



European Maritime Safety Agency

### **Workshop Report**

Enhancing the effectiveness of the law enforcement chain in combating illegal discharges

**15-16 February 2011, Lisboa**

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## ***Background***

Based on article 10.2.a) of Directive 2005/35/EC, as later amended by Directive 2009/123/EC, on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences, the Agency has set-up and operates the European satellite oil spill detection and monitoring service, CleanSeaNet. The service entered into operation on 16 April 2007. CleanSeaNet supplements existing surveillance systems at national or regional level, strengthens Member States' response to illegal discharges and supports response operations in the case of accidental spills. During the first three years of CleanSeaNet operations, despite the high number of spills detected on satellite images and reported, few legal actions have been taken against, or penalties imposed on polluters as a result.

In order to discuss how the law enforcement chain could be improved and how EMSA could support the implementation of the Directive in all its aspects, the Agency organised a workshop in Lisbon, Portugal, on 15-16 February 2011.

## ***Workshop Participation and Objectives***

The overall goal of the workshop, enhancing the law enforcement chain to combat illegal discharges, was addressed through the definition of three broad objectives:

1. To establish a shared knowledge and understanding among key stakeholders from operational authorities, vessel inspection authorities, and administrative and judicial enforcement authorities, on the current status and likely future trends in the law enforcement chain for countering illegal discharges.
2. To explore ways of strengthening the law enforcement chain and in particular, the role of CleanSeaNet.
3. To identify action at national, regional, and European Community level to enhance effectiveness.

## ***Workshop Structure***

Since participants had different backgrounds and levels of knowledge about the different elements of the enforcement chain, the first day opened by providing general information on the institutional framework within which enforcement chains in EU Member States operate. This consisted of presentations on the international and European legal requirements. The role of EMSA was also presented, and the capabilities of the CleanSeaNet service were outlined, drawing attention both to the advantages and the limitations of the service. The following session introduced various examples of national practice, showing how Member States take different approaches to address the problem, and highlighting the advantages and disadvantages of each. With this information as a starting point, participants were then invited to form three groups in order to discuss the different practices applied for enforcing the provisions of Directive 2005/35/EC as amended.

The role of international and regional initiatives in contributing to the enhancement of the enforcement chain was considered in the morning of the second day. Presentations from regional networks and from Interpol gave some insight into how collaboration and exchange of information between countries can also contribute to national capacity for combatting illegal pollution. This was followed by a round table in plenary session. Discussions on international cooperation were followed

the same morning by group discussions on practical improvements of the enforcement chain and in particular the role that EMSA and the CleanSeaNet service, could play in supporting Member States detecting and prosecuting illegal discharges.

The afternoon session was dedicated to summarising and reflecting upon the discussions of the previous two days. The meeting was concluded by an agreement on the actions to be taken in the near and medium term future by EMSA in cooperation with the Member States and other interested stakeholders.

The Agenda of the workshop is in Annex 1. The list of participants, including brief biographical information, is in Annex 2.

## ***Welcome and opening of meeting (Willem de Ruyter)***

EMSA's Executive Director, Willem de Ruyter, opened the workshop. He gave a speech which provided some background information on EMSA's CleanSeaNet service to participants, and introduce some of the main issues to be considered during the workshop.

In 2007, when EMSA launched CleanSeaNet, satellite imagery for pollution detection and identification of polluters was used by only a limited number of countries. In many of those, this service was only provided in the framework of research projects such as Marcoast.

Workshops held in 2007 were important to share information on the existing practices for addressing illegal discharges and to set-up the CleanSeaNet service in the most appropriate manner, not as research, but as a permanent service for EU Member States and Norway.

Four years later, the operational use of satellite is widespread. 24 countries used the service during 2010, and 2 new countries (Iceland and Turkey) joined the CleanSeaNet 2<sup>nd</sup> generation in 2011.

CleanSeaNet, which has been continually improved since 2007, is efficient at detecting spills and, more recently, identifying polluters. This capacity has been achieved by connecting CleanSeaNet to SafeSeaNet.

### Key figures (16 April 2007 - 31 January 2011):

- 8388 images successfully delivered covering more than 1,000,000 Km<sup>2</sup> – the equivalent of more than 50,000 flight hours;
- 8782 possible spills detected by CleanSeaNet, 2673 checked on site, 698 confirmed;
- From 1 January 2009 until 31 January 2011, 295 possible spills have been checked by aircraft less than 3 hours after satellite overpass, 144 (49%) confirmed. Nearly half of CleanSeaNet detections are confirmed when checked within 3 hours of satellite overpass.

CleanSeaNet is a monitoring tool, and enables coastal States to monitor their waters in a more effective way than before. However, it has ambitions to be more than just this; it has ambitions to become a tool for identifying and prosecuting polluters. It is now time for EMSA to work together with the coastal States at improving follow-up to the detection of suspected pollution.

The reduced availability of resources in the Member States and at EU level requires better organisation and increased cooperation between key stakeholders from operational authorities, vessel inspection authorities, and administrative and judicial enforcement authorities.

The purpose of this workshop is to work together at identifying possible improvements of the enforcement chain and how the Agency could further support actions taken at national and regional level. Jointly we can improve further the effectiveness of the enforcement chain.

**Day 1, 15 February 2011**

(Chair: Henrik Ringbom)

***Introduction of Day 1***

The Chair thanked participants for being there in large numbers. It was noted that it is unusual for EMSA to invite three participants from each Member State, and was highlighted that, in the context of the workshop, there was a particular reason for this - the need to bring people together from across the whole enforcement chain. This is the first occasion on which EMSA has held such a workshop. The Agenda of the Workshop was introduced, explaining what would be happening on each of the days.

The purpose of the first session of Day 1 was to frame the discussions which would come thereafter. The broader context, including institutional and legal frameworks, and the CleanSeaNet service, were presented. Given that participants were from different areas of interest and had different background experience, it was considered important that the workshop included an overview of the key issues which impact upon the effectiveness of the illegal discharge enforcement chain.

***International legal framework for prosecution of illegal discharges at sea (Steven Vandenborre)***

Steven Vandenborre presented the International Legal Framework for Prosecution of Illegal Discharges at Sea. The presentation introduced a range of useful reference documents, to which participants might wish to refer. The equipment and discharge regulations in MARPOL Annex 1 and Annex 2 were then explained. The presentation also addressed enforcement issues, and explained the distinction between legislative/enforcement jurisdiction and arrest/judicial jurisdiction. The broad international legal framework (UNCLOS and MARPOL) was introduced, followed by the relevant aspects of the European legal framework, including maritime Conventions, criminal Conventions, and instruments related to Port State Control (but with the exception of Directive 2005/35/EC as amended, which was addressed in a subsequent presentation).

