



Council of the
European Union

031610/EU XXVI. GP
Eingelangt am 19/07/18

Brussels, 19 July 2018
(OR. en)

11270/18

Interinstitutional File:
2018/0012(COD)

TRANS 330
MAR 99
ENV 527
PECHE 297
CODEC 1300

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	ST 10448/2/18 REV 2
No. Cion doc.:	ST 5454/18 + ADD 1
Subject:	Proposal for a Directive of the European Parliament and of the Council on port reception facilities for the delivery of waste from ships, repealing Directive 2000/59/EC and amending Directive 2009/16/EC and Directive 2010/65/EU - Recitals

The Shipping Working Party has agreed on the text of the recitals, as set out in the annex to this document, as the basis for the Presidency's negotiations with the European Parliament.

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on port reception facilities for the delivery of waste from ships, repealing Directive
2000/59/EC and amending Directive 2009/16/EC and Directive 2010/65/EU

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union's maritime policy is aimed at a high level of safety and environmental protection. This can be achieved through compliance with international conventions, codes and resolutions while maintaining the freedom of navigation as provided for by the United Nations Convention on the Law of the Sea ('UNCLOS').

¹ OJ C , , p. .

² OJ C , , p. .

- (2) The International Convention for the Prevention of Pollution from Ships ('MARPOL Convention') provides for general prohibitions on discharges from ships at sea, but also regulates the conditions under which certain types of waste can be discharged into the marine environment. The MARPOL Convention requires Member States to ensure the provision of adequate reception facilities in ports.
- (3) The Union has pursued the implementation of parts of the MARPOL Convention through Directive 2000/59/EC of the European Parliament and the Council³, by following a port-based approach. Directive 2000/59/EC aims to reconcile the interests of smooth operation of maritime transport with the protection of the marine environment.
- (4) In the last two decades, the MARPOL Convention and its Annexes have undergone important amendments, which put in place stricter norms and prohibitions for the discharges of waste from ships at sea.
- (5) Annex VI to the MARPOL Convention introduced discharge norms for new waste categories, in particular, the residues from exhaust gas cleaning systems, consisting of both sludge and bleed-off water. Those waste categories should be included in the scope of this Directive.
- (6) On 15 April 2014, the International Maritime Organisation ('IMO') adopted the Consolidated Guidance for port reception facility providers and users (MEPC.1/Circular 834/Rev.1), including the standard format for waste notification, waste delivery receipt, and reporting alleged inadequacies of port reception facilities.
- (7) In spite of those regulatory developments, discharges of waste at sea still occur. This is due to a combination of factors, namely adequate port reception facilities are not always being available in ports, enforcement often being insufficient and there being a lack of incentives to deliver the waste onshore.

³ Directive 2000/59/EC of the European Parliament and the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ L 332, 28.12.2000, p.81).

- (8) Directive 2000/59/EC has contributed to increasing volumes of waste being delivered to port reception facilities since its entry into force, and as such has been instrumental in reducing waste discharges at sea, as was revealed in the evaluation of that Directive carried out in the framework of the Regulatory Fitness and Performance programme (REFIT Evaluation).
- (9) The REFIT Evaluation has also demonstrated that Directive 2000/59/EC has not been fully effective due to inconsistencies with the MARPOL Convention framework. In addition, Member States have developed different interpretations of the key concepts in that Directive, such as adequacy of the facilities, advance waste notification and the mandatory delivery of waste to port reception facilities, and exemptions for ships in scheduled traffic. The REFIT Evaluation called for more harmonisation of those concepts and further alignment with the MARPOL Convention in order to avoid unnecessary administrative burden on both ports and port users.
- (10) This Directive is also instrumental for the application of the main environmental legislation and principles in the context of ports and the management of waste from ships. In particular, Directive 2008/56/EC of the European Parliament and the Council⁴ and Directive 2008/98/EC of the European Parliament and the Council⁵, are relevant instruments in this regard.
- (11) Directive 2008/98/EC lays down the main waste management principles, including the "polluter pays" principle and the waste hierarchy, which calls for preparing for reuse and recycling of waste over other forms of waste recovery and disposal and requires the establishment of systems for the separate collection of waste. In addition, the extended producer responsibility concept is a guiding principle of Union waste law, on the basis of which producers are responsible for the environmental impacts of their products throughout the life-cycle of those products. Those obligations also apply to the management of waste from ships.

