



Council of the  
European Union

Brussels, 19 January 2018  
(OR. en)

5454/18

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**Interinstitutional File:  
2018/0012 (COD)**

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**TRANS 20  
MAR 9  
ENV 30  
CODEC 59  
IA 19**

**PROPOSAL**

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| From:            | Secretary-General of the European Commission,<br>signed by Mr Jordi AYET PUIGARNAU, Director   |
| date of receipt: | 18 January 2018  |
| To:              | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of<br>the European Union   |
| No. Cion doc.:   | COM(2018) 33 final   |
| Subject:         | Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF<br>THE COUNCIL on port reception facilities for the delivery of waste from<br>ships, repealing Directive 2000/59/EC and amending Directive 2009/16/EC<br>and Directive 2010/65/EU |

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Delegations will find attached document COM(2018) 33 final.

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Encl.: COM(2018) 33 final



Strasbourg, 16.1.2018  
COM(2018) 33 final

2018/0012 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on port reception facilities for the delivery of waste from ships, repealing Directive 2000/59/EC and amending Directive 2009/16/EC and Directive 2010/65/EU**

(Text with EEA relevance)

{SWD(2018) 21 final} - {SWD(2018) 22 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Discharges of waste from ships pose an increasing threat to the marine environment, with costly environmental and economic consequences. Recently, the problem of marine litter has come to the fore, as a growing number of scientific studies provide evidence of the devastating effects on marine ecosystems and of the impacts on human health. Although most sources of marine litter are land-based, shipping also has an important role to play in discharges of household waste and operational waste at sea. There are also major concerns over the eutrophication effects of discharges of sewage from ships, in particular from large passenger ships, in certain sea areas such as the Baltic Sea, as well as the effects of oily waste discharges on marine life and habitats.

Reasons for the occurrence of illegal discharges at sea can be found both on the ships themselves, in particular bad on-board waste management practices, as well as on shore, due to a lack of adequate facilities in ports to receive waste from ships.

Directive 2000/59/EC<sup>1</sup> regulates the shore side through provisions ensuring the availability of port reception facilities (PRF) and the delivery of waste to those facilities. It implements the relevant international norms, i.e. those contained in MARPOL<sup>2</sup>. However, whereas the Directive focuses on operations in port, MARPOL mostly focuses on operations at sea. In this way, the Directive both aligns with and complements MARPOL, by regulating the legal, practical and financial responsibilities at the shore-sea interface. Although MARPOL provides a comprehensive framework addressing ship-source pollution from different polluting substances, it does not provide for an effective enforcement mechanism. Therefore, incorporating the main concepts and obligations of MARPOL into EU law means that they can be enforced effectively through the EU legal system.

Some 17 years after its entry into force, the Directive is in need of a thorough revision. The current situation is now significantly different to when the original Directive was adopted in 2000. Since then, MARPOL has been strengthened through subsequent amendments, while the scope and definitions of the current Directive are no longer in line with the international framework. As a consequence, Member States are relying increasingly on the MARPOL framework, making implementing and enforcing the Directive problematic. In addition, Member States apply different interpretations of the Directive's main concepts, creating confusion among ships, ports and operators.

The revision aims to achieve a higher level of protection of the marine environment by reducing waste discharges at sea, as well as improved efficiency of maritime operations in port by reducing the administrative burden and by updating the regulatory framework. As the proposal comes under the Regulatory Fitness Programme (REFIT), it aims to be in line with the REFIT principles of simplification and clarification.

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<sup>1</sup> Directive 2000/59/EC of the European Parliament and the Council of 27 November 2000 on port reception facilities for ship generated waste and cargo residues, OJ L 332, 28.12.2000, p. 81.

<sup>2</sup> The International Convention for the Prevention of Pollution from Ships (consolidated version).

For the sake of clarity, the proposal repeals the current Directive, replacing it with a single new Directive. It also includes ancillary changes to Directive 2009/16/EC on Port State Control<sup>3</sup>, as well as Directive 2010/65/EU<sup>4</sup>.

- **Consistency with existing policy provisions in the policy area**

Reducing pollution in the seas is an important field of EU action in maritime transport. This was reiterated in the Commission Communication on the EU maritime transport policy until 2018<sup>5</sup>, which calls for zero-waste from maritime traffic. This goal can be achieved through compliance with international conventions and standards. MARPOL, the relevant international framework, has undergone a series of amendments, such as including new or stricter discharge norms for ships. These should be properly reflected in the Directive.

The provision of waste reception facilities in ports qualifies as a service that a port provides to its users, as defined in the Port Services Regulation<sup>6</sup>. The proposed Directive takes into account the relevant principles and provisions as included in this regulation, but goes beyond its requirements by providing for cost structures and their transparency. This is to serve the overall aim of the proposed Directive, which is to reduce discharges of waste at sea. In addition, the Port Services Regulation only applies to the TEN-T ports, whereas the proposed Directive covers *all* ports, including smaller ones, such as fishing ports and marinas.

Directive 2010/65/EC includes the advance waste notification within the information to be electronically reported through the ‘national single window’ system. To this end, an electronic waste message has been developed. The information reported in this message is subsequently exchanged through the EU’s maritime information and exchange system (SafeSeaNet) and relayed to the reporting module in the Port State Control Database set up under Directive 2009/16/EC to facilitate compliance, monitoring and enforcement.

- **Consistency with other Union policies**

The Directive in force and the present proposal are fully in line with the principles of EU environmental law, in particular: (i) the precautionary principle; (ii) the ‘the polluter should pay’ principle; and (iii) the principle that preventive action is taken at source where possible. It also contributes to the aims of the Marine Strategy Framework Directive<sup>7</sup>, which seeks to protect the marine environment and calls for good environmental status of all EU marine waters by 2020. The proposed Directive also gives effect to the Waste Framework Directive<sup>8</sup> by envisaging improved waste management practices in ports in line with the polluter pays principle and the EU waste hierarchy. Finally, the proposed Directive is in line with the

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<sup>3</sup> Directive 2009/16/EC of the European Parliament and the Council of 23 April 2009 on port state control, OJ L 131, 28.5.2009, p. 57.

<sup>4</sup> Directive 2010/65/EU of the European Parliament and the Council of 20 October 2010 on reporting formalities for ships arriving and/or departing from ports of the Member States, OJ L 283, 29.10.2010, p. 1.

<sup>5</sup> COM(2009)8 "Strategic goals and recommendations for the EU's maritime transport policy until 2018".

<sup>6</sup> Regulation (EU) 2017/352 of the European Parliament and the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports, OJ L 57, 3.3.2017, p. 1-18.

<sup>7</sup> Directive 2008/56/EC of the European Parliament and the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy, OJ L 164, 25.6.2008, p. 19-40.

<sup>8</sup> Directive 2008/98/EC of the European Parliament and the Council of 19 November 2008 on waste and repealing certain directives, OJ L 312, 22.11.2008, p. 3-30.

Sulphur Directive<sup>9</sup>, which contributes to the sustainability of maritime transport by reducing the sulphur content of marine fuel. However, the application of the regime imposed by the Sulphur Directive must not result in a shift from air emissions to discharges of waste at sea, or to other water bodies, such as ports and estuaries, as a by-product of the abatement technologies applied, such as exhaust gas cleaning systems.

The proposed Directive will also be instrumental in achieving the target set in the Commission's Circular Economy Strategy<sup>10</sup> to reduce by 30 % by 2020 the amount of marine litter found on beaches and lost fishing gear found at sea. The Circular Economy Strategy also recognises that revising the old PRF Directive can make a direct and significant contribution to reducing marine litter generated by ships. In the Commission's Strategy on Plastic<sup>11</sup>, additional measures for reducing lost or abandoned fishing gear are examined, such as extended producer responsibility and deposit-refund schemes for commonly littered fishing gear, as well as increased exchange of information on such schemes.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

Given that the proposal replaces the current Directive, the legal basis remains Article 100 (2) TFEU (ex. Article 80(2) TEC), which includes the adoption of common rules for sea transport. Although the Directive aims to protect the marine environment from discharges of waste at sea, its overall policy objective is to facilitate sea transport and contribute to the realisation of the internal transport market.

### **• Subsidiarity (for non-exclusive competence)**

Shipping is an international sector, with operations taking place in international waters and in ports across the globe. The sector therefore requires international rules, which for ship-source pollution are provided by MARPOL. However, the main problems in the international regime do not relate to insufficient standards, but rather to the fact that they are not adequately implemented and enforced. Striving for harmonised implementation of internationally agreed rules, where necessary complemented by specific EU requirements, is one of the fundamental pillars of EU maritime policy. This is also reflected in the Directive's legal basis, namely Article 100(2) TFEU, which includes the adoption of common rules for sea transport. As the Directive transposes the MARPOL Convention into EU law, it shares the same objective as the Convention, i.e. the protection of the marine environment against pollution from ships. The problem of marine pollution typically occurs across EU waters and therefore requires a common EU approach to tackle the issues effectively, as these cannot be solved by action from individual Member States.

