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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences

(Text with EEA relevance)

{SEC(2023) 209 final} - {SWD(2023) 159 final} - {SWD(2023) 164 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal concerns a modification of Directive 2005/35/EC¹ on ship-source pollution and on the introduction of penalties for pollution offences as amended by Directive 2009/123/EC².

The policies on preventing pollution from ships were developed between 2000 and 2009, in the wake of two major maritime accidents involving the ships *Erika* and *Prestige*, which caused substantial oil spills³. Directive 2005/35/EC (hereinafter ‘SSP Directive’ or ‘Directive’) regulates penalties for illegal discharges of oil and noxious liquid substances from ships into the sea. Not all waste that is generated on ships has to be delivered to ports. Some can be discharged into the sea. An illegal discharge is a discharge from a ship that does not meet the relevant International Maritime Organization (IMO) rules, i.e. the standards set in the International Convention for the Prevention of Pollution from Ships (Marpol 73/78).

The main objective of the Directive is to incorporate these international standards into EU law and to ensure that those responsible for illegal discharges of polluting substances are subject to dissuasive, effective and proportionate penalties in order to improve maritime safety and to better protect the marine environment from pollution by ships.

The Directive sets out an enforcement system where monitoring and verification activities carried out by the Member States lead to penalties on those responsible for infringements. The process is threefold: first, surveillance tools detect a potential discharge from a ship; second, the competent authority decides whether to dispatch a boat or aircraft to check on-scene if the pollution can be confirmed; third, evidence is collected and, if the offender is identified, penalties are applied. Imposing penalties for pollution offences from ships finds its origin in international law. The United Nations Convention on the Law of the Sea (UNCLOS) specifies, among other things, that a State can impose penalties for pollution committed by a foreign vessel in case of major damage to the coastal State or if the flag State in question has repeatedly disregarded its enforcement obligations. EU flag States are also required to impose penalties in line with UNCLOS on their ships if they discharge polluting substances illegally into sea in or outside the EU.

The European Green Deal reaffirms the Commission’s ambition to protect its population from environment-related risks and impacts, setting the pathway to a healthy planet for all. This proposal is one of EU’s initiatives aimed at reducing pollution from maritime transport in its seas and is in line with the smart and sustainable mobility strategy⁴ and zero-pollution action plan⁵.

The Commission carried out the first ex-post evaluation of the Directive in 2022 and found that it successfully contributed to the incorporation of international rules on ship-source pollution into Member State law and improved the detection of pollution from ships. In particular, the Directive was the impetus behind the creation of the CleanSeaNet service - an

¹ OJ L 255, 30.9.2005, p.11

² OJ L 280, 27.10.2009, p. 52.

³ MV Erika accident in 1999, France (20,000 tonnes of oil), MV Prestige accident in 2002, Spain (63,000 tonnes of oil).

⁴ COM(2020) 789 final

⁵ COM(2021) 400 final

EU satellite-based oil spill monitoring and vessel detection service managed by the European Maritime Safety Agency (EMSA).

However, the evaluation identified a number of shortcomings: (1) the current scope of the Directive does not cover all relevant polluting substances of the international regime e.g. garbage or sewage discharges into sea; (2) information exchange and/or expertise to effectively detect, verify and penalise pollution from ships are irregular across the EU Member States and generally insufficient; (3) there is an unbalanced dissuasive effect of the penalties currently applied across the EU for ship-source pollution; (4) the current reporting by Member States is incomplete and results in a lack of detailed information on ship-source pollution and related penalties imposed across the EU over time.

In light of this, offenders discharging polluting substances illegally are not always identified, and rarely penalised. For this reason, a proposal to amend Directive 2005/35/EC has been prepared. The specific objectives of the revision are to: (1) incorporate international standards into EU law by aligning the Directive with Marpol Annexes on discharges into the sea; (2) support Member States by building their capacity to detect pollution incidents, verify, collect evidence and effectively penalise identified offenders in a timely and harmonised manner; (3) ensure that persons (natural and legal) responsible for illegal discharges from ships are subject to effective, proportionate and dissuasive penalties; and (4) ensure simplified and effective reporting on ship-source pollution incidents and follow-up activities.

- **Consistency with existing policy provisions in the policy area**

There is a close link with Directive (EU) 2019/883⁶ on port reception facilities (PRF) for the delivery of ship waste. Directive (EU) 2019/883 introduced stronger rules and better monitoring of ships' waste delivery at ports. This translated into a better capacity in ports to receive waste from ships and less waste discharged at sea. However, some ships may still decide to illegally discharge waste at sea, to avoid paying for the PRF, especially since the Directive 2005/35/EC on illegal discharges does not cover the same substances (hence they could not be penalised under Directive 2005/35/EC). This is why, at the time of adoption of Directive 2019/883, the co-legislators called for a review of Directive 2005/35/EC to match the scope with Directive (EU) 2019/883 and make the penalties proportionate. Specifically, ships should be discouraged from breaching EU law through a strong system of proportionate and effective penalties in parallel to waste collection solutions offered in EU ports. These two Directives jointly ensure that the EU and its Member States comply with their obligations relating to ship-source pollution under Marpol 73/78.

It is therefore proposed to align the scope of Directive 2005/35/EC with that of Directive 2019/883/EC⁷ in order to improve pollution prevention for the marine environment in Europe.

The proposal is consistent with Directive 2009/16/EC⁸ on port State control, Directive 2009/18/EC⁹ on maritime accident investigation and Directive 2009/21/EC¹⁰ on flag State requirements. The three EU maritime safety Directives are based on the rules and standards established by the IMO at international level and are complementary to one another and to this Directive. The flag State Directive lays down rules for ship inspections and fleet oversight

⁶ OJ L xxxx.

⁷ Annex III is not covered under Directive (EU) 2019/883 because packaged goods are not waste. Nevertheless, it is proposed to cover Annex III under Directive 2005/35/EC because it cannot be ruled out that illegal jettisoning of packaged goods into the sea might take place, in which case Directive 2005/35/EC should apply.

⁸ OJ L 131 28.5.2009, p. 57

⁹ OJ L 131, 28.5.2009, p. 114

¹⁰ OJ L 131, 28.5.2009, p.132

for EU flag State administrations which are relevant for preventing pollution of the marine environment in and outside of the EU. When stronger environmental rules become effective under the international conventions, the flag State's responsibility to enforce them is automatically extended. The port State control Directive is also relevant here as it supports, through the required inspections, the detection and correction of lack of compliance not only with safety but also with pollution prevention rules and standards. Regarding maritime accidents, they not only cause casualties and economic losses but can have a direct impact on the environment, e.g. oil pollution, hence the link to the SSP Directive which addresses such pollution.

- **Consistency with other EU policies**

The revised Directive is complementary to Directive (EU) 2023/xxxx¹¹ on environmental crime. Directive (EU) 2023/xxxx introduced criminal sanctions for serious environmental offences including offences of illegal discharges from ships. The criminal provisions in Directive 2005/35/EC are therefore no longer necessary because criminal penalties for ship-source pollution offences are provided for by Directive (EU) 2023/xxxx. Consequently, this proposal removes from Directive 2005/35/EC the criminal provisions of Articles 5 and 8. Directive 2005/35/EC continues to include the sectorial provisions on the relevant obligations and prohibitions (e.g. the definition of illegal discharges) and provides for administrative penalties for ship-source pollution when the act will not qualify for criminal proceedings. To ensure the effectiveness of national enforcement efforts, the administrative and criminal enforcement regimes must be seen as interlinked parts of one system and should coexist.

Directive 2008/56/EC¹² on the marine strategy framework is the principal EU legal instrument for protecting and conserving the marine environment, its species and habitats. It enshrines the ecosystem approach to the management of human activities (including fishing, tourism, recreation) having an impact on the marine environment. Directive 2005/35/EC contributes to the objectives of Directive 2008/56/EC by introducing dissuasive penalties for illegal discharges of polluting substances by ships across seas in Europe.

The proposal also supports the final proposals of the Conference on the Future of Europe, in particular the proposals on tackling pollution, more specifically Proposal 2.7 to 'combat ... ocean pollution, including through ... promoting of environmentally friendly shipping by using best available technologies ...'. The EU is also committed to the 2030 Agenda for Sustainable Development and its Sustainable Development Goals, of which SDG 14 ('Conserve and sustainably use the oceans, seas and marine resources for sustainable development') is the most relevant for this proposal.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Title VI (Articles 90-100) of the Treaty on the Functioning of the Union (TFEU) establishes the EU's prerogative to make provisions for the common transport policy, which gives the EU the right to act on ship-source pollution. According to Article 100(2) TFEU, the EU legislator may lay down appropriate provisions for sea transport. Article 91(1)(a) TFEU provides that the EU has competence in the field of transport to lay down common rules applicable to international transport. In view of this, the revised Directive would be based on Article 100(2) TFEU.

¹¹ OJ L 328, 6.12.2008, p. 28.

¹² OJ L 164 25.6.2008, p. 19.

- **Subsidiarity**

Ship-source pollution typically leads to damage with cross-border implications. Due to the frequent transboundary impact of marine pollution and the fact that perpetrators act across borders, action by Member States alone would not be sufficient to tackle this problem. Diverging national approaches on this issue hinder efficient cooperation between Member States and allow offenders to escape penalties.

As all Member States have ratified Marpol 73/78, they could have potentially incorporated international standards on the prevention of pollution from ships on their own. However, the Directive transposes and complements the international regime by: (1) helping Member States to identify the offenders by supplying satellite surveillance information on potential oil spills; and (2) providing a liability regime facilitating the penalisation of polluters. The added value of this proposal is that it will complement the international framework with the liability regime (by clarifying the existing regime) and with better information for Member States (thanks to improved surveillance covering more types of pollutants and information exchange based on EU digital tools). The revision also aims to introduce new provisions on penalties without affecting Directive (EU) 2023/xxxx. These goals cannot be achieved by Member States acting alone. A harmonised legal framework and common digital tools are needed. For example, satellite surveillance provided by CleanSeaNet represents good value due to economies of scale. EU-level action would be more effective than action at national level because of its stronger deterrent effect on perpetrators that act across borders.

- **Proportionality**

The proposal has been prepared in view of the latest developments at the international arena and the results of the ex-post evaluation. The Commission has also carried out an impact assessment to identify and assess alternative ways to achieve the same objectives.

