

Workshop on Ship Source Pollution (Implementation of Directive 2005/35/EC)

**Organised by the European Commission / DG MOVE
and EMSA on 13 November 2018, in Lisbon, Portugal**

Workshop Report – December 2018

List of Abbreviations

DG MOVE	European Commission Directorate-General for Mobility and Transport
EMSA	European Maritime Safety Agency
IMO	International Maritime Organisation
ENPE	European Network of Prosecutors for the Environment
MARPOL	International Convention for the Prevention of Pollution from Ships
MS	Member States
GISIS	Global Integrated Shipping Information System
MRCC	Maritime Rescue Coordination Centre
MUMM	Scientific Service - Management Unit of the North Sea Mathematical Models and the Scheldt estuary
BA	Bonn Agreement
NSN	North Sea Network of Investigators and Prosecutors
MENELAS	Mediterranean Network of Law Enforcement Officials relating to MARPOL within the framework of the Barcelona Convention
BSC	Black Sea Commission
MONINFO	Environmental Monitoring of the Black Sea Basin: Monitoring and Information Systems for Reducing Oil Pollution
CSN	CleanSeaNet
SEG	SafeSeaNet Ecosystem Graphical User Interface
RPAS	Remotely Piloted Aircraft Systems

1. Introduction

EMSA, on the request of the European Commission / DG MOVE, organised a workshop on “Ship-source pollution and the introduction of penalties, including criminal penalties for pollution offences (implementation of Directive 2005/35/EC)”, held on 13 November in Lisbon. The workshop was attended by 50 experts, from EU and EFTA Member States’ maritime authorities, environmental enforcement /port state control authorities and public prosecutor offices, as well as representatives from the Regional Agreement Secretariats and experts from relevant organisations, such as the IMO and the ENPE. The workshop was co-chaired by Maik Schmahl (DG MOVE) and Marc Journal (EMSA); the workshop Agenda and list of participants are attached to this report.

2. Workshop scope and objectives

2.1 **Directive 2005/35/EC** on ship-source pollution and on the introduction of penalties for infringements (as amended) incorporates international standards (i.e. MARPOL Convention Annexes I and II) for the prevention of ship source pollution into EU law and seeks to ensure that the persons responsible for discharges of polluting substances are subject to adequate penalties, including criminal penalties.

Article 12 of this Directive requires that: *"Every three years, Member States shall transmit a report to the Commission on the application of this Directive by the competent authorities. On the basis of these reports, the Commission shall submit a Community report to the European Parliament and the Council. In this report, the Commission shall assess, inter alia, the desirability of revising or extending the scope of this Directive. It shall also describe the evolution of relevant case-law in the Member States and shall consider the possibility of creating a public database containing such relevant case-law."*

2.2 In order to enable the Member States and the Commission to fulfil their reporting obligations under this Directive, this workshop aimed to facilitate the exchange of experiences regarding the implementation and legal enforcement of the Directive (looking also into regional and international MARPOL reporting obligations), and to further elaborate the content of a reporting template under this Directive, that could be used by Member States.

3. Summary of workshop proceedings

3.1 The European Commission (Maik Schmahl, DG MOVE) provided an overview of the EU legislative framework covering the prevention of ship source pollution, notably Directive 2005/35/EC (as amended by Directive 2009/123/EC) and Directive 2000/59/EC (on port reception facilities). Reporting obligations for Member States (MS) and the Commission were mentioned, noting the need for improvement of the MS reporting to the Commission under Article 12 of Directive 2005/35/EC, which in turn will enable the Commission to report to the Council and the Parliament. Currently only one country (France) is submitting such reports to the Commission.

