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REPORT

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 1)

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Subject: 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
– Analysis of the final compromise text with a view to agreement

I. INTRODUCTION

1. On 16 January 2018, the Commission submitted the above-mentioned proposal to the European Parliament and to the Council as part of the so-called "Circular Economy Package".
2. The main objective of the proposal is to achieve a higher level of protection of the marine environment through incentivising and regulating waste delivery in ports.

3. The Commission seeks to align the EU legislation, as far as possible, with the international legal framework (MARPOL Convention). It has also identified that the current Directive is not fully consistent with Union waste legislation and seeks to rectify this, inter alia, through the setting up of waste reception and handling plans. The Directive also addresses the lack of systematic recording of waste delivered in ports and insufficient exchange of information between Member States and establishes an indirect fee system for all ships to incentivise the delivery of waste to port reception facilities.

II. STATE OF PLAY

4. On 7 June 2018, the Council reached a General Approach on the above mentioned proposal. On 15 October 2018, the draft report of the European Parliament rapporteur was adopted by the TRAN Committee. The draft report mainly supports the Commission's proposal but introduces new elements such as the prohibition on the discharge of plastics, the concept of actively fished waste and amendments to Directive 2005/35/EC¹.
5. Three trilogues have taken place on 6 and 22 November and 12 December. During the trilogues in November the "A" points were agreed and many of the "B" points were tentatively agreed, with the standard proviso that nothing is agreed until everything is agreed. The Parliament had notably agreed to accept the derogation for landlocked Member States.
6. The preparation of a mandate for the third trilogue was discussed extensively at the Shipping Working Party on 5 December 2018.
7. Some important outstanding issues remained open for the third trilogue, including the inspection regime, the Parliament provisions on discharges or the inclusion of amendments to Directive 2005/35/EC, the issue of high-viscosity substances and the inspection regime.
- 7a. The United Kingdom maintains a parliamentary scrutiny reservation.

¹ Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ L 255, 30.9.2005, p. 11).

III. THE FINAL COMPROMISE TEXT

8. The essential key political concerns for the Council in this file are that the primary aim of the Directive, the delivery of waste from ships, is upheld and to ensure that the scope of the Commission proposal was not broadened. Moreover, the inspection regime as set out in the General Approach including the 15 % inspection threshold but excluding smaller vessels from the Union risk-based targeting mechanism and the importance of having an implementing act for the 'Green Ship' concept are key elements of the Council's position.
9. Regarding the Parliament's position, we negotiated on the 'shall' provision for short sea shipping and green ships. We also examined whether we could include the possibility to have financial incentives for the delivery of high-viscosity substances. Many of the Parliament's other concerns have been addressed in the recitals.
10. Nevertheless, some changes were necessary as a result of the negotiations. The tentative agreements on key issues are listed in the table below:

<i>Recital/Article</i>	<i>Tentatively agreed solution</i>
Recital (15a)	Offshore installations
Recital (15b)	Ballast water
Recital (16a)	Catering waste
Recital (16b)	Waste and plastics from rivers
Recital (18a)	Fishing for litter schemes
Recital (10a)	Polluter pays principle
Recital (23a)	Revision of Directive 2005/35/EC
Recital (24a)	Lost fishing gear

Recital (27a)	Penalties
Article 8(2)(cb)	The possibility to provide financial incentives for the delivery of high-viscosity substances
Article 8(4b)	The introduction of a 'shall' provision for both short sea shipping and the 'Green Ship' concept.
Article 12a(1)	Inspections corresponding to at least 15%
Article 12a(3)	The possibility to take into account the Union risk-based targeting mechanism when establishing procedures for inspections of ships falling outside the scope of Directive 2002/59/EC
Article 25	Paragraph 2 reintroduced (see passenger ship safety legislation)
Annex 1	Reinstated
Annex 4	Reinstated

IV. **CONCLUSION**

11. The Permanent Representatives Committee is invited to:

- examine and approve the final compromise text in the annex to this report with a view to reaching an agreement at first reading with the European Parliament;
- allow the Presidency to send a letter to the European Parliament stating that if the plenary of the European Parliament were to adopt, subject to revision of the text by the legal-linguist experts, the amended text of the draft Regulation in the same form as set out in the annex to this report, the Council would adopt the Regulation in the form of the Commission proposal as thus amended by the Parliament.

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 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 Committee²,

Having regard to the opinion of the Committee of the Regions³,

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 OJ C , , p. .

³ OJ C , , p. .

- (1a) The United Nations Sustainable Development Goal 14 calls attention to the threats of marine and nutrient pollution resource depletion and climate change, all of which are caused primarily by human actions. Those threats place further pressure on environmental systems, like biodiversity and natural infrastructure, while creating global socio-economic problems, including health, safety and financial risks. The European Union must work to protect marine species and to support the people who depend on oceans, whether it be for employment, resources or leisure.
- (2) The International Convention for 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 parts the MARPOL Convention through Directive 2000/59/EC of the European Parliament and the Council⁴, 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.
- (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 this Directive.
- (5a) However, the Member States should continue to work at International Maritime Organisation ('IMO') level for a comprehensive consideration of environmental impacts of wastewater discharges from open loop scrubbers including measures to counter possible impacts.

⁴ 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).

