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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Shipping
N° Cion doc.:	10119/23 + ADD 1
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences - Comments by Belgium

Delegations will find attached comments by **Belgium** on the above proposal.

Written comments by Belgium on the Ship Source Pollution Directive**General:**

Belgium welcomes the proposal for a revised SSP directive and its modernization. BE support the goals of the proposal:

- It's important to strengthen the communication and cooperation between the members states to increase the effectiveness of enforcement;
- BE supports the expansion of the scope which will provide for a more uniform interpretation and enforcement;
- BE supports the importance of administrative penalties as one of the means to achieve compliance.

BE remarks:

Proposal	BE Proposal	BE Position
Article 1 Amendments to Directive 2005/35/EC Directive 2005/35/EC is amended as follows:		
(1) The title is replaced by the following: 'Directive of the European Parliament and of the Council on the enforcement of international standards on pollution from ships and on the introduction of penalties for pollution offences';	(1) The title is replaced by the following: 'Directive of the European Parliament and of the Council on the enforcement of international standards on pollution from ships and on the introduction of <u>administrative</u> penalties for pollution offences';	BE supports the change in title. Belgium propose to refer in the title to "administrative penalties" and not "penalties" since the focus of this directive lays on administrative penalties and not criminal penalties .
(2) Article 1 Purpose 1. The purpose of this Directive is to incorporate into Union law international standards on pollution from ships and to ensure that persons responsible for illegal discharges of polluting substances are subject to dissuasive, effective and proportionate administrative penalties in order to improve maritime safety and to enhance protection of the marine environment from pollution by ships.		BE supports the focus on administrative penalties and its importance in the enforcement policy. This is already provided in Belgian legislation where criminal and administrative sanctions work together to achieve a better compliance.

2. This Directive does not prevent Member States from taking more stringent measures in conformity with international law, by providing for administrative or criminal penalties in accordance with their national law.’;	2. This Directive does not prevent Member States from taking more stringent measures in conformity with international law, by providing for administrative or criminal penalties in accordance with their national law.’;	BE supports this article. It’s important that MS can be stricter when necessary. We have for example more stringent legislation for open loop scrubbers. Delete reference to criminal penalties since this directives only contains administrative penalties.
(3) Article 2 is replaced by the following:		
‘Article 2		
Definitions		
6. ‘company’ means the shipowner or any other organisation or person, such as the manager or the bareboat charterer, which has assumed the responsibility for the operation of the ship from the shipowner.’;		BE supports the alignment with the ISM code. It’s important to have a broad definition so the responsible person can be held liable. Some flexibility is needed.
(4) Article 4 is replaced by the following:		
‘Article 4		BE can support the proposal in extending the scope. In Belgium these discharges are already infringements and sanctioned by criminal and administrative sanctions. BE supports also the removal of “minor cases”. This term caused difficulties in interpretation and will help us to prosecute more successfully.
(8) In Article 6, the following paragraph 3 is added:		
3. An indicative list of irregularities or information within the meaning of paragraph 1 is provided in Annex I to this Directive.’;	3. An indicative list of irregularities or information within the meaning of paragraph 1 is provided in Annex I to this Directive.’	Belgium doesn’t support this paragraph and suggests to delete it. This contains an obligation to inspect. We have to take into account the current workload of the Port State Control. Inspectors always have a margin of appreciation and every case is different. In many cases the proposed criteria will lead to an inspection however this can’t be an obligation.

