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CONTRIBUTION

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 Sweden

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



Ministry of Rural Affairs and infrastructure



Sweden's comments on the proposal for amending Ship Source Pollution directive – 231117 (comments on the PCY idea paper from 16 Nov)

General comments

SE believes the pace of negotiation of this file has been very fast which has made it difficult to follow up on all relevant issues. These written comments are made with the best available knowledge, but we do not limit ourselves from raising additional comments at a later stage – albeit knowing the PCY ambition on the timetable. Comments/proposal in article 8.1 and related recital 8 is of great importance for Sweden.

Detail comments

Recital (6)

"... Since EGCS residue ~~and discharge water~~ **may** cause pollution to the marine environment, the penalties provided under Directive 2005/35/EC should apply in case of illegal discharges."

Position: The word "may" should be deleted from the sentence.

Justification: Any waste from the EGCS residue contains hazardous substances for the marine environment, regardless to whether it's legal or not.

Recital (6bis)

However, where local or regional sensitive waters/environment exist, the discharge waters from EGCS may ~~potentially~~ affect the ecosystem although they are complying with MARPOL.

Position: SE propose to delete “potentially”.

Justification: The proposed text is better than original but it’s unnecessary to write both “may” and “potentially”.

Recital (8)

Position: SE propose to add green text and to replace “or” with “and is” in the last sentence.

8) Administrative penalties introduced in transposition of Directive 2005/35/EC, **in accordance with article 1**, should be without prejudice to Directive (EU) 2023/xxxx. Member States should define the scope of administrative and criminal law enforcement with regards to ship-source pollution offences according to their national law. In the application of national law transposing Directive 2005/35/EC, Member States should ensure that the imposition of criminal penalties and of administrative penalties respects the principles of the Charter of Fundamental Rights of the European Union, including the prohibition of *ne bis in idem* **and is** ~~or~~ **in line with the polluter pays principle.**

Justification: the recital already refers to the MS right to respect “national law” when it comes to designing the respective penalty system. Article 1 (2) as well gives this flexibility. This addition just makes it a bit clearer and also reflect the requirements given in Article 1 (1).

Recital (9)

The reference to 8.3. should be deleted as 8.3 is deleted.

Article 4.1(f)

Position: Ref to 14.1, 14.4 and 14.6 should be deleted.

Justification: SE believe it is not relevant to refer to these regulations regarding the release of EGCS residues

Article 4.3.

Position: Consider delete entire sub-article

Justification: As ref to exemptions is brought into article 4.1, article 4.3. seem to be redundant. We ask PCY do look into this as the extremely limited time makes it hard to cross-check everything.

Article 8.1.

Position:

Without prejudice to the obligations of Member States under Directive (EU) 2023/xxxx and Member States shall, **as provided for by Article 1 and in accordance with their national law, 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 **in all cases** be dissuasive, effective and proportionate ~~in line with the polluter pays principle~~.

Justification: Copying parts of what COM proposed in recital 8 (national law) to the article, and referring to the obligations under Article 1, reflecting the requirements given in Article 1 (1) and the flexibility given in Article 1 (2).

Article 8.2.

Position: SE prefer the wording:

Member States shall ensure that the administrative penalties introduced in the transposition of this Directive include fines imposed on the company at the time of the infringement **unless the investigation identifies other legal or natural person as responsible for the infringement**

However, in the spirit of compromise we can support the PCY proposal:

Member States shall ensure that the **administrative** penalties introduced in the transposition of this Directive include fines imposed on the company at the time of the infringement ~~unless the investigation identifies other legal or natural person as responsible for the infringement where the company was found liable.~~ Member States may also impose fines on other natural or legal persons if they are found responsible of the infringement. ~~the company can prove that that the master or, if not acting under the responsibility of the master, the crew another natural or legal person was responsible for the infringement.~~

Article 10.1d

Current wording is not clear, especially “such percentage shall be communicated in advance to the Commission”. SE support in general the 10% and supports proposal from FI.

(d) within three years from the date of transposition of this Directive, ensure that competent authorities verify ~~a certain percentage of at least 10% of the class A alerts sent by CleanSeaNet every year according to Member States capabilities, where verify means necessary verification activities by the competent authorities of that Member State to ascertain whether the alert in question [was accurate] / [presented an illegal discharge]~~ ~~the follow-up actions by competent authorities of an alert sent by CleanSeaNet, or the reasons for not following up such an alert, taking into account Member States' capabilities [OR: capacities]. Such percentage shall be communicated in advance to the Commission.~~

Article 12a.2

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 new or updated** the international standards for the prevention of **air** pollution from ships subject to present and future regulations 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.~~

Position: Delete “air”

Justification: The review needs to include, if appropriate, all changes in all MARPOL Annexes. Although “air” is the only part of MARPOL not included in the scope for the moment, we don’t know how future changes might affect MARPOL.