

2.4.2024

A9-0365/ 001-049

AMENDMENTS 001-049

by the Committee on Transport and Tourism

Report

Marian-Jean Marinescu

A9-0365/2023

Amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements

Proposal for a directive (COM(2023)0273 – C9-0187/2023 – 2023/0171(COD))

Amendment 1

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) While the overarching objective of this Directive is to transpose important amendments to the International Convention for the Prevention of Pollution from Ships ('Marpol 73/78') of the International Maritime Organization (IMO), in Union law, an up-to-date and complete text of Marpol 73/78 and its related annexes is not available on the IMO's website. This makes it burdensome for the sector, citizens and administrations to gain proper access to the text of Marpol 73/78 and other similar IMO conventions, and is an obstacle to full transparency and publicity in the IMO's work.

Amendment 2

Proposal for a directive
Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) The European Commission and the Member States should request at IMO level that full texts of all IMO conventions, including Marpol 73/78 and its related annexes, be made public on the IMO's website, accessible to all free of charge, at the latest by [OP: Please insert a date: one year from the date of entry into force of this amending Directive]. The IMO should thereafter regularly update the convention texts when required.

Amendment 3

Proposal for a directive
Recital 3 c (new)

Text proposed by the Commission

Amendment

(3c) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission as regards amending this Directive, if necessary and for information purposes, in order to include in an Annex the full text of Marpol 73/78 and those of its annexes referred to in this Directive, and as regards subsequently amending that Annex, whenever required.

Amendment 4

Proposal for a directive
Recital 3 d (new)

Text proposed by the Commission

Amendment

(3d) When applying the provisions of this Directive via the corresponding national laws, the Marpol 73/78 and its Annexes

referred to in this Directive in force at the date of infringement should be considered.

Amendment 5

Proposal for a directive Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) Beyond the scope of the present directive, marine pollution is broader than the specific ship-source aspects covered by Marpol 73/78 annexes, as defined in Article 3 paragraph 8 of Directive (EU) 2008/56/EC and also covered by other relevant EU legislation. It results in harming biodiversity and living resources in marine ecosystems, as well as in hazards to human health and the impairment of the quality for use of sea water and the sustainable use of marine goods and services, hence hindering other marine activities, such as fishing, tourism and recreation. Underwater noise pollution, produced by shipping, is detrimental to marine species both in the short and long term, particularly to marine mammals, but also to fish, crustaceans, and invertebrates, as they use sound to find food, communicate with one another and avoid predators. Reporting by Member States of incidents involving excessive underwater noise should be encouraged. Air pollution, such as black carbon, PM or NOx, can become a public health threat, particularly in coastal areas, as well as the release of plastic microbeads and pellets from containers.

Amendment 6

Proposal for a directive Recital 9

Text proposed by the Commission

(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.

Amendment

(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. ***This possibility to hold the master or the crew responsible should, however, not prevent the payment of the full amount of the penalty. To ensure that any environmental damage caused by illegal discharges under this Directive is effectively sanctioned with penalties, the company should remain responsible as a last resort.*** 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.

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).

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).

Amendment 7

Proposal for a directive

Recital 10

Text proposed by the Commission

(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.

Amendment

(10) National administrative and judicial authorities should take into account all relevant circumstances, **including recidivism**, 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.

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).

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).

Amendment 8

Proposal for a directive

Recital 11

Text proposed by the Commission

(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.

Amendment

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Amendment 9

Proposal for a directive

Recital 12

Text proposed by the Commission

(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 effective, dissuasive and proportionate penalties and that

Amendment

(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 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.

adequate data is made available to the Commission *and EMSA* 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, experience *and best practices* should be facilitated through enhanced cooperation, while at the same time ensuring that adequate data are made available to the Commission *and EMSA* in order to allow the proper monitoring of the implementation of Directive 2005/35/EC.

Amendment 10

Proposal for a directive

Recital 13

Text proposed by the Commission

(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

Amendment

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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.

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).

Amendment 11

Proposal for a directive

Recital 14

Text proposed by the Commission

(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

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 **50%** 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.

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).

Amendment

(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.

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 *prevent*, detect and verify pollution incidents and ensure the effective enforcement of Directive 2005/35/EC.

