

## 【欧州】 【海事】

# Maritime Transport - Environmental issues: The European Parliament and the Council reach provisional agreement on the revision of directive on ship-source pollution

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### 【概要 : Summary】

The European Green Deal's main target to reach climate-neutrality by 2050 should be achieved by transforming the EU's economy into a net-zero GHG emission economy. The most serious challenge facing the transport sector is to significantly reduce its emissions and become more sustainable. Regarding pollution from maritime transport, the Directive 2005/35/EC transposes MARPOL international standards regarding oil and noxious liquid substances in bulk into EU law, ensuring Member States establish penalties and collaborate on enforcement with the European Maritime Safety Agency (EMSA).

On 1 June 2023, the European Commission presented five legislative proposals under the maritime safety package to modernise EU rules on maritime safety and preventing and reducing pollution from ships. One legislative proposal COM (2023) 273 final is intended to revise Directive 2005/35/EC on ship-pollution from ships, based on MARPOL standards. The proposal on a revision of Directive 2005/35/EC aims to enlarge the scope of Directive 2005/35/EC to cover more polluting substances and types of illegal discharges into European seas, including garbage and sewage. The revision considers the shortcomings of Directive 2005/35/EC and intends

to enforce international pollution prevention standards within the EU. Accordingly, the proposal COM (2023) 273 final aims at incorporating all MARPOL Annexes of international standards into EU law to decrease pollution from maritime transport. The revised Directive will also support EU Member States to improve their capacity to detect pollution incidents, collect and verify evidence, and to effectively penalise identified offenders, thereby ensuring that illegal discharges from ships into the sea are subject to effective penalties. EMSA's CleanSeaNet database will be optimized for surveillance and information sharing, extending its coverage to all pollutants.

The European Parliament and the Council's provisional agreement on the revision of Directive 2005/35/EC of 15 February 2024 will have to be formally adopted before the legislation will enter into force and the EU Member States will have 30 months to transpose the new provisions into national law. The prevention and reduction of pollution from ships, based on the new law, is expected to lower the environmental impact of maritime transport activities.

【記事 : Article】

## 1. The legislative package on modernising maritime safety

The European Green Deal emphasised the need to accelerate the transition to a zero pollution and climate-neutral economy, including a shift to sustainable maritime transport.

The EU's policies on preventing pollution from ships were developed in the wake of two major maritime accidents involving the ships Erika in 1999 and Prestige in 2002, which caused substantial oil spills (COM(2023) 273 final, Council of the European Union 2024). In the EU, Directive 2005/35/EC regulates penalties for illegal discharges of oil and noxious liquid substances from ships into the sea. However, not all waste that is generated on ships must be delivered to ports and an illegal discharge is a discharge from a ship that does not meet the relevant International Maritime Organization (IMO) rules and standards set in the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) (COM(2023) 273 final). Based on the relevant standards of IMO's International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) rules, Directive 2005/35/EC has the main objective to incorporate those international standards into EU law and to ensure that those responsible for illegal discharges of polluting substances from ships into the sea are subject to effective and proportionate penalties (Council of the European Union 2023a). In particular, Directive 2005/35/EC transposes the MARPOL international standards relating to oil and noxious liquid substances in bulk (MARPOL Annexes I and II) into EU law (European Commission 2023b).

Directive 2005/35/EC also ensures that Member States set effective, proportionate, and dissuasive penalties for illegal discharges, and it also provides for collaboration on

enforcement across the EU with the support of EMSA (European Commission 2023b).

In 2022, the European Commission carried out the first ex-post evaluation of Directive 2005/35/EC and found that it had successfully contributed to the incorporation of international rules on ship-source pollution into EU Member State law and improved the detection of pollution from ships EC (Council of the European Union 2023a). However, the evaluation identified shortcomings, including the current scope of the Directive 2005/35/EC, which does not cover all relevant polluting substances of the international regime e.g. garbage or sewage discharges into sea (COM(2023) 273 final). Furthermore, the information exchange and/or expertise to effectively detect, verify and penalise pollution from ships are irregular across the EU Member States and generally insufficient. Moreover, there is an unbalance of the penalties for ship-source pollution currently applied across the EU and finally, the current reporting by Member States is incomplete, resulting in a lack of detailed information on ship-source pollution and related penalties imposed (COM(2023) 273 final). Accordingly, the proposed revision of Directive 2005/35/EC intends to prevent any type of illegal discharges into European seas and ultimately to decrease pollution of the sea from maritime transport, thereby lowering the environmental impact of maritime transport activities on the marine ecosystem (COM (2023) 273 final).

