



Plenary sitting

A9-0365/2023

17.11.2023

*****I**

REPORT

on 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 (COM(2023)0273 – C9-0187/2023 – 2023/0171(COD))

Committee on Transport and Tourism

Rapporteur: Marian-Jean Marinescu

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ***■*** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on 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 (COM(2023)0273 – C9-0187/2023 – 2023/0171(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2023)0273),
 - having regard to Article 294(2) and Article 91(1), point (c) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0187/2023),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the Committee of the Regions of xx¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Transport and Tourism (A9-0365/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ Not yet published in the Official Journal.

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

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***

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.

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.

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

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).

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

(11) When a Member State suspects that a ship 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 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 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.

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 ***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 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 form the transposition of this Directive. Access to this information should be granted to the authorities of other Member States having an interest in it

Amendment

(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 **50%** per year of the alerts sent by CleanSeaNet should be ensured by each Member State within the first three years form 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).

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 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.

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 **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

(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.

Amendment 13

Proposal for a directive Recital 15 a (new)

Text proposed by the Commission

Amendment

(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

Amendment

(16) Member States should report to the Commission ***and EMSA*** the information

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.

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 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.

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

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).

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

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. 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 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

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 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).

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

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.

Amendment 19

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

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

national law.;

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

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

Amendment

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

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 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

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

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.;

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

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.

Amendment

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

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.

Amendment

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 overview on the implementation and enforcement of this Directive. The overview shall include the information listed in Annex II to this Directive.

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

Amendment

1. The Commission shall develop, maintain ***and make easily accessible to the public***, 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.

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

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.’

EXPLANATORY STATEMENT

The main objective of the Commission proposal is to incorporate international standards on illegal discharges from ships into the sea into EU law and to ensure that those responsible for such discharges are subject to dissuasive, effective and proportionate penalties. The result should be to better protect the marine environment from pollution by ships and improve maritime safety. While the Rapporteur shares the aims of the Commission proposal, he proposes a number of additions and modifications to further improve the text, including: He wants to ensure that all interested parties have easy access to the full and updated texts of International Maritime Organization (IMO) conventions - which is not the case at the time of writing. While the overarching objective of the Directive currently under consideration is to transpose important amendments to the International Convention for the Prevention of Pollution from Ships (known as 'Marpol 73/78') 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.

The Rapporteur also wants to ensure that all parties, including the maritime transport sector, national administrations and civil society, have easy access to the text of reference for this Directive at the date of an infringement. When applying the provisions of this Directive and the corresponding national laws, Marpol 73/78 and its Annexes as referred to in this Directive in force at the date of infringement must be considered.

Your Rapporteur also wishes to clarify the level of penalties. It should be spelled out more clearly than in the Commission proposal that the level of administrative penalties should not be allowed to be fixed at such low levels that, de facto, the dissuasive, effective and proportionate character of these penalties is undermined. Maximum limits for administrative penalties as low as EUR 10 000 for legal persons, such as shipping companies, or minimum limits starting at only EUR 10 for natural persons and EUR 32 for legal persons, as indicated for some Member States in the accompanying impact assessment, appear to be far too low for penalising manifestly illicit behaviour or even dissuading it.

Finally, the Rapporteur wishes to clarify and increase the level of verification. He proposes that Member States thoroughly analyse all the alerts that they receive from CleanSeaNet. They should then perform a higher percentage of on-the spot verification than foreseen in the Commission proposal. To avoid clearly unnecessary on-the spot-verifications, manifest false alarms, if revealed during the analysis of the imagery, can be subtracted from this objective. With these and further amendments, the Rapporteur wants to further improve the effectiveness of the Ship Source Pollution Directive and turn it into a more powerful tool, to the benefit of everyone, reducing sea pollution and increase maritime safety, while maintaining the proportionality of all measures.

**ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The following list is drawn up under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

Entity and/or person
Assarmatori, The Italian Shipowner's Association
Costa Cruises
ECSA
IFAW
EMSA
Fincantieri
SafeSeas
MSC Group
ESPO
CLIA
World Shipping Council
Intertanko
FEPOR

10.11.2023

OPINION OF THE COMMITTEE ON FISHERIES

for the Committee on Transport and Tourism

on 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
(COM(2023)0273 – C9-0187/2023 – 2023/0171(COD))

Rapporteur for opinion: Cláudia Monteiro de Aguiar

SHORT JUSTIFICATION

The conservation of marine biological resources is at the core of the Common Fisheries Policy as the fishing sector is a victim of marine pollution which includes, among many other sources, illegal discharges of polluting substances into the sea from ships.