- (5b) Member States should be encouraged to take appropriate measures in accordance with Directive 2000/60/EC of the European Parliament and of the Council⁵, including discharge bans for wastewater from open loop scrubbers and certain cargo residues on their territory waters.
- (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/Rev.1), including the standard format for waste notification, waste delivery receipt, and reporting alleged inadequacies of port reception facilities.
- (7) Despite those regulatory developments, discharges of waste at sea still occur at substantial environmental, social and economic costs. This is due to a combination of factors, namely adequate port reception facilities are not always being available in ports, enforcement often being insufficient and there being 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, inter alia, by contributing to their costs irrespective of actual use of facilities, and as such has been instrumental in reducing waste discharges at sea, as was revealed in the evaluation of that Directive carried out in the framework of the Regulatory Fitness and Performance programme (REFIT Evaluation).
- (9) The REFIT Evaluation has also demonstrated that Directive 2000/59/EC has not been fully effective due to inconsistencies with the MARPOL Convention framework. In addition, Member States have developed different interpretations of the key concepts in that 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 REFIT Evaluation called for more harmonisation of those concepts and full alignment with the MARPOL Convention in order to avoid unnecessary administrative burden on both ports and port users.

⁵ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (The Water Framework Directive) (OJ L 327, 22.12.2000, p. 1).

- (10) This 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 2008/56/EC of the European Parliament and the Council⁶ and Directive 2008/98/EC of the European Parliament and the Council⁷, are relevant instruments in this regard.
- (10a) Union maritime policy should aim at a high level of protection of the marine environment taking into account the diversity of the maritime areas of the Union. It should be based on the principles that preventive action should be taken and that damage to the marine environment should as a priority be rectified at source and that the polluter should pay.
- (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. In addition, the extended producer responsibility concept is a guiding principle of Union waste law, on the basis of which producers of products are responsible for the environmental impacts of their products throughout the life-cycle of those products. Those obligations also apply to the management of waste from ships.
- (12) Separate collection of waste from ships, including derelict fishing gear, is necessary to ensure its further recovery for preparation for reuse or recycling in the downstream waste management chain and to prevent it causing damage to marine animals and environments. 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.

⁶ 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).

⁷ 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).

- (12a) Directive (EU) 2018/851 of the European Parliament and the Council⁸ calls on Member States to halt the generation of marine litter as a contribution towards the United Nations Sustainable Development Goal to prevent and significantly reduce marine pollution of all kinds.
- (13) Every year a substantial amount of plastic enters the seas and ocean in the Union. Although, in most sea areas, 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 waste, including plastic and derelict fishing gear, going directly into the sea.
- (14) The Commission Communication of 2 December 2015 entitled "Closing the loop - An EU action plan for the Circular Economy" Strategy⁹ 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, as also specified in MEPC.1/Circular 834/Rev.1 and the IMO Guidelines for ensuring the adequacy of port waste reception facilities (Resolution MEPC.83(44)). 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. It may, in some cases, be difficult to assess if a port reception facility located outside of the Union meets this standard.

⁸ Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste (OJ L 150, 14.6.2018, p. 109).

⁹ Commission Communication COM/2015/0614, 'Closing the loop- an EU action plan for the Circular Economy', section 5.1.

- (15a) Offshore installations are one of the sea-based sources of marine litter. For that reason, Member States should therefore adopt measures as appropriate on waste delivery from offshore installations flying their flag and/or operating in the waters of Member States and ensure compliance with the stringent discharge norms applicable to offshore installations laid down in the MARPOL Convention.
- (15b) In accordance with the IMO's International convention of 13 February 2004 for the Control and Management of Ship's Ballast Water and Sediments which entered into force on 8 September 2017, all ships are obliged to carry out ballast water management procedures according to IMO standards, and ports and terminals designated for the cleaning and repair of ballast water tanks are required to have adequate facilities to provide for the reception of sediments.
- (16) Regulation (EC) No 1069/2009 of the European Parliament and of the Council⁸ 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 preparation for reuse and recycling of waste from ships, efforts should be made in accordance with MEPC.1/Circ.834/Rev.1 to better segregate the waste so that potential contamination of waste, such as packaging waste, can be avoided.
- (16a) Under Regulation (EC) 1069/2009, intra-EU voyages are not considered "transport operating internationally" and the catering waste from these voyages does not need to be incinerated. However, such intra-EU voyages are considered "international voyages" under International maritime legislation (MARPOL and SOLAS). In order to ensure coherence of Union legislation, the definitions from Regulation (EC) 1069/2009 should be followed when defining the scope and treatment of international catering waste under this Directive.

- (16b) Waste and plastics from rivers are one of the main contributors to marine litter, which includes discharges from inland waterway vessels. Those vessels should therefore be subject to stringent discharge and delivery norms. Nowadays, those rules are laid down by the relevant River Commission. However, Inland ports are covered by Union waste legislation. To continue the efforts of harmonising the legislative framework for European inland waterways the Commission is invited to evaluate a European regime for discharge and delivery norms of inland vessels. That regime should take into account the Convention on the collection, deposit and reception of waste produced during navigation on the Rhine and inland waterways of 9 September 1996 (CDNI).
- (17) To ensure the adequacy of port reception facilities, the development, implementation and re-assessment of the waste reception and handling plan is essential, based on consultation of all relevant stakeholders. For practical and organisational reasons, neighbouring ports in the same geographical 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.
- (17a) It can be challenging to adopt and monitor waste reception and handling plans for small ports, such as mooring areas and marinas, which receive low traffic, mostly recreational crafts, or are only in use during part of the year. The waste from those small ports is normally handled by the municipal waste management system according to the principles as set out in Directive (EU) 2018/851. In order not to overburden the local authorities and facilitate the waste management in such small ports, it should be sufficient that the waste from local mooring areas and marinas is included in the municipal waste stream and managed accordingly, that the port makes information regarding waste reception available to the users of the port, and that the exempted ports are reported in the electronic system to allow for a minimum level of monitoring.