To avoid a litany of different policies in ports for the delivery of waste from ships, and to ensure a level playing field for both ports and port users, further harmonisation at EU level is necessary. A simplified and therefore more harmonised implementation of the different obligations at EU level will improve competitiveness and economic efficiency of the shipping sector, while ensuring basic conditions in ports. This should avoid adverse effects such as

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<sup>9</sup> Directive 2005/33/EC of the European Parliament and the Council of 6 July 2005 as regards the sulphur content of marine fuels, OJ L 191, 22.7.2005, p. 59.

<sup>10</sup> COM/2015/614 final, 'Closing the loop — an EU action plan for the Circular Economy'.

<sup>11</sup> Commission Staff Working Document SWD (2018)16

‘PRF shopping’, where ships keep their waste on board until they can deliver it to the port where this is economically most advantageous. Further harmonisation of the exemption regimes for ships in scheduled and regular traffic would also tackle inefficiencies at the ship and port sides.

At the same time, Member States maintain a margin of discretion with respect to implementing common rules and principles at local/port level. With the new Directive, they will continue to decide on the design and operation of the cost recovery systems, the level of the fees and the development of waste reception and handling plans for ports in their territory. Member State authorities are best placed to determine the level of detail and coverage of the waste reception and handling plans, taking into account the size and geographic location of the ports and the needs of the ships visiting them.

- **Proportionality**

The proposal has a two-fold objective: (i) improving the protection of the marine environment against discharges of waste from ships, while (ii) ensuring the efficiency of maritime transport operations in ports. The impact assessment has shown that waste continues to be discharged at sea, with devastating effects on marine ecosystems, especially from garbage disposal. At the same time, the current regime creates an unnecessary administrative burden on ports and port users, mostly caused by inconsistencies between the obligations under the Directive and the international framework (i.e. the MARPOL Convention). The impact assessment has demonstrated the proportionality of the preferred option for addressing the problems, in line with the comments received from the Regulatory Scrutiny Board on the impact assessment report.

The proposal aims to address these problems by seeking further alignment with MARPOL, in particular as regards its scope, definitions and forms. The proposed Directive also aims for more consistency with other EU acts, by incorporating the inspections fully within the Port State Control framework, and aligning with Directive 2002/59/EC as regards the monitoring and reporting obligations. The new approach relies significantly on a system of electronic reporting and exchange of information, based on existing electronic systems, and on the principle that the information should only be reported once. This should facilitate monitoring and enforcement, while minimising the associated administrative burden.

The specific problem of marine litter warrants additional measures, which should result in a further reduction of garbage discharges from ships. This should be achieved through a combination of incentive and enforcement measures. Given that the fishing and recreational sectors also contribute significantly to the problem of marine litter, these have been more systematically integrated in the system, in particular as regards the incentives for delivery of waste on shore. However, as notification and inspection obligations would put a disproportionate burden on smaller vessels and ports, a differentiated approach based on length and gross tonnage is applied. This approach will consist in the following:

- The reporting of information contained in the advance waste notification and waste receipt will only be required from vessels of 45 metres and above, in line with Directive 2002/59/EC.
- The 20 % inspection target for fishing vessels and recreational craft will only apply to vessels over 100 gross tonnage, consistent with the IMO requirements for a garbage management plan to be kept on board.

- Merchant vessels will be inspected as part of Port State Control, following a risk-based approach, which should render the system more efficient and effective.

Although the Directive aims at further harmonising the main concepts of the PRF regime to ensure a common EU approach on the basis of the relevant international norms, it leaves a margin of discretion for Member States to decide on the operational measures applicable at port level, based on local considerations and the port's administrative set-up and ownership structure. The adequacy of waste reception facilities is determined based on the size, geographic location and type of traffic visiting the port, which in turn determine the level of detail and scope of the port's waste reception and handling plan. These plans can also be developed in a geographic context, thus serving the interests of ports within regional proximity, as well as those of regional traffic.

Although Member States will have to ensure that the cost recovery systems incorporate the principles laid down in the Directive, in particular for indirect fee and levels of transparency, they will still be free to design the systems of charges and decide on the exact level of the fees, taking into account the type of traffic to the ports. This discretion will be more limited for garbage — the most important component of marine litter — for which the costs shall be recovered fully through the indirect fee. Given the particularly negative effects on the marine environment from plastics and other components of garbage from ships, a maximum financial incentive is needed to ensure that garbage is delivered at every port call, instead of being discharged at sea.

- **Choice of the instrument**

In the interests of clear and consistent legal drafting, the most appropriate legal solution was found to be the proposal for a single new Directive. The alternative option of proposing a set of amendments to the current Directive was discarded because it would have required a large number of changes. The choice of a new regulation was also discarded as this would not give enough flexibility to Member States to decide on the best implementation policies for their ports, which differ widely in terms of size, location, ownership and administrative set-up.

### **3. RESULTS OF EX POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex post evaluations/fitness checks of existing legislation**

The ex post evaluation has shown that the Directive has been relevant to achieving the objective of reducing waste discharges at sea and has had clear EU added value. However, while waste volumes delivered on shore have increased, trends are uneven between the different waste categories. Moreover, a significant amount of waste continues to be discharged at sea. This is mainly due to differences in how the current Directive's main obligations, such as provision of adequate port reception facilities, the design and operation of cost recovery systems and the enforcement of the mandatory delivery obligation, are interpreted and implemented.

The concept of adequacy of port reception facilities was not defined clearly in the old Directive, causing confusion among port users and operators. By extension, lack of consultation of port users, as well as inconsistencies with EU 'land-based' legislation, has resulted in situations where adequate facilities are not always available in ports. For example, stakeholders during the consultation complained about the lack of separate collection in ports

of waste that had been previously segregated on board in line with international standards. In addition, there has been confusion over the scope of the mandatory delivery obligation in the light of the MARPOL discharge norms, including the definition of sufficient storage capacity on board as the main exception for a ship to leave without having delivered its waste.

The legal and administrative framework for PRF inspections has also been unclear, as well as the basis for and regularity of these inspections. Finally, exemptions for ships in scheduled traffic have been applied on varying grounds and under different conditions, creating unnecessary administrative burden. These issues have rendered the regime less effective in delivering on its main objective: i.e. reducing discharges of waste at sea.

Further issues highlighted by the ex post evaluation:

- The Directive is not fully consistent with relevant EU policies such as the EU waste legislation and its key principles, which have not been fully implemented in ports.
- Significant changes in the international legal framework (MARPOL) have not been incorporated into the Directive.
- The lack of systematic recording of waste delivered in ports and insufficient exchange of information between Member States have hampered the efficient monitoring and enforcement of the Directive and resulted in significant data gaps on waste streams in EU ports.

- **Stakeholder consultations**

Regular consultations have been held with a wide range of stakeholder groups in the context of the PRF Subgroup set up under the European Sustainable Shipping Forum to assist in the revision process. The Subgroup, which unites the main stakeholder groups, i.e. Member State national authorities, ports, ship owners, port reception facility operators and environmental NGOs, brings together a high level of expertise on port reception facilities for managing waste from ships. Over the course of several meetings, the Subgroup examined and discussed the proposed measures and options for the revision, and its suggestions were properly reviewed and taken into consideration in the drafting of the proposal. A summary of the outcome of the Subgroup's discussions is included in the annexes to the staff working document<sup>12</sup>.

Generally, stakeholders are in favour of a revision, which seeks further alignment with MARPOL, in particular as regards the scope of the mandatory delivery requirement, and provides specific measures addressing the problem of marine litter. The Subgroup has stressed on multiple occasions the need for a proper implementation of the EU waste principles in the context of the PRF regime, as well as for further harmonisation of the exemption regime and the cost recovery systems, without imposing a 'one system fits all' approach for EU ports. In addition, the Subgroup discussed ways to improve monitoring and enforcement was discussed and how electronic reporting and data exchange could facilitate the process.

In the context of the impact assessment process, an open public consultation was organised, which triggered responses from a wide variety of stakeholders. This was followed up by a targeted consultation directed at all port stakeholders. These consultations revealed that the lack of incentives and enforcement are among the most important drivers of the overall

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<sup>12</sup> Annex 2, page 7, Synopsis Report of stakeholder consultation.

problems of waste discharged at sea. In addition, it was pointed out in both consultation rounds that inconsistency in definitions and forms and different exemption regimes lay at the basis of the unnecessary administrative burden.