Therefore, the Rapporteur welcomes this Commission proposal updating Directive [2005/35/EC¹ on ship-source pollution](#) and the introduction of penalties for pollution offences.

The Rapporteur points out that the definition of ship source pollution is outlined in Annexes I to VI of the International Convention for the Prevention of Pollution from Ships, 1973, and its 1978 Protocol (Marpol 73/78), which are legally binding for the European Union. The enforcement of higher standards will ensure a level playing field for the shipping sector, which has a transnational dimension with positive effects on marine ecosystems and thus fisheries.

The Rapporteur welcomes tighter emission limits; however, cautions that the inclusion of provisions on sulphur oxide and nitrogen oxide emissions from ship exhausts may have an impact on the EU fishing fleet, which is primarily comprised of ageing vessels belonging to SMEs with limited resources for investing in new low emission engines. The extension of the Directive's scope to cover additional substances under Marpol 73/78 will need to be strongly reflected in the EMFAF with increased support for low emission engines and fleet renewal. The Rapporteur urges the commission to support fleet renewal through EMFAF.

The rapporteur also introduces a new definition to the draft and underscores the need for vigilance in areas with significant fishing activity, defending the dual cause of ecological protection and sustenance of fishing communities. The Rapporteur also calls for an informed maritime community, emphasising the need for education and training.

Finally, the Rapporteur also recommends that the inclusion of feedback from fishing communities and a collaborative approach with maritime stakeholders highlight the Directive's

¹ OJ L 255, 30.9.2005, p.11

complete vision, aiming to balance ecological protection with the sustainability of fishing communities.

To conclude, in addition to achieving a level playing field among third-country fleets operating in EU waters, the Rapporteur hopes that this will facilitate coordinated controls by Member States, as well as prosecution and cross-border enforcement, ultimately leading to a reduction in ship-source pollution.

AMENDMENTS

The Committee on Fisheries calls on the Committee on Transport and Tourism, as the committee responsible, to take the following into account:

Amendment 1

Proposal for a directive Recital 1

Text proposed by the Commission

(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.

Amendment

(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. ***In this regard, it shall be recalled that the ocean should be recognised at an international level as a global common and should be protected in the light of its uniqueness and interconnectedness and the essential ecosystem services that it provides, on which current and future generations depend for their survival and well-being.***

Amendment 2

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The best action in relation to marine pollution and waste is to ensure prevention of the polluting substances being released into the ocean to start with. In view of the high prevalence of expanded polystyrene litter in the marine environment, which is explained by the fact that these products, because of their lightness, easily fly away from vessels and end up in the sea, Member States should consider the phasing out of expanded polystyrene containers and packaging from fishery products in line with the ambition of replacing single-use plastics with durable alternatives benefitting the environment and fishers.

Amendment 3

Proposal for a directive Recital 2 b (new)

Text proposed by the Commission

Amendment

(2b) It is also of importance that actions to effectively recover released polluting materials and waste are supported. Fishers, aquaculture producers and their organisations are already working to collect waste including fishing gear lost or abandoned at sea and 'ghost gear' which represents a threat to all marine activities and ecosystems worldwide. These efforts cannot be expected to happen without a compensation mechanism tailored to these efforts. Whereas in the EU, an estimated 20% of fishing gear is lost at sea, accounting for nearly a third of marine litter in European seas^{18a} and only 1,5% of worn out fishing gear get recycled^{18b}, there is an urgent need to improve collection, recycling and repair of all fishing gear and therefore support is needed. In this regard, the Member States should exchange best practices and report on their different actions to recover and prevent the release of polluting materials

and waste.

^{18a} 'Circular economy: From abandoned fishing nets to sustainable clothing', European Commission.

^{18b} 'Lost fishing gear: a trap for our ocean', European Commission.

Amendment 4

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) The EU fishing fleet is on average 31,5 years old, fleet renewal should be supported through EMFAF (Regulation EU 2021/1139) contributing to meet ever higher environmental regulations, especially for the development of sustainable small-scale coastal fishing.

