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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document 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

Delegations will find attached document SWD(2023) 164 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**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**

{COM(2023) 273 final} - {SEC(2023) 209 final} - {SWD(2023) 159 final}

A. Need for action

What is the problem and why is it a problem at EU level?

Directive 2005/35/EC on ship-source pollution ('SSP Directive' or 'Directive') deals with penalties for illegal discharges of oil and noxious liquid substances from ships to the sea. Illegal, means anything that does not meet MARPOL standards (MARPOL - Convention for the Prevention of Pollution from Ships).

The Directive is one of EU's initiatives aiming to decrease pollution to the sea from maritime transport. Its purpose is to incorporate international standards for ship-source pollution into EU law and to ensure that those responsible for discharges of polluting substances to sea are subject to penalties. The reason behind the Directive was largely the public concern following accidents involving the tankers Erika (1999) and Prestige (2002).

Although the maritime sector provides substantial economic and social benefits to the EU, it also has an impact on the environment and the health of EU citizens. Oil spills are a concerning source of marine pollution, as they are difficult to clean up and can last for long periods in the marine environment. Other harmful substances released by ships as well as garbage and sewage also have a negative effect on the sea. They can pollute marine and coastal habitats, causing damage to the natural environment and the economy.

The Commission carried out an *ex-post evaluation* in 2022 and found that the Directive successfully contributed to the incorporation of the international rules for ship-source pollution into EU law and improved the detection of possible pollution from ships. In particular, the Directive was the impetus behind the creation of the CleanSeaNet service - an EU-wide oil monitoring system using satellite surveillance hosted by the European Maritime Safety Agency (EMSA). However, offenders discharging polluting substances illegally are not always identified, and therefore rarely penalised. A number of issues have been identified as problematic: (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 inconsistent across the EU and generally insufficient; (3) there is an unbalanced dissuasive effect of the penalties currently applied across EU for ship-source pollution; (4) the current reporting by Member States is incomplete and results in a lack of information on ship-source pollution and related penalties across the EU over time.

There is clear Union relevance of improving the Directive to address this cross-border problem. In the absence of further EU-level action, the problem will most likely persist. With the entry into force of the new Environmental Crime Directive (which for the first time will have provisions on ship-source pollution), the provisions on criminal penalties in the SSP Directive will become obsolete and thus need to be removed.

What should be achieved?

In line with the European Green Deal, the aim is to incorporate into EU law international standards on pollution by ships and to ensure that those responsible for discharges of polluting substances are subject to effective, proportionate and dissuasive penalties. The specific objectives are to: (1) incorporate international standards into EU law by aligning the Directive with MARPOL Annexes on discharges into 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 responsible for illegal discharges from ships are subject to effective, proportionate and dissuasive penalties; and (4) ensure simplification and effective reporting on ship-source pollution incidents and follow-up activities.

What is the value added of EU-level action (subsidiarity)?

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 enough to tackle this problem. Diverging national approaches in this area hinder efficient cooperation between Member States and allow offenders to escape penalties. The Directive already goes beyond the MARPOL standards by (1) providing a liability regime that allows more effective penalisation of polluters; and (2) supporting the Member States in identifying the offenders through digital tools. The value added by this revision is regulating more polluting substances, clarifying the existing liability regime and extending satellite surveillance to cover more types of pollutants. The revision also aims to introduce new measures on penalties without affecting the revised Environmental Crime Directive. Action at EU level would be more effective than action at national level because it would have a deterrent effect across borders.

B. Solutions

What are the various options to achieve the objectives? Is there a preferred option? If not, why?

Three policy options (PO) have been assessed in this impact assessment and propose solutions to the problem, but they vary approach, level of harmonisation and amount of discretion left to Member States. All policy options envisage extending the scope of the Directive to cover not only MARPOL Annexes I-II (oil and noxious liquid substances in bulk) – as is the case currently – but also Annex III (harmful substances carried by sea in packaged form), Annex IV (sewage), Annex V (garbage) and Annex VI discharge water and residues from scrubbers. All options provide Member States with better information and ensure that the level of EMSA support (training, guidance, integrated tools, access to information on possible detections) is sufficiently high.

PO-A leaves the most discretion to Member States on implementing MARPOL standards. Under PO-A, Member States would be responsible for managing their information on ship-source pollution incidents and for keeping the public informed through national websites. This option follows a national approach on determining the type of penalty and does not regulate the level of the penalty. For PO-A, there is more adaptability for Member States and a minimum of EU intervention.

PO-B focuses on strengthening cooperation between Member States mainly through common measures included in all options e.g. further optimisation of the EMSA tools such CleanSeaNet, SafeSeaNet and THETIS. Under PO-B, the criteria for levels of penalties would be set out. PO-B also would provide a structure for cooperation among Member States and strengthen their enforcement without introducing major regulatory measures or costs for Member States.

PO-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. PO-C is expected to generate higher verification costs but it provides a

structure for strengthened enforcement. On penalty levels, PO-C would strengthen harmonisation across the EU by setting the values.