- **Collection and use of expertise**

This proposal builds on the information collected and analysed during the evaluation and the impact assessment process, for which external studies were conducted. In addition, technical assistance and specific data were received from the European Maritime Safety Agency (EMSA).

The 2015 ex post evaluation study assessed data received from 40 large commercial ports, on the basis of which a time series on waste deliveries was drawn up for the period 2004-2013. Part of the data originated from earlier studies that EMSA had conducted on the implementation of the Directive, and was supplemented by a stakeholder survey.

The support study conducted in 2016 to assist with the **impact assessment** for the revision of the Directive sought to supplement the data on waste volumes delivered at the ports identified in previous studies (Ramboll 2012 and Panteia 2015) for the period 2013-2015. Updated waste delivery data for this period were received from 29 out of the 40 ports assessed earlier. In addition, the impact assessment support study applied a model to calculate the waste gap, known as the MARWAS model, which measures: (i) the difference between waste that is expected to be delivered to the ports for which delivery data has been received, on the basis of the traffic to these ports during the specified time frame; and (ii) what was delivered in absolute volumes in these ports during this period. Ship movement data were obtained from EMSA for the 29 ports under review and fed into the model. The support study also developed an environmental vulnerability assessment of the different regional sea areas in relation to the different categories of waste from ships. The methodology is explained in detail in the relevant annex to the staff working document accompanying this proposal<sup>13</sup>.

Continuous support throughout the process has been provided by the PRF Subgroup mentioned above.

- **Impact assessment**

The impact assessment examined different policy options for revising the Directive, based on the following guiding principles:

- (1) The scope of the revision, the extent of the legislative changes and the development of soft law guidance;
- (2) The scope of the mandatory delivery requirement for waste. The choice for aligning with the MARPOL discharge norms or aiming for a zero-waste discharge regime through full delivery to ports. This also has an impact on other aspects such as the application of cost recovery systems and enforcement;
- (3) The potential for addressing the specific problem of marine litter from ships (mostly garbage from ships);

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<sup>13</sup> Annex 4, page 23, Analytical models used in preparing the Impact Assessment.

- (4) The potential for reducing the administrative burden and simplifying the regime in line with the REFIT objectives of the proposal.

These principles are reflected in the policy objectives described below.

OPTION 1: Baseline scenario. Under this option no legislative change to the Directive is planned. Instead, soft law guidance would be developed, as well as further expansion of the electronic reporting and monitoring system set up under article 12(3) of the current Directive, which is based on the electronic reporting into SafeSeaNet and THETIS (Port State Control Database).

OPTION 2: Minimum revision. This option envisages targeted initiatives and concise legal adjustments in relation to the MARPOL Convention as well as relevant Union legislation, building on the baseline scenario. In particular, it would bring the scope into line with the MARPOL Convention, by including waste covered under Annex VI to the Convention and update references to Union environmental legislation.

OPTION 3: MARPOL alignment. This option seeks further approximation to MARPOL, in particular in determining the scope of mandatory delivery in line with the MARPOL discharge norms, which would address the illegal discharges of waste at sea. This option also includes incorporating PRF inspections into Port State Control, and includes the full range of measures to improve the adequacy of facilities and economic incentives for ships to deliver to them.

OPTION 4: EU PRF regime beyond MARPOL. This option aims to strengthen the current regime under the Directive, going beyond the MARPOL Convention. Mandatory delivery would apply to all waste from ships, including the waste that may be discharged at sea under MARPOL. This option also includes the full range of measures for improving adequacy of the facilities and providing the right incentives for delivery.

OPTIONS 3B and 4B: Marine litter option variants under options 3 and 4 above. These variant options specifically address the problem of marine litter from ships (mostly garbage discharges). Both incentive and enforcement measures are included, as well as a proposal to bring fishing vessels and recreational craft fully within the scope of the Directive, albeit with a differentiated enforcement approach based on gross tonnage.

The impact assessment concluded that the preferred option is policy option 3B, as it reconciles the objectives of reducing waste discharges at sea, in particular garbage discharges (marine litter), with the intended reduction of the administrative burden through further alignment with the MARPOL Convention.

The preferred policy option is expected to:

- generate positive environmental impacts, as it should result in a substantial reduction of illegal discharges at sea of oily waste, sewage, garbage and scrubber waste;
- make an important contribution to the circular economy through special measures focused on reducing marine litter, including waste originating from the fishing and recreational sector, and improving waste management practices in port;
- result in a reduction of the enforcement costs and a substantial reduction of administrative costs;

- generate additional employment, especially for waste handlers and in the tourism sector in coastal areas;
- lead to increased environmental awareness around the problem of marine litter, both at shore and on board.

The preferred option is expected to **generate additional compliance and operational costs**, in particular from investments in waste collection in ports, the alignment of the cost recovery systems and the development of new capacity for the reception and treatment of new waste streams. However, these costs are expected to be limited. The anticipated level of these costs is described in impact assessment included in the staff working document accompanying the proposal<sup>14</sup>. However, an exact quantification of the overall compliance costs could not be provided due to a lack of data.

The impact assessment was submitted to the Regulatory Scrutiny Board for approval in May 2017. The Board issued a positive opinion with reservations<sup>15</sup>. In its opinion, the Board expressed concerns over the added value of the Directive compared to the MARPOL Convention, and requested more explanation of the relationship between the two regimes and how the proposed options are in line with or go beyond the Convention. In this context the Board also posed some questions regarding the proportionality of the preferred option, in particular as it includes more specific requirements for smaller vessels, and there is still some uncertainty as regards the exact compliance and investment costs related to this option. These comments were addressed in the following ways:

- Additional explanation was included on how the Directive aims to transpose the relevant obligations from the MARPOL Convention through a port-based approach, and not only seeks to provide for enforcement of these requirements through the EU legal regime, but also offers added value as regards their implementation in the Member States, in particular through additional elements such as the waste reception and handling plans, cost recovery systems in ports and the regime on exemptions for ships in scheduled traffic. A table offering a comparison between the two instruments was included, as well as an overview of the most relevant amendments to the MARPOL Convention in the last 15 years.
- A table was included comparing the different policy options to the MARPOL Convention. It was also explained that the preferred option based on alignment with MARPOL does not equal full alignment, as this would mean retracting fundamental obligations, which have proven very relevant and useful, as was shown in the ex-post (REFIT) evaluation of the Directive. Additional explanations were included to demonstrate the proportionality of each one of the options, and more information was provided on how the preferred options proposes to redefine the position of the smaller vessels, i.e. fishing vessels and recreational craft, taking a differentiated approach to enforcement based on gross tonnage and length overall.
- Finally, additional efforts were made to obtain quantitative data from the ports in relation to some of the key obligations included in the preferred option. However, as

<sup>14</sup> Commission Staff Working Document – Impact Assessment, page 60 (compliance costs), and page 73 (conclusion).

<sup>15</sup> Opinion on the Impact Assessment/Port reception facilities for ship generated waste and cargo residues, 23 June 2017, <http://ec.europa.eu/transparency/regdoc/>[...]

it concerns commercially sensitive data, limited feedback was received, and the description of the compliance and investment costs remains mostly qualitative.

- **Territorial impact assessment**

The proposed revision has an important regional dimension given the different sea basins in the EU and the local specificities of ports. For this reason, a territorial impact assessment was undertaken. The assessment pointed to the specific challenges that ports located in small islands and remote places may face when implementing the PRF regime, but also concluded that the new Directive may provide benefits to these regions, in particular in tourism development, employment and governance. However, in spite of the regional differences, the territorial impact assessment revealed a strong call for harmonisation of the key aspects of the Directive. The results of the territorial impact assessment have been summarised in the synopsis report attached to the staff working document accompanying the proposal.

- **Regulatory fitness and simplification**

Given that the proposal is a REFIT initiative, it aims to simplify the regulatory framework and reduce administrative burden.

By better aligning the definitions with MARPOL, the standard forms developed by the IMO for waste notification and waste receipt can also be fully incorporated into the Directive. By doing so, parallel forms and systems can be avoided as much as possible. In addition, it is proposed to include the PRF inspections in the Port State Control regime and employ the information and monitoring system, which was developed on basis of the current Directive (Article 12(3)) and which is based on electronic reporting in SafeSeaNet and THETIS, to facilitate monitoring and enforcement. These measures are expected to generate a EUR 7.1 million reduction in administrative costs as they should result in more effective inspections. The proposed revisions are also expected to increase business opportunities for waste operators in ports, as well as operators in the recreational and tourism sector, most of which qualify as SMEs, as more waste should be landed in ports, resulting in a cleaner marine environment, with positive effects for local and regional tourism.