Amendment 5

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Regulation (EC) No 1224/2009 includes reporting obligations on lost gears which Member States should transmit to the Commission. The Commission should use this information already received when evaluating the implementation of this Directive and the state of the Union in this regard.

Amendment 6

Proposal for a directive Recital 7 a (new)

(7a) Regulation No 1224/2009 makes illegally disposing of a fishing gear or gear at sea from a fishing vessel a serious infringement under that Regulation provided that specific criteria has been met. For such infringements there are obligations under Regulation (EC) No 1224/2009 for Member States to have appropriate administrative or criminal sanctions that are effective, proportionate and dissuasive.

Amendment 7

Proposal for a directive Recital 8

(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 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.

(8) Administrative penalties introduced in transposition of Directive 2005/35/EC should be without prejudice to Directive (EU) 2023/xxxx, **with the aim of harmonizing and proportionally penalizing ship-source pollution offences**. Member States should define the scope of administrative and criminal law enforcement with regards to **these** offences 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.

Amendment 8

Proposal for a directive Recital 9

(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.

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

(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 ***both*** to the company of the ship ***and*** a member or members of the crew 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.

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).

within the Community and repealing Council Regulation (EC) No 3051/95 (Text with EEA relevance) (OJ L 64, 4.3.2006, p.1).

Amendment 9

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 when determining the level of penalties to be imposed to the polluter. ***National authorities should establish a comprehensive and proportional system of penalizing ship-source pollution offenses that takes into account the size of the vessel, the nature and quantity of waste, and the frequency of violations, all while promoting environmental responsibility and deterring illegal pollution.*** 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 ***a level playing field and broad support across Member States for the administrative and judicial actions to be taken it is important to ensure as uniform as possible application of the penalties. In order to ensure these*** 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 10

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 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.

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. ***The rights of crew members who report any offenses they encounter should be diligently safeguarded. In this context, the Member States should also exchange on best practices and actions taken to prevent marine waste, including fisheries waste, how more eco-design could be used to reduce the most common marine waste detected and their impacts on the environment, and good actions deployed***

to recover marine waste already at sea.

Amendment 11

Proposal for a directive

Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) Regulation (EU) 2021/1139 of the European Parliament and of the Council includes possibility for Member States to support actions to improve the eco-design of fishing gear as well as supporting actions for prevention and recovery of marine waste.

Amendment 12

Proposal for a directive

Recital 13

Text proposed by the Commission

Amendment

(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

(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.

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).

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 *and proportionately* 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 13

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 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.

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. ***It is also of importance to include all relevant stakeholders in these sub-groups, including the fisheries sector.***

Amendment 14

**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

(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. ***The Commission should also utilize the data gathered by EFCA, where appropriate, especially in relation to lost fishing gear.***

²⁹ OJ L xxxx.

Amendment 15

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

Amendment

(18) In order to increase public awareness in ship-source pollution discharges, improve environmental protection, ***contribute to the goal of restoring nature and respect the commitments of European Green Deal,*** 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. ***To this end, it is essential to provide statistics on the number and location of discharges detected by the CleanSeaNet system, and to publish an annual report containing the data received, the number of discharges that were verified and confirmed, and the number of administrative and criminal penalties that were applied.*** 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).

Amendment 16

Proposal for a directive

Recital 21

Text proposed by the Commission

(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’.

Amendment

(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. ***A future review of Marpol 73/79 should also include zero pollution from (micro)plastics and PFAS.*** 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 ***CO₂***, 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’.

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.

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.

Amendment 17

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

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, ***to contribute to the goal of restoring nature, respect the commitments of European Green Deal*** and to enhance protection of the marine environment from pollution by ships.

Amendment 18

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2005/35/EC

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

2. ‘polluting substances’ means

Amendment

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;

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, *in its up-to-date version*;

Amendment 19

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2005/35/EC

Article 2 – paragraph 1 – point 6 a (new)

Text proposed by the Commission

Amendment

6a. 'Damage' refers to accidental physical harm impairing the value, usefulness, or normal function of the ship or its equipment, and does not include routine wear and tear.