- (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 MARPOL Annex V waste. 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. However, in case a ship delivers an exceptional amount of MARPOL Annex V waste, especially operational waste, which exceeds the maximum dedicated storage capacity as mentioned in the advance notification form for waste delivery, an additional direct fee may be charged in order to ensure that the costs related to receiving this exceptional amount of waste do not cause a disproportionate burden on a port's cost recovery system. This may also be the case where declared dedicated storage capacity is excessive or unreasonable.
- (18a) In certain Member States, schemes have been set up to provide alternative financing of the costs of collecting and managing fishing gear waste or passively fished waste ashore, including for 'fishing for litter schemes'. These initiatives should be welcomed, and Member States should be encouraged to complement the cost recovery systems set up in accordance with this Directive with the fishing for litter schemes to cover the costs of passively fished waste. As such, those cost recovery systems, which are based on the application of a 100% indirect fee for MARPOL Annex V waste from ships, excluding cargo residues, should not create a disincentive for fishing port communities to participate in existing delivery schemes for passively fished waste.
- (19) A ship's fees may be reduced for those vessels designed, equipped or operated to minimise waste, following certain criteria to be developed by implementing powers conferred on the Commission, in line with the IMO guidelines for MARPOL Annex V and standards developed by the International Standardization Organization. Reduction and efficient recycling of waste can be primarily achieved through effective on board waste segregation in line with those guidelines and standards.

- (20) Cargo residues remain the property of the cargo owner after unloading the cargo to the terminal, and may have an economic value. For this reason, cargo residues should not be included in the cost recovery systems and the application of the indirect fee; the charges 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. Cargo residues shall also include the remnants of oily or noxious liquid cargo after cleaning operations, to which the discharge norms of MARPOL Annexes I and II apply, and which under certain conditions, as set out in those Annexes, do not need to be delivered in port to avoid unnecessary operational costs for ships and congestion in ports.
- (20a) Member States should encourage the delivery of residues from tank washings containing high-viscosity persistent floating substances, possibly by way of appropriate financial incentives.
- (21) Regulation (EU) 2017/352 of the European Parliament and of the Council¹⁰, includes the provision of port reception facilities as a service in its scope. 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. This Directive goes beyond the framework provided by that Regulation 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 for which a Union risk-based targeting mechanism should be established.

¹⁰ 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).

- (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 the application of this exception undermining 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. In cases where it is difficult to establish whether adequate port reception facilities in ports outside the Union are available, it is essential that the competent authority carefully considers the application of the exception.
- (23a) In order to align Directive 2005/35/EC of the European Parliament and of the Council¹¹ to the relevant MARPOL provisions on discharge norms, the Commission should assess the desirability of a review of that Directive, in particular through an extension of its scope.
- (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.

¹¹ Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ L 255, 30.9.2005, p. 11).

(24a) Council Regulation (EC) No 1224/2009¹² requires the master of a fishing vessel to inform the authorities of its flag state about lost fishing gear within 24 hours. The flag State has then to inform the competent authority of the coastal State. The information includes the identification number and name of the vessel, type and position of lost gear as well the measures that were undertaken to retrieve the gear. Fishing vessels below 12 metres can be exempted. That regulation requires a fishing vessel flying the flag of a Member State to have the equipment on board to retrieve lost gear. In cases where gear is lost, the master of the vessel should attempt to retrieve it as soon as possible. Under the proposal for the amendment of Regulation (EC) No 1224/2009¹³, the reporting by the vessel is to be done in an electronic logbook, and Member States are required to collect and record the information concerning lost gear and provide it to the Commission upon request. The information collected and available in the waste receipts on passively fished waste in line with this Directive could also be reported in this way.

¹² Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

¹³ (COM(2018)368).

- (24b) Directive 2010/65/EU of the European Parliament and of the Council¹⁴ simplifies and harmonises administrative procedures applied to maritime transport by making the electronic transmission of information more general and streamlining reporting formalities. The Valletta Declaration, adopted by the Council on 8 June 2017, invited the European Commission to propose appropriate follow-up to the revision of this directive. A public consultation on the reporting formalities for ships was carried out by the Commission from 25 October 2017 to 18 January 2018. On 17 May 2018, the Commission transmitted to the European Parliament and to the Council a proposal for a Regulation of the European Parliament and of the Council establishing a European Maritime Single Window environment and repealing Directive 2010/65/EU.
- (25) The MARPOL Convention requires the contracting parties to maintain up-to-date information on their port reception facilities and to 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').
- (25a) In MEPC.1/Circular 834 the IMO provides for the reporting of alleged inadequacies of Port Reception Facilities. Under this procedure, a ship may report such inadequacies to the administration of the flag State, which in turn shall notify the IMO and the port State of the occurrence. The port State should examine the report and respond appropriately, informing the IMO and the reporting flag State. Reporting of this information on alleged inadequacies directly into the Information, Monitoring and Enforcement System provided for in this Directive, would allow for the subsequent transmission of this information into GISIS, relieving Member States as flag and port States from their reporting duty to IMO.

¹⁴ Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC (OJ L 283, 29.10.2010, p. 1).