3.2 Roel Hoenders (Marine Environment Division, International Maritime Organization (IMO)) presented the scope of and mandatory reporting obligations under the International Convention for the Prevention of Pollution from Ships (MARPOL), noting some of the challenges linked with the Convention’s implementation, as per the relevant findings of the IMO MS Audit Scheme. The current mandatory reporting format under MARPOL, as set-up in the Circular MEPC.1/Circ.318, was also presented in more detail, highlighting that a limited number of countries report annually to IMO. The IMO Sub-committee invited the IMO Secretariat to review the MARPOL reporting and to explore possible ways to improve the reporting format, e.g. via possibly a new GISIS module or through integration into an existing module.

3.3 Melaine Loarer, from the French Directorate for maritime affairs, described how France is producing since 2011 an annual report on pollution monitoring (‘Bilan annuel surveillance des pollutions’), which consolidates at national level data on marine pollution detected and reported in French waters. This data is made available through French MRCCs. She described how at national level tasks related to pollution monitoring and law enforcement are shared among several administrations and different ministries; this also applies to several other MS. The variety of sources used for reporting at-sea pollution led to the need for a more centralised and harmonised reporting at national level. The French report includes statistics on reported pollutions (noting that it is not always possible to identify the source of the pollution or the nature of the pollutant), judicial follow-up of criminal offences and other noteworthy events. The French annual report meets the reporting requirements under the Directive 2005/35/EC and the IMO reporting under MARPOL, even though it was not originally designed for this purpose.

3.4 A 'tour-de-table' short description of the national reporting approaches and main reporting challenges met, followed, with input from all the workshop participants. This enabled an interesting exchange of information and highlighted some of the most commonly faced challenges in implementing the Directive 2005/35/EC. These include for example, the difficulty in collecting the data required for the reporting from the different national administrations involved; the differing role of prosecutors in marine pollution cases in the various countries; and the time and effort required to compile such reports for reporting in regional, IMO and EU levels. There was a clear support by the MS to develop a harmonised reporting format and to align the EU reporting as much as possible with the IMO MARPOL reporting. A preference for electronic submission of the report to the EU was also highlighted.

3.5 The Bonn Agreement representative (Ronny Schallier, MUMM, Belgium) described the Bonn Agreement (BA) approach to reporting of pollution incidents in the Greater North Sea area, noting that aerial surveillance operations fall within the BA operational focus. BA annual surveillance reports indicate a decreasing trend of observed MARPOL Annex I spills (oil and oily substances). However this trend doesn't apply to observations of Annex II products (noxious liquid substances in bulk). The scope of work of the North Sea Network of investigators and prosecutors (NSN) set up in 2002, with the aim to improve the investigation and prosecution of MARPOL offenders within the BA area, was also presented, noting that across the BA countries, the national enforcement systems and sanction practices vary significantly.

3.6 The HELCOM Secretariat representative (Ronnie Willman, Swedish Coast Guard) presented an overview of the aerial surveillance activities conducted under HELCOM including CEPCO flights, emphasising that aerial surveillance is complemented by satellite surveillance to enable bigger area coverage and optimise flight effectiveness. The HELCOM Secretariat compiles annually data on illegal discharges observed during national and joint co-ordinated aerial surveillance activities; since 2014, HELCOM Parties are also reporting detections of substances other than oil. The HELCOM and BA countries are using the same Standard Pollution Reporting Form.

3.7 Roel Hoenders (IMO) presented on behalf of REMPEC the work of the Mediterranean Network of Law Enforcement Officials relating to MARPOL within the framework of the Barcelona Convention (MENELAS), which was established in 2013. With 16 members, MENELAS meets every 2-3 years, with the aim to improve the level of enforcement and the prosecution of discharge offenders in the Mediterranean area. It also maintains a database on illicit ship pollution discharges in the Mediterranean.

3.8 The Black Sea Commission (BSC) Secretariat, represented by Irina Makarenko, presented an overview of the Bucharest Convention on the protection of the Black Sea against pollution and the work of the BSC and its six advisory groups, noting the types of reporting required under the Convention. Aerial surveillance is not established on a regular basis for the Black Sea region. Under the MONINFO project an inventory was conducted of existing resources for aerial surveillance in the Black Sea countries. The BSC is taking steps to promote regional cooperation on ship-source pollution and the introduction of penalties for pollution offences, and on the collection of necessary reporting information, noting that more work is needed in the region.

