



2023/0171(COD)

15.11.2023

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)273 – C9-0187/2023 – 2023/0171(COD))

Rapporteur for opinion: Cláudia Monteiro de Aguiar

PA_Legam

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 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

¹ OJ L 255, 30.9.2005, p.11

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)**

Text proposed by the Commission

Amendment

(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

Text proposed by the Commission

(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.

Amendment

(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

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

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 **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

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.

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 9

Proposal for a directive **Recital 10**

Text proposed by the Commission

(10) National administrative and judicial authorities should take into account all

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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).

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).

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

(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

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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).

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

Amendment

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capacity to detect and verify pollution incidents and ensure the effective enforcement of Directive 2005/35/EC.

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

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***

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.

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).

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

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.***

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’.

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.

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.

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 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;

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, ***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.;

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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

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 both** of the following conditions are fulfilled:

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

Amendment

2. Paragraph 1 shall not apply where the company, the master or the crew

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.;

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 health;

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

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

Amendment

2. The Commission shall provide for the organisation of exchange of

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.;

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

Directive 2005/35/EC

Article 10b – paragraph 1 a (new)

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

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.

Amendment

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

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

concerned.

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 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 RAPPOREUR 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 –: 0 0: 1
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