- (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.
- (26a) Due to the type of trade, which is characterised by frequent port calls, short sea shipping faces significant costs within the current regime for the delivery of waste to port reception facilities, having to pay a fee at each and every port call. At the same time, the traffic is not sufficiently scheduled and regular to qualify for an exemption from payment and delivery of waste on those grounds. To limit the financial burden on the sector, it should be possible to charge reduced fees to vessels based on the type of traffic in which they are engaged.
- (27) The Subgroup on Port Reception Facilities, which had been set up under the European Sustainable Shipping Forum, and brought together a wide range of experts in the field of ship-source pollution and the management of waste from ships, was adjourned in December 2017 in view of the start of the interinstitutional negotiations. Since the subgroup provided valuable guidance and expertise to the Commission, it would be desirable to create a similar expert group with a mandate of exchanging experience on the implementation of this Directive.
- (27a) It is important that any penalties laid down by Member States be properly implemented and be effective, proportionate and dissuasive.
- (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 calculation of the sufficient storage capacity; to further develop the information, monitoring and enforcement system set up under this Directive; to develop common criteria for recognising, for the purpose of granting a reduced waste fee to ships, that a ship's design, equipment and operation demonstrate that it produces reduced quantities of waste, and manages its waste in a sustainable and environmentally sound manner; to define the detailed elements to be contained in waste reception and handling plans and to define the categories of costs and net revenues related to the operation and administration of port reception facilities, 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 Council¹⁵.
- (30) In order to take account of developments at international level, 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. 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, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹⁶. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

¹⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

¹⁶ OJ L 123, 12.5.2016, p. 1.

- (31) Since the objective of this Directive, namely the protection of the marine environment from discharges of waste at sea cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as 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.
- (31a) Good working conditions for port personnel working in port reception facilities are of paramount importance to creating a safe, efficient and socially accountable maritime sector, which is able to attract qualified workers and ensure a wide-level playing field across Europe. Initial and periodic training of staff is essential to ensure the quality of services and the protection of workers. Port and reception facilities authorities should ensure that all personnel receive the necessary training to acquire the knowledge which is essential for their work, with specific attention for health and safety aspects pertaining to dealing with hazardous materials, and that training requirements are regularly updated to meet the challenges of technological innovation.
- (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.

- (32a) The TFEU requires consideration to be given to the special characteristics of the outermost regions of the Union, namely Guadeloupe, French Guiana, Martinique, Mayotte, Réunion, Saint-Martin, the Azores, Madeira and the Canary Islands. To ensure the adequacy and availability of port reception facilities, it may be appropriate for Member States to make regional operating aid available to port reception facility operators or port authorities in those regions of the Union in order to address the effects of the permanent handicaps referred to in Article 349 TFEU. Regional operating aid made available by Member States in that context is exempt from the notification obligation laid down in Article 108(3) TFEU, if, at the time it is granted, it fulfils the conditions laid down by Commission Regulation (EU) No 651/2014¹⁷ declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 TFEU, and adopted pursuant to Council Regulation (EC) No 994/98¹⁸.
- (32b) In order not to impose a disproportionate administrative burden on landlocked Member States which neither have ports nor ships flying their flag that fall within the scope of this Directive, such Member States should be allowed to derogate from the provisions of this Directive. However, those landlocked Member States which have ships flying their flag should only be allowed to derogate from those provisions applicable to ports. This means that as long as those conditions are fulfilled, they are not obliged to transpose this Directive, or certain provisions thereof.
- (33) Directive 2000/59/EC should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:

¹⁷ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

¹⁸ Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid (OJ L 142, 14.5.1998, p. 1).

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 and use of adequate port reception facilities and the delivery of waste to those facilities.

Article 2

Definitions

For the purpose of this Directive, the following definitions apply:

- (a) ‘ship’ means a seagoing vessel of any type operating in the marine environment, and shall include fishing vessels, recreational craft, 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, and falls under the scope of Annexes I, II, IV, V and VI to MARPOL Convention and passively fished waste;
- (ca) ‘passively fished waste’ means waste collected in nets during fishing operations;
- (d) ‘cargo residues’ means the remnants of any cargo material on board which remain on the deck or in holds or tanks 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 providing the service 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 or more, regardless of the means of propulsion, intended for sports or leisure purposes, and not engaged in trade;
- (h) [...]
- (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 principally designed to permit the reception of ships, including the anchorage area within the jurisdiction of the port;
- (k) [...]
- (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;
- (pa) ‘treatment’ means recovery or disposal operations, including preparation prior to recovery or disposal;
- (q) ‘indirect fee’ means a fee paid for the provision of port reception facilities services, irrespective of the actual delivery of waste from ships.

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

Article 3

Scope

1. 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 ships engaged in port related services within the meaning of Article 1 (2) of Regulation (EU) 2017/352, 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). For the purpose of this Directive, and to avoid undue delay to ships, Member States may decide to exclude the anchorage area from their ports for the purposes of the application of Articles 6, 7 and 8.
2. Member States shall take measures to ensure that, where reasonably possible, ships, which do not fall within the scope of this Directive, deliver their waste in a manner consistent with this Directive.

3. Member States which have neither ports nor ships flying their flag falling within the scope of this Directive may derogate from the provisions of this Directive except for the obligation set out in the third subparagraph of this paragraph.

Member States which do not have ports fallings within the scope of this Directive may derogate from the provisions of this Directive which are addressed solely to ports.

Those Member States which intend to avail themselves of the derogations set out in this Article shall communicate to the Commission at the latest on [date of transposition of this amending Directive] if the conditions are met and shall inform the Commission annually thereafter of any subsequent change. Until such Member States have transposed and implemented this Directive they may not have any ports falling within the scope of this Directive or allow ships or craft that fall within the scope of this Directive to fly their flag.