Amendment 12

Proposal for a directive Recital 15

Text proposed by the Commission

(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.

²⁹ OJ L xxxx.

Amendment 13

Proposal for a directive Recital 15 a (new)

Text proposed by the Commission

Amendment

(15) The European Maritime Safety Agency ('EMSA') established by Regulation (EU) xxxx/xxxx²⁹ should provide the necessary support to the Commission *and the relevant Member State authorities* to ensure the implementation of this Directive.

²⁹ OJ L xxxx.

(15a) In order to be able to tackle the problem of ocean container pollution more effectively at European level, the new reporting obligations to IMO under chapter 5 of the International Convention for the Safety of Life at Sea (SOLAS) should not remain limited to IMO level.

Member States should also report on this issue to the European Commission and EMSA on a yearly basis.

Amendment 14

Proposal for a directive

Recital 16

Text proposed by the Commission

(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.

Amendment

(16) Member States should report to the Commission ***and EMSA*** 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 ***developed by EMSA***. 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.

Amendment 15

Proposal for a directive

Recital 17

Text proposed by the Commission

(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

Amendment

(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.

Commission *and EMSA* 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.

Amendment 16

Proposal for a directive Recital 18

Text proposed by the Commission

(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.

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

Amendment

(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 in a disaggregated form, with data for every Member State***, 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.

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).

Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).

Amendment 17

Proposal for a directive

Recital 19

Text proposed by the Commission

(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 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

Amendment

(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, ***adequate support and material assistance, where necessary***. 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 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

down follow-up, in particular investigations, or attempts to find out the identity of the reporting persons.

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).

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).

Amendment 18

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2005/35/EC

Article 1 – paragraph 1

Text proposed by the Commission

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.

Amendment 19

reporting or to impede, frustrate or slow down follow-up, in particular investigations, or attempts to find out the identity of the reporting persons.

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).

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).

Amendment

1. The purpose of this Directive is to incorporate into Union law international standards on pollution from ships and to ensure that persons **and companies** 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.

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2005/35/EC

Article 1 – paragraph 2

Text proposed by the Commission

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.;

Amendment

2. This Directive does not prevent Member States from taking more stringent measures in conformity with ***Union and*** international law, by providing for administrative or criminal penalties in accordance with their national law.

Amendment 20

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2005/35/EC

Article 2 – paragraph 3

Text proposed by the Commission

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;

Amendment

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 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;

Amendment 21

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2005/35/EC

Article 2 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) ‘discharge’ shall mean any release howsoever caused from a ship, as referred to in Article 2 of Marpol 73/78;

deleted

Amendment 22

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2005/35/EC

Article 2 – paragraph 3a (new)

Text proposed by the Commission

Amendment

3a. ‘discharge’ shall mean any release howsoever caused from a ship, as referred to in Article 2 of Marpol 73/78;

Amendment 23

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2005/35/EC

Article 4 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(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.

(f) for Exhaust Gas Cleaning System residue, it satisfies the conditions set out in Annex VI Regulations **4**, 14.1, 14.4, 14.6 and 3.1.1 to Marpol 73/78, **taking into account the guidelines developed by the IMO.**

Amendment 24

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2005/35/EC

Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. Each Member State shall take **the**

2. Each Member State shall take **all**

necessary measures to ensure that any natural or legal person having committed an infringement within the meaning of paragraph 1 is held liable therefor.;

necessary measures to ensure that any natural or legal person having committed an infringement within the meaning of paragraph 1 is held liable therefore;

Amendment 25

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2005/35/EC

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

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 **(b)**, (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:

Amendment 26

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2005/35/EC

Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) the discharge results from damage to a ship *or its equipment*;

Amendment

(a) the discharge results from damage to a ship;

Amendment 27

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2005/35/EC

Article 5 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the discharge was immediately reported to the authorities after its occurrence.

Amendment 28

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2005/35/EC

Article 5 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

(bb) The company, the master, or the crew shall provide documentary evidence or logs detailing the precautions taken to prevent or minimise the discharge upon request by relevant authorities.

Amendment 29

Proposal for a directive

Article 1 – paragraph 1 – point 7 a (new)

Directive 2005/35/EC

Article 6 – paragraph 2

Text proposed by the Commission

Amendment

(7a) In Article 6, paragraph 2 is replaced by the following:

‘2. In so far as the inspection referred to in paragraph 1 reveals facts that could indicate an infringement within the meaning of Article 4, the Member State shall apply the provisions of this Directive taking into account Articles 8 and 9. The competent authorities of that Member State and of the flag State shall be informed.’

Amendment 30

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive 2005/35/EC

Article 8 – paragraph 3

Text proposed by the Commission

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.;

Amendment

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. ***In the event, however, that the master or crew responsible for the commission of the relevant infringement can no longer be found or cannot afford to pay the full amount of the penalty, the company shall remain responsible as a last resort, for the payment of the full amount or of the remainder of the penalty;***

Amendment 31

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive 2005/35/EC

Article 8 d – paragraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

1. ***In order to ensure that penalties are dissuasive, effective and proportionate,*** 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:

Amendment 32

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive 2005/35/EC
Article 8 d – paragraph 1 – point h a (new)

Text proposed by the Commission

Amendment

(ha) The extent of the damage caused by the discharge to marine life, including fish populations, and its subsequent impact on fishing activities and coastal communities.

Amendment 33

Proposal for a directive
Article 1 – paragraph 1 – point 13
Directive 2005/35
Article 8 d – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall not set or apply any “maximum administrative penalties” or “minimum administrative penalties” for infringements under this Directive that would be too low to ensure the deterrent nature, proportionality and effectiveness of these penalties.

Amendment 34

Proposal for a directive
Article 1 – paragraph 1 – point 14
Directive 2005/35/EC
Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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:

1. For the purposes of this Directive, the Member States, the Commission **and/or EMSA** 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:

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).

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).

Amendment 35

Proposal for a directive

Article 1 – paragraph 1 – point 14

Directive 2005/35/EC

Article 10 – paragraph 1 – point d

Text proposed by the Commission

(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.

Amendment

(d) within three years from the date of transposition of this Directive, ensure that **every Member State thoroughly analyses 100%** of the alerts **received from** CleanSeaNet every year **and that it carries out on the spot verifications of at least 50% of those alerts. A Member State can remain below this 50% on the spot verification threshold, if it is able to demonstrate to the Commission, in the course of the reporting provided for in Article 10a, that the thorough analysis of the imagery received from CleanSeaNet clearly revealed a false alarm, caused by, inter alia, algae or light reflexion, making a verification on the spot redundant. Responsible authorities shall conduct verifications on the spot as quickly as possible, to prevent an illegal discharge from dispersing and therefore becoming undetectable by the time of arrival on the spot.**

Amendment 36

Proposal for a directive

Article 1 – paragraph 1 – point 14

Directive 2005/35/EC

Article 10 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) Ensure that relevant information, particularly concerning areas where ship-source pollution incidents occurred, is disseminated to fishing communities in a timely and comprehensible manner by national or local authorities.

Amendment 37

Proposal for a directive

Article 1 – paragraph 1 – point 14

Directive 2005/35/EC

Article 10 – paragraph 2

Text proposed by the Commission

Amendment

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.

2. The Commission, ***where relevant via EMSA***, 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.

Amendment 38

Proposal for a directive

Article 1 – paragraph 1 – point 15

Directive 2005/35/EC

Article 10 a – paragraph 1

Text proposed by the Commission

Amendment

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.

1. The Commission, ***via EMSA***, 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.

Amendment 39

Proposal for a directive

Article 1 – paragraph 1 – point 15

Directive 2005/35/EC

Article 10 a – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) a yearly overview of container losses reported to IMO under the International Convention for the Safety of Life at Sea (SOLAS), including, for each loss, the route of the vessel, as well as the cause and the location of the loss if they are known.

Amendment 40

Proposal for a directive

Article 1 – paragraph 1 – point 15

Directive 2005/35/EC

Article 10b

Text proposed by the Commission

Amendment

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.

The Commission **and EMSA** 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.