(9) Article 8 is replaced by the following		
<i>Article 8</i>		
Penalties		
1. Without prejudice to the obligations of Member States under Directive (EU) 2023/xxxx36 Member States shall lay down a system of administrative penalties for the breach of national provisions implementing Articles 4 and Article 5(2) of this Directive and shall ensure that they are applied. The administrative penalties provided for shall be dissuasive, effective and proportionate.		BE supports
2. Member States shall ensure that penalties introduced in transposition of this Directive include fines which are imposed to the company at the time of the infringement, unless the company can prove that the master or, if not acting under the responsibility of the master, the crew was responsible for the infringement.	2. Member States shall ensure that penalties introduced in transposition of this Directive include fines which are imposed to the company at the time of the infringement, unless the company can prove that the master or, if not acting under the responsibility of the master, the crew was responsible for the infringement.	BE doesn't support this paragraph and would prefer to delete it. We are of the opinion that the company should remain liable. In Belgium we already made the necessary legal changes to make this possible. Belgium supports the decriminalization of the seafarer. This article is formulated too general. All things on board a ship fall under the responsibility of the master. Therefore we would like to delete this paragraph.
3. In the case that it is proven that the master or, if not acting under the responsibility of the master, the crew was responsible for the commission of the relevant infringement, Member States shall ensure that penalties are imposed to such persons in accordance with the provisions of this Directive.';	3. In the case that it is proven that the master or, if not acting under the responsibility of the master, the crew was responsible for the commission of the relevant infringement, Member States shall ensure that penalties are imposed to such persons in accordance with the provisions of this Directive.';	BE would like to delete this paragraph in line with the previous paragraph.
(10) Article 8a is deleted;	(10) Article 8a is deleted;	
(11) Article 8b is deleted;	(11) Article 8b is deleted;	

<i>'Article 8d</i>	<i>'Article 8d</i>	
Effective application of penalties	Effective application of penalties	
1. Member States shall ensure that, when determining and applying the type and level of administrative penalty to a natural or legal person found by competent authorities to be responsible for an infringement within the meaning of Articles 4 and 5(2), the competent authorities take into account all relevant circumstances of the infringement, including:	1. Member States shall ensure that, when determining and applying the type and level of administrative penalty to a natural or legal person found by competent authorities to be responsible for an infringement within the meaning of Articles 4 and 5(2), the competent authorities take into account all relevant circumstances of the infringement, including <u>but not limited to:</u>	BE supports this article. These criteria are a first step to create uniformity and helps creating a level playing field. It's important that a general set of criteria are determined but it should be made clear that also other relevant criteria could be used when required. Therefore we propose to add "but not limited to" to the proposed text.
(a) the nature, gravity and the duration of the discharge;	(a) the nature, gravity and the duration of the discharge;	
(b) the degree of culpability of the responsible person;	(b) the degree of culpability of the responsible person;	
(c) the damage caused from the discharge to the environment or human health;	(c) the damage caused from the discharge to the environment or human health;	
(d) the financial strength of the responsible person, taking into account, as appropriate, the annual world-wide turnover of the responsible legal person;	(d) the financial strength of the responsible person, taking into account, as appropriate, the annual world-wide turnover of the responsible legal person;	
(e) the economic benefits generated or expected to be generated for the responsible person from the infringement;	(e) the economic benefits generated or expected to be generated for the responsible person from the infringement;	
(f) measures taken by the responsible person to prevent the discharge or mitigate its impacts;	(f) measures taken by the responsible person to prevent the discharge or mitigate its impacts;	
(g) the level of cooperation of the responsible person with the competent authority, including any action aiming to circumvent or obstruct an appropriate inspection or other investigation by a competent authority; and	(g) the level of cooperation of the responsible person with the competent authority, including any action aiming to circumvent or obstruct an appropriate inspection or other investigation by a competent authority; and	
(h) any previous infringement by the responsible person.		
2. In order to ensure the uniform application of this Article, the Commission may, by means of implementing acts,		

lay down detailed rules on the criteria to be considered by Member States when applying penalties in respect of each type of polluting substance pursuant to this Directive. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13.';		
(14) Article 10 is replaced by the following:		
<i>'Article 10</i>		
Exchange of information and experience		BE supports this article. It's important to have the necessary tools available to enhance the implementation of this directive and to exchange the necessary information between the relevant competent authorities.
1. For the purposes of this Directive, the Member States and the Commission shall cooperate in the exchange of information, building on the Union Maritime Information and Exchange System set out in Article 22a(3) of and Annex III to Directive 2002/59/EC ³⁷ (SafeSeaNet), in order to attain the following objectives:		
(a) enhance the information required for the effective implementation of this Directive, in particular as provided by the European satellite-based pollution detection service set up by this Directive (CleanSeaNet), with a view to develop reliable methods of tracing polluting substances in the sea;		
(b) develop and implement an appropriate control and monitoring system, integrating information provided under paragraph (a) with information made available in SafeSeaNet and other Union information databases and tools, including		