The proposed extension of the Directive's scope to cover all Annexes of Marpol 73/78 (i.e. all substances covered by Marpol 73/78 and illegally discharged by ships into the sea) aims to better prevent pollution in the marine environment and to align with the scope of Directive 2019/883/EC. The enforcement of Directive (EU) 2019/883 is, together with Directive 2005/35/EC, a key component of measures to prevent ship-source pollution. In addition, the proposal concentrates on technical support to Member States through training platforms, guidance, best practice exchanges and promoting the use of EU digital tools for the collection and exchange of information. The proposal does not set out a strict regulatory approach on levels of penalties or a major mandatory target for Member States' verification activities. Instead, it tackles the problem in a proportionate way by providing better information on potential spills from a central, cost-effective service and sharing information to make the verification activities more targeted, so as to not go beyond what is necessary to achieve the specific objectives. The proposal also relies on clarifications of the existing liability regime, more detailed provisions on the determination of the level and type of penalties with a view of successfully penalising polluters for more types of polluting substances. No detailed provisions are proposed in areas where the objectives might be better achieved by action in other policy areas.

- **Choice of the instrument**

As the amendments concern Directive 2005/35/EC alone, an amending Directive is the most appropriate legal instrument.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Directive was subject to an ex-post 'back-to-back' evaluation (i.e. the evaluation and impact assessment were launched at the same time). The data available for the evaluation was not sufficiently robust to make a complete ex-post assessment for all Member States. Representative data was not available to measure the relevant indicators, e.g. the proportion of identified pollution incidents of Marpol 73/78 Annex I and II type substances subject to penalties. Despite the limitations, the evaluation gives a snapshot of the existing information on the implementation of the Directive.

The evaluation concluded that the objectives of the Directive were not fully achieved and that the scope of polluting substances covered by the Directive is too narrow. The Directive set out a common legal framework for ship-source pollution offences in the EU, but its effectiveness was limited. It integrated Marpol 73/78 rules into EU law and ensured that Member State legislation is also aligned, but data quantifying the role that the Directive had in practice is lacking. The Directive resulted in a successful satellite surveillance tool for oil pollution monitoring - the CleanSeaNet service. This however does not entirely solve the problem of identifying the polluters because satellite surveillance accuracy has, so far, been limited. Some verification aspects could have been managed more effectively. For instance, many spills are not verified on the spot and Member States could have been logging more feedback data in CleanSeaNet. The Directive has not fully achieved the anticipated outcome on the prosecution of offenders. The evaluation also concluded that more clarification is needed on the existing liability regime and more details on the level and type of penalties in the Directive. However, the main conclusion of the evaluation was the need to extend the scope of the Directive to cover the full range of discharges of polluting substances into the sea regulated under Marpol 73/78.

- **Stakeholder consultations**

The main consultation activities for the ex-post evaluation and impact assessment included:

- An open public consultation, organised by the Commission, which ran from 9 December 2021 to 3 March 2022. The public consultation put forward questions on both the impact assessment and the evaluation. Stakeholder input was low, with answers submitted by only 30 respondents.
- Two targeted stakeholder surveys to gather specific information, one for the evaluation and one for the impact assessment, organised by the consultant in charge of the external support study, running, respectively, from December 2021 to February 2022 and June to July 2022.
- Three rounds of interviews with EU-level representatives of key stakeholders organised by the consultant in charge of the external support study, running intermittently between November 2021 and September 2022, to fill specific information requests, in support of the evaluation and to refine the overall problem definition and possible policy options.
- Additional targeted consultation activities organised by the Commission to consult Member States and key stakeholders on possible policy measures and the results of the impact assessment. These activities took place during a meeting of the EU Committee on Safe Seas and the Prevention of Pollution from Ships (2 June 2022), meetings of the European

Sustainable Shipping Forum (18 May 2022 and 18 January 2023) and its subgroup: Waste from Ships (22 March 2022, 4 June 2022 and 14 February 2023), the EU/EEA Maritime Transport Directors (3 October 2022) and the North Sea Network of Investigators and Prosecutors (25 April 2022). A final workshop to validate the conclusions of the support study attended by Member States, NGOs and industry representatives was organised on 22 September 2022.

The information collected from stakeholders was key in allowing the Commission to refine the policy options and assess their economic, social and environmental impacts, and then to compare them and select the preferred option. Findings from those processes complemented the desk research carried out as part of the external support study.

- **Collection and use of expertise**

This review builds primarily on the data collected during the ex-post evaluation. The Commission has gathered extensive technical advice from several expert studies including a comprehensive preparatory study for the review of the Directive. Member State authorities, industry actors and civil society were asked to provide input for the preparation of the study.

The preparation of this proposal also required input from experts from the Commission and EMSA on the concrete formulation of technical definitions and legal drafting.

- **Impact assessment**

The legislative proposal is based on an impact assessment. Three policy options, covering different policy measures, were examined in terms of their effectiveness in achieving the objectives as well as their environmental, economic and social impacts. For each specific objective, a series of measures were identified. The measures, which are complementary and not mutually exclusive, were grouped into three policy options. All three policy options entailed aligning the scope of Directive 2005/35/EC with the Marpol 73/78 Annexes and covering these discharges into the sea.

- Option A leaves the most discretion to Member States in implementing Marpol 73/78 standards, while keeping the level of EU support sufficiently high (training, guidance, digital tools, access to information on possible spills). It keeps the Member States responsible for informing the public through national websites. This option takes a national approach in determining the type of penalty and does not regulate the level of penalty. In brief, there is more adaptability for Member States under this option with a minimum of EU intervention.

- Option B (the preferred option) focuses on strengthening cooperation between Member States mainly by strengthening EU support (training, guidance, digital tools, access to information on possible spills). It provides for criteria for determining the levels of penalties and is expected to provide a structure for cooperation among Member States and strengthen Member States' enforcement action by means of technical support from EMSA, without introducing major new regulatory measures and costs for Member States.

- Option C focuses on stronger EU regulatory action to complement cooperation among Member States. It obliges Member States to verify at least 60% of their CleanSeaNet alerts and is expected to generate higher enforcement costs. On the levels of penalties, it specifically strengthens harmonisation across the EU by setting their values. On the other hand, it provides the same structure for cooperation between Member States as the two other options (training, guidance, digital tools, access to information on possible spills).

The policy choice brought forward by this proposal is Option B because it was assessed as the most efficient and proportionate. There are however serious data gaps, low stakeholder input and high uncertainty about the impacts, especially the environmental benefits estimated for the three options. Option B and C are more efficient than Option A, specifically thanks to the benefits of providing harmonised solutions at EU level, as compared to multiple national approaches.

The Regulatory Scrutiny Board issued a positive opinion (with reservations) on the impact assessment on 27 March 2023. Annex I to the impact assessment explains how the Regulatory Scrutiny Board comments were addressed in the report.

One of the conclusions of the impact assessment pointed to the limitations for the assessment that had resulted from the scarcity of data. For this reason and beyond the outcome of the impact assessment, the Commission considered appropriate to propose an additional measure that would facilitate a more homogenous collection of data and provide for more visibility regarding the effective monitoring carried out by Member States and the related proportion of actual pollution incidents. The proposed measure will complement the measures in the preferred option as per the impact assessment (Option B) by incentivising better monitoring through an obligation for each Member State to verify at least 10% of alerts sent by CleanSeaNet each year. This verification threshold has a small effect on the costs (EUR 0.5 to EUR 0.8 million per year), because it is already achieved by most Member States, while the Commission believes that it will incentivise more effective monitoring of the Directive and help to ensure implementation by all Member States. This additional measure does not alter in a significant way the ranking of options and the choice of the preferred policy option.

- **Regulatory fitness and simplification**

The focus of the proposal is on increasing the efficiency of the existing measures given that this is a Directive that has been evolving since 2005 and amended in 2009 in response to new developments, including court rulings, international obligations under Marpol 73/78 and changes in technologies. Some clarifications and simplifications will be introduced in the revised Directive. This includes clarifications on the existing liability regime and the simplification of reporting obligations, with focus on digital solutions.

The proposal is not expected to result in additional administrative costs or adjustments costs for the private sector or the public. More penalties may be expected for ships not meeting Marpol 73/78 requirements. On the positive side, the level playing field should benefit compliant ship operators. In addition, businesses and especially the general public will benefit from the reduction in ship-source pollution.

The proposal does not include requirements for ship operators and is thus not expected to have an impact on SMEs. It does not create new obligations for businesses and would not have an impact on their costs. The extension of the Directive's scope to cover additional substances under Marpol 73/78 may be relevant for recreational craft and fishing vessels, sector segments with high SME participation. However, the fact that this extension is focused on the enforcement of international standards means that the shipping sector must comply with these standards with or without the Directive and no impact on costs is expected for the compliant SMEs. The initiative is therefore considered non-relevant for SMEs.

- **Fundamental rights**

The Charter of Fundamental Rights of the European Union, as an instrument of primary EU law, enshrines the fundamental rights enjoyed by people across the EU. Overall, the proposal

is expected to better protect fundamental rights and individual freedoms, especially with regards to justice, fair trials, non-discrimination, equal treatment of perpetrators and the principle of legality, and the right to proportionate and effective penalties. The exception from liability of crew, masters and owners is further clarified in the proposal. Their protection is therefore strengthened through a more integrated harmonisation of international rules into national laws and better observance of the rule of law and fair trial principles. It further safeguards the principle of equality, contributing to non-discrimination and equal treatment of seafarers. The measures ensuring clearer delimitation between the infringements falling within the criminal and administrative procedure will also facilitate the equal treatment of perpetrators across the EU. This initiative will result in better observance of the right to justice by improving the definition of infringement subject to administrative or criminal procedure. The proposal further ensures the protection of personal data.

4. BUDGETARY IMPLICATIONS

The current net costs of the proposal amount to EUR 125.8-134.7 million over 2025-2050. The budget impact of the proposal is described in more detail in the Legislative Financial Statement annexed to this proposal for information. The budget impact of the proposal is already included in the Commission's Proposal for a Regulation of the European Parliament and of the Council on the European Maritime Safety Agency and repealing Regulation (EC) No 1406/2002.

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The success of the Directive would mean that the person (legal or natural) responsible for the pollution of the sea is adequately penalised to produce a deterrent effect thus prevent pollution in the future. Penalties for ship-source pollution can be seen as the last line of defence for pollution prevention and the protection of the marine environment and human health. The first line of defence for maritime safety and pollution prevention is provided through flag State control and the second line of defence through port State control legislation, however, ships may still cause pollution of the sea through accidents and (intentional) operational discharges.

The Commission will monitor the implementation and effectiveness of this initiative through a number of actions and a set of core indicators that will measure progress towards achieving the specific objectives. Adequate monitoring and reporting arrangements have been identified in the impact assessment. EMSA will play an important role in this process, as the Agency is in charge of visits to the Member States and the development and operation of the digital tools for maritime transport - the Integrated Maritime Services and CleanSeaNet.

