutants from ship into sea is prohibited.	causing therefore water pollution.			
FI	☑	• Ports can set rules for themselves, but haven't done yet.				
FR	☑	• Ports can set rules for themselves, but haven't done yet. • Port authorities can forbid the entrance to the port of any ship whose presence could endanger human health or environment. • Ship owners, including those planning to equip their ships with scrubbers, have been sent letters regarding the regulations they need to comply with, including the MSFD and WFD.	• Studies are required to control the impact and ensure compliance with the WFD.	• Studies are planned: any change may be based on their findings. • See also last column.		A meeting took place last summer in France on this topic, involving our services in charge of the implementation of the MSFD and WFD for coastal waters and our service in charge of maritime transport. Following this meeting, a generic letter has been sent to all ship owners. The letter asks the ship owners for relevant information, in order to carry out a study of compliance with the environmental requirements.
DE	☑: **EEZ and coastal waters (with proof that IMO criteria are met).**	• **Inland Waterways:** Discharge not allowed according to Convention on the collection, deposit and reception of waste produced during navigation on the Rhine and Inland Waterways (CDNI)* • For **Ports** that are not part of an inland waterway the relevant authorities can set rules for themselves, but not aware of any DE ports	• The national authorities have to decide whether the operation of scrubbers is likely to affect the achievement of WFD objectives, especially the obligation to prevent the deterioration of water bodies according to Article 4 WFD and Article 1 MSFD and to take appropriate measures.** • DE seeks for balanced approaches via regular information exchange among	• Further studies on the environmental impacts of scrubber washwater are currently being conducted. The results will be considered. •	☑	One workshop has taken place so far, where national authorities and regional authorities have discussed the implications in the context of discharge of scrubber wash water. At the moment, the authorities responsible for the WFD are in the process of consolidation of their position within the frame of the German Working Group on water issues of the Federal States and the Federal Government (LAWA). Besides WFD, DE considers related marine protection aspects in the context of operation of scrubbers according to the MSFD and its need to achieve a good environmental status of marine waters, too, thus aiming at coherent policy approaches including for community action between air quality and water policies. Subsequently, the exchange of views between the

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		that are planning to do so yet. In its scope of application, the regulations of the Federal Water Act (Wasserhaushaltsgesetz) have to be applied. • We agree with the information note for the meeting of the Water- and Marine Directors in November 2014, according to which WFD objectives have to be met by the national authorities. • Therefore, when applying the provisions of the SD which permit the use of scrubbers under the conditions specified by the IMO, WFD obligations remain applicable in relation to water quality and the progressive reduction/phase-out of pollutant emissions.	relevant air pollution and water policies entities at all policy levels – nationally within the implementing structures, at the EU within the different WPs (e.g WG Chemicals) and regionally within HELCOM MARITIME, where shipping related Sulphur- and scrubber wash water issues are at stake, too. If the international agreements (e.g. the IMO Washwater Guidelines) should prove to be not sufficient to reach the objectives of WFD/MSFD they should be revised.			different authorities and actors is an ongoing task and includes R&D (see left). * **Additional information of 15/1/2016**: Article 1 (e) the CDNI Convention defines '*Other waste generated from the operation of the vessel*' as '*domestic waste water, domestic refuse, cleansing slurry, slops and other special waste as defined in Part C of the Implementing Regulation*'. Part C of the Implementing Regulation specifies in Article 8.01 (e) '*Other special waste*' as '*generated from the operation of the vessel other than oily and greasy waste [...]*'. Originating from the operation of the EGCS, which is an essential part of the vessel's operation, EGCS wash water is 'waste generated on board' (Article 1 (a)). According to Article 3 (1), the discharge of such waste is prohibited. ** **Additional information of 15/1/2016:** DE reaffirms its efforts to assess all possible risks that could affect the obligations set out in the WFD, including the discharge of scrubber wash water. This refers especially to the aim of achieving Good Environmental Status for all water bodies, including coastal and marine waters, and a fundamental prohibition of deterioration in the status of water bodies. Furthermore, the provisions of the Directive on Priority Substances must be complied with. The German government has implemented these directives nationally or is working on corresponding amendments. In addition, the 'precautionary approach' of the WFD comprises the possibility of reservations of authorizations based on the Federal Water Act or bans, based on local regulations within the scope of responsibility of ports, to be enforced. The Federal Ministry for the Environment currently conducts an enquiry, initiated within the framework of the LAWA, about practical enforcement, monitoring and experience gained on