⁴ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p.19).

⁵ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p.3).

- (12) Separate collection of waste from ships, including derelict fishing gear, is necessary to ensure its further recovery in the downstream waste management chain. Garbage is often segregated on board of ships in accordance with international norms and standards and Union legislation should ensure that these efforts of on-board waste segregation are not undermined by a lack of arrangements for separate collection on shore.
- (12a) Directive (EU) 2018/851 of the European Parliament and the Council⁶ calls on Member States to halt the generation of marine litter as a contribution towards the United Nations Sustainable Development Goal to prevent and significantly reduce marine pollution of all kinds.
- (13) Although, in most sea areas, the majority of marine litter originates from land-based activities, the shipping industry, including the fishing and recreational sectors, is also an important contributor, with discharges of garbage, including plastic and derelict fishing gear, going directly into the sea.
- (14) The Commission Communication of 2 December 2015 entitled "Closing the loop - An EU action plan for the Circular Economy"⁷ acknowledged the specific role that Directive 2000/59/EC has to play in this respect, by ensuring the availability of adequate facilities for the reception of garbage, and providing for both the right level of incentives and the enforcement of the delivery of waste to the on-shore facilities.

⁶ Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste (The Directive on Waste) (OJ L 150, 14.6.2018, p.109).

⁷ Commission Communication COM/2015/0614, 'Closing the loop- an EU action plan for the Circular Economy', section 5.1.

- (15) A port reception facility is considered to be adequate if it is able to meet the needs of the ships normally using the port without causing undue delay, as also specified in MEPC.1/Circular 834/Rev.1 and the IMO Guidelines for ensuring the adequacy of port waste reception facilities (Resolution MEPC.83(44)). Adequacy relates both to the operational conditions of the facility in view of the user needs, as well as to the environmental management of the facilities in accordance with Union waste legislation. It may, in some cases, be difficult to assess if a port reception facility located outside of the Union meets this standard.
- (16) Regulation (EC) No 1069/2009 of the European Parliament and of the Council⁸ requires international catering waste to be incinerated or disposed of by burial in an authorised landfill, including waste from ships calling at Union ports which has potentially been in contact with animal by-products on board. In order for this requirement not to limit the preparation for reuse and recycling of waste from ships, efforts should be made in accordance with MEPC.1/Circ.834/Rev.1 to better segregate the waste so that potential contamination of waste, such as packaging waste, can be avoided.
- (17) To ensure the adequacy of port reception facilities, the development, implementation and re-assessment of the waste reception and handling plan is essential, based on consultation of all relevant stakeholders. For practical and organisational reasons, neighbouring ports in the same region may want to develop a joint plan, covering the availability of port reception facilities in each of the ports covered by the plan while providing a common administrative framework.

⁸ Regulation (EC) No 1069/2009 of the European Parliament and the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) 1774/2002 (Animal by-products Regulation) (OJ L 300, 14.11.2009, p.1).