<p>disseminating information on actual or potential discharges of Exhaust Gas Cleaning System residue to the dedicated module of THETIS set up by under Commission Implementing Decision 2015/25338 (THETIS-EU), in order to facilitate the early identification and monitoring of ships discharging polluting substances, with a view to optimise enforcement actions undertaken by national authorities;</p>		
<p>(c) make optimum use of the information provided in accordance with paragraph (a) and (b) as well as reported by Member States pursuant to Article 10a, with a view to facilitate access to and exchange of such information between competent authorities and with authorities of other Member States and the Commission; and</p>		
<p>(d) within three years from the date of transposition of this Directive, ensure that competent authorities verify at least 10% of the alerts sent by CleanSeaNet every year.</p>	<p>(d) within three years from the date of transposition of this Directive, ensure that competent authorities verify at least 10% of the alerts sent by CleanSeaNet every year. <u>Verify means the follow-up by competent authorities of an alert sent by CleanSeaNet or the reasons for not following up such an alert.</u></p>	<p>Belgium supports the benefits of this disposition. However, BE proposes to better define what is mentioned under “verify”. At the moment Belgium verifies 100% of the alerts sent by CSN. However there are many reasons why a verification above sea is not done or is not operationally relevant (many spots are simply very limited or false alerts that do not need to be verified). So things are certainly going well with the Belgian follow-up, but verifications in the field are not always linked to whether or not the CSN alerts are followed up properly. Therefor it should be clarified that verify in this case means “the follow-up by competent authorities of an alert sent by CleanSeaNet or</p>

		the reasons for not following up such an alert“
2. The Commission shall provide for the organisation of exchange of experiences between Member States' national authorities and experts, including those from the private sector, civil society and trade unions, on the application of this Directive across the Union, with a view to establish common practices and guidelines on the enforcement of this Directive.’;	2. The Commission shall provide for the organisation of exchange of experiences between Member States' national authorities and experts, including those from the private sector, civil society and trade unions, on the application of this Directive across the Union, with a view to establish common practices and guidelines on the enforcement	Guidelines should be provided on international level (IMO). BE would therefore prefer to delete this paragraph.
(15) The following Articles 10a, 10b, 10c and 10d are inserted:		
<i>Article 10c</i>	<i>Article 10c</i>	
Publication of information	Publication of information	Belgium would like to delete this article. Belgium has its doubts about the effectiveness of this article. The public information would be just partial because this only concerns administrative penalties and not the criminal penalties. In our view this would create a wrong image. And also what if there is a change in company but the sanctions is always linked to the ship?
1. Based on information reported by Member States in accordance with Article 10a, the Commission shall make publicly available a regularly updated Union-wide overview on the implementation and enforcement of this Directive. The overview shall include the information listed in Annex II to this Directive.	1. Based on information reported by Member States in accordance with Article 10a, the Commission shall make publicly available a regularly updated Union-wide overview on the implementation and enforcement of this Directive. The overview shall include the information listed in Annex II to this Directive.	
2. Without prejudice to Directive 2003/4/EC39, the Commission shall take appropriate measures to protect the confidentiality of information obtained in	2. Without prejudice to Directive 2003/4/EC39, the Commission shall take appropriate measures to protect the confidentiality of information obtained in	

implementation of this Directive.	implementation of this Directive.	
(18) The following Article 12a is inserted:		
<i>'Article 12a</i>		
Evaluation and review		
2. As part of the review, the Commission shall assess the possibility of modifying the scope of this Directive, if appropriate, in view of among other elements the international standards for the prevention of air pollution from ships subject to regulation by Marpol 73/78, notably sulphur oxide and nitrogen oxide emissions from ships, as well as in view of other standards regulating discharges from ships which have been made subject to regulation by Marpol 73/78, such as black carbon, marine litter, container loss, loss of plastic pellets and underwater noise.'		BE supports this article. It is important that new developments regarding IMO standards for air pollution caused by ships, such as the existing NOx and SOx standards, are taken into account during the next review of this directive.