


COMBINED EVALUATION ROADMAP/INCEPTION IMPACT ASSESSMENT

This combined evaluation roadmap/Inception Impact Assessment aims to inform citizens and stakeholders about the Commission's work in order to allow them to provide feedback on the intended initiative and to  initiate effectively in future consultation activities. Citizens and stakeholders are, in particular, invited to provide views on the Commission's understanding of the current situation, problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE INITIATIVE	Revision of the Directive on ship-source pollution
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG MOVE, Unit D2 PLAN/2019/5432
LIKELY TYPE OF INITIATIVE	<i>Legislative proposal</i>
INDICATIVE PLANNING	Q3 2022
ADDITIONAL INFORMATION	https://ec.europa.eu/transport/modes/maritime/safety/actions_en

A. Context, Evaluation, Problem definition and Subsidiarity Check

Context

Prevention of pollution from ships, in whatever form, is at the heart of the EU maritime safety policy developed since 1992. According to Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements, Member States shall ensure that ship-source discharges of polluting substances are regarded as infringements, if committed with intent, recklessly or with serious negligence and sets out a common framework for how to deal with penalties, including criminal sanctions, for illegal discharges from ships.

The objective of the Directive is to protect the marine environment from ship-source pollution by incorporating international standards for ship-source pollution into EU law, as set out in the International Convention for the Prevention of Pollution from Ships (MARPOL), and to ensure that persons responsible for discharges of polluting substances are subject to adequate penalties, including criminal penalties. There have been considerable developments as regards protection of the marine environment against the negative effects from discharges from ships at both the international level in the International Maritime Organization (MARPOL Convention) and in EU legislation, as well as developments and enhancements in EU-wide surveillance systems to monitor activities at sea and in electronic reporting systems. An evaluation of the performance of the Directive on ship-source pollution and on the introduction of penalties for infringements is therefore necessary.

Directive 2019/883/EU on port reception facilities for the delivery of waste from ships in recital 13 calls on the Commission to assess the desirability of a review of the Directive on ship-source pollution, in particular a possible extension of its scope, in order to align Directive on ship-source pollution with the relevant MARPOL Convention provisions prohibiting the discharge of certain types of waste from ships. The Commission has confirmed its commitment to undertake such a review.

Furthermore, Directive 2008/99/EC on the protection of the environment through criminal law (the Environmental Crime Directive) is the EU's main horizontal instrument to protect the environment through criminal law. It is currently being revised, following an evaluation in 2019/20 that found that the Directive had no effect on the ground. One of the objectives of the review is to broaden its scope to include sectoral legislation that is currently not covered. Ship-Source pollution as regulated under Directive 2005/35/EC is currently not under the scope of the Environmental Crime Directive. It will be assessed whether the criminal law provisions currently in Directive 2005/35/EC should be moved to the Environmental Crime Directive.

The Directive on ship source pollution was amended in 2009 to oblige Member States to provide for criminal penalties in their national legislation, thereby linking it with the Environmental Crime Directive and the findings of the evaluation of the Environmental Crime Directive must therefore be taken into

account.

The European Green Deal Communication adopted by the European Commission on 11 December 2019 emphasised the need to accelerate the transition to a zero pollution and climate-neutral economy horizontally, including maritime transport within the shift to sustainable mobility. Having in place effective measures that contribute to reducing marine pollution from ships reflect the Green Deal priorities.

This initiative is also foreseen in the Sustainable and Smart mobility Strategy (action number 14) adopted on 9 December 2020.

This is the context in which a possible revision of the Directive on ship-source pollution and on the introduction of penalties for infringements will be considered.

Evaluation

The evaluation work will examine the effect the Directive on ship-source pollution and on the introduction of penalties for infringements has had in practice in terms of reducing illegal discharges from ships and how it contributed to the number of convictions or the level of imposed sanctions in the Member States. The evaluation work will examine the application and effects of the Directive from 1 April 2007 until 31 December 2020. The focus will be potential problems encountered with the implementation and application of the Directive and whether illegal discharges/pollution offences related to substances covered by this Directive have been subject to effective, proportionate and dissuasive penalties in Member States, and what the effect has been on overall ship source pollution in the EU.