The proposal for a new Directive leaves a considerable margin of discretion to Member States to: (i) organise the reception facilities in their ports, as reflected in the waste reception and handling plans; and (ii) design the appropriate fee systems, taking into account the size and geographic location of the ports, as well as the type of traffic to those ports.

The proposed revision envisages the further development and operation of the information, monitoring and enforcement system that was already set up under the present Directive to facilitate monitoring and enforcement of the Directive. The system will be based on the Union Maritime Information and Exchange System provided for under Directive 2002/59/EC and the Inspection Database set up under Directive 2009/16/EC. Data will be reported electronically using the ‘national single window’ system, in line with Directive 2010/65/EU, and exchanged between Member States for monitoring and enforcement purposes. The proposal will also further standardise electronic reporting formats for waste receipt, waste notification and the exemptions for ships in scheduled traffic.

- **Fundamental rights**

The proposal has no consequences for the protection of fundamental rights.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no consequences for the Union budget.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal is accompanied by an implementation plan that lists the actions needed to implement the measures and identifies the main technical, legal and time-related implementation challenges.

Adequate monitoring and reporting arrangements have been identified. EMSA plays an important role in this process, as the Agency is in charge of the development and operation of electronic data systems for maritime transport.

The Directive in force already calls for the establishment of a common information and monitoring system that would: (i) identify ships not delivering their waste; and (ii) ascertain whether the goals of the Directive had been met. In recent years, this system has been developed on the basis of existing databases: in particular SafeSeaNet has provided the electronic reporting and exchange of the information from the advance waste notification, and a separate EU module has been developed within the Inspection Database (THETIS) for the reporting of results from PRF inspections. In addition, steps have been taken to ensure that the information stored in SafeSeaNet is systematically transmitted to THETIS-EU so that the mandatory delivery obligation can be monitored and enforced. With the proposed Directive, the systems will be further improved and should also include the basic information on the availability of reception facilities in EU ports. This information will also be transmitted to GISIS, the IMO's global integrated ship information system, and to ensure that Member States, by reporting under the Directive, meet their international reporting obligations at the same time.

In addition, EMSA will help monitor the implementation of the proposed Directive. Given that the full cycle of envisaged EMSA implementation visits is scheduled to last 5 years<sup>16</sup>, the evaluation cycle of the Directive is set at seven-year intervals.

Finally, it is also envisaged that an expert group will be set up, consisting of representatives from the Member States and from other relevant sectors. The group will exchange information and experience on the implementation of the Directive and provide the necessary guidance to the Commission.

- **Explanatory documents (for directives)**

Explanatory documents are not required as the proposal aims to simplify and clarify the existing regime.

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<sup>16</sup> As provided for in the EMSA Methodology for visits to Member States, <http://emsa.europa.eu/implementation-tasks/visits-and-inspections/items.html?cid=89&id=3065>

## 6. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

The proposed Directive will align the EU regime as far as possible with MARPOL, in particular as regards scope, definitions and forms. Full alignment, however, is not possible, as the focus of the Directive is on operations in ports, while MARPOL is focused on operations at sea. Although the Directive builds on the obligations which Member States have assumed under MARPOL, it goes further by addressing in detail the legal, operational and financial responsibilities of all the operators. In addition, the proposed Directive, like its predecessor, has a wider scope by covering all sea-going vessels and all EU ports visited by these vessels.

The main areas where the Directive and MARPOL will continue to differ concern the following:

- the adoption of waste reception and handling plans;
- the development and operation of the cost recovery systems;
- the mandatory reporting of information from the advance waste notification and the waste receipt;
- the inspection regime;
- the regime of exemptions for ships in scheduled traffic.

Many of these differences in the EU regime serve to better implement and enforce the regime envisaged by MARPOL.

The most important changes introduced by the new Directive are outlined below.

### **Title, scope and definitions:**

The title will be changed to expressly refer to the delivery of waste from ships, as this would better reflect the main objective of the Directive.

**Article 2** will replace the definition of ‘ship-generated waste’ with the more generic definition of ‘waste from ships’, defined in relation to the relevant Annexes to MARPOL. This will also include the category of ‘cargo residues’, as well as waste falling under MARPOL Annex VI, i.e. the residues from exhaust gas cleaning systems, which comprise of sludge and bleed-off water from these systems. By deleting the distinction between ship-generated waste and cargo residues, and ensuring full compliance with the MARPOL definitions, further alignment with the standard IMO forms and certificates is made possible. Passively fished waste, i.e. waste collected in nets during fishing operations, has been included in the definition of waste from ships to ensure appropriate arrangements are made for the delivery of this type of waste from the fishing sector to port reception facilities, given its relevance in the context of marine litter. Clear and updated references have been added to the relevant pieces of EU legislation.

### **Adequacy of port reception facilities:**

The notion of ‘adequate port reception facilities’ has been more clearly described in line with IMO guidance. The requirement for separate collection of waste stemming from the Waste Framework Directive has been expressly included in **Article 4** to be applied in ports. This is

especially relevant in cases where the waste was previously segregated on board in line with international norms and standards.

As regards the waste reception and handling plans, which are instrumental for achieving adequacy of port reception facilities, stronger emphasis has been placed in **Article 5** and **Annex 1** on the consultation requirements. Clarifications have also been provided for the notion of what constitutes an ‘appropriate plan’, the ‘significant changes’ to such a plan and the ‘regional context’ in which it can be developed.

### **Incentives for delivery:**

To ensure that the right incentives are provided for the delivery of the different types of waste to port reception facilities, **Article 8** lays down the main principles to be incorporated and employed in every fee system set up under the Directive. This includes the relationship between the fee charged and the costs of PRF, the calculation of the ‘significant contribution’ to be covered by the indirect fee, and the main transparency requirements. A new **Annex 4** is included in the Directive, which provides an overview of the different types of costs of the PRF system, distinguishing between direct and indirect costs.

Although Article 8 does not prescribe one particular system to be applied in all EU ports, the proposed cost recovery system is stricter as regards the principles to be applied when establishing the indirect fee for garbage, including passively fished waste. As garbage discharges contribute significantly to the wider problem of marine litter, a ‘no special fee’ system is proposed, in which payment of the indirect fee should give ships the right to deliver all their garbage on board, without having to pay any additional direct fees (based on volumes). As fishing vessels and recreational craft will also be included in the indirect fee system, this should also address the disposal of end-of-life fishing nets and passively fished waste.

Article 8 also strengthens the ‘green ship’ concept, as already developed and applied by individual ports in line with international standards and certification schemes. Under this concept, a reduced waste fee should be applied for ships that can demonstrate sustainable waste management on board, the criteria for which will have to be further set out by the Commission in a delegated act.

### **Enforcement of the mandatory delivery requirement:**

The advance waste notification form referred to in **Article 6** has been fully aligned with IMO Circular MEPC/834 and is provided in a new Annex 2 to the Directive. The scope of the delivery obligation for all waste has been set in accordance with MARPOL, so that the PRF Directive mirrors the MARPOL discharge regime: where MARPOL prohibits the waste from being discharged at sea, the PRF Directive requires the delivery of this waste to port reception facilities on shore, including the cargo residues. With this approach, no specific provision for the delivery of cargo residues is necessary, as was the case under the old Directive. In addition, **Article 7** requires the issuing of a waste receipt to the ship upon delivery of the waste, containing the information that should be electronically reported by the ship into the information, monitoring and enforcement system, i.e. SafeSeaNet, before departure.

**Article 7** limits the application of the exception based on sufficient storage capacity to situations where the next port of call is located in the EU and where there is no uncertainty over the availability of adequate port reception facilities. This assessment should be done on basis of the information made available in the information, monitoring and enforcement

system that is embedded in SafeSeaNet, on adequate port reception facilities in EU ports. Furthermore, this proposal envisages the adoption of specific methods to calculate sufficient on-board storage capacity by the Commission through an implementing act.

On the inspection regime, **Article 10** specifies that the PRF inspections must be fully integrated into the Port State Control regime set up under Directive 2009/16/EC and follow a risk-based approach, when the ship falls within the scope of that directive. To ensure that every Port State Control inspection also verifies compliance with the PRF requirements, certain changes need to be made to Directive 2009/16/EC, as set out in **Article 21**. At the same time, a separate inspection regime is provided for fishing vessels, recreational craft and domestic vessels over 100 gross tonnage, as these vessels are not covered by the Port State Control Directive. Results from the inspections undertaken on these vessels will have to be recorded in the information, monitoring and enforcement system, in a specific EU module within THETIS.