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 and practical arrangements relating to the use of the facilities are simple and expeditious to avoid undue delays to ships, and;
 - (ba) 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 waste from ships in an environmentally sound manner in accordance with the requirements of Directive 2008/98/EC and other relevant Union and national legislation on waste. To this end, the Member States shall ensure separate collection to facilitate reuse and recycling of waste from ships in ports as required in Union waste legislation, in particular Directive 2008/98/EC, Directive 2012/19/EU of the European Parliament and of the Council¹⁹ and Directive 2006/66/EC of the European Parliament and the Council²⁰. In order to facilitate this process, port reception facilities may collect the separate waste fractions in accordance with waste categories defined in the Marpol Convention, taking into account its guidelines. This point 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, in their capacity as flag States, shall use the IMO forms and procedures to notify the IMO as well as the authorities of the port State of alleged inadequacies of port reception facilities.

[...]

Member States, in their capacity as port States, shall investigate all reported cases of alleged inadequacies and use the IMO forms and procedures to notify the IMO and the reporting flag State of the outcome of the investigation.

4. [...]

4a. The port authorities concerned or, failing them, the relevant authorities shall ensure that waste delivery or reception operations are carried out with sufficient safety measures to avert risks to persons and the environment at ports covered by this Directive.

¹⁹ Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (OJ L 197, 24.7.2012, p. 38).

²⁰ Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (Text with EEA relevance) (OJ L 266, 26.9.2006, p. 1).

5. Member States shall 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. Member States shall ensure that an appropriate waste reception and handling plan shall be in place and implemented for each port following ongoing consultations with the relevant parties, including in particular with port users or their representatives, and where appropriate local competent authorities, port reception facilities operators, and organisations implementing extended producer responsibility obligations and representatives of civil society. 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 structure of the costs shall be clearly communicated to the ship operators and be made publicly available and easily accessible, in an official language of the Member State where the port is situated and, where relevant, in a language that is internationally used:
 - (a) location of port reception facilities applicable to each berth, including, where relevant, opening hours
 - (b) list of waste from ships normally managed by the port;
 - (c) list of contact points, the port reception facility operators and the services offered;
 - (d) description of the procedures for delivery of the waste;
 - (e) description of the cost recovery systems, including the waste management schemes and funds where applicable; and

(f) [...]

This information shall also be made available electronically and kept up-to-date 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 of the European Parliament and of the Council²¹.

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 geographical region, with the appropriate involvement of each port, provided that the need for and availability of, port reception facilities are specified for each port.
4. Member States shall evaluate and approve the waste reception and handling plan and ensure its re-approval at least every five 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.

Member States shall monitor the port's implementation of the waste reception and handling plan. Where during this five year period no significant changes have taken place, the re-approval may consist of a validation of the existing plans.

- 4a. Small non-commercial ports, which are characterised by rare or low traffic from recreational crafts only, may be exempted from the scope of this Article if their port reception facilities are integrated in the waste handling system managed by or on behalf of the municipality, and the Member States, where those ports are located, ensure that the information regarding the waste management system is made available to the users of those ports.

²¹ 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).

The Member States where such ports are located shall notify the location and name of those ports electronically in the part of information, monitoring and enforcement system referred to in Article 14.

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 bound for a port located in the Union shall complete truly and accurately the form set out in Annex 2 to this Directive 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; or
 - (b) as soon as the port of call is known, if this information is available less than 24 hours prior to arrival; or
 - (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 of this Article 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 2002/59/EC and Directive 2010/65/EU of the European Parliament and of the Council.
3. The information referred to in paragraph 1 shall be available on board, preferably in electronic form, 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 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 its waste carried on board to a port reception facility in accordance with the relevant discharge norms laid down in the MARPOL Convention.
2. Upon delivery, the port reception facility operator or the authority of the port where the waste was delivered shall truly and accurately complete the form set out in Annex 3 and issue and provide, without undue delay, the waste receipt to the ship.

The requirement set out in the first subparagraph shall not apply in small ports with unmanned facilities or that are remotely located, provided that the Member State where such ports are located has notified these ports 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, or as soon as this has been received, 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 2002/59/EC and Directive 2010/65/EU.

The information from the waste receipt referred to in this paragraph shall be available on board for at least two years where relevant with the appropriate Oil Record Book, Cargo Record Book, Garbage Record Book or the Garbage Management Plan, and shall be made available upon request to the Member States' authorities.

4. [...]

5. Without prejudice to paragraph 1, a ship may proceed to the next port of call without delivering the waste, if:
 - (a) [...]
 - (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; or
 - (c) the information available on board ships falling outside the scope of Directive 2002/59/EC 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; or
 - (d) the ship only calls at anchorage for less than 24 hours or under adverse weather conditions, where such an area has not been excluded from the scope of the port in accordance with Article 3.
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 it cannot be established based on the available information, including information electronically available in the information, monitoring and enforcement system referred to in Article 14 or in GISIS, that adequate facilities are 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 5 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, are 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) ships shall pay an indirect fee, 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 direct costs for actual delivery of the waste during the previous year. Costs related to expected traffic volume for the coming year can also be taken into account;
 - (c) in order to provide for a maximum incentive for the delivery of waste as defined in Annex V to the MARPOL Convention other than cargo residues, no direct fee shall be charged for this waste, in order to ensure a right of delivery without any additional charges based on volume of waste delivered, except when this volume of waste delivered exceeds the maximum dedicated storage capacity as mentioned in the form set out in Annex 2 to this Directive. Passively fished waste shall be covered by this regime, including the right of delivery;
 - (ca) in order to avoid that the costs of collection and treatment of passively fished waste are borne exclusively by port users, Member States shall cover, where appropriate, these costs from the revenues generated by alternative financing systems, including waste management schemes and European, national or regional funding available;