The implementation can be checked by means of monitoring if the feedback on verification to CleanSeaNet alerts is being provided by the Member States in a timely and effective manner and if information on evidence collection and administrative proceedings is uploaded to the reporting tool regularly. The Commission, with the support of EMSA, will develop a public website with core indicators on the implementation rate and the key non-confidential information on incidents of illegal discharges; the website will be updated regularly with data from the reporting tool to keep the public informed on the implementation and penalties

imposed. EMSA will carry out cycles of visits to Member States to verify operations on the ground as part of EMSA's support role to the Commission¹³. Additionally, upon request, horizontal analysis and technical assistance will be provided by EMSA and reported to the Commission and Member States.

The impacts of the Directive should be evaluated no later than five years after the transposition date of the legislation. It is expected that more robust and representative data will already be available to prepare a complete evaluation for all Member States. In this context, an expert study would be needed to estimate the progress made on penalty levels. The evaluation should also examine the data available on environmental benefits and the possibility to extend the scope to new developments in Marpol 73/78 and air pollution. Afterwards, in line with the five-year EMSA review cycle of visits to Member States, the Commission will regularly analyse the Directive's implementation.

- **Explanatory documents (for directives)**

Explanatory documents are not required as the proposal aims to simplify and clarify the existing regime.

- **Detailed explanation of the specific provisions of the proposal**

The title of the Directive

The title lays out the subject matter of the Directive in a more precise manner by adding the element to the title of 'the enforcement of international standards'. This change aims at clarifying that the subject-matter of the Directive is not the introduction of new substantive standards for ship-source pollution, but the transposition and enforcement of already adopted international standards. The element of 'criminal penalties' set out in the current title has been deleted for reasons of legal coherence with Directive (EU) 2023/xxxx on environmental crime.

Article 1 - Purpose

The general objective of the Directive is amended to specify that adequate penalties, in this Directive, mean dissuasive, effective and proportionate penalties. This refers to administrative penalties. The element of 'criminal penalties', existing in the current Directive, has been deleted from the purpose for reasons of legal coherence with the Directive (EU) 2023/xxxx on environmental crime.

Article 2 - Definitions

Article 2 paragraph 2 updates the definitions which have been problematic or refer to the outdated scope of the Directive and introduces one new definition. Firstly, the definition of 'polluting substances' under paragraph 2 is adapted to the extended scope of the Directive which covers Marpol 73/78 Annex I-VI. A new definition under point 2a introduces 'Exhaust Gas Cleaning System residue', i.e. discharges from scrubbers into the sea, as the substance covered under the extended scope of the Directive with regards to Annex VI to Marpol 73/78, taking into account the guidelines developed by the IMO. A new definition in point 5a incorporates the internationally agreed definition of 'company' in the Directive, in alignment with the International Management Code for the Safe Operation of Ships and for Pollution

¹³ EMSA carries out such visits under Article 3 of Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency as part of its core tasks; therefore, no additional costs are expected to arise.

Prevention (ISM Code)¹⁴, implemented in Union law by virtue of Regulation (EC) No 336/2006¹⁵.

Article 4 - Prohibition of discharges

Article 4 sets out the general prohibitions covered by this Directive. An illegal discharge can be attributed to a natural or legal person and national provisions implementing this Directive should provide for holding such persons accountable. Some of the prohibitions from the current Directive (Marpol 73/78 Annex I-II substances) are updated versions of the existing ones, however some are new (Marpol 73/78 Annex III-VI substances). The notion of ‘minor cases’ is removed as a result of the findings of the ex-post evaluation that this term is problematic and is not interpreted in the same way by the Member States. Furthermore, this term was relevant only for the application of criminal penalties, which are now outside the scope of the Directive.

Article 5 - Exceptions

The proposal in Article 5 sets out the exceptions from the prohibitions stated under Article 4 in case where a discharge into the sea takes place after damage to a ship or its equipment occurs. This article is only applicable if the condition of ship/equipment damage is met. The provision has been amended clarify the existing liability regime under Marpol 73/78, by spelling out the applicable rules without changing them as compared to Directive 2005/35/EC. The notion of ‘owner’ used in Marpol 73/78 is clarified by using instead the notion of ‘company’ as it may represent different entities that manage a ship. This exception applies therefore to any organisation which has assumed the operation of the ship, in alignment with the ISM Code. The provision applies to the extended scope of the Directive. Exceptions for criminal offences (Article 5a) and its further details (Article 5b) have been deleted for reasons of legal coherence with the Directive (EU) 2023/xxxx on environmental crime. The thresholds for criminal liability for ship-source pollution offences introduced by Directive 2009/123/EC are removed because Directive (EU) 2023/xxxx now addresses these thresholds.

Article 6 - Enforcement measures with respect to ships within a port of a Member State

The provision does not change as compared to the existing one. To assist Member States with discharging their obligations under Article 6, a new Annex to the Directive is provided pointing to an indicative list of irregularities or information that could give rise to a suspicion that an illegal discharge might have taken place, which in turn triggers the obligation of the port State to inspect the incident.

Article 8 - Penalties

The article is amended due to the implications of Directive (EU) 2023/xxxx on environmental crime. The revision of Directive 2005/35/EC will cover administrative penalties only whereas Directive (EU) 2023/xxxx covers criminal penalties for ship-source pollution. It specifies the principles that should govern the introduction of penalties in national law provisions in transposition of the Directive, meaning that they should be effective, proportionate and

¹⁴ International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organisation by Assembly Resolution A.741(18) of 4 November 1993, as amended.

¹⁵ Regulation (EC) No 336/2006 of the European Parliament and of the Council of 15 February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95 (Text with EEA relevance).

dissuasive. The system of administrative penalties introduced in the national legal order should be without prejudice to Directive (EU) 2023/xxxx and the penalties provided therein.¹⁶ A new paragraph to Article 8 specifies the type of penalties that should at least be provided in the national legal order, which should include fines imposed to the company of the ship, recognising the international rules applicable to shipping that operational and/or technical management of the ship could be delegated by the registered owner to a different company. In such cases, the company would be held responsible for illegally discharging polluting substances into the sea instead of delivering them to port reception facilities, unless it proves that another person, namely the master or a member or members of the crew, the latter not acting under the responsibility of the master, was responsible for the discharge. A new paragraph to Article 8 clarifies that if it is proven that another person was responsible for the infringement other than the company, they should be subject to penalties in accordance with Directive 2005/35/EC. Criminal penalties against natural persons (Article 8a), liability for criminal offences (Article 8b) and criminal penalties against legal persons (Article 8c) have been deleted for reasons of legal coherence with Directive (EU) 2023/xxxx on environmental crime.

Article 8d - Effective application of penalties (new)

This is a new article aiming at the consistent application of the penalty system provided by the Directive across the Union and the approximation of the penalties imposed. National judicial and administrative authorities should take into account all relevant circumstances when determining the level of penalties to be imposed to the polluter. Taking into account the diverse nature of polluting substances covered under this Directive and the importance of consistent application of these penalties across the Union in light of the cross-border nature of ship-source pollution, further effectiveness of penalty levels will be defined in an implementing act through the establishment of concrete criteria for the application of penalties for discharges of different polluting substances into the sea. An example of such additional criteria might be on the basis of the geographical area where a discharge of a specific type of polluting substance took place, depending on the sensitivity of the area to the chemicals contained in the polluting substance, e.g. illegal discharges of cooking oil in the Baltic Sea.

Article 10 – Exchange of information and experience

The underlying principle of the provision has not changed - the Commission shall assist Member States in their enforcement activities with the support of EMSA. The title of the article has been amended to reflect that the measures outlined in this article concern the exchange of information and experience necessary for the effective implementation of the Directive and the cooperation between the parties concerned.

In order to improve the information exchange between the Member States, provisions have been added on strengthening the existing digital tools at the disposal of the Member States, in particular CleanSeaNet, and improving the automatic links between the existing maritime safety databases and information exchange systems, including THETIS, THETIS-EU and SafeSeaNet, in order to provide timely and accurate information in a user-friendly format in the Integrated Maritime Services and to allow better targeting by the Member States. In order to ensure the effective monitoring of the Directive's implementation by all Member States, a verification rate of 10% per year by each Member State of the alerts sent by CleanSeaNet is

¹⁶ Directive (EU) 2023/xxxx in its Articles 5 and 7 addresses non-criminal sanctions and these requirements must be taken into account when applying Directive 2005/35/EC.

also provisioned. Access of national authorities across the enforcement chain to such information should be facilitated, as well as access for authorities of other Member States interested in such information, in order to minimise the administrative burden of enforcement activities. The Commission will provide the fora where the exchange of experience between Member States' authorities and experts should take place. For this purpose, meetings of experts for establishing common practices and guidelines are proposed, for example through the establishment of a dedicated expert group. The provisions on the tasks of EMSA were removed from the article as these tasks are defined in a separate legal instrument.

Article 10a – Reporting (new)

The reporting obligations of Member States have been replaced with a more detailed system of reporting to the Commission on the implementation of the Directive. Accordingly, reporting should now take place as soon as the relevant activities are completed, by means of a dedicated electronic reporting tool developed and maintained by EMSA. This arrangement ensures a concrete and more effective reporting system by avoiding a time lag between the date of the pollution incident or the administrative proceedings and the actual date of reporting. The article requires Member States to report relevant data concerning (i) inspections, (ii) verification activities and (iii) penalties imposed. It also requires Member States to record in CleanSeaNet the verification activity undertaken after a CleanSeaNet alert is sent to the Member State or the reasons for not following up such an alert. An implementing act is foreseen to provide more detailed rules on the procedure for reporting, including specifying the type of information to be reported. The Commission will monitor the implementation and effectiveness of this Directive with the support of EMSA through these actions and will be in position to assess the indicators that will measure progress towards achieving the objectives of the Directive.

Article 10b – Training (new)

This provision aims at assisting Member States in their training activities of the relevant authorities involved across the enforcement chain with a view to ensure that all parties involved have the necessary specialised skills and abilities to perform their roles effectively. The article provisions that the Commission, with the technical support of EMSA, will provide training to the EU Member States to better fulfil their responsibilities under the Directive, given the widened scope and new regulatory developments at the IMO, relevant for the implementation of this Directive. On this basis, EMSA will regularly carry out workshops and cover (i) new technological developments, including new digital tools, with regards to the implementation of the Directive; and (ii) best practices of the Member States and their methods for evidence collection and verification of illegal discharges.