3.9 The Chair introduced for discussion the main content elements of the proposed draft EU reporting template for the purposes of the Directive 2005/35/EC. The report, to be submitted by MS to the Commission every three years, should contain information in relation to: (a) Monitoring and identification of ships illegally discharging polluting substances; (b) Enforcement and exchange of information (port, coastal and flag state); (c) Legal proceedings and application of penalties applied (criminal and administrative penalties). He noted, that in relation to points (a) and (b) above, the information (or a summary thereof) submitted annually to IMO under the MARPOL reporting could also be used as is for the EU reporting template. Going beyond the IMO MARPOL reporting, the Commission emphasised that the EU report should also include, when available, information on types and quantity of pollutants covered by the other MARPOL annexes (III, IV, V and VI), as well as other pollutants (e.g. paraffin etc.). He proposed the establishment of a Correspondence Group (CG) comprised of MS experts (those who are interested to contribute) to further address the content and template of the EU reporting under Directive 2005/35/EC. The CG is expected to work on this during the first half of 2019.

3.10 EMSA (Sonia Santos) presented recent developments of the CleanSeaNet (CSN) satellite based oil spill identification, monitoring and vessel detection service, including recent trends of CSN detections. In terms of service evolution points highlighted included: the improved CSN image delivery time of 'quasi real time' in 20 minutes (from the previous 'near real time' 30 minutes delivery); the new services integrated in CSN, based on optical product based detections (i.e. wake, feature, activity and change detections); and the service's better processing performances. The integration of the CleanSeaNet service into the SafeSeaNet Ecosystem Graphical user interface (SEG) gives now access to the complete maritime picture available in EMSA's integrated Maritime Services including SafeSeaNet information which is valuable for follow-up to pollution detections.

3.11 The workshop participants were also updated on the scope and status of the Agency's Remotely Piloted Aircraft Systems (RPAS) contracted services, aimed for marine pollution and ship emission monitoring, as well as

for supporting Coast Guard functions through maritime surveillance services. The currently available RPAS portfolio was presented by Juan de las Heras, including an overview of recent operations conducted by Member States, where the RPAS were used both for emissions monitoring and for multipurpose surveillance operations.

3.12 Alvaro García Ortiz, representing the European Network of Prosecutors for the Environment (ENPE) used the PRESTIGE as a case study to demonstrate some of the challenges of criminal punishment of polluters. These include problems faced by the judge or prosecutor when entering, confronting and interpreting maritime law while having to apply criminal law, considering also the transnationality of such maritime environmental crimes.

3.13 Marc Journal (EMSA) presented an overview of the 2013 document “Addressing Illegal Discharges in the Marine Environment” which provides a complete overview for authorities involved in the enforcement chain, promoting the use of existing tools and supporting with information the effective prosecution of offenders. This document is published on EMSA’s website (<http://emsa.europa.eu/>).

3.14 Georgios Christofi (Environment and Capacity Building Unit, EMSA) informed that EMSA is currently investigating the possibility to develop in 2020 a Reporting Gate for MS to report to the Commission, based on their reporting obligations under EU law. This concept was presented and discussed at the Consultative Network for Technical Assistance (CNTA) meeting in October and is going to be further discussed in a workshop in March 2019. MS (through their CNTA representative) were invited to comment on this concept and particularly relevant to the scope of this workshop would be the Reporting Requirements to be included in the Reporting Gate.

4. Workshop outcome and recommendations

4.1 The workshop achieved its objective to bring together the various relevant authorities from the Member States, the Commission, EMSA, the IMO and the Regional Agreements to openly discuss the challenges faced by the countries when implementing the reporting requirements under Directive 2005/35/EC. The workshop also agreed on the way forward on how to improve this EU reporting, noting also the reporting done under MARPOL and at regional levels.