The evaluation will cover the criteria of effectiveness, relevance, efficiency, coherence/complementarity and EU added value. Sanction types and levels may differ greatly among Member States, and the evaluation will assess their effectiveness in terms of protecting the marine environment. Under the criterion of efficiency, the Member States' costs to implement the Directive and to the extent possible, the benefits, will be assessed. In addition, the evaluation will also look at the possible potential to reduce regulatory burden. The coherence analysis will focus on the Directives' coherence with other instruments addressing maritime safety and enhanced protection of the marine environment, such as the Directive on port reception facilities for the delivery of waste from ships, the Environmental Crime Directive, as well as the Directive establishing a Community vessel traffic monitoring and information system, and the Directive on port state control. The findings of the evaluation of the Environmental Crime Directive will be taken into account. The evaluation will furthermore cover the enhanced coordination of the EU-wide digital reporting systems and services currently hosted in EMSA and in particular the linking e.g. between the THETIS EU, SafeSeaNet, CleanSeaNet systems, as well as systems used by EU Member States as flag States for the control of their fleet and their role in support of Member States in pursuing illegal activities before their courts and admissibility of such evidence.

Such a retrospective evaluation will be accompanied by a forward-looking analysis supported by a study, with a view to a possible proposal for a revision of the Directive in 2022. The evaluation will help determine what further amendments to the Directive would be needed beyond alignment with other EU and international legal instruments and addressing inconsistencies and thereby support the impact assessment work.

Problem the initiative aims to tackle

Despite increased surveillance and enforcement efforts, illegal discharges of oil and other polluting substances still regularly occur in European waters, and the detection, and therefore the number of prosecutions, remains low.

Possible causes of the problem include the following:

- The main incentive for illegal discharges from ships is the cost and time savings for operators as compared to delivering waste legally in ports.
- Maritime transport is by nature transboundary, and successful prosecution of polluters relies on mutual understanding of the legislation in place, exchange of information, and coordination between coastal, port and flag States. This leads to difficulties in enforcement.
- Sanction types and levels may differ greatly among Member States. This can lead to differences in their deterrent effect and affect their overall effectiveness to prevent pollution.

- EU legislation has only partially been updated over the last two decades to reflect important amendments to the MARPOL Convention and its Annexes, which have put in place stricter norms and prohibitions for discharges of waste from ships at sea.
- The EU-wide satellite surveillance and digital reporting systems currently hosted in the European Maritime Safety Agency (EMSA) to support Member States and facilitate the tracking and tracing of suspected ship source pollution are not optimally used or coordinated with a view to ensuring that they meet their full operational potential.

Basis for EU intervention (legal basis and subsidiarity check)

The initiative, in general, falls within the scope of maritime transport policy as referred to in Art. 100(2) TFEU (Treaty on the Functioning of the European Union).

The implementation of the MARPOL Convention shows discrepancies among Member States and there is thus a need to harmonise its implementation at EU level. In particular, the practices of Member States relating to the imposition of penalties for discharges of polluting substances from ships differ significantly which can influence the effectiveness of the intervention at EU level. Incidents of spills or discharges may cause pollution with cross-border effects. This also emphasizes the need to ensure efficient collaboration between Member States and coordination and coherence among relevant electronic reporting systems and formats to create an enhanced dissuasive effect. Measures of a dissuasive nature form an integral part of the EU's maritime safety policy, as they ensure a link between responsibility of each of the parties involved in the transport of polluting goods by sea and their exposure to penalties. In order to achieve effective protection of the marine environment, there is a need for effective, dissuasive and proportionate penalties for all pollution offences involving substances covered by MARPOL Annexes I, II, IV, V and VI.

B. Objectives and Policy options

This initiative will analyse how to strengthen the provisions in the Directive on ship-source pollution and on the introduction of penalties for infringements that their objectives are reached in practice.

Policy options will be developed after the evaluation. On the basis of current knowledge, options could include maintaining the existing provisions of the Directive, or amending the Directive as a consequence of developments at both the international level in the International Maritime Organization and in EU legislation, while ensuring coherence with the revision of the Environmental Crime Directive. It could be considered to combine the option to amend the Directive with non-legislative measures to provide more detailed guidance to support authorities involved in the enforcement chain in addressing illegal pollution as well as enhanced coordination with initiatives to tackle ship source pollution at regional level.

C. Preliminary Assessment of Expected Impacts

Likely economic impacts

Amendments concerning alignment or inconsistencies will relate to enforcement of up to date international standards for ship-source pollution. As the main incentive for illegal discharges are cost savings, improved enforcement should create a more level playing field for operators who comply with the applicable rules. As regards the costs for Member States in relation to increased coherence and coordination between existing reporting mechanisms, most of the necessary monitoring and enforcement tools already exist, but improvements could bring one-off costs. However, these are expected to be off-set by long term administrative savings (better flow of information between authorities, better targeting of surveillance and inspections).

Likely social impacts

The protection of the environment and prevention of pollution of ships contributes to beneficial social impacts with positive impacts on security and human health. Effective law enforcement and dissuasive penalties contribute to preventing crime and strengthening the common values that unite a society, including the trust in its institutions.

Likely environmental impacts

The environmental impacts to be expected are defined in terms of protection of the marine environment, and more specifically a reduction in illegal discharges from ships at sea. Reduced levels

of ship-source pollution in the marine environment result in cleaner seas and have a positive effect on marine ecosystems and associated ecosystem services. Reduced marine pollution has a positive impact on economic activities, such as fishing and tourism.

The benefits of reduced illegal discharges at sea are undisputed, but at the same time are difficult to quantify.

Likely impacts on fundamental rights

No significant impacts on fundamental rights are expected.

Likely impacts on simplification and/or administrative burden

The revision should lead to increased coherence and coordination between existing reporting mechanisms, which will simplify reporting procedures and reduce administrative burden.

D. Evidence base, Data collection and Better Regulation Instruments

Impact assessment

A back-to-back evaluation and impact assessment will be carried out. The evaluation will assess how the Directive has been working to date and might identify further necessary improvements.

Evidence base and data collection

The evaluation will draw on views and experiences of relevant stakeholders and the general public in order to collect relevant data and information on all the evaluation criteria described above.

The evaluation will take into account:

- Data collected by Member States since 1 April 2007.
- Data from relevant regional organisations dealing with maritime pollution from ships.
- Data from existing studies regarding illegal discharges from ships.
- Data available at EMSA.
- Data available from international organisations, both public and private, e.g. the International Maritime Organization, the International Oil Pollution Compensation Funds, the International Tanker Owners Pollution Federation, insurance and re-insurance.
- Articles and other input from academia.

Consultation strategy

A public consultation questionnaire will be published on the Commission's central public consultation page in the first quarter of 2021 for 12 weeks on: <https://ec.europa.eu/info/law/better-regulation/have-your-say>. The public consultation will aim at identifying current shortcomings of the implementation and enforcement of international standards for ship source pollution in the EU and gather evidence regarding possible legislative measures to overcome these shortcomings.

The consultation will be available in all EU languages. Replies to the public consultation may be submitted in any of the official EU languages. The results of the public consultation will be published on the public consultation website of the Commission soon after closure of the public consultation. A synopsis report summarising the results of all consultation activities will be published on the DG MOVE website: https://ec.europa.eu/transport/media/consultations_en.

In parallel, targeted consultations of relevant stakeholders will also be conducted. The main stakeholders to be targeted should include Member States' competent authorities, shipowners' associations and organisations, environmental associations and organisations, stakeholders in the maritime industry and concerned businesses, recognised organisations, academia and relevant international, regional and European bodies and EMSA dealing with maritime pollution from ships. Consultations may take the form of targeted questionnaires, workshops and interviews.

Consultation will furthermore take place in the Sub-Group on waste from ships within the framework of the European Sustainable Shipping Forum as well as in the Committee of Safe Seas and the Prevention of Pollution from Ships (COSS). A seminar will be organised to involve experts from relevant regional sea conventions. Consideration will be given to involving the established experts groups and fora dealing with the various EU-wide maritime surveillance systems as well as dedicated expert groups hosted in EMSA.

Will an Implementation plan be established?

An implementation plan will be established to help Member States to transpose and implement the revised Directive in a consistent manner.