- (cb) in order to encourage the delivery of residues from tank washing containing high-viscosity persistent floating substances, Member States may provide for appropriate financial incentives for their delivery;
 - (d) the indirect fee shall not include 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 point (b) of paragraph 2, if any, shall be covered on the basis of the types and quantities of waste actually delivered by the ship..
- 4. [...]
- 4a. The fees may be differentiated on the following basis:
 - (a) the category, type and size of the ship;
 - (b) the provision of services to ships outside normal operating hours in the port; or
 - (c) the hazardous nature of the waste.
- 4b. The fees shall be reduced on the following basis:
 - (a) the type of trade the ship is engaged in, in particular when a ship is engaged in short sea shipping trade; or
 - (b) the ship's design, equipment and operation demonstrate that the ship produces reduced quantities of waste, and manages its waste in a sustainable and environmentally sound manner.
- 4c. The Commission shall adopt implementing acts, by [12 months after the entry into force of this Directive], to define the criteria for determining that a ship meets the requirements stated in point (b) of paragraph 4b in relation to the ship's on-board waste management. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 20(2).

5. [...]
6. In order to ensure that the fees are fair, transparent, easily identifiable, 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 in an official language of the Member State and, where relevant, in a language that is internationally used to the port users in the waste reception and handling plans.
7. Member States shall ensure that monitoring data on the volume and quantity of passively fished waste is collected, and shall report such monitoring data to the Commission. The Commission shall, on the basis of the monitoring data reported by Member States in accordance with subparagraph (ca), publish a report by 31 December 2022 and every two years thereafter.

The Commission shall adopt implementing acts to define monitoring data methodologies and the format for reporting.

Article 9

Exemptions

1. Member States may exempt a ship calling at their ports from the obligations in Articles 6, 7(1) and 8, where there is sufficient evidence that the following conditions are met:
 - (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;
 - (ba) the exemption does not pose a negative impact on maritime safety, health, shipboard living or working conditions or on the marine environment; and

- (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 notified to all ports on the ship's route and accepted by the port where the delivery and payment takes place in a Union port or in another port if it can be established based on the information reported electronically into the information, monitoring and enforcement system referred to in Article 14 and in GISIS that adequate facilities are available in the port with which the arrangement under point (b) has been made; and
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 ships visiting their ports.
 5. Notwithstanding the granted exemption, a ship shall not proceed to the next port of call if there is not 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.

SECTION 4:
ENFORCEMENT

Article 10

Inspections

Member States shall ensure that any ship may be subject to inspections, including random ones, in order to verify that it complies with the requirements of this Directive.

Article 11

Port State Control Inspections

[...]

Article 12

Inspections outside Port State Control

[...]

Article 12a

Inspection commitments

1. Member States shall carry out inspections of ships calling in their ports corresponding to at least 15 % of the total number of individual ships calling in the Member State annually. The total number of individual ships calling in a Member shall be calculated as the average number of individual ships over the previous three years, as reported through the Information, Monitoring and Enforcement System referred to in Article 13.

2. Member States shall comply with the number of inspections specified in paragraph 1 of this Article by selecting ships on the basis of a Union risk-based targeting mechanism. In order to ensure harmonisation of inspections and provide for uniform conditions for selection of ships for inspection, implementing powers shall be conferred on the Commission to define the detailed elements of a Union risk-based targeting mechanism, in accordance with the examination procedure referred to in Article 19(2).
3. Member States shall establish procedures for inspections for ships falling outside the scope of Directive 2002/59/EC to ensure, as far as practicable, compliance with this Directive. In establishing those procedures Member States may take into account the Union risk-based targeting mechanism.
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 this 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/EU:

- (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. [...]
4. Member States shall ensure that information listed in Article 5(2) is made electronically available to SafeSeaNet.

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. [...]

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 this Directive. The Commission shall also ensure that the inspection database provides information for the Union risk-based targeting mechanism. The Commission shall regularly review the database to monitor the implementation of the Directive and call attention to any doubts regarding comprehensive implementation with the aim of instigating corrective action.
5. Member States shall at all times have access to the information recorded.

Article 15a

Training of personnel

Port and port reception facilities authorities shall ensure that all personnel receive the necessary training to acquire the knowledge which is essential for their work on dealing with waste, with specific attention to health and safety aspects pertaining to dealing with hazardous materials, and that training requirements are regularly updated to meet the challenges of technological innovation.

Article 16

Penalties

Member States shall lay down 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, civil society and trade unions, on the application of this Directive in Union ports.

Article 18

Amendment procedure

1. The Commission is 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 Commission may also amend, by means of delegated acts, the Annexes to this Directive 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 threats to the marine environment, the Commission is empowered to adopt delegated acts in accordance with Article 19, amending this Directive, to the extent necessary to avoid such a threat, in order not to apply, for the purpose of this Directive, an amendment to the MARPOL Convention.
4. The delegated acts provided for in this Article 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 the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
1. The power to adopt delegated acts referred to in Article 18(1), (2) and (3) shall be conferred on the Commission for a period of five years from [the date of entry into force of this Directive]. 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 of power referred to in Article 18(1), (2) and (3) 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.
- 2a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
3. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

4. A delegated act adopted pursuant to Article 18(1), (2) and (3) 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 of 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 of the European Parliament and of the Council²². 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

[...]

²² Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships (OJ L 324, 29.11.2002, p. 1).

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, 7 and 9 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

1. 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 [date of entry into force]. The evaluation shall also include a report detailing best waste prevention and management practices on board ships.
2. In the context of Regulation (EU) 2016/1625, when the next review of the European Maritime Safety Agency (EMSA) mandate is due, the Commission shall also evaluate whether EMSA should be granted additional competences for the enforcement of this Directive.