Amendment 41

Proposal for a directive

Article 1 – paragraph 1 – point 15

Directive 2005/35/EC

Article 10 c – paragraph 1

Text proposed by the Commission

Amendment

1. Based on information reported by Member States in accordance with Article 10a, the Commission shall make publicly available a regularly updated Union-wide

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.

overview, ***including in disaggregated form, with data for every Member State,*** on the implementation and enforcement of this Directive. The overview shall include the information listed in Annex II to this Directive. ***Information identifying an individual ship should only be made publicly available if all legal proceedings are finalised and there is no appeal.***

Amendment 42

Proposal for a directive

Article 1 – paragraph 1 – point 15

Directive 2005/35/EC

Article 10 c – paragraph 2

Text proposed by the Commission

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.

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).

Amendment

2. Without prejudice to Directive 2003/4/EC³⁹, the Commission shall take appropriate measures to protect the confidentiality of ***certain*** information obtained in implementation of this Directive.

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).

Amendment 43

Proposal for a directive

Article 1 – paragraph 1 – point 15

Directive 2005/35/EC

Article 10 d – paragraph 1

Text proposed by the Commission

1. The Commission shall develop ***and*** maintain a confidential online external reporting channel for receiving reports, within the meaning of Directive (EU)

Amendment

1. The Commission shall develop, maintain ***and make easily accessible to the public,*** a confidential online external reporting channel for receiving reports,

2019/1937⁴⁰ on potential infringements of this Directive and shall relay such reports to the Member State or Member States concerned.

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.

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).

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).

Amendment 44

Proposal for a directive

Article 1 – paragraph 1 – point 15

Directive 2005/35/EC

Article 10 d – paragraph 2

Text proposed by the Commission

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.

Amendment

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, ***investigate, where appropriate, act upon, and provide prompt*** feedback and follow-up on those reports in accordance with Directive (EU) 2019/1937.

Amendment 45

Proposal for a directive

Article 1 – paragraph 1 – point 18 b (new)

Directive 2005/35/EC

Article 12 e (new)

Text proposed by the Commission

Amendment

(18b) The following is inserted:

‘Article 12e

Public accessibility of Consolidated IMO Conventions

If by [OP: Please insert a date: one year

from the date of entry into force of this amending Directive] the IMO has not published the full texts of all its conventions, including Marpol 73/78 and its related annexes, on its website, accessible to users free of charge, the Commission shall adopt, within 3 months, a delegated act in accordance with Article 12b amending this Directive, by adding a new Annex with the full text of Marpol 73/78 and those of its annexes referred to in this Directive. The Commission is empowered to adopt delegated acts in accordance with Article 12b to subsequently amend that Annex, whenever required.'

Amendment 46

Proposal for a directive

Article 1 – paragraph 1 – point 18

Directive 2005/35

Article 12 a – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the interaction of this Directive with other relevant international and Union law on marine environment protection and maritime safety;

Amendment 47

Proposal for a directive

Article 1 – paragraph 1 – point 18

Directive 2005/35/EC

Article 12a – paragraph 1 – point bb (new)

Text proposed by the Commission

Amendment

(bb) the latest data and scientific findings

Amendment 48

Proposal for a directive

Article 1 – paragraph 1 – point 18

Directive 2005/35/EC

Article 12 a – paragraph 2

Text proposed by the Commission

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.

Amendment

2. As part of the review, the Commission shall assess the possibility of modifying the scope of this Directive, if appropriate, in view of ***developments under international conventions and Union law on*** 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 ***from sources other than ships***, container loss ***for containers other than those already covered by Annex III to Marpol***, loss of plastic pellets and underwater noise. ***Any modification of the scope shall take into consideration existing international and Union law and avoid overlapping with the provisions of existing Union legal acts and their enforcement mechanisms.***

Amendment 49

Proposal for a directive

Article 1 – paragraph 1 – point 18 a (new)

Directive 2005/35/EC

Article 12 b (new)

Text proposed by the Commission

Amendment

(18a) The following article is inserted:

‘Article 12b

Exercise of delegation

1. The power to adopt delegated acts is conferred on the Commission subject to

the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 12e is conferred on the Commission for a period of five years from [...]. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes to such extension no later than three months before the end of each period.

3. The delegation of powers referred to in Article 12e may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the powers specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and the Council.

6. A delegated act adopted pursuant to Article 12e shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of the notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be

*extended by two months at the initiative of
the European Parliament or the Council.'*