### **Exemption regime for ships in scheduled and regular traffic:**

**Article 9** of the proposal provides for further harmonisation of the exemption criteria, in particular what constitutes a ‘ship in scheduled traffic’ with ‘frequent and regular port calls’, as well as what constitutes ‘sufficient evidence of an arrangement’ for delivery and payment of the fee. A standard exemption certificate is introduced, which should be included in the information, monitoring and enforcement system through electronic reporting into SafeSeaNet, so that Member States can subsequently exchange the information contained in the certificate.

### **Fishing vessels and recreational craft:**

The position of fishing vessels and small recreational craft has been redefined in the Directive, given their relative importance in contributing to the problem of marine litter at sea. Whereas under the current Directive both fishing vessels and small recreational craft are exempted from some of the key obligations, these exemptions have been redefined, so that the larger vessels are included based on length and gross tonnage to ensure proportionality of the regime

As regards the cost recovery systems, fishing vessels and recreational craft will be subject to the indirect fee. Similar to other vessels, fishing vessels and recreational craft will thus be required to pay a fee to the port/harbour irrespective of whether they deliver any waste or not. However, this should also give these ships the right to deliver all their garbage without having to pay any additional fees, including any derelict fishing gear and passively fished waste. As regards the other waste types, the general obligations of applying a minimum 30% indirect fee will also apply to the delivery of waste by the fishing and recreational sector.

Reporting of the information from the waste notification and waste receipt will only be required for fishing vessels and recreational craft of 45 metres and above. Requiring vessels below this threshold to report electronically before arrival and departure would be disproportionate, as these vessels are generally not equipped for electronic reporting nor are the ports receiving them able to process electronic notifications at each and every port call. This was also shown in the impact assessment accompanying the proposal<sup>17</sup>.

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<sup>17</sup> Commission Staff Working Document – Impact Assessment, chapter 5.2.5, page 46.

On enforcement, the Directive lays down that inspections must be carried out for at least 20 % of all fishing vessels and recreational craft over 100 gross tonnage calling in the ports of a relevant Member State annually. This threshold coincides with the MARPOL requirement for carrying a garbage record plan on board for ships over 100 gross tonnage.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on port reception facilities for the delivery of waste from ships, repealing Directive 2000/59/EC and amending Directive 2009/16/EC and Directive 2010/65/EU**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>18</sup>,

Having regard to the opinion of the Committee of the Regions<sup>19</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (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 (UNCLOS).
- (2) The International Convention on the Prevention of Pollution from Ships ('MARPOL Convention') provides for general prohibitions on discharges from ships at sea, but also regulates the conditions under which certain types of waste can be discharged into the marine environment. The MARPOL Convention requires Member States to ensure the provision of adequate reception facilities in ports.
- (3) The Union has pursued the implementation of the MARPOL Convention through Directive 2000/59/EC of the European Parliament and the Council<sup>20</sup>, by following a port-based approach. Directive 2000/59/EC aims to reconcile the interests of smooth operation of maritime transport with the protection of the marine environment.

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<sup>18</sup> OJ C , , p. .

<sup>19</sup> OJ C , , p. .

<sup>20</sup> Directive 2000/59/EC of the European Parliament and the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ L 332, 28.12.2000, p.81).

- (4) In the last two decades, the MARPOL Convention and its Annexes have undergone important amendments, which put in place stricter norms and prohibitions for the discharges of waste from ships at sea.
- (5) Annex VI to the MARPOL Convention introduced discharge norms for new waste categories, in particular, the residues from exhaust gas cleaning systems, consisting of both sludge and bleed-off water. Those waste categories should be included in the scope of the Directive.
- (6) On 15 April 2014, the International Maritime Organisation ('IMO') adopted the Consolidated Guidance for port reception facility providers and users (MEPC.1/Circular 834), including the standard format for waste notification, waste receipt, and reporting alleged inadequacies of port reception facilities.
- (7) In spite of these regulatory developments, discharges of waste at sea still occur. This is due to a combination of factors, namely adequate port reception facilities are not always available in ports, enforcement is often insufficient and there is a lack of incentives to deliver the waste onshore.
- (8) Directive 2000/59/EC has contributed to increasing volumes of waste being delivered to port reception facilities since its entry into force, and as such has been instrumental in reducing waste discharges at sea, as was revealed in the REFIT Evaluation of the Directive.
- (9) The REFIT Evaluation has also demonstrated that Directive 2000/59/EC has not been fully effective due to inconsistencies with the MARPOL framework. In addition, Member States have developed different interpretations of the key concepts in the Directive, such as adequacy of the facilities, advance waste notification and the mandatory delivery of waste to port reception facilities, and exemptions for ships in scheduled traffic. The evaluation called for more harmonisation of those concepts and further alignment with the MARPOL Convention in order to avoid unnecessary administrative burden on both ports and port users.
- (10) The Directive is also instrumental for the application of the main environmental legislation and principles in the context of ports and the management of waste from ships. In particular, Directive 2008/98/EC of the European Parliament and the Council<sup>21</sup>, as well as Directive 2008/56/EC of the European Parliament and the Council<sup>22</sup>, are relevant instruments in this regard.
- (11) Directive 2008/98/EC lays down the main waste management principles, including the "polluter pays" principle and the waste hierarchy, which calls for the reuse and recycling of waste over other forms of waste recovery and disposal and requires the establishment of systems for the separate collection of waste. These obligations also apply to the management of waste from ships.

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<sup>21</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p.3).

<sup>22</sup> 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) (OJ L 164, 25.6.2008, p.19).

- (12) Separate collection of waste from ships, including derelict fishing gear, is necessary to ensure its further recovery in the downstream waste management chain. Garbage is often segregated on board of ships in accordance with international norms and standards and Union legislation should ensure that these efforts of on-board waste segregation are not undermined by a lack of arrangements for separate collection on shore.
- (13) Although the majority of marine litter originates from land-based activities, the shipping industry, including the fishing and recreational sectors, is also an important contributor, with discharges of garbage, including plastic and derelict fishing gear, going directly into the sea.
- (14) The Commission's Circular Economy Strategy<sup>23</sup> has set a reduction target for marine litter of 30 % by 2020 and acknowledged the specific role that the Directive 2000/59/EC has to play in this respect, by ensuring the availability of adequate facilities for the reception of garbage, and providing for both the right level of incentives and the enforcement of the delivery of waste to the on-shore facilities.
- (15) A port reception facility is considered to be adequate if it is able to meet the needs of the ships normally using the port without causing undue delay. Adequacy relates both to the operational conditions of the facility in view of the user needs, as well as to the environmental management of the facilities in accordance with Union waste legislation.
- (16) Regulation (EC) 1069/2009 of the European Parliament and of the Council<sup>24</sup> requires international catering waste to be incinerated or disposed of by burial in an authorised landfill, including waste from ships calling at Union ports which has potentially been in contact with animal by-products on board. In order for this requirement not to limit the promotion of further reuse and recycling of waste from ships, efforts should be made to better segregate the waste on board so that potential contamination of waste, such as packaging waste, can be avoided.
- (17) To ensure adequacy of port reception facilities, the development and re-assessment of the waste reception and handling plan is essential, based on consultation of all relevant port users. For practical and organisational reasons, neighbouring ports in the same region may want to develop a joint plan, covering the availability of port reception facilities in each of the ports covered by the plan while providing a common administrative framework.
- (18) To address the problem of marine litter effectively, it is fundamental to provide the right level of incentives for the delivery of waste to port reception facilities, in particular garbage. This can be achieved through a cost recovery system, which requires the application of an indirect fee, which is due irrespective of the delivery of waste and which should give a right of delivery of the waste without any additional direct charges. The fishing and recreational sector, given their contribution to the occurrence of marine litter, should also be included in this system.

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<sup>23</sup> Commission Communication COM/2015/0614, 'Closing the loop- an EU action plan for the Circular Economy', section 5.1.

<sup>24</sup> Regulation (EC) 1069/2009 of the European Parliament and the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) 1774/2002 (OJ L 300, 14.11.2009, p.1).

