



Council of the European Union
General Secretariat

Brussels, 17 November 2023

**Interinstitutional files:
2023/0171 (COD)**

WK 15354/2023 INIT

LIMITE

TRANS

MAR

OMI

CODEC

ENV

IA

DROIPEN

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Shipping
N° prev. doc.:	ST 15117/23
N° Cion doc.:	ST 10119/23 + ADD1
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 Germany

Delegations will find attached comments by Germany on the above proposal.

Further written comments by Germany

on the Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences

–

Revised First Presidency compromise proposal
(WK 14503/2023)

We hereby submit our comments with regard to the second compromise proposal.

Recital 6:

We do not support the proposed deletion. There are provisions with regard to scrubber sewage in the Directive (EU) 2016/802 relating to a reduction in the sulphur content of certain liquid fuels. The observance already has to be guaranteed and infringements have to be sanctioned. (PH value 8,0 (see Annex II of Art. 8 (4) of the Directive). Therefore, it would be an infringement of the sulphur-Directive to limit the sanctions to EGCS-residue violations. Therefore, we oppose the deletion and propose to add the PH value 8,00 in Annex I para. 3 of this Directive.

Recital 6bis:

We do not understand the Presidency's comment with regard to this recital, because the Directive does not differentiate between open and closed loop scrubber, therefore we would like to ask for further explanation.

Art. 6 (Enforcement measures...)

To our understanding the meaning of "*appropriate inspection, taking into account the relevant guidelines adopted by the International Maritime Organisation (IMO),...*" (Art. 6 (1)) remains unclear. What is „appropriate“ in this context? Which „guidelines“ should be relevant? This should be clarified.

Also there could be a possible circular reasoning involved: Annex 1 contains the „irregularities“ which give reason to an „appropriate inspection“. These irregularities can be findings within a PSC-inspection. If „appropriate inspection“ under Art. 6 is PSC in the end the PSC gives reason to conduct another PSC. The inspections should be triggered by alarms through CleanSeaNet though (recital 13).

Art. 8 (*Penalties*):

We welcome the Presidency's new wording for Art. 8 (2). However, we would like to ask for clarification why the wording with regard to the "company" is "found liable" and with regard to other persons the wording is "found responsible". In both cases natural and legal persons can be affected, therefore the wording should be the same. We would propose to use "found liable" in both cases.

Art. 10a (*Reporting*):

We propose to include a minimum threshold for reporting requirements. Otherwise the administrative burden for the reporting authorities will be too heavy if every single minor occurrence has to be reported. Therefore, we propose the following wording:

“2. Member States shall ensure that the following information relating to the actions undertaken by their competent authorities is reported through the electronic reporting tool referred to in paragraph 1, once the legal and administrative procedures are concluded **and the incident is not a minor occurrence according to national regulations.**”

Art. 10d *(Protection of persons who report potential infringements)*

With regard to Art. 10d the relationship of the new reporting channel to be set up at EU level to the reporting channels to be set up at national level in accordance with Directive (EU) 2019/1937 of 23 October 2019 on the on the protection of persons who report breaches of Union law has to be clarified. As the Directive 2005/35/EC is mentioned in its Annex Part I, the Directive 2019/1937, the latter applies to it (Art. 2 paragraph 1 a Directive 2019/1937).

We reserve the right to further comment on the proposal.