Article 25

Transposition

1. Member States shall bring into force, by [24 months after the entry into force], the laws, regulations and administrative measures necessary to comply with this Directive. They shall immediately communicate to the Commission the text of those measures.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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 ...,

For the European Parliament

The President

For the Council

The President

ANNEX 1

REQUIREMENTS FOR WASTE RECEPTION AND HANDLING PLANS IN PORTS

Plans shall cover all types of waste from ships normally visiting the port and shall be developed according to the size of the port and the types of ships calling at that port.

The following elements shall be included in the plans:

- a) an assessment of the need for port reception facilities, in light of the need of the ships normally visiting the port;
- b) a description of the type and capacity of port reception facilities;
- c) a description of the procedures for the reception and collection of waste from ships;
- d) a description of the cost recovery system;
- e) a description of the procedure for reporting alleged inadequacies of port reception facilities;
- f) a description of the procedure for ongoing consultations with port users, waste contractors, terminal operators and other interested parties; and
- g) an overview of the type and quantities of waste received from ships and handled in the facilities.

The plans may also include:

- a) a summary of relevant national legislation and the procedure and formalities for the delivery of the waste to port reception facilities;
- b) identification of a point of contact in the port; c) a description of the pre-treatment equipment and processes for specific waste streams in the port if any;

- c) a description of methods of recording the actual use of the port reception facilities;
- d) a description of methods for recording the amounts of the waste delivered by ships;
- e) a description of how the different waste streams are managed in the port.

The procedures for reception, collection, storage, treatment and disposal should conform in all respects to an environmental management scheme suitable for the progressive reduction of the environmental impact of these activities. Such conformity is presumed if the procedures are in compliance with the Regulation (EC) No 1221/2009 of the European Parliament and the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme.

ANNEX 2

STANDARD FORMAT OF THE ADVANCE NOTIFICATION FORM FOR WASTE DELIVERY TO PORT RECEPTION FACILITIES

Notification of the Delivery of Waste to: (enter name of port of destination, as referred to in Article 6 of Directive XXXX/XX/EU)

This form should be retained on board the vessel along with the appropriate Oil Record Book, Cargo Record Book, or Garbage Record Book as required by the Marpol Convention.

1. SHIP PARTICULARS

1.1 Name of ship:	1.5 Owner or operator:		
1.2 IMO number:	1.6 Distinctive number or letters:		
	1.6a MMIS number:		
1.3 Gross tonnage:	1.7 Flag State:		
1.4 Type of ship: <input type="checkbox"/> Oil tanker <input type="checkbox"/> Other cargo ship	<input type="checkbox"/> Chemical tanker <input type="checkbox"/> Passenger ship	<input type="checkbox"/> Bulk carrier <input type="checkbox"/> Ro-ro	<input type="checkbox"/> Container <input type="checkbox"/> Other (specify)

2. PORT AND VOYAGE PARTICULARS

2.1 Location/Terminal name:	2.6 Last Port where waste was delivered:
2.2 Arrival Date and Time:	2.7 Date of Last Delivery:
2.3 Departure Date and Time:	2.8 Next Port of Delivery:
2.4 Last Port and Country:	2.9 Person submitting this form is (if other than the master):
2.5 Next Port and Country (if known):	

3. TYPE AND AMOUNT OF WASTE AND STORAGE CAPACITY²³

Type	Waste to be delivered (m ³)	Maximum dedicated storage capacity (m ³)	Amount of waste retained on board (m ³)	Port at which remaining waste will be delivered	Estimated amount of waste to be generated between notification and next port of call (m ³)
MARPOL Annex I- Oil					
Oily bilge water					
Oily residues (sludge)					
Oily tank washings					
Dirty ballast water					
Scale and sludge from tank cleaning					
Other (please specify)					

MARPOL Annex II – NLS²⁴					
Category X substance					
Category Y substance					
Category Z substance					
OS- other substances					
MARPOL Annex IV – Sewage					
MARPOL Annex V – Garbage					
A. Plastics					
B. Food Wastes					
C. Domestic wastes (e.g. paper products, rags, glass, metal, bottles, crockery, etc.)					
D. Cooking Oil					
E. Incinerator ashes					
F. Operational wastes					
G. Animal carcass(es)					
H. Fishing gear					
I. E-waste					
J. Cargo residues ²⁵ (HME)					
K. Cargo residues ²⁶ (non-HME)					
MARPOL Annex VI – Air Pollution related					
Ozone depleting substances and equipment containing such substances ²⁷					
Exhaust gas cleaning residues					

²⁴ Indicate the proper shipping name of the NLS involved

²⁵ May be estimates; indicate the proper shipping name of the dry cargo

²⁶ May be estimates; indicate the proper shipping name of the dry cargo

²⁷ Arising from normal maintenance activities on board

Other waste, not covered by MARPOL					
Passively fished waste					

Notes

1. This information shall be used for port State control and other inspection purposes.
2. This form is to be completed unless the ship is covered by an exemption in accordance with Article 9 of Directive XXXX/XXXX/EU

ANNEX 3

STANDARD FORMAT FOR THE WASTE DELIVERY RECEIPT

The designated representative of the reception facility provider shall provide the following form to the master of a ship that has delivered waste in accordance with Article 7 of Directive XXXX/XX/EU.

This form shall be retained on board the vessel along with the appropriate Oil Record Book, Cargo Record Book or Garbage Record Book, as required by MARPOL.