- (19) The ‘Green Ship’ concept should be further developed in relation to waste management, so that an effective reward system can be implemented for those vessels that reduce their waste on board.
- (20) Cargo residues remain the property of the cargo owner after unloading the cargo to the terminal, and often have an economic value. For this reason, the cargo residues should not be included in the cost recovery systems and the application of the indirect fee; the fee for the delivery of cargo residues should be paid by the user of the reception facility, as specified in the contractual arrangements between the parties involved or in other local arrangements.
- (21) Regulation (EU) 2017/352 of the European Parliament and the Council<sup>25</sup>, includes the provision of port reception facilities as a service in the scope of the Regulation. It provides rules on the transparency of the charging structures applied for the use of port services, consultation of port users and handling of complaint procedures. The Directive goes beyond the framework provided by the Regulation (EU) 2017/352 by providing more detailed requirements for the operation and design of the cost recovery systems for port reception facilities for waste from ships and the transparency of the cost structure.
- (22) In addition to providing incentives for delivery, effective enforcement of the delivery obligation is paramount and should follow a risk-based approach in line with Directive 2009/16/EC<sup>26</sup>, which is no longer consistent with the 25 % target for inspections in Directive 2000/59/EC for vessels falling under its scope.
- (23) One of the main obstacles for the effective enforcement of the mandatory delivery obligation has been the different interpretation and implementation by Member States of the exception based on sufficient on-board storage capacity. To avoid that the application of this exception undermines the main objective of the Directive, it should be specified further, in particular in regard to the next port of call, and sufficient storage capacity should be determined in a harmonised way in Union ports, based on common methodology and criteria.
- (24) Monitoring and enforcement should be facilitated through a system based on electronic reporting and exchange of information. To this end, the existing information and monitoring system set up under Directive 2000/59/EC should be further developed, and continue to be operated on basis of existing electronic data systems, in particular the Union Maritime Information and Exchange system (SafeSeaNet) and the Inspection Database (THETIS). The system should also include the information on port reception facilities available in the different ports.
- (25) The MARPOL Convention requires the contracting parties to maintain up-to-date information on their port reception facilities and communicate this information to the IMO. To this end IMO has established a Port Reception Facilities Database within its Global Integrated Ship Information System (‘GISIS’). By reporting this information into the Information, Monitoring and Enforcement System set up by the Directive, and

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<sup>25</sup> Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports (OJ L 57, 3.3.2017,p.1).

<sup>26</sup> Directive 2009/16/EC of the European Parliament and the Council of 23 April 2009 on port state control (OJ L 131, 28.5.2009, p.57).

the subsequent transmission of this information via the system to GISIS, Member States would no longer have to report this information separately to the IMO.

- (26) There is a need for further harmonisation of the regime of exemptions for ships in scheduled traffic with frequent and regular port calls, in particular clarification of the terms used and the conditions governing those exemptions. The REFIT Evaluation and the Impact Assessment have revealed that the lack of harmonisation of the conditions and application of exemptions has resulted in an unnecessary administrative burden for ships and ports.
- (27) The Subgroup on Port Reception Facilities, which had been set up under the European Sustainable Shipping Forum, and which brings together a wide range of experts in the field of ship-source pollution and the management of waste from ships, has provided valuable guidance and expertise to the Commission. It would be desirable to maintain this group as a separate expert group to exchange experience on the implementation of the Directive.
- (28) The powers conferred on the Commission to implement Directive 2000/59/EC should be updated in accordance with the Treaty on the Functioning of the European Union (TFEU).
- (29) In order to provide for a methodology for the application of the exception based on sufficient storage capacity, and for the further development of the information, monitoring and enforcement system set up under this Directive, implementing powers should be conferred on the Commission. Implementing acts should be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and the Council.
- (30) In order to take account of developments at international level, and to promote environmentally sound waste management practices on board, the power to adopt acts in accordance with article 290 TFEU should be delegated to the Commission in respect of amending this Directive to update the references to international instruments and the Annexes and to change references to international instruments, in order to prevent, if necessary, changes to those international instruments from applying for the purposes of this Directive, and to develop common criteria for recognising 'green ships' for the purpose of granting a reduced waste fee to those ships. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.
- (31) Since the Directive's objective of protection of the marine environment from discharges of waste at sea cannot be sufficiently achieved by Member States unilaterally but rather, by reason of the scale of action, can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (32) The Union is characterised by regional differences at port level, as also demonstrated in the Territorial Impact Assessment.. Ports differ based on geographic location, size,

administrative set-up and ownership, and are characterised by the type of ships normally visiting. In addition, waste management systems reflect the differences at municipal level and downstream waste management infrastructure.

(33) Directive 2000/59/EC should therefore be repealed.

HAVE ADOPTED THIS DIRECTIVE:

## **SECTION 1: GENERAL PROVISIONS**

### *Article 1*

#### **Subject matter**

This Directive aims to protect the marine environment against the negative effects from discharges of waste from ships using ports located in the Union, while ensuring the smooth operation of maritime traffic, by improving the availability of adequate port reception facilities and the delivery of waste to those facilities.

### *Article 2*

#### **Definitions**

For the purpose of this Directive:

- (a) ‘ship’ means a seagoing vessel of any type operating in the marine environment, including fishing vessels and recreational craft not engaged in trade, hydrofoil boats, air-cushion vehicles, submersibles and floating craft;
- (b) ‘MARPOL Convention’ means the International Convention for the Prevention of Pollution from Ships, in its up-to-date version;
- (c) ‘waste from ships’ means all waste, including cargo residues, which is generated during the service of a ship or during loading, unloading and cleaning operations, or waste that is collected in nets during fishing operations, and falls under the scope of Annexes I, II, IV, V and VI to MARPOL;
- (d) ‘cargo residues’ means the remnants of any cargo material on board which remain on the deck or in holds following loading and unloading, including loading and unloading excess or spillage, whether in wet or dry condition or entrained in wash-water, excluding cargo dust remaining on the deck after sweeping or dust of the external surfaces of the ship;
- (e) ‘port reception facilities’ means any facility, which is fixed, floating or mobile and capable of receiving the waste from ships;
- (f) ‘fishing vessel’ means any ship equipped or used commercially for catching fish or other living resources from the sea;
- (g) ‘recreational craft’ means a ship of any type, with a hull length of 2.5 metres and beyond, regardless of the means of propulsion, intended for sports or leisure purposes, and not engaged in trade;

- (h) ‘domestic vessel’ means a ship flying the flag of a Member State solely engaged in domestic voyages in that Member State;
- (i) ‘domestic voyage’ means a voyage in sea areas from a port of a Member State to the same or another port within that Member State;
- (j) ‘port’ means a place or a geographical area made up of such improvement works and equipment as to permit the reception of ships, including the anchorage area within the jurisdiction of the port;
- (k) ‘catering waste’ means all waste food, including used cooking oil originating in restaurants, catering facilities and kitchens’;
- (l) ‘sufficient storage capacity’ means enough capacity to store the waste on board from the moment of departure until the next port of call, including the waste that is likely to be generated during the voyage;
- (m) ‘scheduled traffic’ means traffic based on a published or planned list of times of departures and arrivals between identified ports or recurrent crossings that constitute a recognised schedule;
- (n) ‘regular port calls’ means repeated journeys of the same ship forming a constant pattern between identified ports or a series of voyages from and to the same port without intermediate calls;
- (o) ‘frequent port calls’ means visits by a ship to the same port taking place at least once a fortnight;
- (p) ‘GISIS’ means the Global Integrated Ship Information System set up by the International Maritime Organisation.

‘Waste from ships’, as defined in points (c) and (d) shall be considered to be waste within the meaning of Article 3(1) of Directive 2008/98/EC<sup>27</sup>.

### *Article 3* **Scope**

This Directive shall apply to:

- (a) all ships, irrespective of their flag, calling at, or operating within, a port of a Member State, with the exception of any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on a government non-commercial basis;
- (b) all ports of the Member States normally visited by ships falling under the scope of point (a).

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<sup>27</sup> Directive 2008/98/EC of the European Parliament and the Council of 19 November 2008 on waste and repealing certain directives, OJ L 312, 22.11.2008, p. 3-30.

Member States shall take measures to ensure that, where possible, ships, which do not fall within the scope of this Directive, deliver their waste in a manner consistent with this Directive.