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						these questions at stake in the Federal States ('Länder') and their ports. In any case, any concluding assessment regarding the risks deriving from scrubber discharges is still premature, as we are lacking data and surveys, yet. In order to react adequately, being in line with the provisions of the WFD, measures may need to be taken – as appropriate – at any time once improved knowledge of impacts on water management issues will be available.
LV	☑	• In general, national authorities are of the position that open-loop scrubber wash water discharge **should be prohibited** in Latvian territorial waters and ports.	• A need for clear procedure/conditions regarding emissions from EGCS of ships keeping in mind at least two aspects: ✓ according to Latvian Regulations regarding discharge of polluting substances into water all territory of Latvia is specified as a highly sensitive area, where heightened requirements for urban wastewater treatment apply ✓ WFD-related surface water protection measures, taking into account purposes of the Directive – to prevent further deterioration of waters as well as to improve the aquatic environment, inter alia, through specific	• There is not sufficient information on the number of vessels with EGCS entering Latvian ports and their impact on water quality in specific ports of Latvia.	☑ Discussions on improvements of relevant national regulations regarding emissions from EGCS will be continued.	Interests of stakeholders should be taken into account as there are many vessels with open-loop scrubber systems installed and approved.

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			measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances			
LT	☑	• According to Port Rules and Conditions of Use approved by the Ministry of Transport and Communication discharges of polluted water are **not allowed** in Port Water Area.		• Lithuanian experts are still studying whether EGC wash water discharges have serious impacts on the marine environment or not. When results will be clear, conclusions will be provided.	☑ This topic is under discussion.	
NL	☑		• The use of scrubbers can have an impact on water quality. • If it becomes clear from studies that there are serious impacts on water quality then it should be looked at (and regulated) in the context of the IMO guidelines or SD		☑ Environment authorities are discussing the issue with shipping colleagues	A preference expressed for hybrid scrubbers.
NO	☑	• Ports can set rules for themselves, but haven't done yet.	• WFD requirements must be met.			Environment authorities have had contact with Norwegian shipowners who say there is no problem with installing closed-loop scrubbers

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PL	☑	• Ports and maritime offices can set rules for themselves, but havent done yet.	• At present Poland does not have sufficient experiences in the use and control of installations for cleaning exhaust gases. • There are no disturbing signals from the inspection bodies responsible for control of ships and monitoring of water quality.		(There appears to be only one authority in Poland responsible for the discharge of scrubber wash water into surface waters including port waters.)	Most of ship owners, to meet the requirements of Directive 2012/33/EU, have chosen the option of use the fuels with lower sulphur content.
SE	☑	• Port can set rules for themselves, but haven't done yet.	Preference for closed loop or hybrid scrubbers.			
UK	☑*	• Port can set rules for themselves, but not aware of any UK ports that are planning to do so yet.*	• Given the limited number of scrubbers that have been installed and the expected rate of their installation, in advance of a more definitive case under WFD we can accept ship scrubber wastewater discharges into ports and harbours.*	• Meantime we will seek evidence on quality of wastewater which would be discharged, noting that discharges will in any case need to be compliant with IMO regulation.*		* **Additional information of 15 January 2016:** The UK position in Annex 1 remains unchanged. We consider that more work needs to be done to obtain and analyse data from wash water discharges to justify any deviation from the IMO guidelines on EGCS. We support the ongoing work in the ESSF EGCS sub-group and welcome the work that is being carrying out by The Joint Research Centre for this item. The outcome of these work streams should provide more robust data which can be used to understand the consequences in relation to compliance with EU Water Framework Directive.

