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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	1 June 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
Subject:	REGULATORY SCRUTINY BOARD OPINION 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 SEC (2023) 209 final.

Encl.: SEC (2023) 209 final



EUROPEAN COMMISSION

Brussels, 27.03.2023
SEC(2023) 209 final

REGULATORY SCRUTINY BOARD OPINION

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}
{ SWD(2023) 159 final}
{ SWD(2023) 164 final}



EUROPEAN COMMISSION
REGULATORY SCRUTINY BOARD

Brussels,
RSB

Opinion

Title: Impact assessment on a proposal for a revision of Directive 2005/35/EC on ship-source pollution

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Although maritime accidents are a prominent source of ship-source pollution, the majority result from deliberate discharges from tank-cleaning operations and waste oil disposal from maritime transport.

Directive 2005/35/EC on ship-source pollution (SSP) regulates enforcement and sanctions on illegal discharges to the sea of substances covered by Annexes I and II of the UN International Maritime Organisation (IMO) MARPOL Convention. Polluters are subject to penalties, including criminal penalties.

Based on evaluation findings, this initiative aims to revise the existing legislation to align its scope with all MARPOL Annexes on discharges to the sea. In addition, it aims to ensure that: (a) Member States have the capacity to identify, verify and penalise offenders in a timely and harmonised manner; (b) offenders are subject to effective, proportionate and dissuasive penalties; and (c) reporting across EU on ship-source pollution is simplified and effective.

(B) Summary of findings

The Board notes the improvements made to the draft report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) The report does not explain clearly what its level of ambition is and how the preferred option will effectively tackle the problem of ship source pollution in EU waters.

(C) What to improve

(1) The report should summarise, upfront, the main problems, and the main aim of the revision in order to frame the overall narrative and intervention logic early in the analysis. It should explain clearly what its level of ambition is so that the effectiveness of the options on delivering on this ambition and tackling the problem can be clearly assessed.

(2) The discussion on the choice of the preferred option should make clear that this initiative is part of a broader framework of measures aiming to tackle the problem of ship source pollution in EU waters in working together. The report should explain whether the expected contribution of 0.5% reduction of oil waste discharge under the preferred option is in line with the envisaged ambition of the initiative.

The Board notes the estimated costs and benefits of the preferred option in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Impact assessment on a proposal for a revision of Directive 2005/35/EC on ship-source pollution
Reference number	PLAN/2019/5432
Submitted to RSB on	3 March 2023
Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option (Policy option B)		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Enforcement costs savings for Member States administrations, expressed as present value over 2025-2050 relative to the baseline	EUR 1.8 million	Enforcement costs savings for the Member States administrations are driven by the further integration and enhancements in the data exchange tools and automated links in the Integrated Maritime Services based on CleanSeaNet, THE TIS, THETIS EU and SafeSeaNet by EMSA, that is expected to lead to a reduction in the time spent for verifying CleanSeaNet alerts.
Administrative costs savings for Member States administrations, expressed as present value over 2025-2050 relative to the baseline	EUR 0.9 million	The development of a dedicated reporting tool for data collection would lead to significant time savings for reporting to the European Commission under the SSP Directive.
Enhanced surveillance capabilities of Member States administrations	Significant improvement in surveillance capabilities	Improvement of the surveillance and enforcement capabilities of Member States with the introduction of new technical support tools by EMSA, linked to the scope extension, and the enhanced knowledge sharing activities and data collection tools and their integration.
Improvement in enforcement of identified infringements by Member States administrations	Improvement in enforcement capabilities of Member States administrations	
Infringements will be more effectively subject to penalties	Higher probability of being subject to penalties	
Improvement in dissuasiveness of penalties	Improvement in the effectiveness and eventually dissuasiveness of penalties	Higher probability of identifying infringements and imposing penalties, due to enhanced support in enforcement activities.
Awareness raising	Improved awareness raising and visibility to the public	Improved awareness rising as a result of increased reporting by Member States and public

I. Overview of Benefits (total for all provisions) – Preferred Option (Policy option B)		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
		information sharing through a website.
<i>Indirect benefits</i>		
Functioning of the internal market	Positive impact on the functioning of the internal market and competition	Improving the identification of offenders and prosecution (deterrence by means of penalties) is expected to contribute to a level playing field.
Technological development	Accelerated deployment of innovation	Accelerated deployment of innovative technologies is expected due to the deployment of new technical solutions to meet the requirements of the revised Directive, specifically on surveillance and evidence collection.
Governance, participation and good administration	Improved information exchange and opportunities for enhanced Member State governance	Improvement in information availability, exchange and Member State collaboration in marine protection. In addition, public participation is encouraged by improved transparency and dedicated portal with information on ship-source pollution.
Reduction in external costs from oil spills, expressed as present value over 2025-2050 relative to the baseline	EUR 690.5 million	The reduction in external costs comes from improved environmental conditions as an indirect impact of the dissuasive effect of the improved enforcement and environmental awareness, leading to a shift in industry behaviour.
<i>Administrative cost savings related to the 'one in, one out' approach *</i>		
-	-	-

II. Overview of costs – Preferred option (<i>Policy option B</i>)							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Direct adjustment costs relative to the baseline (i.e. present value over 2025-2050)		-	-	-	-	For EMSA: additional costs of EUR 2.9 million For European Commission: additional costs of EUR 0.2 million	For EMSA: additional costs of EUR 119.7 to 128.5 million For European Commission: additional costs of EUR 0.6 million
Direct enforcement costs relative to the baseline (i.e. present value over 2025-2050)		-	-	-	-	-	For Member States: additional costs of EUR 2.5 million
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs	-	-	-	-		
	Indirect adjustment costs	-	-	-	-		
	Administrative costs (for offsetting) relative to the baseline (i.e. present value over 2025-2050)	-	-	-	-		



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment on a proposal for a revision of Directive 2005/35/EC on ship-source pollution

Overall opinion: NEGATIVE

(A) Policy context

Although maritime accidents are a prominent source of ship-source pollution, the majority result from deliberate discharges from tank-cleaning operations and waste oil disposal from maritime transport.