Amendment 20

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

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.;

Amendment 21

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 (c), (d) and (e) shall not be regarded as an infringement for the company, the master or the crew **if it is a direct result of force majeure; justified only if compelling evidence is provided; or if all** of the following conditions are fulfilled:

Justification

For instance: Unforeseen navigational accidents, collisions with other vessels, or accidents involving underwater obstacles, like submerged containers or debris, that result in damage to a ship's equipment and lead to unintended polluting discharges. In such cases, the ship's company, master, or crew may be exempt from liability if they can demonstrate that they took all reasonable precautions to prevent or minimize the discharge once the accident occurred.

Extreme and unexpected weather conditions, crisis or emergency response, etc...

Amendment 22

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 23

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 24

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2005/35/EC

Article 5 – paragraph 2

Text proposed by the Commission

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.;

Amendment

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 ***negligently*** or recklessly and with knowledge that damage would probably result. ***Acting against safety rules, good practices, and ignoring warnings in particular, when demonstrated that risks have been taken with full awareness of the danger;***

Amendment 25

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive 2005/35/EC

Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States are encouraged to include educational and training programs as part of the penalty system, ensuring that fishing operators, masters, and crews are informed about best practices and the importance of compliance.

Amendment 26

Proposal for a directive

Article 1 – paragraph 1 – point 13

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

Text proposed by the Commission

Amendment

(aa) content and quantity of discharged waste as aggravating factors;

Justification

Member States are encouraged to tailor penalties to the specific content of the waste discharged and to differentiate between different types of waste, as to assign higher penalties to the illegal discharge of materials with increased environmental risk.

Member States should create penalty brackets based on the volume or quantity of waste discharged. Smaller discharges may receive lower penalties, while larger or more significant discharges result in higher fines.

Amendment 27

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive 2005/35/EC

Article 8d – paragraph 1 – point a b (new)

Text proposed by the Commission

Amendment

(ab) ship size categories;

Justification

Member States are encouraged to establish a tiered penalty structure where the fines or penalties increase with the size of the vessel. Larger ships may face more substantial fines compared to smaller ones for similar offenses.

Amendment 28

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive 2005/35/EC

Article 8d – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the damage caused from the discharge to the environment or human

(c) the damage caused from the discharge to the environment or human

health;

health, ***environmental impact assessment and the cost of environmental restoration***;

Justification

Member States are encouraged to conduct an assessment of the environmental impact of the offense, considering factors such as local ecosystem sensitivity, potential harm to wildlife, and damage to coastal areas, and thereby adjust penalties based on the severity of the environmental impact, with a focus on mitigating and restoring affected ecosystems.

Penalties should cover the expenses required to remediate the environmental damage caused by the illegal discharge, ensuring that polluters bear the financial responsibility for cleanup and restoration efforts.

Amendment 29

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive 2005/35/EC

Article 8d – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) measures taken by the responsible person or company to inform the competent authorities, or hierarchy in the case of a company employee;

Justification

Member States may take into consideration reduced penalties for those individuals who inform authorities or, if they are employees, their supervisors for infringement as a way to balance accountability and cooperation while promoting environmental responsibility. It may encourage honesty, efficient resource allocation, and prompt remediation efforts while ensuring fairness and equity in the treatment of environmental violations.

Amendment 30

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive 2005/35/EC

Article 8d – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) ***any*** previous ***infringement*** by the

(h) ***amount and volume of*** previous

responsible person.

infringements by the responsible person.

Justification

Member States are encouraged to implement a system that increases penalties for repeat offenders. For example, for each subsequent offense committed by the same ship, the penalty could be multiplied. It is prerogative to define clear thresholds for the number of repeat offenses and specify the multiplier to be applied in each case. Member States should consider increasing penalties exponentially for habitual offenders to create a strong deterrent against persistent violations.

Amendment 31

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive 2005/35/EC

Article 8d – 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 32

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive 2005/35/EC

Article 8d – paragraph 1 – point h b (new)

Text proposed by the Commission

Amendment

(hb) In areas of significant fishing activity, Member States are encouraged to enforce enhanced monitoring mechanisms and consider stricter and dissuasive penalties to deter infringements.

Amendment 33

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive 2005/35/EC

Article 8d – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall take into account obligations stemming from other Union acts such as Regulation (EC) No 1224/2009 on Fisheries Control when implementing the obligations under paragraph 1.