Ref. Ares(2016)254855 - 18/01/2016

INFORMATION NOTE FOR WATER AND MARINE DIRECTORS ITALY, NOVEMBER 2014

Sulphur Directive[1] (SD) and scrubbers: implications for the Water Framework Directive (WFD)

The Water and Marine Directors are invited to:
Take note of the information presented and inform relevant authorities accordingly.

The Issue

The amended SD requires that MS take measures to ensure that the sulphur content of marine fuels used in SOx Emission Control Areas (SECAs) does not exceed 0.10% as from 1 January 2015.

However, the SD provides that MS should allow the application of alternative SOx emission abatement techniques. One of these is the use of exhaust gas cleaning systems (EGCS), known as "scrubbers". In a nutshell, this involves cleaning the exhaust with water and discharging the washwater either to the sea (open loop scrubbers) or mostly to port facilities (closed loop scrubbers). The text of the SD requires that scrubbers comply with an IMO standard[2] which sets certain minimum performance values for the washwater.
In view of the impending deadline, a debate has arisen as to the effect of the SD provisions concerning the use of scrubbers vis-à-vis WFD obligations. For example, some of the pollutants in the washwater are polyaromatic hydrocarbons (PAHs), which are priority hazardous substances under the WFD.
The issue is also relevant to the Marine Strategy Framework Directive.[3]

Observations

The SD makes no reference to the WFD and vice versa. The two pursue different but complementary objectives: one relates to reducing emissions of SOx, while the other inter alia relates to protecting and improving the aquatic environment.
The WFD's objectives include the prevention of deterioration and the achievement of good chemical status. To these ends, measures have to be taken to progressively reduce the emissions of priority substances, and to phase out the emissions of priority hazardous substances.

The primary intention of the SD is to encourage the use of low-sulphur fuel in maritime transport and this involves a considerable investment in new or retro-fitted engine technology by ship owners. The SD permits the use of scrubbers as an alternative means of achieving its objective on SOx emissions. However, the possibility of allowing the use of scrubbers does not prevail over Union legislation to safeguard Europe's waters. In other words, the SD does not add a new exemption to the binding environmental objectives of the WFD.
WFD objectives have to be met by the national authorities. Therefore, when applying the provisions of the SD which permit the use of scrubbers under the conditions specified by the IMO, WFD obligations remain applicable in relation to water quality and the progressive reduction/phase-out of pollutant emissions. In that context, the national authorities are best placed to determine whether the operation of scrubbers is likely to affect the achievement of WFD objectives, and to take appropriate measures.[4]

From the available information, it appears that the majority of the SECA bordering MS have not yet decided on possibly limiting the discharge of scrubber wash water beyond the IMO standard to ensure compatibility with the WFD. This legal uncertainty may affect the use of already installed and approved scrubbers, and possibly complicate future investment decisions of ship owners. Under the European Sustainable Shipping Forum (ESSF)[5], it was decided to collect more information about the exact characteristics of the scrubber washwater from ship owners already using this abatement equipment on-board. This should provide more information concerning the use of scrubbers vis-à-vis WFD obligations.

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[1] Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC, as latest amended by Directive 2012/33/EU
[2] Resolution MEPC.184(59) of 17/07/2009 http://www.imo.org/blast/blastDataHelper.asp?data_id=26469&filename=184(59).pdf
[3] In summary, the sulphuric acid in washwater contributes, like carbon dioxide, to ocean acidification. Increased acidification (e.g. on busy shipping lanes, estuaries, ports and confined water bodies given the limited dilution and buffering capacity) may hamper the effectiveness of measures taken to achieve Good Environmental Status by 2020.
[4] In this respect, it is worth recalling recital (13) of the (original and consolidated) SD which explicitly allows MS to maintain or introduce more stringent protective measures. This also mirrors Article 193 TFEU.
5 The group of experts on maritime transport sustainability set up by Commission Decision C(2013)5984 final of 24 September 2013.