Article 10c - Publication of information (new)

This is a new article. The Commission will ensure that key, non-confidential and up-to-date information on ship-source pollution is available online. On this basis, EMSA will publish online an overview and update it regularly. This way, the general information on each ship-source pollution incident in the EU will be accessible to the public. This would include information such as the details of an alert from satellite surveillance, its follow-up by the Member State concerned, facts of verification on-scene or ship inspection and the end result of the proceeding, for example, the administrative fine imposed, including its level, the name, flag and IMO number of the ship against which it was imposed and the key facts of the case in which it was imposed. EMSA will also make publicly available an overview on the

implementation and enforcement of this Directive per Member State by providing country profiles with information measuring progress towards achieving the specific objectives such as the number of identified pollution incidents or the number of administrative proceedings per country as well as some key indicators on their ratios. A new Annex to the Directive is provided pointing to the type of publicly available information.

Article 10d - Protection of persons who report potential illegal discharges (new)

The new set-up of the EMSA digital tools will provide a gateway for alerting the Member State that an illegal discharge from a ship occurred at sea. Whistle-blowers (i.e. natural persons who report information on breaches acquired in the context of their work-related activities) will have a dedicated channel to report the potential offences. This article makes reference to the protection of whistle-blowers by the link to the Directive (EU) 2019/1937 laying down minimum standards for the protection of persons reporting the following breaches of Union law.

Article 12a - Evaluation and review (new)

This is a new article. This provision provides that the Commission will produce an evaluation of the implementation of the Directive five years after transposition. A review clause has also been added hereby stating that any future modifications of the international standards for prevention of pollution from ships which have been made subject to control by Marpol 73/78 should be taken into account during the review.

Articles 13 - Committee Procedure

This is a new standard article for the adoption of implementing acts.

Former Articles 5a-b, 8a—c, 11, 14 and 15 and the sole Annex have been deleted

The above mentioned articles were deleted in principle due to the implications of the Directive (EU) 2023/xxxx on environmental crime as well as in cases where they are no longer relevant. The sole Annex to Directive 2005/35/EC has been deleted as outdated.

Annex I (new)

This is a new Annex providing examples of situations when enforcement activities should be triggered because there is a suspicion that a ship discharged polluting substances illegally. In such case, the Member State must carry out an inspection at port to check and collect information on the circumstances of the illegal discharge as well as the evidence. The Annex includes an indicative list of examples of irregularities and information that could trigger the obligation to inspect e.g. results of previous port state inspections or an inspection carried out by police, environmental or other authorities, inspections on the delivery of waste from ships in port reception facilities, or information exchanged or received by means of the Integrated Maritime Services. If the inspection reveals facts that an illegal discharge took place, then appropriate proceedings must be instituted, as appropriate.

Annex II (new)

This is a new Annex providing a non-exhaustive list of types of information that is to be disclosed to the public on each pollution incident and on the implementation of the Directive by each Member State. Such information will be provided in a user-friendly format, for instance, in the form of a map where a user can zoom into the geographical area of interest

and see how pollution incidents are handled in a particular year. The information available publicly would be provided in non-technical language with the aim to give the public information on how Member States follow up pollution incidents and which ships were fined.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences

(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 Committee¹⁷,

Having regard to the opinion of the Committee of the Regions¹⁸,

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.
- (2) The International Convention on the Prevention of Pollution from Ships ('Marpol 73/78') provides for general prohibitions on discharges from ships at sea, but also regulates the conditions under which certain substances can be discharged into the marine environment.
- (3) Since the adoption of Directive 2005/35/EC of the European Parliament and of the Council¹⁹, Marpol 73/78 and its Annexes have been the subject of important amendments, which have put in place stricter norms and prohibitions for the discharges of substances from ships into the sea. These changes as well as the lessons learned from the implementation of Directive 2005/35/EC should be taken into account.
- (4) Directive (EU) 2019/883 of the European Parliament and of the Council²⁰ ensures that waste is delivered to Union ports, where it is collected by adequate port reception facilities. The enforcement of Directive 2019/883/EC is, together with Directive 2005/35/EC, a key

¹⁷ OJ C 77, 31.3.2009, p. 69.

¹⁸ OJ C 202, 7.6.2016, p. 177.

¹⁹ Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ L 255, 30.9.2005, p. 11).

²⁰ Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC (OJ L 151, 7.6.2019, p. 116).

instrument in preventing ship-source pollution. In order to ensure an effective, integrated and coherent enforcement system vis-à-vis the provisions of Directive (EU) 2019/883 on waste delivery to port reception facilities, Directive 2005/35/EC should be amended in order to extend its scope to Annexes IV to VI to Marpol 73/78, in view of discouraging ships from discharging illegally polluting substances into the sea, instead of delivering them in port reception facilities in accordance with the provisions of Directive (EU) 2019/883.

- (5) Directive (EU) 2019/883 does not cover under its scope Annex III of Marpol 73/78 because packaged goods are not categorised as waste, therefore they are usually not delivered in port reception facilities. However, it cannot be ruled out that harmful substances carried in packaged form could be illegally jettisoned into the sea. In light of the above, the scope of Directive 2005/35/EC should be extended to Annex III to Marpol 73/78. Accordingly, jettisoning of harmful substances should be prohibited under Directive 2005/35/EC, unless it is found by competent authorities that it was necessary for securing the safety of the ship or saving life at sea.
- (6) Marpol 73/78 includes emissions from ships in the definition of discharges in Article 2 thereof. Annex VI to Marpol 73/78 addresses the prevention of air pollution from ships. Annex VI and the corresponding IMO guidelines on Exhaust Gas Cleaning Systems (EGCS) (Resolution MEPC.340 (77)) allow for the use of EGCS by ships of as an alternative compliance method to reduce sulphur oxide (SOx) emissions. Annex VI regulate the residue and discharge water from EGCS, either by prohibiting their discharge at sea and requiring their delivery to adequate port reception facilities (in the case of EGCS residue from close loops systems) or regulating the conditions for their discharge (in the case of discharge water from open loop systems). Directive (EU) 2016/802 of the European Parliament and of the Council²¹ transposes international SOx standards in Union law, while Directive (EU) 2019/883 ensures that EGCS residue is delivered in port reception facilities. Since EGCS residue and discharge water may cause pollution to the marine environment, the penalties provided under Directive 2005/35/EC should apply in case of illegal discharges. For those reasons, the scope of Directive 2005/35/EC should be extended to EGCS residue and discharge water, taking into account the guidelines developed by the IMO, without prejudice to the provisions of Directive (EU) 2016/802 setting out any stricter discharge norms and penalties therefor.
- (7) Directive (EU) 2023/xxxx²² ensures common definitions of environmental criminal offences and the availability of dissuasive, effective and proportionate criminal sanctions for serious environmental offences. Directive 2005/35/EC was amended by Directive 2009/123/EC of the European Parliament and of the Council²³, which introduced criminal penalties for certain infringements of Directive 2005/35/EC, which should now fall within the scope of Directive (EU) 2023/xxxx. Accordingly, the provisions of Directive 2005/35/EC which were added or replaced by Directive 2009/123/EC should be deleted from Directive 2005/35/EC.
- (8) Administrative penalties introduced in transposition of Directive 2005/35/EC should be without prejudice to Directive (EU) 2023/xxxx. Member States should define the scope of administrative and criminal law enforcement with regards to ship-source pollution offences

²¹ Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (codification) (OJ L 132, 21.5.2016, p. 58).

²² OJ L xxxx.

²³ Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 280, 27.10.2009, p. 52).

according to their national law. In the application of national law transposing Directive 2005/35/EC, Member States should ensure that the imposition of criminal penalties and of administrative penalties respects the principles of the Charter of Fundamental Rights of the European Union, including the prohibition of *ne bis in idem*.

- (9) The penalties provisioned by Directive 2005/35/EC should be strengthened by ensuring consistent application of administrative penalties throughout the Union. To strengthen the deterrent effect of penalties imposed for ship-source pollution offences, such penalties should take at least the form of fines imposed to the company of the ship, unless the company can prove that the master of the ship or a member or members of the crew, the latter not acting under the responsibility of the master, was responsible for the discharge. In this context, the company of ship means the shipowner or any other organisation or person, such as the manager or the bareboat charterer, which has assumed the responsibility for the operation of the ship from the shipowner, in alignment with the International Management Code for the Safe Operation of Ships and for Pollution Prevention ('ISM Code')²⁴, implemented in Union law by virtue of Regulation (EC) No 336/2006 of the European Parliament and of the Council²⁵. Directive 2005/35/EC should recognise that the management of the ship could be delegated by the registered owner to a different entity, which should then be held in the first place responsible for not implementing its obligations under the ISM Code to ensure the avoidance of damage to the environment or the assignment of shipboard operations to qualified personnel.
- (10) National administrative and judicial authorities should take into account all relevant circumstances when determining the level of penalties to be imposed to the polluter. Taking into account the diverse nature of polluting substances covered under Directive 2005/35/EC and the importance of consistent application of penalties across the Union in light of the cross-border nature of the regulated behaviour, further approximation and effectiveness of penalty levels should be fostered through the establishment of concrete criteria for the application of penalties for discharges of different polluting substances. In order to ensure the uniform conditions for the application of penalties, implementing powers should be conferred to the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²⁶. The examination procedure should be used for the adoption of these implementing acts.
- (11) When a Member State suspects that a ship which is voluntarily within its port or at an off-shore terminal committed an illegal discharge, an appropriate inspection should take place to establish the circumstances. In order to assist Member States with their obligations under Directive 2005/35/EC to inspect such ships, Annex I to Directive 2005/35/EC provides an indicative list of irregularities or information that should be taken into account by competent authorities on a case-by-case basis when determining whether a ship should be considered suspect.
- (12) The accompanying measures for cooperation and the reporting obligations of Member States have not been sufficient until now to allow a complete analysis whether polluters face

²⁴ International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organisation by Assembly Resolution A.741(18) of 4 November 1993, as amended.

²⁵ Regulation (EC) No 336/2006 of the European Parliament and of the Council of 15 February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95 (Text with EEA relevance) (OJ L 64, 4.3.2006, p.1).

²⁶ 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 Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

effective, dissuasive and proportionate penalties and that adequate data is made available to the Commission to monitor the implementation of Directive 2005/35/EC. In order to ensure the effective and consistent enforcement of Directive 2005/35/EC, exchange of information and experience should be facilitated through enhanced cooperation, while at the same time ensuring that adequate data are made available to the Commission in order to allow the proper monitoring of the implementation of Directive 2005/35/EC.