***Directive 2005/35/EC as amended (Daniel Warin)***

Daniel Warin of DG MOVE introduced Directive 2005/35/EC as amended by Directive 2009/123. The background to the Directive was explained, including the initial need for a Directive arising from the uneven implementation of MARPOL at Member State level. He then explained the reasons behind the amendment to the Directive, and addressed broadly: a) aspects of the Directive which have remained unchanged, and b) aspects of the Directive which have been modified. The need to set up, in principle, a penal sanction regime and for a uniform implementation of the Directive throughout the European Union were emphasised

Following this presentation, the Chairman informed participants about the on-going in-house study being undertaken by EMSA to assess the impact of the Directive at a national level (on enforcement practices, case law, etc.), and reminded that EMSA would be grateful for additional input and information. Participants were requested to contact Gosia Nesterowicz (+351 21 1209 294 – Malgorzata.NESTEROWICZ@emsa.europa.eu).

## ***The CleanSeaNet service: presentation, results and contribution to the illegal discharge response chain (Marc Journal)***

The presentation covered various aspects of CleanSeaNet, the European Satellite Oil Spill Monitoring and Vessel Detection Service, including legal basis, operational use, and products delivered.

The analysis of CleanSeaNet results from the beginning of the service in April 2007 until 31 January 2011 demonstrates that the service is efficient at detecting oil spills. It was emphasised that, when possible spills are checked on site by aircraft less than 3 hours after satellite image acquisition, the confirmation rate is close to 50 %.

Spills weather out rapidly; the confirmation rate therefore decreases with the delay between satellite detection and verification. A Near Real Time service<sup>1</sup> and the timely use of aerial surveillance are essential in order to be able to catch polluters in the act and/or to collect onsite actionable evidence.

The basics of oil detection using Synthetic Aperture Radar were explained in order to help workshop participants understand the possibilities of service as well as its limitations. Discharges appear as a long and linear dark feature on radar satellite images. Ships can also be detected on these images and subsequently identified with vessel traffic information from SafeSeaNet.

When an image shows a vessel at the end of a linear dark feature and when the shape of this feature matches the track of the vessel, there is little doubt that the ship has been discharging a product.

Nevertheless, CleanSeaNet does not detect “oil spills” but “possible oil spills”. Confirming the nature of the product<sup>2</sup> requires collecting additional information on site and/or in port. However, it is important to highlight that a CleanSeaNet detection may constitute a suspicion of discharge that, in application of article 6 of Directive 2005/35/EC makes an inspection in port mandatory.

## ***Presentations on National Examples of Enforcement Procedures***

The purpose of the second session of the day was to look at the enforcement chain in practice. Different Member States have very different practices, and the presentations aimed to give an overview of the diversity of national systems, ranging from the different types of legal structures in place to the use of aerial surveillance and port inspection in follow-up procedures. This set the context for participants to begin thinking about the effectiveness of different institutional approaches, and the value of different operational procedures.

### **France (Nicolas Mariel, Christian Cosse, Laurent Huet)**

The presentation on French enforcement practices consisted of three parts:

#### Illegal Discharges Monitoring in France (Nicolas Mariel)

The first presentation explained how the French legal and operational system, including the use of CleanSeaNet, is structured to deal with illegal discharges. The cooperation between *Préfets Maritimes*, MRCCs and prosecutors was emphasised.

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<sup>1</sup> Near Real Time means that CleanSeaNet alerts are passed to the authorities in the affected coastal State less than 30 minutes after satellite pass.

<sup>2</sup> The product is not necessarily a *polluting substance* in the meaning of Directive 2005/35, and if it is a polluting substance, its discharge might be legal under some circumstances.

### Aerial surveillance of discharges at sea and collection of evidence (Christian Cosse)

The second presentation described the French aerial surveillance practice of checking oil spills, including technical equipment carried on board (e.g. SLAR, IV/UV). Crew members include experienced observers able to discriminate between oil and other phenomena. Oil quantity is assessed using the Bonn Agreement Oil Appearance Code. Only oil concentrations over 50 ppm can be observed visually.<sup>3</sup>

### The French public prosecution policy concerning voluntary sea pollutions (Laurent Huet)

The final presentation presented the French criminal legal system, which is characterised by specialised jurisdictions and heavy fines. Under French law, evidence can be brought by any means. It is worth noting that observation by a qualified state official and supported by photographs is sufficient to successfully prosecute the perpetrators of illicit discharges. The maximum fine for vessels found to be illegally discharging was increased to €15 million in 2008, and the average level of fines has increased from €300,000 six years ago to €1 million in 2010.

France is confronted with the issue that some flag States exercise their privilege of jurisdiction as provided by article 228 of UNCLOS, and impose very low penalties. France is currently studying the possibility of using the two safeguard clauses included in article 228, i.e. a major damage caused to the coastal State, and repeated enforcement failures on the part of the flag State.

France is trying to improve the enforcement chain through actions in four main areas:

- Technical improvement of the detection and identification equipment in particular at night;
- Improvement of evidence provided by the various equipment/systems;
- Operational improvement by better coordination of detection (CSN) and on-site verification;
- Judicial improvement through implementation of an effective network.

## **Italy: Italian Coast Guard Activity using CleanSeaNet to identify polluters (Dario Cau)**

The presentation from Italy gave an overview of the Italian process of combatting illegal discharges. The Italian Coast Guard cross-checks CleanSeaNet detections with information coming from all ship reporting systems in order to identify possible polluters. In case a vessel is suspected of having polluted in Italian waters, a request for inspection is sent to the authorities of the next port of call in EU Member States and in third countries as well. Three individual case studies were presented in more detail to illustrate the efficiency of using CleanSeaNet detections to trigger inspections in port.

In 2010, a total of 59 inspections were carried out at the request of the Italian Coast Guard. Evidence of MARPOL violations was found on board 13 vessels, and 6 were detained for deficiencies revealed during the inspection. It was explained that, with the Italian approach, the likelihood of being inspected has an important deterrent effect. Cooperation with EU Member States has improved and the number of inspections has increased. Nevertheless court proceedings are still too slow (up to 5 years) and fines too low (€5,000). Communication with non-EU countries also needs to be supported and improved.

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<sup>3</sup> See annex 12 to Resolution MEPC.61 (34) adopted on 9 July 1993

## Norway: Administrative sanctions (Else Heldre)

The Norwegian presentation focused predominantly on the use of administrative sanctions to penalise vessels polluting illegally, a process which was introduced recently in Norway. These fines are for minor violations related to safety and environment. The goal of this system is to safeguard life, health, property and the environment through the application of penalties which permit a rapid reaction to violations on the part of the administration and act as deterrent to ship owners, and also to enable more cases to be investigated and followed up in an efficient manner. Experience to date indicates that around 80% of pollutions are considered minor violations, and can therefore be handled through administrative sanctions.