## 2. The main objectives of revising Directive 2005/35/EC on ship-source pollution

On 1 June 2023, the European Commission presented a maritime safety package, with five legislative proposals to modernise EU rules on maritime safety and to prevent water pollution from ships (European Commission 2023a). The legislative package also includes a proposal on revising the Directive on ship-source pollution (Directive

2005/35/EC) with proposal COM(2023) 273 final on the introduction of penalties on ship-source pollution (European Commission 2023a, see also Antolini 2024). Thereby, the revision of Directive 2005/35/EC should help to lower the environmental impact of maritime transport activities (COM (2023) 273 final).

The revision of the Directive 2005/35/EC has several main specific objectives, including to incorporate international standards into EU law by aligning the EU law with MARPOL Annexes on discharges into the sea. In this context, the European Commission has proposed to extend the current scope of Directive 2005/35/EC, which covers only oil (MARPOL Annex I) and noxious liquid substances in bulk (MARPOL Annex II), to more harmful substances carried by sea (Council of the European Union 2023a).

Therefore, considering these shortcomings of Directive 2005/35/EC individualised by the European Commission's ex-post evaluation, the proposal COM (2023) 273 final aims at incorporating all international standards on discharges into the sea in the MARPOL Annexes into EU law (COM(2023) 273 final). Accordingly, the revised directive aims at covering all illegal discharges of harmful substances from ships in EU waters (Council of the European Union 2024). Considering the objective to expand the scope of the new directive to cover all international standards covering polluting substances discharged illegally into the sea, the scope will not only cover oil and noxious liquid substances in bulk, but it will also include harmful substances in packaged form (MARPOL Annex III), sewage from ships (Annex IV), garbage from ships (Annex V) and the residues of exhaust gas cleaning systems (scrubbers) (as part of Annex VI) (European Commission 2023b, Council of the European Union 2023a). Moreover, based on proposal COM(2023) 273 final, the revised directive will support EU Member States by building their capacity to detect pollution

incidents, verify, collect evidence, and effectively penalise identified offenders in a timely and harmonised manner, ensuring that natural or legal persons responsible for illegal discharges from ships are subject to effective, proportionate, and dissuasive penalties. The revision will establish a strengthened legal framework for penalties and their effective application, enabling national authorities to ensure a dissuasive and consistent imposition of sanctions to ship-source pollution incidents in all European seas (Council of the European Union 2024). At the same time, the new directive based on COM (2023) 273 final will separate the administrative sanctions regime from the criminal sanctions' regime. Accordingly, the provisions related to criminal penalties will be removed from the revised directive for reasons of legal coherence with the future Environmental Crime Directive (COM(2021) 851 final), which the Council and the European Parliament found a provisional agreement on in November 2023 (European Parliament 2023, Council of the European Union 2023b).

Finally, the revised Directive will ensure simplified and effective reporting on ship-source pollution incidents and follow-up activities (COM(2023) 273 final, Council of the European Union 2023a). The Directive 2005/35/EC was the basis of creating the EU satellite-based oil spill monitoring and vessel detection service, CleanSeaNet service, managed by the European Maritime Safety Agency (EMSA). This EMSA's surveillance and information sharing database "CleanSeaNet" needed to be optimised, providing for information sharing and follow up obligations of national authorities (European Commission 2023a). The revision proposes to extend the surveillance services provided by EMSA through "CleanSeaNet" to cover all types of pollutants and to facilitate timely enforcement and cooperation between the EU Member States in case of cross-border ship-

source pollution incidents (European Commission 2023a, see also Antolini 2024).

Finally, the revised directive will secure a level playing field for the maritime sector while improving implementation and enforcement through an enhanced cooperation framework between European and national authorities (Council of the European Union 2024).

### 3. The European Parliament and the Council's provisional agreement on the revision of Directive 2005/35/EC

On 15 February 2024, the European Parliament and the Council of the European Union negotiators reached a provisional agreement on the Commission's proposal for a revision of the Directive 2005/35/EC, on ship-source pollution, to ensure safer and cleaner shipping in the EU, as part of the "maritime safety" legislative package (Council of the European Union 2024, COM (2023) 273 final).