1. RECEPTION FACILITY AND PORT PARTICULARS

1.1.	Location /terminal name:
1.2.	Reception facility provider(s)
1.3.	Treatment facility provider(s) – if different from above:
1.4.	Waste Delivery Date and Time from: _____ to: _____

2. SHIP PARTICULARS

2.1. Name of the ship:	2.5. Owner or operator:
2.2. IMO number:	2.6. Distinctive number or letters: MMIS number:
2.3. Gross tonnage:	2.7. Flag State:
2.4. Type of ship: <input type="checkbox"/> Oil tanker <input type="checkbox"/> Chemical tanker <input type="checkbox"/> Bulk carrier <input type="checkbox"/> Container	
<input type="checkbox"/> Other cargo ship <input type="checkbox"/> Passenger ship <input type="checkbox"/> Ro-ro <input type="checkbox"/> Other (specify)	

3. TYPE AND AMOUNT OF WASTE RECEIVED

MARPOL Annex I – Oil	Quantity (m ³)	MARPOL Annex V- Garbage	Quantity (m ³)
Oily bilge water		A. Plastics	
Oily residues (sludge)		B. Food wastes	
Oily tank washings		C. Domestic wastes (e.g. paper products, rags, glass, metal, bottles, crockery, etc.)	
Dirty ballast water		D. Cooking oil	
Scale and sludge from tank cleaning		E. Incinerator ashes	
Other (please specify)		F. Operational wastes	
MARPOL Annex II – NLS	Quantity (m³)/Name⁵	G. Animal carcass(es)	
Category X substance		H. Fishing gear	

Category Y substance		I. E-waste	
		J. Cargo residues ⁶ (HME)	
		K. Cargo residues ⁶ (non-HME)	
		MARPOL Annex VI – Air Pollution related	Quantity (m³)
Category Z substance		Ozone-depleting substances and equipment containing such substances	
OS – other substance		Exhaust gas-cleaning residues	
MARPOL Annex IV – Sewage	Quantity (m³)	Other waste, not covered by MARPOL	Quantity (m³)
		Passively fished waste	

⁵ Indicate the proper shipping name of the NLS involved

⁶ Indicate the proper shipping name of the dry cargo

ANNEX 4

Categories of costs and net revenues related to the operation and administration of PRF

<i>Direct costs</i>	<i>Indirect costs</i>	<i>Net revenues</i>
<p>Direct operational costs that arise from the actual delivery of waste from ships, including the cost items listed below.</p>	<p>Indirect administrative costs that arise from the management of the system in the port, including the cost items listed below.</p>	<p>Net proceeds from waste management schemes and national/regional funding available, including the revenue elements listed below.</p>
<ul style="list-style-type: none"> • Provision of port reception facilities infrastructure, including the containers, tanks, processing tools, barges, trucks, waste reception, treatment installations; • Concessions due for site leasing, if applicable, or for leasing the equipment necessary for the operation of port reception facilities; • The actual operation of the port reception facilities: collection of waste from the ship, transport of waste from the port reception facilities for final treatment, maintenance and cleaning of port reception facilities, costs for staff, including overtime, provision of electricity, waste analysis and insurance; • Preparing for re-use, recycling or disposal of the waste from ships, including separate collection of waste; • Administration: invoicing, issuing of waste receipts to the ship, reporting. 	<ul style="list-style-type: none"> • Development and approval of the waste reception and handling plan, including any audits of the plan and its implementation; • Updating the waste reception and handling plan, including labour costs and consultancy costs, where applicable; • Organizing the consultation procedures for the (re)evaluation of the waste reception and handling plan; • Management of the notification and cost recovery systems, including the application of reduced fees for "green ships", the provision of IT systems at port level, statistical analysis and associated labour costs; • Organisation of public procurement procedures for the provision of port reception facilities, as well as the issuing of the necessary authorisations for the provision of port reception facilities in ports; 	<ul style="list-style-type: none"> • Net financial benefits provided by extended producer responsibility schemes; • Other net revenues from waste management such as recycling schemes; • Funding under the EMFF; • Other funding or subsidies available to ports for waste management and fisheries.

	<ul style="list-style-type: none"> • Communication of information to port users through the distribution of flyers, putting up signs and posters in the port, or publication of the information on the port's website,) and electronic reporting of the information as required in article 5. • Management of waste management schemes: EPR schemes, recycling and application for and implementing of national/regional funds • Other administrative costs: monitoring exemptions and electronic reporting of this information as required in article 9. 	
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ANNEX 5

Exemption Certificate

**CERTIFICATE OF EXEMPTION UNDER ARTICLE 9
IN RELATION TO THE REQUIREMENTS UNDER ARTICLE 6,
ARTICLE 7 AND ARTICLE 8 OF DIRECTIVE XXXX/XX/EU
AT THE PORT[S] OF *[INSERT PORT]* IN *[INSERT MEMBER STATE]*²⁸**

Name of ship	Distinctive number or letters	Flag State
<i>[insert name of the ship]</i>	<i>[insert IMO number]</i>	<i>[insert name of the Flag State]</i>

is in scheduled traffic with frequent and regular port calls at the following port(s) located in *[insert name of the Member State]* according to a schedule or predetermined route:

[]

and calls at these ports at least once a fortnight:

[]

and has made an arrangement to ensure the payment of the fee and the delivery of waste to the port, or a third party at the port of:

[]

and is thus exempted, in accordance with *[Insert relevant article in national legislation of the country]*,

from the requirements on:

- mandatory delivery of waste from ships,
- the advance notification of waste, and
- the payment of the mandatory fee, at the following port(s):

²⁸ Delete if not appropriate

[]

This certificate is valid until [*insert date*], unless the grounds for issuing the certificate are changed before that date.

Place and Date

.....

Name

Title