Substantial violations, the remaining 20% of cases, are treated as criminal. The Norwegian Maritime Directorate (NMD) works in close cooperation with the public prosecutor to support such cases. The role of the NMD in supporting criminal prosecutions is twofold: 1) to provide advice on the seriousness of the crime and on the legal basis on which prosecution can take place; and 2) to provide assistance in preparing the case.

## Comments and questions related to the presentations

A question was put to Norway, asking whether the public prosecutor would be notified if administrative sanctions were applied to a vessel. Norway responded that the prosecutor would be notified if there was a substantial administrative sanction, but probably not for all minor sanctions. However, as the information is available on the website, the prosecutor can access any information they like about the types and levels of sanctions being applied.

In response to the question of how many cases of administrative sanctions had been applied, Norway stated that there had been about 60 cases in 2010 (for a range of safety and environmental infringements), slightly more than in the previous year. It was noted that the system is still very recent.

France asked for other participants' views on how to deal with requests by flag States to take over prosecutions initiated by coastal States, on the basis of UNCLOS Article 228. Under Article 228 if a coastal State has begun proceedings to impose penalties in respect of any violation by a vessel the flag State of the vessel concerned can, within 6 months of the date on which proceedings were first instituted, start its own proceedings. If this occurs, the initial proceedings instituted by the coastal State will be suspended. The Commission pointed out that Article 228 raises the issue of harmonisation. If a flag State exercises its prerogative to take over proceedings, in some cases it can impose much lower penalties for the same offence than would have been imposed by the coastal State, thereby undermining the impact of the penalty. If there was greater harmonisation of sanction regimes across Europe, this would be less likely to happen.

It was observed that Article 228 allows the coastal State to continue with proceedings, despite the flag State prerogative, if major damage has been caused to the coastal State, or if the flag State has repeatedly disregarded its obligations. However, it is often difficult to get information on what actually happens during proceedings at national level, and therefore it is difficult to establish whether or not a flag State has repeatedly disregarded its obligations.

Another aspect of harmonisation of sanction regimes across Europe was then addressed. Big differences in the penalties imposed can lead to infringements occurring more in some areas than in others. Sanctions are currently not harmonised across Europe. Nevertheless, attention should be

given to article 8 of Directive 2005/35 (as amended) which states that *each Member State shall take the necessary measures to ensure that infringements within the meaning of Articles 4 and 5 are punishable by effective, proportionate and dissuasive penalties*. It was further noted that even if sanctions were harmonised across the EU, the same problem will still exist in relation to non-EU States.

In addition to harmonisation of the sanction regimes in national law of Member States, it was noted that effective enforcement would also be necessary to avoid discrepancies. There have already been some cases brought against Member States for poor implementation of the sanction regimes they have established, as this counts as an infringement of the Directive. In this area there are also often difficulties in encountering complete, accurate and/or up-to-date information on what Member States are doing. There are also legal barriers in some states prohibiting communication of information on enforcement procedures.

### ***Group discussion on the different practices for the enforcement of Directive 2005/35/EC as amended***

The purpose of this session was to work together to identify improvements which could be made to the enforcement chain in combatting illegal discharges, and how EMSA might further support actions taken at national and regional level.

The participants were asked to consider both legal and technical aspects, bearing in mind that best practices are those which provide sufficient dissuasive effects to discourage the parties involved in the transport of hazardous cargoes by sea from engaging in substandard practices.

The following aspects were considered in addressing the points proposed for discussion:

- advantages and disadvantages of the different enforcement practices
- Identifying enabling factors/barriers to an effective enforcement chain
- Identifying actions for strengthening the enforcement chain

### **Summary of discussions**

It is clear from the discussions that enforcement practices vary a lot between the Member States.

The Directive is not implemented in the same manner in every country and it was emphasised that both administrative and criminal penalties can be effective and dissuasive. Most countries use some kind of administrative proceedings to enforce pollution regulations. The use of out of court settlements is also widespread. Nevertheless, it was stated that the entry into force of Directive 2009/123/EC, amending Directive 2005/35/EC, makes a system of criminal penalties mandatory. Whether criminal or administrative, it was highlighted that fast enforcement procedures are an advantage.

Not having a system of administrative penalties was also considered to be a shortcoming since it results in polluters not being penalised for minor cases or when it is not possible for whatever reason to build a court case.

The level of fines was felt to be too low. There was a general agreement on the fact that fines imposed on polluters are usually not dissuasive. It is common that fines are not high enough to cover the costs of investigating the cases. In addition, very often, the polluter does not bear the cost. The issue of who bears the cost and the role of the P&I clubs was thoroughly discussed. Participants

observed that practice of the P&I clubs covering fines is widespread and may undermine public policy. It was also pointed out that, if P&I clubs did not at least pay the guarantee, it could have a negative effect as many vessels unable to pay the fine would end up blocking up the ports and not moving on.

It was acknowledged that inspection in port and the associated risk of detention has a strong deterrent effect. Detention has a strong financial impact on ship operators but all participants agreed that a vessel can only be detained if deficiencies presenting a hazard to safety and/or environment are found during the inspection. It was clear to all participants that detention cannot be used as a penalty system. Another point which was discussed was that even if formal proceedings cannot be undertaken, the fact that vessels suspected of pollution are inspected helps to spread the belief that ships' operations are being constantly monitored. Publicity given to enforcement cases also contributes to the increase the deterrent effect of illegal discharge response chain.

An active discussion took place on whether countries are actually requesting other port States to investigate suspected pollution offences. It seems that the practice of a state requesting an inspection at the next port of call is not widespread. It should be noted that even in the absence of request, by application of article 6.1 of Directive 2005/35/EC as amended, the Member States, wherever the information comes from, have the obligation to inspect vessels which are suspected of discharge whether legal or not.

It was felt by some participants that there should be a very clear indication that the ship might have polluted illegally before any kind of investigation is made in order to avoid over-controlling ships that are respecting the rules. It was nevertheless noted that that, as provided in article 6.2 of the Directive, the purpose of the inspection is to reveal facts that could indicate an infringement. However, it was agreed that not being selective enough in initiating a case, could be counterproductive. In particular, requests should be linked to vessels clearly identified. If a request is made for inspections to all vessels which have transited a particular area, and if no information is given on what the inspection is looking for, then the inspection is unlikely to be successful.

Inspection in port at the request of another State appears to be an important way of improving the enforcement chain, but a number of issues need to be addressed. It was noted was the lack of full information given when one country requests another to make an inspection is a problem. If the request sent does not explain why the vessel is thought or suspected to be a polluter, and what information is needed by the requesting State, it can be hard to carry out the inspection and provide relevant feedback.