The general improvements found in the European Commission proposal COM (2023) 273 final are retained by the co-legislators and the negotiators agreed to extend an existing ban on discharge of oil spills and noxious liquid substances by ships to include sewage, garbage and residues from exhaust gas cleaning systems (scrubbers) (European Parliament 2024). However, the provisional agreement introduces several changes to ensure clarity and coherence with international rules and procedures, in the interest of protection of the marine environment (European Parliament 2024, Council of the European Union 2024). In this context, the MEPs managed to secure an obligation for the EU to review the rules of the revised directive five years after their transposition into the EU Member States' national law to assess if marine plastic litter, loss of containers and plastic pellet spills from ships should also face penalties (European Parliament 2024).

Moreover, the European Parliament's MEPs ensured that EU Member States and the Commission will communicate more and better on pollution incidents, best practices to tackle pollution, and follow-up measures, following alerts by the European satellite system for oil spill and vessel detection via the EMSA's CleanSeaNet (European Parliament 2024). To prevent illegal discharge from dispersing and therefore becoming undetectable, the agreed text foresees the digital check of all high confidence CleanSeaNet alerts and an aim to verify at least 25% of them by the competent national authorities (European Parliament 2024).

Considering the differing legal systems in the Member States, the provisional agreement between the European Parliament and the Council also indicates more clearly that the legislation in question concerns administrative penalties only, thus drawing a clear line between the scope of this directive and that of the new draft legislation on environmental crimes (Council of the European Union 2024).

Finally, the Council made sure to introduce adequate flexibility to the EU Member States regarding their obligations to verify and report pollution incidents, to avoid imposing an excessive administrative burden and in recognition of the EU Member States' diverse situations in terms of geographical location, resources, and capabilities (Council of the European Union 2024).

The European Commission welcomed the provisional agreement on the revision of Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for pollution offences reached between the co-legislators (DG MOVE 2024). According to the Commission, the new rules will not only extend the scope of Directive 2005/35/EC but the revision will also improve transparency by making information available online regarding the pollution offences in European seas as well as on the penalties imposed.

Moreover, information will be made available online on how coastal authorities verified a potential spill after an alert by satellite surveillance (DG MOVE 2024).

There will be stronger tools and platforms for the exchange of information and EMSA's satellite surveillance for ship-source pollution and information sharing database CleanSeaNet will be improved (DG MOVE 2024). According to the European Commissioner for Transport, Adina Vălean "…the revised rules for ship-source pollution make it easier to impose effective penalties that discourage pollution in the future" (DG MOVE 2024).

The European Parliament and the Council of the European Union's provisional agreement on the revision of Directive 2005/35/EC of 15 February 2024 will now need to be approved by both co-legislators. After the formal adoption of the legislative act and the publication of the new rules in the Official Journal of the EU, they will enter into force 20 days later (DG MOVE 2024). After the entry into force of the revised directive, the EU Member States will have 30 months to transpose its provisions in their national legislation (Council of the European Union 2024).

#### 4. Conclusion

On 1 June 2023, the European Commission presented the revision of Directive 2005/35/EC on ship-source pollution as part of the Maritime Safety package for modernising and reinforcing the EU's maritime rules on safety and pollution prevention. The proposal COM(2023) 273 final is one of the initiatives that aim at reducing pollution from maritime transport in European seas and it is in line with the Smart and Sustainable Mobility Strategy COM(2020) 789 final and the Zero-Pollution Action Plan (COM (2021) 400 final).

The revised Directive 2005/35/EC on ship-source pollution incorporates the IMO MARPOL Annexes'

international standards into EU law. It widens the scope of the ship-source pollution types covered, from covering oil and noxious liquid substances in bulk in Directive 2005/35/EC to cover all harmful substances in packaged form (MARPOL Annex III), sewage from ships (Annex IV), garbage from ships (Annex V) and the residues of exhaust gas cleaning systems (as part of Annex VI). The new law will also ensure that those responsible for illegal discharges of polluting substances are subject to effective and proportionate penalties and to reaching an improvement not only of maritime safety but also to better protect the marine environment from any form of ship-source pollution. It is an essential step towards reaching a more sustainable maritime transport and to extend the scope of the Directive 2005/35/EC to cover more types of polluting substances discharged into the sea, including the residues of exhaustion cleaning systems, sewage and garbage.

The provisional agreement needs to be approved by both co-legislators before the formal adoption will lead to the entry into force of the revised Directive. The revision of the Directive 2005/35/EC is part of the EU's commitment towards the realisation of a sustainable maritime transport in the EU waters.

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