Amendment 34

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 35

Proposal for a directive

Article 1 – paragraph 1 – point 14

Directive 2005/35/EC

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Member States and the Commission shall cooperate in the exchange of information on best practices and actions taken to prevent marine waste, including fisheries waste, how more eco-design could be used to reduce the most common marine waste detected and their impacts on the environment, and good actions deployed to recover

marine waste already at sea.

Amendment 36

Proposal for a directive

Article 1 – paragraph 1 – point 14

Directive 2005/35/EC

Article 10 – paragraph 2

Text proposed by the Commission

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.;

Amendment

2. The Commission shall provide for the organisation of exchange of experiences between Member States' national authorities, fishers and experts, including those from the private sector, civil society, trade unions, and ***representatives from fishing communities and associations*** 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 37

Proposal for a directive

Article 1 – paragraph 1 – point 15

Directive 2005/35/EC

Article 10a – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall also report on the measures taken in relation to prevention and recovery of marine waste as well as actions to replace materials in gears and products used at sea, such as expanded polystyrene containers and packaging, as appropriate, taking into account other reporting obligations under other Union acts.

Amendment 38

Proposal for a directive

Article 1 – paragraph 1 – point 15

Text proposed by the Commission

Amendment

1a. This training shall also encompass modules on the ecological impact of marine pollution, specifically focusing on the implications for fish populations, breeding grounds, and migratory patterns. Experts from the fisheries sector shall be invited to contribute to and participate in these training sessions, offering first-hand knowledge and insights into the effects of pollution on fishing activities and marine life. The Commission and Member States shall endeavour to disseminate key insights and information from these training sessions to fishing communities, ensuring they are well-informed and equipped to play a collaborative role in upholding the objectives of this Directive.

Amendment 39

Proposal for a directive

Article 1 – paragraph 1 – point 15

Directive 2005/35/EC

Article 10c – 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 overview on the implementation and enforcement of this Directive. The overview shall include the information listed in Annex II to this Directive.

1. Based on information reported by Member States in accordance with Article 10a ***as well as relevant information received under other Union acts, such as Regulation (EC) No 1224/2009 in relation to lost fishing gear***, 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.

Amendment 40

Proposal for a directive

Article 1 – paragraph 1 – point 15

Directive 2005/35/EC

Article 10d – 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) 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).

Amendment

1. The Commission shall develop, maintain **and make easily accessible to the public**, 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.

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 41

Proposal for a directive

Article 1 – paragraph 1 – point 15

Directive 2005/35/EC

Article 10d – 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 42

Proposal for a directive

Article 1 – paragraph 1 – point 15

Directive 2005/35/EC
Article 10d – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that individuals who report potential infringements within this Directive shall not suffer any adverse employment consequences, harassment, threats, or discrimination as a result of their disclosure. The identity of whistle-blowers shall be kept confidential to the extent permitted by law. Whistle-blowers shall not be considered liable for their disclosure, provided that it is made in good faith and without malice.

Amendment 43

Proposal for a directive
Article 1 – paragraph 1 – point 18
Directive 2005/35/EC
Article 12a – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) relevant information gathered under other Union acts, such as Regulation (EC) No 1224/2009.

Amendment 44

Proposal for a directive
Article 1 – paragraph 1 – point 18
Directive 2005/35/EC
Article 12a – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Commission shall also compile the information Member States have submitted pursuant to Article 10a paragraph 2a and assess whether further actions on EU-level are needed and present, as appropriate, proposals to that effect.

**ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The following list is drawn up under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the opinion, until the adoption thereof in committee:

Entity and/or person
No input

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences
References	COM(2023)0273 – C9-0187/2023 – 2023/0171(COD)
Committee responsible Date announced in plenary	TRAN 10.7.2023
Opinion by Date announced in plenary	PECH 10.7.2023
Rapporteur for the opinion Date appointed	Cláudia Monteiro de Aguiar 12.9.2023
Discussed in committee	9.10.2023
Date adopted	9.11.2023
Result of final vote	+: 21 –: 1 0: 0
Members present for the final vote	Clara Aguilera, João Albuquerque, Pietro Bartolo, François-Xavier Bellamy, Isabel Carvalhais, Asger Christensen, Rosa D’Amato, Francisco Guerreiro, Anja Haga, Anja Hazekamp, Niclas Herbst, Jan Huitema, Ladislav Ilčić, France Jamet, Predrag Fred Matić, Francisco José Millán Mon, Marc Tarabella, Theodoros Zagorakis
Substitutes present for the final vote	Cláudia Monteiro de Aguiar, Elżbieta Rafalska, Lucia Vuolo
Substitutes under Rule 209(7) present for the final vote	Iskra Mihaylova