- (18) To address the problem of marine litter effectively, it is fundamental to provide the right level of incentives for the delivery of waste to port reception facilities, in particular MARPOL Annex V waste. This can be achieved through a cost recovery system, which requires the application of an indirect fee, which is due irrespective of the delivery of waste and which should give a right of delivery of the waste without any additional direct charges. The fishing and recreational sector, given their contribution to the occurrence of marine litter, should also be included in this system. However, in case a ship delivers an exceptional amount of MARPOL Annex V waste, especially operational waste, which exceeds the maximum dedicated storage capacity as mentioned in the advance notification form for waste delivery, an additional direct fee may be charged in order to ensure that the costs related to receiving this exceptional amount of waste do not cause a disproportionate burden on a port's cost recovery system. This may also be the case where declared dedicated storage capacity is excessive or unreasonable.
- (18a) In certain Member States, schemes have been set up to provide alternative financing of the costs of collecting and managing fishing gear waste or passively fished waste ashore. Those schemes, which may be based on agreements between the ports and fishing communities in the Member States, should complement the cost recovery systems set up in accordance with this Directive. As such, those cost recovery systems, which are based on the application of a 100% indirect fee for MARPOL Annex V waste from ships, excluding cargo residues, should not create a disincentive for fishing port communities to participate in existing delivery schemes for passively fished waste.
- (19) A ship's fees may be reduced for those vessels designed, equipped or operated to minimise waste, following certain criteria to be developed by implementing powers conferred on the Commission, in line with the IMO guidelines for MARPOL Annex V and standards developed by the International Standardization Organization (ISO). Reduction and efficient recycling of waste can be primarily achieved through effective on board waste segregation in line with those guidelines and standards.

- (20) Cargo residues remain the property of the cargo owner after unloading the cargo to the terminal, and may have an economic value. For this reason, the cargo residues should not be included in the cost recovery systems and the application of the indirect fee; the charges for the delivery of cargo residues should be paid by the user of the reception facility, as specified in the contractual arrangements between the parties involved or in other local arrangements. Cargo residues shall also include the remnants of oily or noxious liquid cargo after cleaning operations, to which the discharge norms of MARPOL Annexes I and II apply, and which under certain conditions, as set out in those Annexes, do not need to be delivered in port to avoid unnecessary operational costs for ships and congestion in ports.
- (21) Regulation (EU) 2017/352 of the European Parliament and of the Council⁹, includes the provision of port reception facilities as a service in its scope. It provides rules on the transparency of the charging structures applied for the use of port services, consultation of port users and handling of complaint procedures. This Directive goes beyond the framework provided by that Regulation by providing more detailed requirements for the operation and design of the cost recovery systems for port reception facilities for waste from ships and the transparency of the cost structure.
- (22) In addition to providing incentives for delivery, effective enforcement of the delivery obligation is paramount and should follow a risk-based approach for which a Union risk based targeting mechanism should be established.

⁹ Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports (OJ L 57, 3.3.2017, p.1).

- (23) One of the main obstacles for the effective enforcement of the mandatory delivery obligation has been the different interpretation and implementation by Member States of the exception based on sufficient on-board storage capacity. To avoid the application of this exception undermining the main objective of the Directive, it should be specified further, in particular in regard to the next port of call, and sufficient storage capacity should be determined in a harmonised way in Union ports, based on common methodology and criteria. In cases where it is difficult to establish whether adequate port reception facilities in ports outside the Union are available, it is essential that the competent authority carefully considers the application of the exception.
- (24) Monitoring and enforcement should be facilitated through a system based on electronic reporting and exchange of information. To this end, the existing information and monitoring system set up under Directive 2000/59/EC should be further developed, and continue to be operated on basis of existing electronic data systems, in particular the Union Maritime Information and Exchange system (SafeSeaNet) and the Inspection Database (THETIS). The system should also include the information on port reception facilities available in the different ports.
- (24a) Directive 2010/65/EU simplifies and harmonises administrative procedures applied to maritime transport by making the electronic transmission of information more general and streamlining reporting formalities. The Valletta Declaration, adopted by the Council on 8 June 2017, invited the European Commission to propose appropriate follow-up to the revision of this directive. A public consultation on the reporting formalities for ships was carried out by the Commission from 25 October 2017 to 18 January 2018. The substance of reporting obligations for ship wastes should not be altered by the proposal for a Regulation establishing a European Maritime Single Window environment and repealing Directive 2010/65/EU which has been recently adopted by the Commission.
- (25) The MARPOL Convention requires the contracting parties to maintain up-to-date information on their port reception facilities and to communicate this information to the IMO. To this end IMO has established a Port Reception Facilities Database within its Global Integrated Ship Information System ('GISIS').