- (13) The existing satellite-based service ‘CleanSeaNet’ which notifies Member States authorities on potential illegal discharges, should be further enhanced to include information on the additional polluting substances under the scope of Directive 2005/35/EC. Information relating to potential or actual discharges reported by Member States in accordance with Directive 2005/35/EC and to other Union maritime safety databases, such as the Union Maritime Information and Exchange System established by Directive 2002/59/EC of the European Parliament and of the Council²⁷ (‘SafeSeaNet’) and the Inspection Database set up by Directive 2009/16/EC of the European Parliament and of the Council²⁸ (‘THETIS’) should be integrated and disseminated in a user-friendly electronic format to the national authorities involved in the enforcement chain in order to facilitate their timely response. Such information, when relating to an actual or potential discharge of Exhaust Gas Cleaning System residue from a ship, should further be automatically disseminated to the dedicated module of THETIS set up by under Commission Implementing Decision 2015/253 (‘THETIS-EU’), in order to assist Member States with enforcement actions undertaken in accordance with the provisions of Directive (EU) 2016/802. In order to ensure the effective monitoring of the Directive’s implementation by all Member States, a verification rate of 10% per year of the alerts sent by CleanSeaNet should be ensured by each Member State within the first three years from the transposition of this Directive. Access to this information should be granted to the authorities of other Member States having an interest in it under their roles as port States of the next port of call, coastal States affected by the potential discharge or flag States of the ship in order to facilitate effective and timely cross-border cooperation, minimise the administrative burden of enforcement activities and ultimately effectively penalise offenders for infringements of Directive 2005/35/EC.
- (14) The Sub-group on Waste from Ships, which was set up under the European Sustainable Shipping Forum, and which 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 interinstitutional negotiations of Directive (EU) 2019/883. Since that temporary Sub-group provided valuable guidance and expertise to the Commission, a similar expert group should be created with a mandate of exchanging experience on the application of this Directive in order to assist Member States in building their capacity to detect and verify pollution incidents and ensure the effective enforcement of Directive 2005/35/EC.
- (15) The European Maritime Safety Agency (‘EMSA’) established by Regulation (EU) xxxx/xxxx²⁹ should provide the necessary support to the Commission to ensure the implementation of this Directive.

²⁷ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p. 10).

²⁸ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (recast) (OJ L 131, 28.5.2009, p. 57).

²⁹ OJ L xxxx.

- (16) Member States should report to the Commission the information needed to ensure a proper monitoring of the implementation of Directive 2005/35/EC. In order to limit administrative burden and assist the Commission in analysing the data provided by Member States, such information should be reported by Member States through a dedicated electronic reporting tool. To the extent that such information relates to penalties imposed to or involving natural persons, such information shall be anonymised. In order to ensure that information reported in accordance with Directive 2005/35/EC is comparable in type among Member States and collected on the basis of a harmonised electronic format and procedure for reporting, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.
- (17) In order to assist Member States with the development of their capacities regarding effective enforcement of Directive 2005/35/EC by the national administrative and judicial authorities, the Commission should provide Member States with guidance and training relating to, inter alia, best methods and practices for detection, verification and evidence collection, as well as guidance on relevant regulatory developments of Marpol 73/78 and on technological developments available, including new digital tools, in order to facilitate effective, cost-efficient and targeted enforcement activities.
- (18) In order to increase public awareness in ship-source pollution discharges and improve environmental protection, information provided by the Member States on the application of Directive 2005/35/EC should be made publicly available through a Union-wide overview and include the information listed in Annex II of Directive 2005/35/EC. Directive 2003/4/EC of the European Parliament and of the Council³⁰ aims to guarantee the right of access to environmental information in the Member States in line with the Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention), to which the Union is a party. The Commission should protect the confidentiality of information received by Member States, without prejudice to the provisions of Directive 2003/4/EC.
- (19) Directive (EU) 2019/1937 of the European Parliament and of the Council³¹ lays down minimum standards on reporting of breaches of Union law, including of Directive 2005/35/EC and for the protection of persons reporting such breaches. Member States should ensure, in particular, that crew under the scope of Directive (EU) 2019/1937 reporting actual or potential illegal discharges are granted protection. In addition to the existing reporting channels provided at national level as regulated under Directive (EU) 2019/1937, the Commission should make available a centralised online external reporting channel for reporting actual or potential illegal discharges and relay such reports to the Member State or Member States concerned, which should subsequently handle these reports in accordance with Directive (EU) 2019/1937, including with regards to acknowledgement of receipt, adequate feedback and follow-up. The Commission should ensure the protection of the confidentiality of the identity of reporting persons, including, where necessary, by restricting the exercise of certain data protection rights of persons concerned, such as of individuals included in the report as participating in the potential illegal discharge, in line with Article 25(1) points (c) and (h) and

³⁰ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).

³¹ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

Article 25(2) of Regulation (EU) 2018/1725 of the European Parliament and of the Council³², to the extent and as long as necessary to prevent and address attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations, or attempts to find out the identity of the reporting persons.

- (20) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on [xx xx 2023]³³.
- (21) Discussions are ongoing at the IMO regarding new environmental issues in relation to international shipping, resulting in both water and air pollution. These include the water pollutants of marine litter, such as the loss of containers and plastic pellets, and underwater noise and air pollutants such as black carbon. These discussions may result in new regulations under Marpol 73/78. Moreover, Directive 2008/56/EC of the European parliament and of the Council³⁴ requires Member States to achieve good environmental status in the marine environment, which includes, amongst others, marine litter and underwater noise from ships as qualitative descriptors. Relatedly, Directive (EU) 2023/xxxx³⁵ sets limit values for nitrogen dioxide (NO₂) resulting from nitrogen oxide (NO_x) emissions. Shipping activities contribute to higher NO₂ levels in coastal and port areas. Against this background, a future review of Directive 2005/35/EC should take into account new developments and the Commission should examine the possibility of modifying the scope of this Directive, if appropriate, in view of any new international standards under Marpol 73/78. A future review should assess the possibility of modifying the scope of Directive 2005/35/EC, if appropriate, to incorporate SO_x and NO_x emissions, as regulated in Annex VI to Marpol, based on the experience gained in implementing the Directive (EU) 2016/802 and on the development and maturity of monitoring and detecting SO_x and NO_x emissions from ships, with a view to ensure a coherent, efficient and effective enforcement regime, as well as the imposition of dissuasive penalties therefor, in line with the Zero Pollution Action Plan and, in particular, Flagship 5 thereof ‘*Enforcing zero pollution together*’.
- (22) Since the objectives of this Directive cannot be sufficiently achieved by the Member States by reason of the cross-border damage which may be caused by illegal discharges covered by this Directive and the availability of effective, dissuasive and proportionate penalties across the Union for such discharges but can rather, by reason of scale and effects of the proposed 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 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.
- (23) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the protection of personal data, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of legality and proportionality of criminal

³² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance) (OJ L 295, 21.11.2018, p. 39).

³³ OJ C xxxx.

³⁴ 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) (Text with EEA relevance) (OJ L 164, 25.6.2008, p. 19).

³⁵ OJ L xxxx.

offences and penalties, and the right not to be tried or punished twice in criminal proceedings for the same offence. This Directive seeks to ensure full respect for those rights and principles and should be implemented accordingly.

(24) Therefore, Directive 2005/35/EC should be amended.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2005/35/EC

Directive 2005/35/EC is amended as follows:

(1) The title is replaced by the following:

‘Directive of the European Parliament and of the Council on the enforcement of international standards on pollution from ships and on the introduction of penalties for pollution offences’;

(2) Article 1 is replaced by the following:

‘Article 1

Purpose

1. The purpose of this Directive is to incorporate into Union law international standards on pollution from ships and to ensure that persons responsible for illegal discharges of polluting substances are subject to dissuasive, effective and proportionate administrative penalties in order to improve maritime safety and to enhance protection of the marine environment from pollution by ships.
2. This Directive does not prevent Member States from taking more stringent measures in conformity with international law, by providing for administrative or criminal penalties in accordance with their national law.’;

(3) Article 2 is replaced by the following:

‘Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

1. ‘Marpol 73/78’ means the International Convention for the Prevention of Pollution from Ships, 1973 and its 1978 Protocol, in its up-to-date version;
2. ‘polluting substances’ means substances subject to regulation by Marpol 73/78 Annexes I (oil), II (noxious liquid substances in bulk), III (harmful substances carried by sea in packaged form), IV (sewage from ships), V (garbage from ships) and Exhaust Gas Cleaning System residue;
3. ‘Exhaust Gas Cleaning System residue’ shall mean any material removed from the washwater or the bleed-off water by a treatment system or discharge water that does not meet the discharge criterion, or other residue material removed from the exhaust gas cleaning system discharged overboard as a result of the operation of a compliance method for emissions reductions, as defined in Annex VI Regulation 4 to Marpol 73/78,

used as an alternative in terms of emissions reductions to the standards set forth in Regulation 14 of Annex VI to Marpol 73/78, taking into account the guidelines developed by the IMO;

- (a) 'discharge' shall mean any release howsoever caused from a ship, as referred to in Article 2 of Marpol 73/78;
- 4. 'ship' means a seagoing vessel, irrespective of its flag, of any type whatsoever operating in the marine environment and shall include hydrofoil boats, air-cushion vehicles, submersibles and floating craft;
- 5. 'legal person' means any legal entity in possession of such status under applicable national law, other than States themselves or public bodies in the exercise of State authority or public international organisations;
- 6. 'company' means the shipowner or any other organisation or person, such as the manager or the bareboat charterer, which has assumed the responsibility for the operation of the ship from the shipowner.';

(4) Article 4 is replaced by the following:

'Article 4

Infringements

1. Member States shall ensure that discharges of polluting substances into any of the areas set out in Article 3(1) are regarded as infringements, unless:
 - (a) for polluting substances subject to regulation by Annex I to Marpol 73/78, it satisfies the conditions set out in Annex I Regulations 15, 34, 4.1 or 4.3 to Marpol 73/78;
 - (b) for polluting substances subject to regulation by Annex II to Marpol 73/78, it satisfies the conditions set out in Annex II Regulations 13, 3.1.1 or 3.1.3 to Marpol 73/78;
 - (c) for polluting substances subject to regulation by Annex III to Marpol 73/78, it satisfies the conditions set out in Annex III Regulation 8.1 to Marpol 73/78;
 - (d) for polluting substances subject to regulation by Annex IV to Marpol 73/78, it satisfies the conditions set out in Annex IV Regulations 3, 11.1 and 11.3 to Marpol 73/78;
 - (e) for polluting substances subject to regulation by Annex V to Marpol 73/78, it satisfies the conditions set out in Annex V Regulations 4.1, 4.2, 5, 6.1, 6.2, 7 to Marpol 73/78 and section 5.2 of part II-A of the International Code for Ships Operating in Polar Waters (Polar Code); and
 - (f) for Exhaust Gas Cleaning System residue, it satisfies the conditions set out in Annex VI Regulations 14.1, 14.4, 14.6 and 3.1.1 to Marpol 73/78.
2. Each Member State shall take the necessary measures to ensure that any natural or legal person having committed an infringement within the meaning of paragraph 1 is held liable therefor.';