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

21	+
ECR	Ladislav Ilčić, Elzbieta Rafalska
NI	Marc Tarabella
PPE	François-Xavier Bellamy, Anja Haga, Niclas Herbst, Francisco José Millán Mon, Cláudia Monteiro de Aguiar, Lucia Vuolo, Theodoros Zagorakis
Renew	Asger Christensen, Jan Huitema, Iskra Mihaylova
S&D	Clara Aguilera, João Albuquerque, Pietro Bartolo, Isabel Carvalhais, Predrag Fred Matić
The Left	Anja Hazekamp
Verts/ALE	Rosa D'Amato, Francisco Guerreiro

0	-

1	0
ID	France Jamet

Key to symbols:

+ : in favour

- : against

0 : abstention

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences			
References	COM(2023)0273 – C9-0187/2023 – 2023/0171(COD)			
Date submitted to Parliament	1.6.2023			
Committee responsible Date announced in plenary	TRAN 10.7.2023			
Committees asked for opinions Date announced in plenary	BUDG 10.7.2023	ENVI 10.7.2023	PECH 10.7.2023	JURI 10.7.2023
	LIBE 10.7.2023			
Not delivering opinions Date of decision	BUDG 28.6.2023	ENVI 17.7.2023	JURI 18.9.2023	LIBE 29.6.2023
Rapporteurs Date appointed	Marian-Jean Marinescu 7.7.2023			
Discussed in committee	19.9.2023			
Date adopted	16.11.2023			
Result of final vote	+: 36 -: 1 0: 0			
Members present for the final vote	Magdalena Adamowicz, José Ramón Bauzá Díaz, Karolin Braunsberger-Reinhold, Marco Campomenosi, Ciarán Cuffe, Karima Delli, Carlo Fidanza, Isabel García Muñoz, Jens Gieseke, Elena Kountoura, Bogusław Liberadzki, Peter Lundgren, Elżbieta Katarzyna Łukacijewska, Marian-Jean Marinescu, Tilly Metz, Caroline Nagtegaal, Jan-Christoph Oetjen, Philippe Olivier, Rovana Plumb, Bergur Løkke Rasmussen, Dominique Riquet, Thomas Rudner, Henna Virkkunen, Petar Vitanov, Lucia Vuolo, Kosma Złotowski			
Substitutes present for the final vote	Sara Cerdas, Leila Chaibi, Valter Flego, Ljudmila Novak, Marianne Vind			
Substitutes under Rule 209(7) present for the final vote	Daniel Freund, Gabriel Mato, Ana Miranda, Dennis Radtke, Michaela Šojdrová, Eugen Tomac			
Date tabled	17.11.2023			

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

36	+
ECR	Carlo Fidanza, Peter Lundgren, Kosma Złotowski
ID	Marco Campomenosi
PPE	Magdalena Adamowicz, Karolin Braunsberger-Reinhold, Jens Gieseke, Elżbieta Katarzyna Łukacijewska, Marian-Jean Marinescu, Gabriel Mato, Ljudmila Novak, Dennis Radtke, Michaela Šojdrová, Eugen Tomac, Henna Virkkunen, Lucia Vuolo
Renew	José Ramón Bauzá Díaz, Valter Flego, Caroline Nagtegaal, Jan-Christoph Oetjen, Bergur Løkke Rasmussen, Dominique Riquet
S&D	Sara Cerdas, Isabel García Muñoz, Bogusław Liberadzki, Rovana Plumb, Thomas Rudner, Marianne Vind, Petar Vitanov
The Left	Leila Chaïbi, Elena Kountoura
Verts/ALE	Ciarán Cuffe, Karima Delli, Daniel Freund, Tilly Metz, Ana Miranda

1	-
ID	Philippe Olivier

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention