

## **Shipping industry position on the proposal on ship-source pollution**

ECSA, ICS, the International Group of P&I Clubs and CLIA (hereinafter 'the shipping industry') welcome the Commission's proposal to amend the ship source pollution directive (SSPD). The shipping industry supports the revision and recognises that it is a necessary and positive step forward.

The shipping industry supports the purpose of SSPD to incorporate international standards on pollution from ships into Union law and to ensure that offenses are subject to effective and dissuasive penalties (Article 1 SSPD proposal).

In parallel, the shipping industry has identified the following areas which should be improved to ensure that the directive is fit for purpose.

### **a) Exhaust Gas Cleaning System (EGCS) residues**

- The Commission's proposed EGCS residue definition goes beyond MARPOL when including "or other residue material removed from the exhaust gas cleaning system discharged overboard as a result of the operation of a compliance method for emissions reductions, as defined in Annex VI Regulation 4 to Marpol 73/78" (Article 2(3) SSPD proposal)<sup>1</sup>.
- This wording seems to be unclear and may create legal uncertainty. In addition, the definition of 'discharge' has been included only in the definition of EGCS residue, even though the term discharge is used throughout the Directive and for discharges other than EGCS residue. As it currently reads, the proposal may wrongfully be read as preventing the discharge of washwater. Therefore, a full alignment with the MARPOL definition is needed to avoid any unclarity.
- A full alignment with MARPOL on the EGCS definition is also necessary to ensure a level playing field internationally. A regulatory fragmentation between

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<sup>1</sup> EGCS residue is dealt with in resolution MEPC.340(77) which is referred to in Regulation 4 of MARPOL VI. The definition of EGCS Residue in resolution MEPC.340(77) is as follows: "*Material removed from the washwater or the bleed-off water by a treatment system or discharge water that does not meet the discharge criterion, or other residue material removed from the EGCS.*"

the EU and the rest of the world, and in particular with non-EU neighbouring countries, may undermine the competitiveness of European shipping.

- IMO discussed at the Marine Environment Protection Committee (MEPC 80) in July 2023 the EU submission (MEPC 80/5/5) for a potential future amendment on EGCS. It has now been forwarded to the Sub-Committee on Pollution Prevention and Response (PPR 11), which is scheduled for February 2024 and will advise MEPC 81 (April 2024) on the matter.
- The use of EGCS is permitted under Directive 2016/802 and washwater discharges from EGCS are allowed if they comply with the criteria as set under Annex VI Regulation 4 of MARPOL and Resolution MEPC.340 (Guidelines for Exhaust Gas Cleaning Systems).
- The shipping industry welcomes that Article 4(1)f) of the SSPD refers to certain MARPOL Annex VI Regulations. However, it is vital that **Article 4(1)f) of the SSPD includes** a reference **to Regulation 4 of MARPOL Annex VI and to relevant IMO Guidelines including Resolution MEPC.340(77)**. This will provide continued adherence to international standards and ensure that vessels can continue their operations while using their EGCS. Any change to the contrary would potentially introduce significant operational changes for shipowners, notwithstanding the legal uncertainty that would ensue.

#### **b) Review clause on air pollution (sulphur oxide and nitrogen oxide emissions)**

- Article 12a of the proposal mentions a possible future review of SSPD which would examine the possibility of modifying the scope of this Directive in view of international standards under MARPOL, notably to include sulphur oxide (SO<sub>x</sub>) and nitrogen oxide (NO<sub>x</sub>) emissions from ships.
- However, the shipping industry agrees with the Impact Assessment report which accompanies the proposal that the **SSPD is not the right instrument to address the issue of air pollution from international shipping**. The Impact Assessment report discarded at an early stage the inclusion of air emissions covered by MARPOL Annex VI (e.g. SO<sub>x</sub>, NO<sub>x</sub>, VOC, PM) under the scope of the SSPD.<sup>2</sup>

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<sup>2</sup> SWD(2023) 159 final, Commission staff working document Impact assessment report, accompanying the proposal for a directive on ship-source pollution, Part 1, page 118.

- Due to the different nature of air and water pollution, different regulatory and enforcement mechanisms for illegal concentrations of pollutants in air due to emissions from ships, such as SO<sub>x</sub> and NO<sub>x</sub>, and for water pollution were adopted at international and EU level. They provide an implementable and dissuasive regime. For instance, Directive (EU) 2016/802), which aims to reduce the emissions of sulphur dioxide (SO<sub>x</sub>), already includes penalties.
- Inclusion of new penalties for air emissions in the SSPD would not bring an added value and would create uncertainty in enforcement. As highlighted by the Impact Assessment of the Commission, “extending the scope of the SSP to No<sub>x</sub> or SO<sub>x</sub> air emissions would overlap with existing EU law provisions and enforcement mechanisms in place, contributing to over-regulation, which could result in incoherent regimes. Furthermore, the inclusion of these emissions within the SSP Directive would result in double punishment”.
- Article 12a should thus mention clearly that a review should only be sought if new or updated standards have been agreed at international level.

### c) Publication of ships' identification

- In accordance with Article 10c, Annex II of the proposal stipulates that a ship's identification involved in an infringement will be published in an Union-wide overview. However, it may be proven that the Master or a crew member was responsible for the infringement as recognised in Article 8 of the proposal.
- Thus, when a vessel is allegedly involved in a marine pollution accident, the publication of its information should await until the respective investigation and relevant administrative and/or penal proceedings are completed. **Unfounded offences published in the Union-wide overview will lead to a negative impact for the ship/shipowner** concerned as clean records of ships and companies are important for commercial operations.
- A right to appeal and to object before a name of the ship/IMO number is made public should be created. The right to objection should be included and the appeal/objection procedures should be first finalised before publication of the offence and the identification of the ship or company.

### d) Application of exceptions

- MARPOL allows for the discharge of substances of all categories “for the purpose of securing the safety of a ship or saving life at sea”. In addition, discharges which are a result of damage to the vessel are not subject to penalties under certain conditions referred to in MARPOL, as it has been set out in Article 5 of the SSPD. However, in Article 5 the application of these exceptions is not extended to the territorial sea.
- MARPOL does not make a distinction in the application of its exceptions. This is because it is accepted that criminal or administrative penalties cannot deter pollution that is a result of an accident or that is necessary for saving life at sea. **Under MARPOL, this principle applies in the territorial sea equally to the EEZ and the high seas.** Article 5 of the SSPD should be amended accordingly.

#### **e) Environmental Crime Directive alignment/ application of exceptions**

- As it currently reads, the reference to Article 4 of SSPD by the Environmental Crime Directive (ECD) could lead to an extension of criminal sanctions to the new enlarged scope of the SSPD. At present, criminal penalties could include a term of imprisonment. If a term of imprisonment is imposed on a foreign seafarer by a coastal or port State then this would be in breach of Article 230 of UNCLOS, which provides that monetary penalties only may be imposed except for acts of pollution in the territorial sea which are both “wilful and serious”. The EU and its Member States are contracting Parties to UNCLOS.
- The reference to “serious negligence” in Article 3 (2) of ECD leaves room for uncertainty. The need for alignment with international rules still exists. The term “when committed with at least serious negligence” in ECD must be interpreted in line with the MARPOL standard of conduct “with intent to cause damage or recklessly and with knowledge that damage would probably result” for legal coherence with Article 5 (2) of the SSPD amending proposal. As it reads, serious negligence in the ECD could be interpreted to include accidental pollution.
- As a result, to ensure legal certainty, Article 5 of SSPD should provide that **Article 3(2) of ECD should be read in strict accordance with the exception mentioned in Article 5(2) of SSPD.**

*ECSA represents 20 national shipowners' associations based in the EU and Norway. European shipowners control 39.5% of the global commercial fleet, contribute 149 billion euros per year to the EU GDP and provide 2 million Europeans with careers both on board and ashore. ECSA strives for a regulatory environment that fosters the international competitiveness of European shipping, to the benefit of the EU.*

*The International Chamber of Shipping is an international trade association representing shipowners and operators in all sectors and trades and is concerned with all technical, legal, employment affairs and policy issues that may affect international shipping. Its membership comprises national shipowners' associations in the United States and the Americas, Asia and Europe and whose member shipping companies operate over 80% of the world's merchant tonnage.*

*The International Group of P&I Clubs (IG) consists of twelve member associations (clubs) which between them provide shipowners liability insurance cover (protection and indemnity) for approximately 90% of the world's ocean-going tonnage. Each IG club is an independent, non-profit making mutual insurance association, providing cover for its ship owner and charterer members against third party liabilities relating to the use and operation of ships. Clubs cover a wide range of liabilities including ship sourced pollution damage (including oil pollution), personal injury to crew, passengers and others on board, cargo loss and damage, wreck removal and dock damage.*

*Cruise Lines International Association (CLIA) is the world's largest cruise industry trade association, providing a unified voice for the industry as the leading authority of the global cruise community. On behalf of its members, affiliates and partners, the organization supports policies and practices that foster a secure, healthy, and sustainable cruise ship environment, promoting positive travel experiences for the more than 30 million passengers who have cruised annually. The CLIA community includes the world's most prestigious ocean, river, and specialty cruise lines; a highly trained and certified travel agent community; and a widespread network of stakeholders, including ports & destinations, ship development, suppliers, and business services.*