All participants agreed that the requesting State needs to be very clear about the purpose of the investigation. If the purpose is to instigate a prosecution, then asking for an inspection in the framework of the Paris MoU<sup>4</sup> is not the only option and may perhaps not even be the most effective solution. A formal request for an inspection in the next port of call can also be made under MARPOL. The officer undertaking the inspection should be going in with a clear IMO/MARPOL approved procedure. This person should be authorised to undertake a broader range of activities, such as interviewing for example. In different legal systems, there may be different requirements

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<sup>4</sup> Section 6 Operational violations

The Authorities will upon the request of another Authority, endeavour to secure evidence relating to suspected violations of the requirements on operational matters of Rule 10 of COLREG 72 and MARPOL. In the case of suspected violations involving the discharge of harmful substances, an Authority will, upon the request of another Authority, visit in port the ship suspected of such a violation in order to obtain information and where appropriate to take a sample of any alleged pollutant.

for the interview process (e.g. for statements to be taken under particular conditions). One suggestion was that a standard form could be used which would help the requesting State give the necessary information to the State carrying out the inspection, detailing what sort of investigation would be necessary. The standard format applied under the Bonn Agreement was given as an example. This is sent by the Bonn Agreement focal point in one country to the Bonn Agreement focal point in another. Who these focal points actually are, and to which administration they are attached, varies from country to country.

A number of issues are also linked with the resources available, in particular to detect illegal discharges and to collect evidence onsite. In discussing appropriate means of detection, two countries are using only satellite images. For other States, this would not be sufficient, and they combine satellite images with photos or samples taken at sea or on board. For example, a country such as Denmark needs corroborating evidence to determine the nature of the discharge in order to be able to prosecute – usually samples from the sea. If, in a given case of suspected pollution, Denmark had been unable to take a sample, and have no other corroborating evidence such as photos and witness statements from aircraft crew, they would then not request an inspection to take place in the country of the next port of call. The lack of technical means in some Member States is a difficulty and actions need to be undertaken such as strengthening the role of on board inspections in port or even at sea. Visual observation is recognised as *one of the most effective ways of recognising and assessing an oil spill exceeding the legal limits of MARPOL*<sup>5</sup> ; All participants agreed that the use of aerial surveillance capacity should be widespread. Unfortunately, not many countries have the necessary resources for systematic aerial surveillance. Some would like an action at EU level to develop this capacity. The possibility to share the use of resources was also mentioned. It was generally felt that Member States should make use of all resources available, including technical means and inspections.

Tasks linked with inspection obligations resulting from legal instruments such as MARPOL, Directive 2005/35/EC, Directive 2002/59/EC<sup>6</sup> as amended, or Directive 2000/59/EC<sup>7</sup> often go beyond the routine tasks of officers in charge of Paris MoU inspections. Detaining a vessel until deficiencies discovered during an inspection are remedied is straightforward. Building a case and in particular learning how to collect evidence is more complex. Investigations to support a court case may be time consuming and often require legal authorisations and specific skills, for example in conducting interviews or searching evidence. Participants agreed that there is a general lack of capacity and resources in this field. Again, the scope needs to be clear in order to send the most appropriate person. The best combination for collecting criminal evidence could be (marine) police and a technical person with knowledge of the vessel.

Another key element, which makes an investigation successful or not, is timing. The chain of proof is very different depending on whether the investigation is for administrative or criminal proceedings. The need for a list of contact points for investigations has also been identified. Continuing the theme of timing, it was pointed out that ships might not return to EU waters, and so actions need to be taken swiftly. Even if a State could interview the ship at a later date, interview data taken at the time of the transgression is usually helpful. It was suggested that some inspections could be undertaken at sea while the ship is en-route.

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<sup>5</sup> North Sea Manual on Maritime Oil Pollution Offences – Part III: Means of Securing Evidence

<sup>6</sup> Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system as amended by Directive 2009/17/EC of 23 April 2009

<sup>7</sup> Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues

The question was raised of whether there is any means for the requesting state to bear some of the costs, as the states which receive the requests may not have the resources to perform all requested investigations.

It was noted that there are different practices regarding the type of evidence used to support enforcement procedures for MARPOL violations. An observation by a qualified state official supported by photos is sufficient in France to bring a prosecution case and in Norway for administrative sanctions. France reported that since they began to impose large fines, there had been a significant decrease in the levels of pollution witnessed. The Netherlands have been using a system of expert observation, but it was felt this was unreliable, they are now in fact moving towards sampling. It was mentioned that States where samples were an absolute requirement, might face great difficulties for successfully prosecuting polluters. It was agreed that samples are reliable to demonstrate the type of product but trying to match samples taken at sea from the slick and on board using fingerprinting techniques can be counterproductive. As they will never match exactly, it was noted that it is easy for the shipping companies to contest the samples, making sampling a disadvantage rather than an advantage in the prosecution procedure.

Methods to establish the link between a spill and a suspected polluter were also discussed. It was mentioned that it is sometimes difficult to unambiguously link a spill, even a confirmed oil spill, and a suspected polluter. If on-site observation is considered as the best method, it is not always possible. It was felt that a combination of all methods should be used to identify polluters including CleanSeaNet and vessel traffic information systems.

There was a discussion regarding collaboration between maritime authorities and the public prosecutor. Where specialised jurisdictions are not in place, prosecutors do not necessarily have a thorough knowledge on the matter and have to rely on the expertise of maritime authorities. It was agreed that a clear line must exist between administrative and judiciary authorities to preserve justice's independence. Nevertheless, it was emphasised that mutual knowledge and dialogue are fundamental in order to optimise the enforcement chain as a whole.

All participants agreed that the exchange of evidence and information on follow-up procedures between cooperating countries, (Coastal States, Port State and Flag State) is a real challenge. Results of enforcement procedures should at least be communicated to the informant but it seems that legal barriers exist in some Member States. It was highlighted that a better information system would support the relations with Flag States as regards jurisdiction precedence. The Flag State obligation<sup>8</sup> to report to the IMO needs re-initiation and improvement. With regard to how collaboration between Flag/Port/Coastal State be improved, it was suggested that a database of information could be compiled, detailing past judgements against particular ships.

The issue of oil spills detected in High Seas was briefly discussed. The case is foreseen in the article 218 of UNCLOS and in Directive 2005/35/EC as amended. Regarding CleanSeaNet, as no Coastal State is affected, it was suggested that the Agency might pass the information to the next port of call. It was also mentioned that the Flag State should take a more active role to handle these cases.

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<sup>8</sup> MARPOL Article 11(1)(f)

## ***Conclusions of the first day***

The Chair summed up the seven stages in the enforcement chain which had been addressed during the course of the day and tried to identify, based on the discussions, where the main problems were being encountered.

### 1. Identification of potential pollution (CleanSeaNet, routine aerial observations, etc.)

Member States use various means of identifying discharges. CleanSeaNet is appreciated as a useful and reliable tool for the initial detection of ship-source oil discharges and the identification of possible polluters. It is clear that the satellite service can only efficiently contribute to the enforcement chain if adequate follow-up actions are undertaken on site and/or in port. Aerial surveillance is being recognised as the most efficient tool but is unfortunately not sufficiently widespread due to a lack of resources.

### 2. Verification of whether a spill is a violation (substance, quantity)

In technical terms, verification of spills does not appear to be a major issue, at least as far as oil discharges are concerned. Some legal systems require samples to prove the nature of the product. The problem rather seems to be to find the resources for getting to the location in time especially when samples are required. Several states noted that MARPOL Annex II discharges are much more complicated to verify. Nevertheless, it is important to note that article 6 of Directive 2005/35/EC refers to inspections as soon as there is a suspicion of discharge of polluting substances. This applies even if there was no verification on site.

### 3. Linking the pollution to a particular ship

Practices vary between Member States as to what type of evidence is needed to link a pollution to a particular ship. Catching the polluter in the act through on-site observation is considered as the best method. Resources are not always available; therefore a combination of all methods should be used to identify polluters including CleanSeaNet and vessel traffic information systems.

### 4. Supplementary verification, gathering of evidence, if needed (Port State Control, Coast Guard, police, interviews etc.)

There are many different players involved in these activities (police, special 'Marpol inspectors', etc.), but it seems that Port State Control (PSC) plays a key role in several Member States. However, conducting inspections for gathering evidence is not among the primary tasks of PSC officers and they may need very specific instructions on the nature and purpose of the visit to carry out the task properly. The need for training was highlighted. The use of PSC as an independent enforcement mechanism (through detentions, etc.) is a separate matter, which is not addressed in the Directive.

Points 1-4 are fairly operational. It seems that the legal foundation for taking action against violations is in place and does not generate concern. Indeed, the existing legal framework even imposes obligations on States to take enforcement actions. Instead it seems that the main problems are linked to an absence of, or incomplete, communication between the various authorities involved in identifying, verifying, confirming and enforcing an action against illegal discharge. Lack of resources contribute to this, but also a lack of will, as is illustrated by the very limited practice of notifying subsequent port States along a suspected ship's route to undertake further investigations.

#### 5. Procedure (administrative, criminal, strict/negligence-based liability)

The Directive does not offer complete freedom for Member States to decide on the type of procedure they wish to undertake to address illegal pollution. It states the cases which require criminal procedures to be taken, and these may be complemented by administrative sanctions for other type of violations (e.g. minor cases). It was remarked that procedures in place in some Member States are slow and sometimes cumbersome.

#### 6. Penalties (fines, imprisonment, detentions , 'black-listing')

The main form of sanctions discussed was fines. No mention was made of imprisonments. Apart from the case of France, it was considered that the fines were generally too low to have the required dissuasive effect. The role of detention of vessels was also discussed. Even if some considered that this may be a convenient way of taking action against pollution violations, it was noted that detention is not a sanction, but an administrative measure to prevent a ship from sailing until major deficiencies have been rectified. It is not a punitive tool in itself, and the sanctions provided for in the Directive cannot be replaced by PSC enforcement measures.

The role of P&I clubs in covering (administrative or criminal) fines was discussed. Several Member States indicated concerns that such a practice could easily undermine the effectiveness of the Directive, notably by removing the dissuasive effects of fines. In the absence of any representative of the clubs, or of certainty about the extent of this practice, the Chairman considered that it was difficult to conclude anything on this point at this stage.

Some more innovative ideas were also discussed in the working groups, such as whether the EU Member States, in their capacity as flag States, should abandon their right to intervene and take over the proceedings in another Member State.

There don't seem to be any particular problems in applying the procedures and penalties (points 5-6); the bigger problem is that few cases reach this stage.

#### 7. Feed-back on follow-up actions (record-keeping)

There was not much to say about this stage by the end of the first day, and the topic was scheduled for discussion on the second day. However, in the course of the study on implementation of the Directive, which is currently undertaken by EMSA, it had been noted that several Member States did not maintain a record of follow-up actions and that this complicated the effort to know exactly how the Directive is implemented in practice, and how applications such as CleanSeaNet are used for enforcement.

## Comments and questions

The remark was made that it should always be borne in mind that the main aim towards which Member States are working is to keep the environment clean. This is not just done through sanctions, and we should bear in mind that there are other issues to be addressed too, such as whether or not we have enough waste reception facilities for ships available at a reasonable price. We should also be looking at how we can help the shipping industry not to pollute.

**Day 2, 16 February 2011**

(Chair: Marin Chintoan-Uta)

***Presentations on enforcement cooperation models***

The first session of Day 2 was focused on the role of international enforcement cooperation models. The North Sea Network provides an example of effective regional cooperation which has been underway for several years and is showing concrete results. The INTERPOL Clean Seas project addresses illegal oil discharges through capacity building and information-sharing efforts among marine and environmental law enforcers globally. Finally, the REMPEC presentation provided an example of a network which is just being established, and addresses some of the issues arising when a network has EU and non-EU members.

**North Sea Network of Investigators and Prosecutors (Jeremy Smart)**

The formation of the North Sea Network of Investigators and Prosecutors in 2001-2 as an informal network was described. The remit of the NSN is 'To improve the understanding and co-operation in the different stages of the enforcement process'. More specific aims are: 1) To ease the flow of information between practitioners in the enforcement process; 2) Exchange information on cases so as to establish best practices; 3) To understand each other's evidential and prosecutorial requirements. This is done through annual meetings, and informal contacts. The main achievements of the NSN, including the drafting of the North Sea Manual on Pollution Offences, were presented.

**INTERPOL (Emile Lindemulder)**

The INTERPOL presentation covered the mission and strategy of the INTERPOL Environmental Crime Programme, and provided an overview of the objectives, products and services of the INTERPOL Project "Clean Seas". The project was initiated based on the concerns from the INTERPOL Environmental Crime Committee members about illegal oil discharges from vessels. Outputs from the project include a World Ship Pollution Prosecution database and an Investigator's Manual for investigating illegal oil discharges by vessels. The manual can be downloaded by government officials from the Interpol website – [www.interpol.int](http://www.interpol.int) – and provides good practical advice on investigation techniques on board vessels. On the basis of the manual, a pilot INTERPOL vessel pollution training was held. The course modules have now been adapted for global dissemination.

The on-going tasks were also presented, including update of the Manual by adding a new section on Garbage management, update of the prosecutors Data Base and promotion of international cooperation and communications.

In the end, INTERPOL invited EMSA to participate in a project aiming at establishing a JOINT Analysis Capacity together with IMO.

**REMPEC (Frédéric Hébert)**

The REMPEC presentation introduced the network, which is currently in the process of being established for enforcement cooperation in countries around the Mediterranean Sea. The objectives of the network are to: 1) improve follow-up of pollution events as well as monitoring and surveillance of illicit discharges; and 2) improve the level of enforcement and the prosecution of discharge offenders. The network faces a number of challenges, including the diverse legal

frameworks which are applied by different countries around the Mediterranean, and weak enforcement capacities and links between investigators and law enforcement officials. Actions are being taken to try to remedy these drawbacks (e.g. technical assistance, training, links with World Bank network of law enforcement officials).

### ***Roundtable: How could EMSA support international cooperation?***

**(Chairman: Marin Chintoan-Uta)**

Following on from the presentations, the roundtable began by discussing some of the links between the different networks. Interpol's role as an observer in the NSN is to be enhanced this year, and they will strengthen links further. REMPEC is working at setting up a network, and so links are not yet clear or established between REMPEC and the NSN, but hopefully these will increase as network for the Mediterranean Sea becomes more established.

The value of maintaining an informal approach to networks, and restricting the number of participants in each network, was emphasized. Smaller networks without formal rules and process allow greater flexibility and better opportunities for the individuals involved to get to know one another.

It was pointed out that EMSA could be useful as an intermediary between networks. EMSA's activity in the Consultative Technical Group for Marine Pollution Preparedness and Response (CTG MPPR) was mentioned, as a regular forum in which discussions take place with the Regional Agreements. It was suggested that perhaps the scope of the meetings could be enlarged from pollution preparedness and response to also address enforcement issues. The example of EMSA's role as an intermediary linking different networks together in the field of Ballast Water management was also given as one possible way which EMSA might provide added value in enabling different regional and sub-regional networks to exchange information and ideas under a more formal EU umbrella.

The role of networks including non-EU countries, such as in the Mediterranean Sea, was discussed. The question was posed as to whether EMSA could strengthen communication and/or services within organisations such as the Barcelona Convention. Nevertheless, the possibility of extending the provision of services such as CleanSeaNet to neighbouring countries will depend of the outcome of the discussions on the revision of EMSA's founding regulation. The MONINFO project was mentioned as one example of cooperation between the EU and non-EU countries.

There followed a brief discussion on Directive 2005/35 as amended. Participants recognised that the Directive definitely indicates that illegal pollution is a criminal offence. For isolated minor transgressions, there may be a role for administrative sanctions, but the emphasis in general should be on criminality of illegal discharges. The Commission noted that the relative roles of administrative versus legal sanctions had been discussed extensively before amending the Directive, and that while in the original Directive there was a choice, in the amended Directive the regime of sanctions must be criminal. Administrative penalties should only be considered for minor cases and/or when legal persons are prosecuted.

The provisions of Article 10 of Directive 2005/35 were addressed. Participants suggested that EMSA could have an important role in supporting Member States and networks through the production of Guidelines and Common Practice. Guidelines referring to the common EU framework might help strengthen harmonisation, given the different national legislation in place across Europe. The need for guidelines was emphasised repeatedly throughout the workshop.

Another area in which it was suggested that EMSA or the Commission could help was by giving assistance to Member States in identifying/requesting resources for follow-up to CleanSeaNet detection. The issue of particular concern was aerial surveillance, which many states would like to carry out but lack resources to do so.

The possibility of providing training was discussed in detail. Inspectors boarding vessels need clear guidelines on what they should look for if they are trying to identify whether or not a vessel has been discharging illegally (e.g. how to check bypasses, what to look for in log books). Supporting such inspections would require not only guidelines, but also training. It was stated that inspectors with maritime backgrounds are increasingly difficult to recruit; applicants for such positions nowadays often lack maritime expertise and experience. This reinforces the need for extra training. Interpol referred to the training course which had been developed through the Clean Seas programme.

There was positive feedback on the training given by EMSA on PSC inspections. One suggestion was that this training could be extended to include inspection for illegal discharges. In the debate which followed, it was noted that, though it is not applied very consistently, Paris MoU authorities may be asked at the request of another authority, to secure evidence or to inspect a vessel in case of a suspected violation of MARPOL. It was pointed out however that inspections are not only carried out by PSC, but also by other inspecting authorities. If training were only given through PSC, it would not be available to other inspectors, such as maritime police.

The role of PSC officers was further discussed. As they frequently feel their remit is checking for safety and environmental purposes, they may not feel comfortable checking for illegal discharges. When a requesting State passes on information on suspected pollution to PSC, it may assume that the issue has been resolved and responsibility passed. However if the PSC does not feel able to handle this request, responsibility might not be taken by PSC officers. The issue then gets 'lost'. This is one example of an area in which communication may not work effectively.

It was emphasized by some of the participants that the main purpose of PSC is not to look for evidence of illegal discharges, and that if they are requested to do so, it should only be on the basis of very clear grounds for suspicion. It was also stressed that the remedy applied by PSC is detention until such point as the ship is repaired, or banning of the vessel. PSC inspections should not be used as a sanction. If criminal charges are to be brought, it is important that the results of the inspections are allowed to be used in court.

Some participants responded by stating that the distinction between compliance monitoring and law enforcement should not be so stark. PSC inspectors enter a vessel to check for infringements, and normal compliance monitoring for safety and environment does not preclude checking for evidence illegal discharges. This is related to the mindset and approach of inspectors. It should all be considered law enforcement and a holistic approach should be adopted.

### ***Group discussion: CleanSeaNet – from an oil spill detection tool towards an oil spill prosecution tool***

Group discussions of the first day dealt with the enhancement of the effectiveness of the law enforcement chain in combatting illegal discharges. The group discussions on Day 2 focused on the use of CleanSeaNet in the enforcement chain and how it could be further improved.

The objective of presenting the CleanSeaNet service was that all participants in the workshop would have a clear view of what CleanSeaNet can achieve and what it cannot.

It is important to remember that:

- CleanSeaNet service is efficient for detecting oil spills;
- With CleanSeaNet it is possible to ascertain when a vessel is discharging, and identifying the discharging vessel;
- Information on the type of ship and cargo on board, as provided by vessel databases and vessel traffic information systems, can help increase or decrease the level of suspicion.

Given the technical characteristics of oil detection on satellite images, a black line detected trailing in a ship's wake indicates a discharge but the discharge might be legal or illegal. There was a common understanding among participants that a CleanSeaNet image alone is not sufficient to determine whether a detected spill is illegal. It was noted that most national legal systems admit various types of evidence and that there is in principle no objection to admitting satellite images as a means of proof. Nevertheless, CleanSeaNet images cannot be used as stand-alone evidence, only as supporting evidence.

It was observed that some Member States rely mainly on aerial surveillance to undertake actions against polluters and use CleanSeaNet to support these operations. Satellite acquisition planning and flight planning are coordinated to ensure a fast response in case a discharge is detected by CleanSeaNet. CleanSeaNet is used to direct assets, and in particular surveillance aircraft, to the position of a possible pollution. In theory evidence collected by surveillance assets should be sufficient. In practice, it can happen that the aircraft or other asset is able to confirm the MARPOL violation but arrives too late to catch the polluter in the act. In that case it was felt that CleanSeaNet and associated vessel traffic information taken from SafeSeaNet could be used as sufficient evidence to demonstrate the link between the pollution and the polluter.

On the occasions that a vessel can be seen in an image at the end of a discharge, and can be identified by AIS, the link between the spill and the suspected polluter is clear. When the discharge is not linked very clearly to a vessel, establishing this link is more difficult. Participants discussed the extent to which all vessels in the area are likely to be reporting AIS signals (size, type of vessel), whether vessels are likely to switch off AIS, and also which sorts of vessels appear on CleanSeaNet images, given the resolution of the images. Even if only one vessel is identified in the general area of the spill, it can rarely be proven that there were no other vessels in the vicinity. It was noted that if there was a bright spot indicating a large vessel, and a clear discharge being emitted, but no AIS signal reported, then this information in itself is somewhat suspicious and might be worth investigating. Nevertheless, it was mentioned that there are clear cases where the track of a vessel matches the shape of the spill, leaving little space for doubt regarding the identification of the suspected polluter. The use of other vessel reporting systems, such as LRIT, was also mentioned as complementary to AIS information.

Many participants were of the opinion that the most promising way to improve the use of CleanSeaNet in the enforcement chain would be to undertake inspections in port of vessels identified on satellite images as possible polluters. This could be a particularly useful action in cases where Member States have limited surveillance resources.

An active discussion took place to analyse under which conditions a CleanSeaNet detection may constitute a suspicion of discharge of polluting substance. The mandatory inspection imposed by article 6.1 of Directive 2005/35/EC as amended does not require as a prerequisite that the discharge is known to be illegal. However, there were divisions between participants over whether or not a discharge detected by CleanSeaNet should be sufficient to instigate an inspection in port, with some fearing that it could lead to vessels being harassed unnecessarily, and others pointing out that when

a substance has clearly been discharged, an inspection or investigation should be performed to identify the product. EMSA indicated that the risk of harassment was limited. The experience of 4 years of operations of CleanSeaNet shows that there are a limited number of clear cases of ongoing discharges with identified vessels attached to the spill.

Some participants insisted on the importance of proportionate actions and of imposing limited constraints on ships operating within the rules. This led to discussions on ways to prevent delaying a vessel more than is essential to proceed with the necessary investigations.

Between the time a discharge is detected on a satellite image and the time the decision is taken to initiate an investigation on-site or in port, it was suggested that the interim step of contacting the vessel could be undertaken. Communication with the vessel might help establish whether or not the substance discharged was legal or illegal, and give a clearer idea whether it should be investigated further. It was suggested that this could be useful, particularly for states with very long coastlines and/or few resources, who would not be able to send out any surveillance asset even if an identified vessel was caught discharging in an image. Another advantage to contacting the vessel directly is that it increases awareness in ship owners and operators that the seas are being actively monitored. It was mentioned that any information available should also be used with a view to increase or decrease the level of suspicion. Access to ship information databases and cargo information are particularly useful to analyse a case.

It was also suggested in order to avoid delaying vessels suspected of pollution in the waters of a coastal State initial investigations should be conducted not only in port but also on board vessels while en route.

Enforcement measures by the coastal State and the flag State as provided in articles 6 and article 7 of Directive 2005/35/EC as amended can only be undertaken if information on possible polluters is passed to the relevant authorities in the coastal State and in the next port of call with minimum delay. Therefore, good coordination in and between Member States and responsiveness of national systems are key elements of the enforcement chain. EMSA indicated that, for the time being, near real time CleanSeaNet alerts are communicated only to coastal States.

There was a discussion on how CleanSeaNet information should be passed to authorities in the next port of call. The issue of whether CleanSeaNet should be extended to users other than current CleanSeaNet users, was brought up in the context of whether it should be linked to other systems such as SafeSeaNet and Thetis. In some countries, the focal point for each of the applications is the same, and so the issue does not arise, but in other countries the focal points are different and the information is not being disseminated effectively between different users. It was pointed out that even if CleanSeaNet was linked to Thetis for example, Port State Control authorities would not necessarily be the right contact for follow-up.

The proposal to link CleanSeaNet with Thetis and SafeSeaNet was viewed by the participants as an improvement of the enforcement chain. This raised the issue of who should enter the information from CleanSeaNet into the other systems: EMSA or the Member States? The possibility for EMSA to enter information directly into Thetis would have to be discussed with the Paris MoU. It was also stated that the entry of information by EMSA, if this were agreed, should not imply that a mandatory inspection must be undertaken, but would only consist of passing information that could give rise to a suspicion. Action should only be taken as deemed necessary by national authorities. Regarding SafeSeaNet, EMSA informed the participants that discussions were already taking place with the Member States through the SafeSeaNet Group and the CleanSeaNet User Group in order to develop technical solutions for linking CleanSeaNet and SafeSeaNet. The purpose is to support the fulfilment

by the Member States of their obligations regarding the communication of information to coastal stations along the planned route of a vessel and regarding inspections in port as provided by Directive 2002/59/EC as amended article 16 and Directive 2005/35/EC as amended article 6 and article 7. It was viewed by the participants as an advantage if suspected vessels were clearly marked when displayed on the map in SafeSeaNet<sup>9</sup>.

Participants insisted on the importance of clear requests for inspection, for example, indicating whether the inspection in the next port of call is to support an investigation already ongoing in the coastal State. There was agreement on the need for a standard form to be implemented, based on what already exists. It was proposed that a system be set up for analysis and grading through a matrix of technical points, from the reliability of the possible detection to the reliability of the identification of the source. CleanSeaNet reports should include all technical elements useful for analysing the situation and should be disseminated to whoever might be able to action. It was suggested to implement in CleanSeaNet the technical capability for the coastal State to propagate the alert when and to whomever appropriate.

It was felt that linking systems would not in itself be sufficient to solve the issue of how contact is made with the competent authorities in each country. Participants were of the opinion that information on possible pollutions detected by CleanSeaNet should be relayed to the relevant authorities through CleanSeaNet national competent authorities. This would require not only good communication between CleanSeaNet focal points, but also internally between national CleanSeaNet focal points and other administrations such as PSC and/or maritime police. Deciding which authorities should be involved was a clear issue to be addressed. It was deemed that having lists of contact points in ports would facilitate the exchange of information between national competent authorities.

The question of whether CleanSeaNet would need to be adapted to support enforcement procedures was briefly discussed. It was recognised that connecting various ship related databases, and in particular having access for individual vessels to data related to the use of Port Reception Facilities would allow a more in depth analysis of cases of suspected violations of MARPOL, and would facilitate prioritisation of vessels to be inspected.

Participants exchanged views on future possible technological developments. Backtracking and modelling could be improved and made more reliable. More detailed sub-regional ancillary data could be added to CleanSeaNet. Other data, such as LRIT, VMS, VTS, Sat-AIS could be used in conjunction with CleanSeaNet to support polluter identification. Feedback between CleanSeaNet and users could become more interactive, for example, information on the reasons why an observed spill was not detected by CleanSeaNet should be available in the system. It would also be an advantage if, through using CleanSeaNet together with other data sources, it was possible to improve the estimation of spill quantity. It was also stated that CleanSeaNet could be useful to environmentalists by its capacity to produce statistics on the level and trends regarding marine pollution.

It was indicated that off shore installations introduce significant amounts of oil into the marine environment. It was felt that in the future, maximum concentration and rate of discharge admissible from oil platforms should be aligned with those admissible from ships.

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<sup>9</sup> Technically, this can be achieved by entering a 'ship related message' in SafeSeaNet

## ***Workshop conclusions and way forward***

Presentations and discussions during the workshop illustrated the variety of legal systems and of operational practices in place in the Member States to address illegal discharges from ships. For example, there are different positions regarding the interpretation of minor or substantial violations, the use of administrative or penal proceedings, and the level of sanctions.

Operational techniques, equipment and procedures for the detection of oil spills and the identification of polluters are used efficiently by the Member States and provide a satisfactory level of performance. CleanSeaNet, in particular, is recognised as an effective tool to support surveillance operations and to trigger enforcement actions. It is possible with CleanSeaNet to detect discharging vessels which may in some cases constitute a suspicion of discharge of polluting substances. Satellite images can also be used as corroborative evidence to support administrative or judicial proceedings.

Nevertheless, enforcement actions undertaken in application of Directive 2005/35/EC have had limited results in terms of number of cases prosecuted and of level of sanctions. In parallel obligations resulting from a number of European Directives regarding communication of information and inspection of suspected polluters are still largely ignored. A vigorous and homogeneous enforcement of pollution regulations throughout European waters would require additional efforts. The use of criminal sanctions against polluters should be applied more widely.

The lack of feedback information on enforcement procedures undertaken and on subsequent action makes it difficult to assess the impact of public policies and of the implementation of the Directive 2005/35/EC. In some States there might be legal limitations to the communication of such information, but in general it would be useful to develop a system of feedback on enforcement procedures. The mechanism of annual reporting obligations by flag States to the IMO as provided by article 11 (1) (f) of MARPOL, needs to be reinstated.

In some areas, the lack of proper resources impedes effective verification and follow-up activities. Nevertheless, better communication and cooperation between various parties involved, both internally between stakeholders within States, and also between States, would certainly result in a significant improvement of the enforcement chain. Although the workshop naturally focused predominantly upon EU Member States, collaboration with neighbouring countries is essential to achieve the objectives of cleaner European seas.

Regional Agreements have been very active in developing international cooperation and setting up informal networks such as the North Sea Network of investigators and prosecutors. These actions, which contribute to the enhancement of the enforcement chain, need to be developed further. Participants recognised that EMSA could play a role in enabling different regional and sub-regional networks to exchange information and ideas under a more formal EU umbrella.

The production of European Guidelines is an important element to enhance the enforcement chain through the exchange of experience, the identification of best practices and the publication of practical information. EMSA could have an important role in supporting Member States and networks through the production of these Guidelines and Common Practice.

Information that a ship may have been discharging illegally is often available but is not investigated further. The illegal enforcement chain could be greatly improved if appropriate inspections were carried out. It is clear that this requires additional effort and resources, including specific training.

The analysis of data on the use of port reception facilities by individual vessels could give a first indication about whether an infringement has been committed. Therefore, additional information on port reception facilities would be useful. It was noted that there are no databases, even at national level, with this information. The implementation of waste messages under the Directive 2010/65/EU was mentioned as one development in this area.

Communication by EMSA of CleanSeaNet information on possible polluters should be limited to CleanSeaNet alert recipients as decided by CleanSeaNet national competent authorities (CSN NCA) in the Member States. Ensuring that information on suspected polluters is passed to relevant authorities along the planned route of a vessel and/or the next port of call is the responsibility of the CSN NCA.

However, in case a possible polluter is detected in the high seas or in the waters of a third country, heading towards an EU Member State, it might be useful for the CleanSeaNet alert to be passed to the next port call via CleanSeaNet.

A number of additional data, such as ship voyage or cargo information, are useful to assist authorities in evaluating a case and deciding on follow-up actions. These data can be found in various maritime information databases, either directly or via vessel traffic information systems like SafeSeaNet. Having these data available together with information on CleanSeaNet would facilitate the decision making process regarding follow up actions to CleanSeaNet detections of possible pollutions. Improved technology may also have a role in future. For example, the use of modelling and associated information will probably increase in coming years as it gets more reliable.

## The way forward

The following points have been agreed as possible actions to support the enhancement of the illegal discharge response chain:

- The Member States and EMSA could work together to draft guidelines and procedures for better enforcement and cooperation. The idea of establishing an informal working group for this purpose was supported by a number of participants. This group should be composed of volunteers from existing networks and from interested Member States possibly through the intermediary of Regional Agreements.
- The Member States and EMSA could work together to ensure that actors involved in the enforcement chain have the possibility to receive suitable training.
  1. In the near future, EMSA will continue working with the Consultative Technical Group for Marine Pollution Preparedness and Response (CTG MPPR) on the organisation of the Training Course on “Marine Pollution Surveillance”
  2. In parallel, whether the scope of this training should be extended and how existing training packages such as the one developed by INTERPOL could be included, should be investigated.
- EMSA should continue to organise regular meetings of various parties involved in the enforcement chain to promote cooperation, communication and exchange of experience and to foster the harmonisation of procedures.
- Interpol and EMSA could cooperate to develop strategic analysis in support of enforcement efforts. This might include, for example, providing CleanSeaNet statistical data for the analysis of trends.

- EMSA should ensure that technical developments of systems operated by the Agency take into consideration the need for the enhancement of the illegal discharge enforcement chain. This should include:
  1. Combining CleanSeaNet information with any additional information that could help in confirming the likelihood of pollution;
  2. Facilitating the exchange and distribution of information on suspected polluters to relevant authorities and, in particular, through the improvement of the link between SafeSeaNet and CleanSeaNet;
  3. Working with the Commission, ESA and the GMES bureau to see how to improve and upgrade satellite sensors to detect illegal discharges.
- The Member States and EMSA could build up a feedback mechanism on enforcement actions and an improved capacity for exchange of such information within States, and between States. In particular, EMSA should support Member States further in the use of CleanSeaNet as an interactive platform, enabling them to provide feedback on spills more efficiently.
- Cooperation between European and third countries should be developed either bilaterally or through other agreements such as the Barcelona Convention. EMSA should explore with the Commission the potential support that could be provided within the limits of its current mandate.