4.2 The Member States welcomed the Commission’s support and guidance to improve their reporting on the implementation of DIR 2005/35/EC through the development of a standard reporting format/template, to be used by the MS for this purpose. They acknowledged that at national level there is still a lot of work to be done to improve this EU reporting and the workshop facilitated the exchange of views and national practices on this issue.

4.3 The workshop concluded the following actions and recommendations:

- **A Correspondence Group (CG) is to be established to develop a harmonised reporting template** for MS to report to the Commission on the implementation of DIR 2005/35/EC; interested countries are invited to nominate members for this CG by 10 December. The Commission will lead and coordinate the work, supported by EMSA, and the Regional Conventions will also be invited to participate. The CG is expected to work on this in 2019; however the work timetable may be further adjusted by the CG.
- **The main content and format of the EU reporting template were discussed and agreed in principle** (i.e. Report to include a list of spill detections; list/info on enforcement cases, including exchange of information between Flag, Coastal, and Port States; and information on any specific difficulties encountered by MS in implementing the Directive). The reporting template should be simple to fill-in and avoid duplication with IMO / MARPOL and Regional reporting conducted already.
- **The IMO to be kept in the loop** of the developments regarding the EU reporting format, in view of the ongoing discussions on the Port Reception Facilities Directive and the possible future review of the MARPOL reporting regime.
- EMSA to explore possible options for **electronic reporting**, as this was indicated as a clear preference of the MS.
- In the near future, **the Correspondence Group could also update the EMSA document “Addressing illegal discharges in the marine environment”**, as / when needed.

4.4 This report, as well as the workshop documents and presentations are published on EMSA’s website (<http://emsa.europa.eu/>).

List of Annexes

Annex 1	Workshop Agenda & Participants' List
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Updated Agenda: Workshop on ship-source pollution (Implementation of Directive 2005/35/EC)

Meeting Room 01/11, EMSA offices, Lisbon

13 November 2018

Time	Agenda Item	Speaker
08:30 – 09:00	<i>Registration and Coffee</i>	
09:00 – 09:15	Welcome and introduction	Commission / EMSA
09:15 – 09:45	Presentation of the legal framework – State of play – EU Reporting requirements	Commission (DG MOVE)
09:45 – 10:15	Relevant international framework (IMO/MARPOL), IMO reporting requirements	IMO Secretariat
10:15 – 10:40	Presentation of the 'Bilan annuel Surveillance des Pollutions'	France
10:40 – 11:00	<i>Discussion and presentation of other (national) reporting examples</i>	All participants
11:00 – 11:20	<i>Coffee break</i>	
11:20 – 13:00	Regional examples of reporting on pollution incidents and implementation: <ul style="list-style-type: none"> ▪ North Sea/North-East Atlantic ▪ Baltic Sea ▪ Mediterranean Sea ▪ Black Sea 	NSN/Bonn Agreement HELCOM MENELAS/REMPEC BSC
13:00 – 14:00	<i>Lunch break</i>	
14:00 – 14:40	Introduction of a draft EU template to facilitate the reporting under Directive 2005/35/EC	Commission (DG MOVE)
14:40 - 15:10	Discussion on the draft template	All participants
15:10 – 15:40	Technological developments in the detection/monitoring of illegal discharges	EMSA
15:40 – 16:00	<i>Coffee break</i>	

16:00 - 16:45	<ul style="list-style-type: none">▪ Application of penalties against natural and legal persons in the EU Member States▪ Relevant Developments and recent case law	<ul style="list-style-type: none">▪ European Network of Prosecutors for the Environment (ENPE)▪ All participants
16:45 – 17:15	Possible accompanying measures to support the implementation and enforcement of Directive 2005/35/EC (information systems, common practices and guidelines)	All participants
17:15 – 17:30	Conclusions and way forward	Commission / EMSA
17:30	<i>End of workshop</i>	

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Participants List

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