## **SECTION 2: PROVISION OF ADEQUATE PORT RECEPTION FACILITIES**

### *Article 4*

#### **Port reception facilities**

1. Member States shall ensure the availability of port reception facilities adequate to meet the need of the ships normally using the port without causing undue delay to ships.
2. Member States shall ensure that:
  - (a) The port reception facilities have the capacity to receive the types and quantities of waste from ships normally using that port, taking into account the operational needs of the users of the port, the size and geographical location of the port, the type of ships calling at that port, and the exemptions provided for under Article 9;
  - (b) The formalities relating to the use of the facilities are simple and expeditious to avoid undue delays to ships, and the fees charged for delivery do not create a disincentive for ships to use the port reception facilities;
  - (c) The port reception facilities allow for the management of the ship's waste in an environmentally appropriate way in accordance with the requirements of Directive 2008/98/EC and other relevant Union legislation on waste. To this end, the Member States shall provide for separate collection of waste from ships in ports as required in Union waste legislation, in particular Directive 2008/98/EC, Directive 2012/19/EU and Directive 2006/66/EC. Point (c) shall apply without prejudice to the more stringent requirements imposed by Regulation (EC) 1069/2009 for the management of catering waste from international transport.
3. Member States shall use the forms and procedures laid down by IMO, for reporting to the authorities of the port state alleged inadequacies of port reception facilities.

Any information received through this reporting procedure shall also be transmitted electronically to the part of the information, monitoring and enforcement system referred to in article 14 of this Directive.
4. Member States shall investigate all reported cases of alleged inadequacies and ensure that any party involved in the delivery or reception of waste from ships can claim compensation for damage caused by undue delay.

## *Article 5*

### **Waste reception and handling plans**

1. An appropriate waste reception and handling plan shall be in place and implemented for each port following ongoing consultations with the relevant parties, in particular with port users or their representatives. Those consultations should be held both during the initial drafting of the plans and after their adoption, in particular when significant changes have taken place, with regards to the requirements in Articles 4, 6, and 7. The detailed requirements for the development of such plans are set out in Annex 1.
2. Member States shall ensure that the following information from the waste reception and handling plans on the availability of adequate reception facilities in their ports and the associated costs shall be clearly communicated to the ship operators and made publicly available either via the website of the ports or in printed form:
  - (a) location of port reception facilities applicable to each berth;
  - (b) list of waste from ships normally managed by the port;
  - (c) list of contact points, the operators and the services offered;
  - (d) description of the procedures for delivery of the waste;
  - (e) description of the cost recovery systems; and
  - (f) description of the procedures for reporting alleged inadequacies of port reception facilities.

This information shall also be electronically reported in the part of the information, monitoring and enforcement system referred to in Article 14 of this Directive, in accordance with Directive 2002/59/EC.

3. The waste reception and handling plans referred to in paragraph 1 may, where required for reasons of efficiency, be developed in conjunction by two or more neighbouring ports in the same region, with the appropriate involvement of each port, provided that the need for and availability of, reception facilities are specified for each port.
4. Member States shall evaluate and approve the waste reception and handling plan, monitor its implementation and ensure its re-approval at least every three years after it has been approved or re-approved, and after significant changes in the operation of the port have taken place. These changes shall include, but not be limited to, structural changes in traffic to the port, development of new infrastructure, changes in the demand and provision of port reception facilities, and new on-board treatment techniques.

## SECTION 3 DELIVERY OF WASTE FROM SHIPS

### *Article 6*

#### **Advance waste notification**

1. The operator, agent or master of a ship falling within the scope of Directive 2002/59/EC of the European Parliament and of the Council<sup>28</sup>, other than a fishing vessel or a recreational craft of less than 45 metres, bound for a port located in the EU shall complete accurately the form in Annex 2 and notify that information to the authority or body designated for this purpose by the Member State in which that port is located:
  - (a) at least 24 hours prior to arrival, if the port of call is known;
  - (b) as soon as the port of call is known, if this information is available less than 24 hours prior to arrival;
  - (c) at the latest upon departure from the previous port, if the duration of the voyage is less than 24 hours.
2. The information referred to in paragraph 1 shall be reported electronically in the part of the information, monitoring and enforcement system, referred to in Article 14 of this Directive, in accordance with Directive 2010/65/EU and Directive 2002/59/EC.
3. The information referred to in paragraph 1 shall be kept on board at least until the next port of call and shall be made available upon request to the relevant Member States' authorities.
4. Member States shall ensure that the information that is notified pursuant to this Article is appropriately examined and shared with the relevant enforcement authorities without delay.

### *Article 7*

#### **Delivery of waste from ships**

1. The master of a ship calling at a Union port shall, before leaving the port, deliver all the waste carried on board of the ship to a port reception facility in accordance with the relevant discharge norms laid down in the MARPOL Convention.
2. Upon delivery, the waste operator or the authority of the port where the waste was delivered shall accurately complete the form in Annex 3 and issue the receipt to the ship.

This requirement shall not apply in small unmanned ports or in remotely located ports, provided that the Member State where such a port is located has reported this

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<sup>28</sup> 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).

information electronically in the part of the information, monitoring and enforcement system referred to in Article 14 of this Directive.

3. The operator, agent or master of a ship, falling within the scope of Directive 2002/59/EC, shall before departure, electronically report the information from the waste receipt in the part of the information, monitoring and enforcement system referred to in Article 14 of this Directive, in accordance with Directive 2010/65/EU and Directive 2002/59/EC.
4. The information referred to in paragraph 2 shall be kept on board for at least two years and shall be made available upon request to the Member States' authorities.
5. Without prejudice to paragraph 1, a ship may proceed to the next port of call without delivering the waste, if:
  - (a) the ship only calls at anchorage for less than 24 hours or under adverse weather conditions;
  - (b) the information provided in accordance with Annexes 2 and 3 shows that there is sufficient dedicated storage capacity for all waste that has been accumulated and will be accumulated during the intended voyage of the ship until the next port of call.
6. In order to ensure uniform conditions for the implementation of the exception based on sufficient dedicated storage capacity, implementing powers shall be conferred on the Commission to define the methods to be used for the calculation of the sufficient dedicated storage capacity on board. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 20(2).
7. If the next port of call is located outside the Union, or there are good reasons to believe that adequate facilities are not available in the next port of call, or this port is unknown, the Member State shall require the ship to deliver all its waste before departure.
8. Paragraph 2 shall apply without prejudice to more stringent requirements for ships adopted in accordance with international law.

#### *Article 8*

#### **Cost recovery systems**

1. Member States shall ensure that the costs of operating port reception facilities for the reception and treatment of waste from ships, other than cargo residues, shall be covered through the collection of a fee from ships. Those costs include the elements listed in Annex 4.
2. The cost recovery systems shall provide no incentive for ships to discharge their waste at sea. To this end, the Member States shall apply the following principles in the design and operation of the cost recovery systems in ports:
  - (a) part of the fee to be paid by ships shall be an indirect fee, to be paid irrespective of delivery of waste to a port reception facility;

- (b) the indirect fee shall cover the indirect administrative costs, as well as a significant part of the direct operational costs, as determined in Annex 4. The significant part of the direct operational costs shall represent at least 30 % of the total yearly direct costs for actual delivery of the waste;
  - (c) in order to provide for a maximum incentive for the delivery of waste as defined in Annex V to the MARPOL Convention, including the waste that has been collected in nets during fishing operations, the indirect fee to be charged shall cover all the costs of port reception facilities for this waste, in order to ensure a right of delivery without any additional direct charges;
  - (d) The indirect fee shall not cover the waste from exhaust gas cleaning systems, the costs of which shall be covered on the basis of the types and quantities of waste delivered.
- 3. The part of the costs which is not covered by the fee referred to in subparagraph (b), if any, shall be covered on the basis of the types and quantities of waste actually delivered by the ship.
  - 4. The fees may be differentiated with respect to, inter alia, the category, type and size of the ship and the type of traffic the ship is engaged in, as well as with respect to services provided outside normal operating hours in the port.
  - 5. The fees shall be reduced if the ship's design, equipment and operation are such that it can be demonstrated that the ship produces reduced quantities of waste, and manages its waste in a sustainable and environmentally sound manner. The Commission shall be empowered by means of delegated acts in accordance with Article 19, to define the criteria for determining that a ship meets the requirements stated in this paragraph in relation to the ship's on-board waste management.
  - 6. In order to ensure that the fees are fair, transparent, non-discriminatory, and that they reflect the costs of the facilities and services made available, and, where appropriate, used, the amount of the fees and the basis on which they have been calculated shall be made available to the port users.

*Article 9*  
**Exemptions**

- 1. Member States may exempt a ship calling at their ports from the obligations in Articles 6, 7(1) and 8 cumulatively, where there is sufficient evidence that:
  - (a) the ship is engaged in scheduled traffic with frequent and regular port calls;
  - (b) there is an arrangement to ensure the delivery of the waste and payment of the fees in a port along the ship's route;
  - (c) the arrangement under point (b) is evidenced by a signed contract with a port or waste contractor, waste delivery receipts and confirmation that the arrangement has been accepted by all ports on the ship's route. The arrangement for delivery and payment of the fee shall be made in a port located in the Union in order to constitute sufficient evidence in accordance with this paragraph.