Annexe 4

Liberté • Égalité • Fraternité
RÉPUBLIQUE FRANÇAISE

Paris, le 23 novembre 2018

NOTE DES AUTORITÉS FRANÇAISES
A LA COMMISSION EUROPEENNE (DG MOVE)

Objet : Interdiction des rejets en mer des laveurs de gaz d'échappement des navires

Réf. : *convention MARPOL relative à la prévention de la pollution par les navires*

Directive (UE) 2016/802 concernant une réduction de la teneur en soufre de certains combustibles liquides

directive 2014/90/UE relative aux équipements marins

Afin de pouvoir respecter les seuils d'émissions d'oxydes de soufre imposés, d'une part, par la convention internationale MARPOL relative à la prévention de la pollution par les navires et, d'autre part, par la Directive (UE) 2016/802 concernant une réduction de la teneur en soufre de certains combustibles liquides, les navires peuvent s'équiper de systèmes de lavage des gaz d'échappements (dénommés scrubbers), dont certaines technologies induisent des rejets à la mer.

Ces systèmes sont soumis à un régime d'autorisation en application de l'annexe VI de la Convention MARPOL et la directive 2016/802/UE. L'autorité du pavillon est l'autorité compétente pour autoriser l'installation de ces systèmes.

En application de la directive 2014/90/UE relative aux équipements marins, les laveurs de gaz sont soumis à un processus de qualification, d'approbation et font l'objet d'un marquage de type CE.

Ces deux régimes de certification couvrent les questions de qualité des effluents.

Sur le plan de la protection du milieu, la réglementation est composée de la directive cadre sur l'eau (DCE), de la Directive cadre UE stratégie milieu marin (DCSMM) et des éventuelles réglementations nationales applicables dans la limite des eaux territoriales.

On constate un manque de cohérence entre les réglementations relatives aux navires et celles relatives au milieu. L'application de certaines prescriptions, d'une part, de la réglementation internationale (MARPOL) et, d'autre part, des directives européennes soufre et équipements marins, s'articule difficilement avec les objectifs poursuivis par des réglementations environnementales européennes (DCE et DCSMM) visant à la protection du milieu marin et avec la réglementation française. En effet, les types de scrubbers fonctionnant en boucle ouverte ou semi-fermée bénéficient d'autorisation, alors même que les rejets en mer des eaux de lavage peuvent conduire à dépasser les seuils tolérés pour le milieu marin au titre des réglementations environnementales. Cette entrée nouvelle de contaminants dans le milieu marin peut être un frein à l'atteinte du bon état écologique visé par les directives DCE et DCSMM, voire un risque de dégradation.

Au niveau européen, il n'existe à ce jour aucune harmonisation des pratiques sur cette question, notamment sur l'articulation des réglementations relatives aux navires et celles relatives au milieu.

Le compte-rendu du cinquième comité de mise en œuvre de la Directive 1999/39/EC sur la teneur en soufre des fuels marins modifiée, qui s'est tenu le 3 mars 2017 à Bruxelles, indique que le sous-groupe « système de lavage des gaz d'échappement » de *l'European Sustainable Shipping Forum* (ESSF) travaille sur une campagne de mesure des rejets des eaux de lavage, afin d'aider les administrations dans la définition de leur position.

Dans ce contexte, la France souhaite ouvrir le débat pour l'établissement d'un cadre harmonisé au niveau européen visant à faire disparaître, à terme, le report des rejets atmosphériques vers des rejets en mer :

1. à une échéance la plus brève, si possible d'ici 2020, compte-tenu de la mise en œuvre de la convention MARPOL, l'interdiction pour tout navire neuf ou nouvellement équipé, de rejeter des eaux de lavages des gaz d'échappement dans les eaux territoriales ;

2. si possible en 2026, en cohérence avec le second cycle de la mise en œuvre de la DCSMM, l'interdiction de tout rejet d'eaux de lavage des gaz d'échappement dans les eaux territoriales, pour les navires neufs comme les existants ;

3. à plus long terme l'interdiction de tout rejet d'eaux de lavage des gaz d'échappement en mer.

Cette position devrait également être portée à l'Organisation Maritime Internationale.

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Les autorités françaises se tiennent à la disposition de la Commission européenne pour toute information complémentaire.