Directive 2005/35/EC on ship-source pollution (SSP) regulates enforcement and sanctions on illegal discharges to the sea of substances covered by Annexes I and II of the UN International Maritime Organisation (IMO) MARPOL Convention. Polluters are subject to penalties, including criminal penalties.

Based on evaluation findings, this initiative aims to revise the existing legislation to align its scope with all MARPOL Annexes on discharges to the sea. In addition, it aims to ensure that: (a) Member States have the capacity to identify, verify and penalise offenders in a timely and harmonised manner; (b) offenders are subject to effective, proportionate and dissuasive penalties; and (c) reporting across EU on ship-source pollution is simplified and effective.

(B) Summary of findings

The Board notes the additional information provided and commitments to make changes to the report.

However, the Board gives a negative opinion because the report contains the following significant shortcomings:

- (1) The report is unclear on the main problem(s) this initiative aims to tackle and the links to the specific problem drivers that limit the effectiveness of the Directive. It lacks a clear and coherent intervention logic and overall narrative.
- (2) The report is neither clear on the scale of the environmental impact of ship pollution problem nor on the expected environmental benefits. It is not clear what success would look like.
- (3) The report does not demonstrate that the preferred option will ultimately tackle the problem of ship source pollution in EU waters and that it is the most effective option for doing so.

(C) What to improve

- (1) The report should draw more on the evaluation findings to: (i) critically discuss how effective the SPP has been in reaching its objectives, (ii) explain what the key problems are, (iii) state which of those this initiative aims to tackle, and (iv) how they interact with each other (e.g. overall problem of ship source pollution versus specific implementation, enforcement and capacity problems). It should provide a clearer idea of the scale of these problems and the underlying problem drivers. On this basis, it should define more precisely its specific objectives, including by explaining upfront what the initiative aims to achieve over and above the MARPOL Convention and by indicating what success would look like. It should then identify the sets of measures that can effectively deliver on the objectives, thereby presenting a clearer intervention logic and overall revised narrative. Being clear on the expected level of ambition and on what success would look like, would help to manage expectations of this initiative.
- (2) The report should present a credible and dynamic baseline. It should include the effects of existing and upcoming relevant legislation, ongoing technological developments, recent geo-political events and insights from foresight. It should be clear how verification and prosecution costs associated with complying with the MARPOL Convention are reflected in the modelling.
- (3) The report should better explain the rationale behind the option design. It should present alternative sets of measures that can effectively tackle the problems. It should better justify why the policy measure on further data integration and exchanges does not feature in the set of common policy measures. It should clarify whether a slightly different option design would affect outcomes, and if yes, how this has been reflected in the analysis.
- (4) The report should reflect the significant data limitations in assessing effectiveness, efficiency and EU added value, both in the evaluation conclusions and in the assessment and comparison of the options.
- (5) The report should improve the analysis of the environmental impacts. The report should more clearly explain (and quantify to the extent possible) the environmental benefits of all measures. If further quantification is not possible, the report should provide a much more developed qualitative assessment of the environmental benefits, fully informed by the views of different stakeholder groups and independent expert judgement. This revised effectiveness assessment of the options in delivering the environmental benefits should then be reflected in the revised comparison of costs and benefits.
- (6) Options should be compared against the dynamic baseline scenario. The report should include a comparative table that ranks effectiveness, efficiency and coherence for each of policy options. The comparison of options should include the results of any additional analysis of the environmental benefits. Where adequate quantitative estimates are missing, a qualitative scoring should be done.
- (7) The report should better justify the choice of the preferred option. The current analysis shows that the preferred option does not have the best Benefit Cost Ratio. However, the effectiveness and efficiency analysis does not adequately reflect the likely different environmental impact of each option. For the report to conclude on the preferred option, the justification should provide the key elements leading to this conclusion,

acknowledge the limitation of the analysis and the fact that the choice of the preferred option is sensitive, even to small changes in policy options' design. In the absence of clear evidence on some proposed measures' effectiveness, in particular with respect to the scale of environmental impacts, the report should demonstrate why the preferred option is expected to deliver the expected positive results.

- (8) Stakeholder and independent expert views and arguments should be presented more prominently and systematically throughout the main report. Notable disagreements between different categories of stakeholders on option design and the impact of some measures should be highlighted. In this regard, Annex II should be structured, summarised and feed into the main report.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.

Full title	Impact assessment on a proposal for a revision of Directive 2005/35/EC on ship-source pollution
Reference number	PLAN/2019/5432
Submitted to RSB on	04 November 2022
Date of RSB meeting	30 November 2022