2. If the exemption is granted, the Member State where the port is located, shall issue an exemption certificate, based on the format set out in Annex 5, confirming that the ship meets the necessary conditions and requirements for the application of the exemption and stating the duration of the exemption.
3. Member States shall report the information from the exemption certificate electronically in the part of the monitoring and information system referred to in Article 14 of this Directive, in accordance with the provisions of Directive 2002/59/EC.
4. Member States shall ensure effective monitoring and enforcement of the arrangements for the delivery and payment in place for the exempted vessels visiting their ports.

## **SECTION 4: ENFORCEMENT**

### *Article 10*

#### **Inspections**

Member States shall ensure that any ship may be subject to an inspection in order to verify that it complies with the requirements of this Directive.

### *Article 11*

#### **Port State Control Inspections**

Inspections shall be carried out in accordance with Directive 2009/16/EC for the ships falling in the scope of that Directive, so that any such inspection includes a verification that the ship complies with the requirements of Articles 6, 7, and 9.

### *Article 12*

#### **Inspections outside Port State Control**

1. As regards inspections of ships falling outside the scope of Directive 2009/16/EC, Member States shall ensure that inspections are carried out of at least 20 % of the total number of the individual vessels for each category listed below:
  - (a) domestic ships flying their flag of 100 gross tonnage and above calling in the relevant Member State annually;
  - (b) fishing vessels of 100 gross tonnage and above calling in the relevant Member State annually;
  - (c) recreational craft of 100 gross tonnage and above calling in the relevant member State annually.

2. The results of the inspections referred to in paragraph 1 shall be recorded in the part of the information, monitoring and enforcement system referred to in Article 15 of this Directive.
3. Member States shall establish procedures for inspections for fishing vessels below 100 gross tonnage as well as for recreational craft below 100 gross tonnage, to ensure compliance with the applicable requirements of this Directive.
4. If the relevant authority of the Member State is not satisfied with the results of the inspection, it shall, without prejudice to the application of the penalties referred to in Article 16, ensure that the ship does not leave port until it has delivered its waste to a port reception facility in accordance with Article 7.

### *Article 13*

### **Information, Monitoring and Enforcement System**

The implementation and enforcement of the Directive shall be facilitated by the electronic reporting and exchange of information between Member States in accordance with Articles 14 and 15.

### *Article 14*

### **Reporting and exchange of information**

1. The reporting and exchange of information shall be based on the Union Maritime Information and Exchange System (SafeSeaNet), referred to in Article 22a(3) and Annex III of Directive 2002/59/EC.
2. Member States shall ensure that the following data is reported electronically and within reasonable time in accordance with Directive 2010/65/EC:
  - (a) information on the actual time of arrival and time of departure of every ship, falling in the scope of Directive 2002/59/EC, calling at an EU port, together with an identifier of the port concerned;
  - (b) the information from the waste notification as contained in Annex 2;
  - (c) the information from the waste receipt as contained in Annex 3;
  - (d) the information from the exemption certificate as contained in Annex 5.
3. Member States shall ensure, to the extent possible, that fishing vessels and recreational craft over 100 gross tonnage, calling at an Union port, shall also report, the information on the actual time of arrival and departure.
4. The information reported for the purposes of Articles 4 and 5(2) shall be subsequently transmitted by the Commission to the IMO Port Reception Facilities Database within GISIS.

*Article 15*  
**Recording of inspections**

1. The Commission shall develop, maintain and update an inspection database to which all Member States shall be connected and which shall contain all the information required for the implementation of the inspection system provided for by this Directive. This database will be based on the inspection database referred to in Article 24 of Directive 2009/16/EC and shall have similar functionalities to that database.
2. Member States shall ensure that the information related to inspections under this Directive, including information regarding non-compliances and prohibition of departure orders granted, is transferred without delay to the inspection database, as soon as the inspection report has been completed, or the prohibition of departure order has been lifted, or an exemption has been granted.
3. Member States shall ensure that the information transferred to the inspection database is validated within 72 hours.
4. The Commission shall ensure that the inspection database makes it possible to retrieve any relevant data reported by the Member States for the purpose of monitoring the implementation of the Directive.
5. Member States shall at all times have access to the information recorded.

*Article 16*  
**Penalties**

Member States shall lay down of the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

**SECTION 5: FINAL PROVISIONS**

*Article 17*  
**Exchange of experience**

The Commission shall provide for the organisation of exchanges of experience between the Member States' national authorities and experts, including those from the private sector, on the application of this Directive in Union ports.

*Article 18*  
**Amendment procedure**

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 19 in order to amend the Annexes to this Directive and the references to IMO

instruments to the extent necessary to bring them into line with Union law or in order to take account of developments at international level, in particular at IMO.

2. The Annexes may also be amended when it is necessary to improve the implementation and monitoring arrangements established by this Directive, in particular those provided in Articles 6, 7 and 9, in order to ensure effective notification and delivery of waste, and the proper application of exemptions.
3. In exceptional circumstances, where duly justified by an appropriate analysis by the Commission and in order to avoid a serious and unacceptable threat to maritime safety, to health, to shipboard living or working conditions or to the marine environment, or to avoid incompatibility with Union maritime legislation, the Commission is empowered to adopt delegated acts in accordance with Article 19, amending this Directive in order not to apply, for the purpose of this Directive, an amendment to the MARPOL Convention.
4. Those delegated acts shall be adopted at least three months before the expiration of the period established internationally for the tacit acceptance of the amendment concerned or the envisaged date for the entry into force of said amendment. In the period preceding the entry into force of such delegated act, Member States shall refrain from any initiative intended to integrate the amendment in national legislation or to apply the amendment to the international instrument concerned. .

#### *Article 19*

#### **Exercise of delegation**

1. The power to adopt delegated acts referred to in Article 8(5), Article 18(1), Article 18(2) and Article 18(3) shall be conferred on the Commission for a period of five years from [the date of entry into force]. The Commission shall draw up a report in respect of the delegation of power not 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 such extension not later than three months before the end of each period.
2. The delegation 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 power specified in that decision. It shall take effect 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.
3. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and the Council.
4. A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of 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 and the Council.

*Article 20*  
**Committee**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 21*  
**Amendments to Directive 2009/16/EC**

Directive 2009/16/EC is amended as follows:

- (1) Article 13 is amended as follows:
  - (a) In paragraph (1) the following point (d) is added:
    - (d) ‘verifies that the ship complies with Article 6, Article 7 and Article 9, where applicable, of Directive 201X/XX/EU on port reception facilities for the delivery of waste from ships.’
  - (b) In paragraph (3) first subparagraph the following provision is added at the end of the paragraph:

‘..or of Directive 201X/XX/EU’.
  - (c) The following paragraph is added:
    - (4) ‘If after the inspection referred to in point 1(d) or referred to in paragraph 3, the inspector is not satisfied that the ship has been in compliance with Directive 201X/XX/EU, the ship shall not be allowed to leave the port, without prejudice to the application of the penalties referred to in Article 16 of Directive 201X/XX/EU, until the ship has delivered its waste to a port reception facility.’
- (2) In Annex I.II.2B, the following indent is added at the end of the list of unexpected factors:
  - ‘Ships which have been reported as not complying with the obligation to deliver their waste in accordance with Article 7 of Directive 201X/XX/EU or for which the information reported in accordance with Article 6 of Directive 201X/XX/EU has revealed evidence of non-compliance with Directive 201X/XX/EU’.
- (3) In Annex IV, the following points are added:
  - (51) A copy of the advance waste notification documents kept on board in accordance with Article 6(3) of Directive 201X/XX/EU

- (52) The standard waste receipt forms issued in accordance with Article 7 of Directive 201X/XX/EU.
- (53) The exemption certificate issued in accordance with Article 9 of Directive 201X/XX/EU.

*Article 22*

**Amendment to Directive 2010/65/EU**

Directive 2010/65/EU is amended as follows:

In point A of the Annex, point (4) is amended as follows:

'4. Notification of waste from ships, including residues

Articles 6 and 7 of Directive 201X/XX/EU of the European Parliament and the Council'.

*Article 23*

**Repeal**

Directive 2000/59/EC is repealed.

References to the repealed Directive shall be construed as references to this Directive.

*Article 24*

**Review**

The Commission shall evaluate this Directive and submit the results of the evaluation to the European Parliament and the Council no later than seven years after its entry into force.

*Article 25*

**Transposition**

1. Member States shall adopt and publish, by 31<sup>st</sup> of December 2020 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 26*  
**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 27*  
**Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*