- (5) Article 5 is replaced by the following:

‘Article 5

Exceptions

1. A discharge of polluting substances subject to regulation by Annexes I, II and VI to Marpol 73/78 into the areas set out in Article 3(1) points (c), (d) and (e) shall not be regarded as an infringement for the company, the master or the crew, if both of the following conditions are fulfilled:
 - (a) the discharge results from damage to a ship or its equipment;
 - (b) all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge.
2. Paragraph 1 shall not apply where the company, the master or the crew responsible for the damage acted either with intent to cause damage or recklessly and with knowledge that damage would probably result.’;

- (6) Article 5a is deleted;

- (7) Article 5b is deleted;

- (8) In Article 6, the following paragraph 3 is added:

3. An indicative list of irregularities or information within the meaning of paragraph 1 is provided in Annex I to this Directive.’;

- (9) Article 8 is replaced by the following:

‘Article 8

Penalties

1. Without prejudice to the obligations of Member States under Directive (EU) 2023/xxxx³⁶ Member States shall lay down a system of administrative penalties for the breach of national provisions implementing Articles 4 and Article 5(2) of this Directive and shall ensure that they are applied. The administrative penalties provided for shall be dissuasive, effective and proportionate.
2. Member States shall ensure that penalties introduced in transposition of this Directive include fines which are imposed to the company at the time of the infringement, unless the company can prove that the master or, if not acting under the responsibility of the master, the crew was responsible for the infringement.
3. In the case that it is proven that the master or, if not acting under the responsibility of the master, the crew was responsible for the commission of the relevant infringement, Member States shall ensure that penalties are imposed to such persons in accordance with the provisions of this Directive.’;

- (10) Article 8a is deleted;

- (11) Article 8b is deleted;

³⁶ OJ L xxxx.

- (12) Article 8c is deleted;
- (13) The following Article 8d is inserted:

‘Article 8d

Effective application of penalties

1. Member States shall ensure that, when determining and applying the type and level of administrative penalty to a natural or legal person found by competent authorities to be responsible for an infringement within the meaning of Articles 4 and 5(2), the competent authorities take into account all relevant circumstances of the infringement, including:
 - (a) the nature, gravity and the duration of the discharge;
 - (b) the degree of culpability of the responsible person;
 - (c) the damage caused from the discharge to the environment or human health;
 - (d) the financial strength of the responsible person, taking into account, as appropriate, the annual world-wide turnover of the responsible legal person;
 - (e) the economic benefits generated or expected to be generated for the responsible person from the infringement;
 - (f) measures taken by the responsible person to prevent the discharge or mitigate its impacts;
 - (g) the level of cooperation of the responsible person with the competent authority, including any action aiming to circumvent or obstruct an appropriate inspection or other investigation by a competent authority; and
 - (h) any previous infringement by the responsible person.
2. In order to ensure the uniform application of this Article, the Commission may, by means of implementing acts, lay down detailed rules on the criteria to be considered by Member States when applying penalties in respect of each type of polluting substance pursuant to this Directive. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13.’;

- (14) Article 10 is replaced by the following:

‘Article 10

Exchange of information and experience

1. For the purposes of this Directive, the Member States and the Commission shall cooperate in the exchange of information, building on the Union Maritime Information and Exchange System set out in Article 22a(3) of and Annex III to Directive 2002/59/EC³⁷ (SafeSeaNet), in order to attain the following objectives:
 - (a) enhance the information required for the effective implementation of this Directive, in particular as provided by the European satellite-based pollution

³⁷ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p. 10).

detection service set up by this Directive (CleanSeaNet), with a view to develop reliable methods of tracing polluting substances in the sea;

- (b) develop and implement an appropriate control and monitoring system, integrating information provided under paragraph (a) with information made available in SafeSeaNet and other Union information databases and tools, including disseminating information on actual or potential discharges of Exhaust Gas Cleaning System residue to the dedicated module of THETIS set up by under Commission Implementing Decision 2015/253³⁸ (THETIS-EU), in order to facilitate the early identification and monitoring of ships discharging polluting substances, with a view to optimise enforcement actions undertaken by national authorities;
- (c) make optimum use of the information provided in accordance with paragraph (a) and (b) as well as reported by Member States pursuant to Article 10a, with a view to facilitate access to and exchange of such information between competent authorities and with authorities of other Member States and the Commission; and
- (d) within three years from the date of transposition of this Directive, ensure that competent authorities verify at least 10% of the alerts sent by CleanSeaNet every year.

- 2. The Commission shall provide for the organisation of exchange of experiences between Member States' national authorities and experts, including those from the private sector, civil society and trade unions, on the application of this Directive across the Union, with a view to establish common practices and guidelines on the enforcement of this Directive.';

(15) The following Articles 10a, 10b, 10c and 10d are inserted:

'Article 10a

Reporting

- 1. The Commission shall establish an electronic reporting tool, for the purposes of collection and exchange of information between the Member States and the Commission on the implementation of the enforcement system provided by this Directive.
- 2. Member States shall ensure that the following information relating to the actions undertaken by their competent authorities is reported through the electronic reporting tool referred to in paragraph 1:
 - (a) information relating to the follow-up by competent authorities of an alert sent by CleanSeaNet or the reasons for not following up such an alert, as soon as the follow-up activities are completed;
 - (b) information relating to the inspections undertaken in accordance with Article 6, as soon as the inspection is completed;
 - (c) information relating to the actions undertaken in accordance with Article 7, as soon as such actions are completed;

³⁸ Commission Implementing Decision (EU) 2015/253 of 16 February 2015 laying down the rules concerning the sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels (OJ L 41, 17.2.2015, p. 55).

- (d) information relating to penalties imposed in accordance with this Directive, without undue delay and in any case, by 30 June each year for penalties imposed during the previous calendar year. To the extent that information relating to penalties include personal data, such information shall be anonymised.
- 3. In order to ensure the uniform application of this Article, the Commission may, by means of implementing acts, lay down detailed rules on the procedure for reporting the information mentioned in paragraph 2, including specifying the type of information to be reported, in accordance with the examination procedure set out in Article 13.
- 4. Member States shall notify the Commission of the entitled authorities that will have access to the reporting tool set out in paragraph 1.

Article 10b

Training

The Commission shall facilitate the development of capacities of Member States by providing, as appropriate, training to the authorities responsible for the detection, verification and enforcement of infringements under the scope of this Directive.

Article 10c

Publication of information

- 1. Based on information reported by Member States in accordance with Article 10a, the Commission shall make publicly available a regularly updated Union-wide overview on the implementation and enforcement of this Directive. The overview shall include the information listed in Annex II to this Directive.
- 2. Without prejudice to Directive 2003/4/EC³⁹, the Commission shall take appropriate measures to protect the confidentiality of information obtained in implementation of this Directive.

Article 10d

Protection of persons who report potential infringements

- 1. The Commission shall develop and maintain a confidential online external reporting channel for receiving reports, within the meaning of Directive (EU) 2019/1937⁴⁰ on potential infringements of this Directive and shall relay such reports to the Member State or Member States concerned.
- 2. Member States shall ensure that national competent authorities receiving reports of violations of this Directive, submitted through the channel referred to in paragraph 1, provide feedback and follow-up on those reports in accordance with Directive (EU) 2019/1937.

³⁹ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).

⁴⁰ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

3. The Commission may restrict the application of Articles 14 to 22, 35, and 36, as well as Article 4 of Regulation (EU) 2018/1725⁴¹ for the data subjects who are part of or mentioned in the report submitted through the channel referred to in paragraph 1 and who are not the data subjects submitting this report. This restriction may apply only for the duration necessary to investigate the report referred to in paragraph 2 by the competent Member State authorities.’;
- (16) Article 11 is deleted;
- (17) Article 12 is deleted;
- (18) The following Article 12a is inserted:

‘Article 12a

Evaluation and review

1. By *[OP: Please insert a date: five years from the date of transposition of this amending Directive]*, the Commission shall carry out an evaluation of this Directive. The evaluation shall be based on at least the following:
- (a) the experience gathered from the implementation of this Directive; and
 - (b) the information reported by Member States pursuant to Article 10a and the Union wide overview provided in accordance with Article 10c.
2. As part of the review, the Commission shall assess the possibility of modifying the scope of this Directive, if appropriate, in view of among other elements the international standards for the prevention of air pollution from ships subject to regulation by Marpol 73/78, notably sulphur oxide and nitrogen oxide emissions from ships, as well as in view of other standards regulating discharges from ships which have been made subject to regulation by Marpol 73/78, such as black carbon, marine litter, container loss, loss of plastic pellets and underwater noise.’
- (19) Article 13 is replaced by the following:

‘Article 13

Committee Procedure

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), established by Article 3 of Regulation (EC) No

⁴¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance) (OJ L 295, 21.11.2018, p. 39).

2099/2002⁴² COSS shall be a committee within the meaning of Regulation (EU) No 182/2011⁴³.

2. Where reference is made to this Article, Article 5 of Regulation (EU) No 182/2011 and Article 5 of Regulation (EC) No 2099/2002 shall apply.’;

(20) Article 14 is deleted;

(21) Article 15 is deleted;

(22) The sole Annex is deleted;

(23) The text set out in Annex I to this Directive is added as Annex I;

(24) The text set out in Annex II to this Directive is added as Annex II.

Article 2

Transposition

1. Member States shall adopt and publish, by *[OP: Please insert a date: one year from the date of entry into force of this amending Directive]* the laws, regulations and administrative provisions necessary to comply with this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive and any subsequent amendment(s) affecting them.

Article 3

Application of Directive 2009/123/EC

As regards infringements to be regarded as criminal offences pursuant to Directive 2005/35/EC as amended by Directive 2009/123/EC⁴⁴ and the corresponding penalties, Member States not bound by Directive (EU) 2023/xxxx shall remain bound by Directive 2005/35/EC as amended by Directive 2009/123/EC.

Article 4

Entry into force

⁴² Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships (OJ L 324, 29.11.2002, p. 1).