PO-B, selected as the **preferred policy option**, is considered the most efficient and proportionate, likely to work well in a common framework. There are however data gaps, low stakeholder input and high uncertainty on the impacts. On coherence, all three options perform the same and can work together with other EU instruments. In terms of effectiveness, PO-C performs better than PO-B because of the deterrent effect of the 60% verification rate, which increases the chances of a ship being caught when discharging illegally in European seas. PO-B and PO-C are more effective than PO-A, specifically thanks to the benefits of providing harmonised solutions at EU level, as compared to multiple national approaches. PO-C is less proportionate than PO-B because of the proposed strict regulatory approach on penalty levels and a major mandatory verification obligation. The imposition of such a strong regulatory approach in PO-C is seen disproportionate given the very uncertain data and weak ex-post evaluation of the initiative (i.e. due to scarce data).

What are different stakeholders' views? Who supports which option?

The involvement of stakeholders in the consultation process was generally low. There were 30 replies to the public consultation.

The preferred policy option (PO-B) is, in principle, supported by different stakeholders. During a stakeholder validation workshop with Member States, industry and NGOs organised in September 2022, when asked about the three options, 20 out of 27 voting participants selected strengthened Member State cooperation and EMSA support. However, opinions differed between stakeholders. Some industry stakeholders consider that the Directive is not needed, as international MARPOL rules are sufficient.

Stakeholders are broadly in favour of extending the scope of the Directive to cover discharges into the sea of other substances covered by MARPOL. The public consultation showed that 23 (out of 28) respondents consider the 'update of the Directive to include amendments to the MARPOL Convention, putting in place stricter rules for discharges of waste from ships at sea' as a relevant aspect that should be addressed. Of the 51 respondents in the stakeholder validation workshop in September 2022, 26 voted to extend the scope to cover Annex I-VI. Some NGOs consider that the Directive's scope should go beyond what is regulated at international level, e.g. cover underwater noise. Stakeholders agree on improving the effectiveness of mechanisms to address surveillance and information exchange and they are in favour of EU support for Member States in this area.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise of main ones)?

PO-B (as with PO-A and PO-C) is expected to result in enforcement cost savings for Member States estimated at EUR 1.8 million.

PO-B (as with PO-C) is expected to result in administrative cost savings for Member States of an estimated EUR 0.9 million.

PO-B is also expected to benefit the environment thanks to pollution prevention. Over 2025-2050, 3,411 tonnes of oil discharges would be prevented compared to the baseline. The reduction in the external costs is estimated at EUR 690.5 million. Uncertainty about the quantified environmental benefits is high, however, due to the lack of data.

Overall, PO-B is expected to result in net benefits estimated at between EUR 558.5 and EUR 567.4 million.

(N.B. All figures are relative to the baseline and expressed as net present value over 2025-2050, in 2020 prices).

What are the costs of the preferred option (if any, otherwise of main ones)?

In PO-B, additional costs will fall mainly on EMSA as its workload will increase due to the development of new IT modules, optimised use of the existing tools, training and guidance. These adjustment costs for EMSA are estimated at between EUR 122.6 and EUR 131.4 million over 2025-2050. In addition, the adjustment costs for the European Commission are estimated at EUR 0.8 million.

The enforcement costs for Member State administrations, linked to the extension of the scope of the Directive and the feedback to the CleanSeaNet alerts, are estimated at EUR 2.5 million.

(N.B. All figures are relative to the baseline and expressed as net present value over 2025-2050, in 2020 prices).

What are the impacts on SMEs and competitiveness?

The preferred policy option does not create new obligations for businesses and would thus not have an impact on their costs. The extension of the Directive's scope to cover additional substances under MARPOL 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.

Will there be significant impacts on national budgets and administrations?

The enforcement costs for Member State administrations are estimated at EUR 2.5 million. On the other hand, PO-B is expected to result in enforcement costs savings estimated at EUR 1.8 million and administrative costs savings estimated at EUR 0.9 million. As a result, the net costs for Member State administrations are estimated at EUR 0.2 million.

(N.B. All figures are relative to the baseline and expressed as net present value over 2025-2050, in 2020 prices).

Will there be other significant impacts?

Aside from the positive indirect impact on discouraging illegal discharges from ships into the marine environment, the initiative may have a positive indirect effect on the health of people across the EU who live next to the sea and/or eat the fish caught in European seas thanks to the higher quality of water. However, this impact is not perceived as significant.

Proportionality

The preferred policy option is assessed as the most proportionate to meet the overall policy objectives. The focus of the preferred policy option is on improving cooperation, knowledge sharing and data collection and goes further to what Member States could achieve themselves. The ships illegally discharging pollutants will face more effective, proportionate and dissuasive penalties thanks to EU support for Member States with training and platforms to exchange information and experience as well as modern digital tools that help identify the possible polluter.

D. Follow up

When will the policy be reviewed?

The Commission will carry out an evaluation of this Directive five years from the date of transposition of this amending Directive and EMSA will carry out visits to Member States to verify operations on the ground, leading to cross-cutting analyses.