- (25a) In MEPC.1/Circular 834/Rev.1 the IMO provides for the reporting of alleged inadequacies of Port Reception Facilities. Under this procedure, a ship may report such inadequacies to the administration of the flag State, which in turn shall notify the IMO and the port State of the occurrence. The port State should examine the report and respond appropriately, informing the IMO and the reporting flag State.
- (26) There is a need for further harmonisation of the regime of exemptions for ships in scheduled traffic with frequent and regular port calls, in particular clarification of the terms used and the conditions governing those exemptions. The REFIT Evaluation and the Impact Assessment have revealed that the lack of harmonisation of the conditions and application of exemptions has resulted in an unnecessary administrative burden for ships and ports.
- (26a) Due to the type of trade, which is characterised by frequent port calls, short sea shipping faces significant costs within the current regime for the delivery of waste to port reception facilities, having to pay a fee at each and every port call. At the same time, the traffic is not sufficiently scheduled and regular to qualify for an exemption from payment and delivery of waste on those grounds. To limit the financial burden on the sector, it should be possible to charge reduced fees to vessels based on the type of traffic in which they are engaged.
- (27) The Subgroup on Port Reception Facilities, which had been set up under the European Sustainable Shipping Forum, and brought together a wide range of experts in the field of ship-source pollution and the management of waste from ships, was adjourned in December 2017 in view of the start of the interinstitutional negotiations. Since the subgroup provided valuable guidance and expertise to the Commission, it would be desirable to create a similar expert group with a mandate of exchanging experience on the implementation of this Directive.
- (28) The powers conferred on the Commission to implement Directive [2000/59/EC](#) should be updated in accordance with the Treaty on the Functioning of the European Union (TFEU).

- (29) In order to provide for a methodology for the calculation of the sufficient storage capacity; to further develop the information, monitoring and enforcement system set up under this Directive; to develop common criteria for recognising, for the purpose of granting a reduced waste fee to ships, that a ship's design, equipment and operation demonstrate that it produces reduced quantities of waste, and manages its waste in a sustainable and environmentally sound manner; to define the detailed elements to be contained in waste reception and handling plans and to define the categories of costs and net revenues related to the operation and administration of port reception facilities, implementing powers should be conferred on the Commission. Implementing acts should be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and the Council¹⁰.
- (30) In order to take account of developments at international level, the power to adopt acts in accordance with article 290 TFEU should be delegated to the Commission in respect of amending this Directive to update the references to international instruments and the Annexes and to change references to international instruments, in order to prevent, if necessary, changes to those international instruments from applying for the purposes of this Directive. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹¹. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

¹⁰ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

¹¹ OJ L 123, 12.5.2016, p. 1.

- (31) Since the objective of this Directive, namely the protection of the marine environment from discharges of waste at sea cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (32) The Union is characterised by regional differences at port level, as also demonstrated in the Territorial Impact Assessment. Ports differ based on geographic location, size, administrative set-up and ownership, and are characterised by the type of ships normally visiting. In addition, waste management systems reflect the differences at municipal level and downstream waste management infrastructure.
- (32a) In order not to impose a disproportionate administrative burden on landlocked Member States which neither have ports nor ships flying their flag that fall within the scope of this Directive, such Member States should be allowed to derogate from the provisions of this Directive. However, those landlocked Member States which have ships flying their flag should only be allowed to derogate from those provisions applicable to ports. This means that as long as those conditions are fulfilled, they are not obliged to transpose this Directive, or certain provisions thereof.
- (33) Directive 2000/59/EC should therefore be repealed,