⁴³ 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 Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁴⁴ OJ L xxxx

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT 'AGENCIES'

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences

1.2. Policy area(s) concerned

Mobility and Transport – Maritime Safety

1.3. The proposal relates to

- ☐ a new action
- ☐ a new action following a pilot project/preparatory action⁴⁵
- ☒ the extension of an existing action
- ☐ a merger of one or more actions towards another/a new action

1.4. Objective(s)

1.4.1. General objective(s)

The general objective of amending Directive 2005/35/EC is to ensure that persons responsible for discharges of polluting substances into sea are subject to effective, proportionate and dissuasive penalties, in order to improve maritime safety and to enhance protection of the marine environment from pollution by ships. The revision contributes towards Sustainable Development Goal (SDG) 14 (“Conserve and sustainably use the oceans, seas and marine resources for sustainable development”) and SDG 3 (“Ensure healthy lives and promote well-being for all at all ages”), and with its provisions on prosecution to SDG 16 (“Peace justice and strong institutions”).

1.4.2. Specific objective(s)

The specific objectives of the revision are to:

Incorporate international standards into EU law by aligning the Directive with the International Convention for the Prevention of Pollution from Ships (MARPOL) Annexes on discharges into sea.

Support Member States by building their capacity to detect pollution incidents, verify, collect evidence and effectively penalise identified offenders in a timely and harmonised manner.

Ensure that persons (natural & legal) responsible for illegal discharges from ships are subject to effective, proportionate & dissuasive penalties.

Ensure simplification and effective reporting on ship-source pollution incidents and follow-up activities.

⁴⁵ As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

This proposal is expected to improve the effectiveness of the penalties and lead to a level playing field by ensuring harmonised and proportionate penalties and levels of penalties that are high enough to discourage illegal discharge.

This proposal is expected to lead to an overall improvement in the effectiveness of verification of Member State authorities and thus increase the proportion of identified offenders, as well as simplify and improve the reporting on the implementation of the Directive.

1.4.4. *Indicators of performance*

Specify the indicators for monitoring progress and achievements.

The effectiveness of the proposed Directive, with respect to the specific objective no. 1, will be determined based on the number of infringements and the number of detections for oil, noxious liquid substances, packaged goods, sewage, garbage and scrubber residues discharged by ships.

The effectiveness of the proposed Directive, with respect to the specific objective no. 2, will be determined based on the number of verifications per Member State (verification level), the number of identified offenders as a result of verification (identified polluters), the number of notifications by whistle-blowers and the number of EMSA trainings and workshops.

The effectiveness of the proposed Directive, with respect to the specific objective no. 3, will be determined based on the levels of monetary fines imposed and the types of penalties imposed.

The effectiveness of the proposed Directive, with respect to the specific objective no. 4, will be determined based on the number of updates per Member State in the reporting tool, the number of ship discharges recorded in the reporting tool per Member State and the number of views/visits at the public website.

1.5. **Grounds for the proposal/initiative**

1.5.1. *Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

EMSA will be required to establish additional satellite monitoring services to Member State authorities because of the extension of the scope of the Directive and upgrade the CleanSeaNet service to better monitor and detect the pollutants. EMSA will be required to develop trainings and develop guidance documents, while regularly updating them. It will also develop an external reporting channel for whistle-blowers, to submit information on possible illegal discharges and enhance the Integrated Maritime Services. EMSA will also be required to develop and maintain a new reporting tool so that Member States report on each ship-source pollution incident, as well as develop a website to keep the public informed about ship-source pollution.

In total, 9 FTEs will be needed to support the provision of the additional satellite monitoring services and additional 3 FTEs to support the development of the Integrated Maritime Services. From those, 1 will be required in the next MFF.

1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this*

point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante)

Diverging national approaches can hinder efficient cooperation of Member States and allow offenders to escape penalties. The higher vulnerability of some regions and diverging capacity of Member States to verify and prosecute cases of ship-source pollution makes EU action necessary, especially with accompanying measures of support by common EMSA digital tools. Given the international nature of maritime transport, there is a clear need to have a cross-border framework that would ensure equal treatment for ship operators regardless of where the pollution incident occurred.

Expected generated Union added value (ex-post)

EU action ensures a level playing field and facilitate national verification, and prosecution as well as cross-border enforcement leading to more dissuasive penalties. EU action will provide for clear added value on countering ship-source pollution which typically have transnational dimension compared to what Member States acting alone can achieve. Further clarification of the EU liability regime and improved satellite surveillance covering more types of pollutants thanks to the extended scope of the Directive in line with MARPOL is ensuring a more efficient and effective implementation of the obligations by the Member States.

1.5.3. *Lessons learned from similar experiences in the past*

The EMSA tools proved to be efficient and beneficial for Member States in the context of achieving the objectives of the Directive. The increased satellite surveillance has contributed to enhanced illegal discharge detection and indirectly to the prevention of ship-source pollution of the marine environment. However, following an evaluation of the Directive, its objectives, even though adequate, were not fully achieved and its scope is limited.

The implementation of CleanSeaNet service, a tool for satellite surveillance has been successful, however it should be further developed to cover the extended scope of the Directive.

The results of the ex-post evaluation are reflected in the impact assessment accompanying this initiative as summarised in Table 2.

1.5.4. *Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

The proposed revision is a key deliverable of the Communication from the Commission on a Sustainable and Smart Mobility Strategy, which sets out the EU vision for a more sustainable transport system of the future. The strategy announced that the Commission is planning to initiate a major review of existing legislation, including the ship-source pollution in 2022 (under Flagship 2 - Creating zero-emission airports and ports). This will improve air quality locally thereby contributing to improved health of nearby residents.

The proposed revision will create synergies with other pieces of EU regulatory framework, notably the Directive (EU) 2019/883 on port reception facilities, Directive on the protection of the environment through criminal law, the Directive 2009/21/EC on compliance with flag State requirements, Directive 2009/16/EC on port State control and Directive 2009/18/EC on accident investigation.

The proposal is compatible with the current Multiannual Financial Framework, although it will require reprogramming within Heading 1 as regards the annual contribution to EMSA (budgetary offsetting by a compensatory reduction of programmed spending under CEF Transport (02 03 01)). The budget impact of the current proposal is already included in the budget for the Commission proposal for a Regulation of the European Parliament and of the Council on the European Maritime Safety Agency and repealing Regulation (EC) No 1406/2002.

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

1.5.5. Assessment of the different available financing options, including scope for redeployment

The budgetary impact of this initiative refers to the additional resources necessary for the establishment of additional satellite monitoring services to Member State authorities by an upgrade of the CleanSeaNet service, the provision of training and guidance, the development and maintenance of a new reporting tool, further developments of the Integrated Maritime Services as well as a new website for keeping the public informed on ship-source pollution, and the related data collection, monitoring and reporting tasks under the proposed Directive. These are new tasks for EMSA that will become permanent, while existing tasks will not decrease or be partly phased out.

The additional need of human resources cannot be met by redeployment, while the additional budgetary needs will be met through offsetting by existing programmes managed by DG MOVE under the current multiannual financial framework.

The increase in appropriations for EMSA will be offset by a compensatory reduction of programmed spending under CEF Transport (02 03 01). The budget impact of the current proposal is already included in the budget for the Commission proposal for a Regulation of the European Parliament and of the Council on the European Maritime Safety Agency and repealing Regulation (EC) No 1406/2002.

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

1.6. Duration and financial impact of the proposal/initiative

☐ limited duration

- ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- ☐ Financial impact from YYYY to YYYY

☒ unlimited duration

- Implementation with a start-up period from 2025,
- followed by full-scale operation.

1.7. Method(s) of budget implementation planned⁴⁶

☐ Direct management by the Commission through

- ☐ executive agencies

☐ Shared management with the Member States

☒ Indirect management by entrusting budget implementation tasks to:

☐ international organisations and their agencies (to be specified);

☐ the EIB and the European Investment Fund;

☒ bodies referred to in Articles 70 and 71;

☐ public law bodies;

☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

☐ bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments

Management of the proposed Directive will be done overall by the Commission services assisted by the European Maritime Safety Agency as appropriate.

Member States will be required to transpose the provisions of the Directive by the respective deadline.

⁴⁶ Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: <https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx>

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The Commission and/or EMSA will verify that feedback to CleanSeaNet alerts is being provided by the Member States in a timely and effective manner and that information on evidence collection and penalties is uploaded to the reporting tool regularly. An EU website will also be developed with core indicators on the implementation rate and the key non-confidential information updated regularly with data from the reporting tool to keep the public informed on the implementation and on pollution incidents.

EMSA, on behalf of the Commission, will carry out visits to Member States to verify operations on the ground. The respective visits reports will identify any shortcomings and areas for improvement. EMSA will also carry out a horizontal analysis and technical assistance, giving an indication of how the legislation is functioning and identifying gaps and what can be done to address them, and report to the Commission and Member States.

The Commission in an expert group will develop implementing acts and interpretative guidelines to ensure a harmonized implementation by the Member States.

2.2. Management and control system(s)

2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

The Commission will be overall accountable for implementing the proposed Directive as well as for evaluating its efficiency and proposing revisions where necessary. The Commission will be assisted by EMSA as appropriate in providing the IT services and developing the IT tools necessary for the reporting, monitoring and verification provisions of the proposed Directive, as well as organising trainings. Member States will be required to carry out the transposition of the Directive to their national legislation by the deadline mentioned in the Directive. Member States will also be required to carry out enforcement, notably by applying administrative penalties in cases of non-compliance. Enforcement activities may be carried out as part of existing inspections, in particular during Port State Control.

2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

While the Commission will be overall accountable for implementing the proposed Directive as well as for evaluating the implementation and compliance, the European Maritime Safety Agency will be responsible for the performance of its operation and for the implementation of its internal control framework. It will be required to develop IT tools and modules, as well as provide training to the Member State authorities, and the Member States will be required to carry out enforcement.

EMSA is best placed to carry out reporting and assessment of compliance tasks, as this will be technical work, requiring strong expertise in data management, as well as in-depth understanding of complex technical matters related to illegal discharges and ship-source pollution.

Member States are best placed to carry out the enforcement of the proposed Directive, notably in a harmonized way by information and experience exchange and by fulfilling their responsibilities as parties to MARPOL.

DG MOVE will apply the necessary controls in line with the supervision strategy adopted in 2017 on the DG's relations with decentralised agencies and JUs. Under the strategy, DG MOVE monitors performance indicators for the implementation of the budget, the audit recommendations and administrative matters. A report is provided by the Agency on a bi-annual basis. The controls performed on the supervision of the Agency as well as on the related financial and budgetary management are in accordance with DG MOVE's Control Strategy, updated in 2022.

The additional resources put at the disposal of EMSA will be covered by EMSA's internal control and risk management system that is aligned with the relevant international standards and includes specific controls to prevent conflict of interests and ensure the protection of whistle-blowers.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

Under the proposed Directive, additional financing will be provided to EMSA, which will be developing IT tools and modules, as well as providing training to the Member State authorities.

EMSA has full responsibility for the implementation of their budget, while DG MOVE is responsible for the regular payment of the contributions established by the Budgetary Authority. The expected level of risk of error at payment and at closure is similar to that attached to the budget subsidies provided to the Agency.

The additional tasks resulting from the proposed revision are not expected to generate specific additional controls. Therefore, the cost of control for DG MOVE (measured against the value of funds managed) is expected to remain stable.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

The proposed Directive regulates pollution prevention and hence no specific anti-fraud measures are included.

EMSA applies the anti-fraud principles of decentralised EU Agencies, in line with the Commission approach. In March 2021, the Agency adopted an updated Anti-Fraud Strategy, based on the methodology and guidance for anti-fraud strategy presented by OLAF as well as on the Anti-Fraud Strategy of DG MOVE. It provides a framework addressing the issues of prevention, detection and conditions for investigations of fraud at Agency level. EMSA continuously adapts and improves its policies and actions to promote the highest level of integrity of EMSA staff, support effective prevention and detection of fraud risk and establish the appropriate procedures to report and handle potential fraud cases and their outcome. Furthermore, EMSA adopted in 2015 its Conflict of Interest policy for the Management Board.

EMSA cooperates with the Commission services on matters relating to preventing fraud and irregularity. The Commission will ensure that this cooperation will continue and will be strengthened.

The proposed Directive contains clear and detailed rules on the legal enforcement to ensure that the obligations it contains are not circumvented by economic operators. The Commission will ensure that appropriate measures are in place to protect the financial interests of the Union by effective checks and, if irregularities, fraud or breach of obligations are detected, by their notification.

The Commission will also take appropriate measures to protect the confidentiality of information obtained in implementation of this Directive and published.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. ⁴⁷	from EFTA countries ⁴⁸	from candidate countries and potential candidates ⁴⁹	From other third countries	other assigned revenue
1	02 10 02	Non-diff.	YES	NO	NO	NO

⁴⁷ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

⁴⁸ EFTA: European Free Trade Association.

⁴⁹ Candidate countries and, where applicable, potential candidates from the Western Balkans.

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- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./non-diff.	from EFTA countries	from candidate countries and potential candidates	from other third countries	other assigned revenue
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework		1	Single Market, Innovation and Digital				
European Maritime Safety Agency (EMSA)			Year 2025	Year 2026	Year 2027	Year 2028-2034	TOTAL
Title 1:	Commitments	(1)	0.513	1.881	1.881	14.364	18.639
	Payments	(2)	0.513	1.881	1.881	14.364	18.639
Title 2:	Commitments	(1a)					
	Payments	(2a)					
Title 3:	Commitments	(3a)	6.450	7.050	7.250	46.650	67.400
	Payments	(3b)	6.450	7.050	7.250	46.650	67.400
TOTAL appropriations for EMSA	Commitments	=1+1a+3a	6.963	8.931	9.131	61.014	86.039
	Payments	=2+2a+3b	6.963	8.931	9.131	61.014	86.039

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

Heading of multiannual financial framework	7	‘Administrative expenditure’					EUR million (to three decimal places)	
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL	
DG: <.....>								
• Human Resources								
• Other administrative expenditure								
TOTAL DG <.....>	Appropriations							
TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)							
		EUR million (to three decimal places)						
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments	Year 2025	Year 2026	Year 2027	Year 2028-2034	TOTAL		
	Payments	6,963	8,931	9,131	61.014	86.039		
		6,963	8,931	9,131	61.014	86.039		

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

3.2.2. Estimated impact on EMSA's appropriations

- ☒ The proposal/initiative does not require the use of operational appropriations
- ☐ The proposal/initiative requires the use of operational appropriations, as explained below:

Amounts in EUR million (to three decimal places)

Indicate objectives and outputs		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)					TOTAL	
↓		OUTPUTS										
		Type ⁵⁰	Average cost	Cost %N	Cost %N	Cost %N	Cost %N	Cost %N	Cost %N	Cost %N	Cost %N	Total No
SPECIFIC OBJECTIVE No 1 ⁵¹ ...												
- Output												
- Output												
- Output												
Subtotal for specific objective No 1												
SPECIFIC OBJECTIVE No 2 ...												
- Output												
Subtotal for specific objective No 2												
TOTAL COST												

⁵⁰ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).
⁵¹ As described in point 1.4.2. 'Specific objective(s)...

Where applicable, amounts reflect the sum of the Union contribution to the agency and other revenue of the agency (fees and charges).

3.2.3. Estimated impact on EMSA's human resources

3.2.3.1. Summary

- ☐ The proposal/initiative does not require the use of appropriations of an administrative nature
- ☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places) Where applicable, amounts reflect the sum of the Union contribution to the agency and other revenue of the agency (fees and charges).

	Year 2025	Year 2026	Year 2027	Year 2028-2034	TOTAL
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Temporary agents (AD Grades)	0.428	1.539	1.539	11.97	15.476
Temporary agents (AST grades)	0.086	0.342	0.342	2.394	3.164
Contract staff					
Seconded National Experts					

TOTAL	0.514	1.881	1.881	14.364	18.64
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The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement. Staff requirements (FTE):

	Year 2025	Year 2026	Year 2027	Year 2028-2034	TOTAL
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Temporary agents (AD Grades)	5	9	9	10	10
Temporary agents (AST grades)	1	2	2	2	2
Contract staff					
Seconded National Experts					

TOTAL	6	11	11	12	12
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The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

EMSA will start preparing the recruitment as soon as the proposal is adopted. The costs are estimated based on the assumption that the 6 FTEs are recruited as of 1st July 2025. So only 50% of the HR costs are needed for the first year.

3.2.3.2. Estimated requirements of human resources for the parent DG

- ☒ The proposal/initiative does not require the use of human resources.
- ☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary staff)							
20 01 02 01 and 20 01 02 02 (Headquarters and Commission's Representation Offices)							
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
10 01 05 01 (Direct research)							
• External staff (in Full Time Equivalent unit: FTE)⁵²							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the Delegations)							
Budget line(s) (specify) ⁵³	- at Headquarters ⁵⁴						
	- in Delegations						
01 01 01 02 (AC, END, INT – Indirect research)							
10 01 05 02 (AC, END, INT – Direct research)							
Other budget lines (specify)							
TOTAL							

⁵² AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in Delegations.

⁵³ Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

⁵⁴ Mainly for the EU Cohesion Policy Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime Fisheries and Aquaculture Fund (EMFAF).

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

Description of the calculation of cost for FTE units should be included in the Annex V, section 3.

3.2.4. Compatibility with the current multiannual financial framework

- ☒ The proposal/initiative is compatible the current multiannual financial framework.
- ☒ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

The tasks allocated to EMSA will require reprogramming of the budget line for the annual contribution to the Agency (02 10 02) under the current multiannual financial framework. The increase in appropriations for EMSA will be offset by a compensatory reduction of programmed spending under CEF Transport (02 03 01) under the current multiannual financial framework. The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

- ☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework⁵⁵.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

⁵⁵ See Articles 12 and 13 of Council Regulation (EU, Euratom) No 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027.

3.3. Estimated impact on revenue

– ☒ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on other revenue

please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative ⁵⁶						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article								

For miscellaneous ‘assigned’ revenue, specify the budget expenditure line(s) affected.

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Specify the method for calculating the impact on revenue.

⁵⁶ As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.



EUROPEAN
COMMISSION

Brussels, 1.6.2023
COM(2023) 273 final

ANNEXES 1 to 2

ANNEXES

to the Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences

{SEC(2023) 209 final} - {SWD(2023) 159 final} - {SWD(2023) 164 final}

ANNEX II

NON-EXHAUSTIVE LIST OF IRREGULARITIES OR INFORMATION REFERRED TO IN ARTICLE 6

- (1) Any irregularities with respect to the oil and other relevant record books or with respect to other deficiencies related to potential discharges, discovered during inspections carried out under Directive 2009/16/EC¹, carried out either by the Member State concerned or by another Member State or a State signatory to the Memorandum of Understanding on Port State Control (Paris MOU) at the previous ports of call of the ship;
- (2) Any irregularities with respect to the delivery of ship-generated waste, or the notification thereof, as required under Directive (EU) 2019/883² which took place either in the Member State concerned or in the Member State of the previous ports of call of the ship;
- (3) Any irregularities with respect to non-compliance with the criteria for the use of exhaust gas cleaning systems operated as emissions abatement methods set out in Annex II of Directive (EU) 2016/802 of the European Parliament and of the Council³, which refers to the 2009 Guidelines for Exhaust Gas Cleaning Systems set out in Resolution MEPC.184(59)) as replaced by the 2021 Guidelines for Exhaust Gas Cleaning Systems set out in resolution MEPC.340(77).
- (4) Any information obtained from another Member State relating to a potential illegal discharge of the ship obtained through the procedures foreseen in Directive 2002/59/EC⁴, including any proof or presumptive evidence on deliberate discharges of oil or other infringements of Marpol 73/78 communicated by coastal stations of a Member State to the coastal stations in the Member State concerned in accordance with Article 16 thereof or incidents or accidents reported by the master of the ship to the coastal station of the Member State concerned in accordance with Article 17 thereof; or
- (5) Any other information by persons involved in the operation of the ship, including pilots, which suggests irregularities relating to potential violation of the obligations under this Directive.

¹ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (Recast) (OJ L 131, 28.5.2009, p. 57).

² Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC (OJ L 151, 7.6.2019, p. 116)

³ Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (codification) (OJ L 132, 21.5.2016, p. 58).

⁴ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p. 10).

ANNEX [II]

INFORMATION TO BE INCLUDED IN THE UNION-WIDE OVERVIEW REFERRED TO IN ARTICLE 10C

- (1) For each pollution incident verified and confirmed by a Member State, information in the Union-wide overview published in accordance with Article 10c shall include:
 - a. date of the incident;
 - b. identification of the ship involved in the incident;
 - c. position (latitude and longitude) of the pollution incident;
 - d. extent of the pollution incident (area and length), if applicable;
 - e. type of pollutant;
 - f. Member State(s) involved;
 - g. description of the verification activities of the pollution incident;
 - h. date and time of verification activities and assets used for verification activities;
 - i. details of the administrative penalty imposed.
- (2) For each Member State, aggregated information contained in the Union-wide overview published in accordance with Article 10c shall include:
 - a. number of CleanSeaNet possible pollution incidents detected by the Member State;
 - b. number of CleanSeaNet possible pollution incidents verified on-scene by the Member State;
 - c. number of confirmed pollution incidents after verification (detailed per area: territorial waters, EEZ, high seas);
 - d. number of identified offenders;
 - e. number of cases where a penalty was imposed.