



Position of the European Sea Ports Organisation on the Commission's proposal on Port Reception Facilities (COM 2018/0012)

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1. Introduction

ESPO welcomes in principle the new proposal on the revision of the Port Reception Facilities (PRF) Directive and its objective to build upon the substantial progress achieved under the existing Directive. For European ports, ship waste is one of the main environmental priorities, as indicated in the ESPO Sustainability Report 2017 ([Link](#)).

It is positive that the proposal seeks to increase efficiency and reduce administrative burden. The new Directive should also make sure that efficient but responsible regime for managing ship waste is encouraged, in line with the 'polluter pays' principle.

The existing Directive 2000/59, which entered into force in 2002, has aimed to prevent the discharge of ship waste such as oily waste, sewage and garbage at sea. Indeed, it has contributed to increasing significantly ship waste discharged at waste facilities in ports. For instance, nowadays, only 2.5% of oily waste is not delivered at waste facilities in ports, according to the Impact Assessment of the European Commission.

According to the existing Directive, all ships calling at European ports already pay a minimum fixed fee (**indirect fee**). The indirect fee, which is paid regardless of whether ships use the facilities or of the quantities they deliver, aims to prevent the discharge of ship waste at sea in order to avoid paying the costs.

ESPO believes that any new provisions enhancing the enforcement of the obligation for ships to deliver waste at shore are welcome. The alignment of specific elements of the Directive with the International Convention for the Prevention of Pollution from Ships (MARPOL) is supported by ESPO. European ports

also believe that addressing waste from fishing vessels and recreational craft, which is related to the vessels' operations, will lead to a more comprehensive policy of addressing the sea-based sources of marine litter. Finally, ESPO welcomes that new types of waste, such as scrubber waste, have been addressed.

2. Fee systems - Article 8 of the proposal

The existing Directive lays out that the costs of waste facilities in ports are covered by a fee paid by the users. To incentivize users to deliver, a **minimum fixed fee (indirect fee)** has already been implemented all across Europe and charged to all ships calling at EU ports, regardless of whether they use the facilities or of the quantities they deliver. **At least 1/3 of the total costs** of waste facilities are currently **covered by the indirect fee**. The rest of the costs for each ship, if any, are covered by the **direct fee** which reflects the real cost of handling the quantities of waste delivered by the ship. The existing indirect fee, which covers all waste types such as oily waste, sewage and garbage, has significantly contributed to limiting ship waste discharged at sea. Even if the indirect fee system is applied in all ports, there are currently different cost recovery systems in place. These reflect the **diversity of ports** and the local realities (waste treatment industry, waste infrastructure) in different Member States as well as the variety of national waste systems.

The new proposal aims to strengthen this incentive policy by introducing the **100% fixed fee (indirect fee) for garbage** (MARPOL Annex V) as well as for waste that has been passively collected in fishing nets. Each port will have to set up a fixed fee covering all quantities of waste without any limits or thresholds. The fixed fee could reflect the category, type and size of ship and the type of traffic. It has to be pointed out that garbage as defined in MARPOL Annex V includes not only plastics or household waste, but also dangerous waste classified as such by EU law.

European ports recognise that providing the right incentives is essential and port authorities are certainly willing to contribute within their competences and financial capacity. However, ESPO believes that introducing a fee system whereby ships could deliver **unreasonable quantities of garbage, including dangerous waste** for a fixed fee would be a severe and unacceptable **divergence from the 'polluter pays' principle**. It does not seem to follow the logic of the Directive that all waste should be delivered at every port call unless ships are excepted/exempted or waste discharge at sea is allowed under MARPOL. It risks to **discourage tackling waste at the source** by reducing waste volumes onboard, which has been the cornerstone of the EU waste policy.

Therefore, **ESPO proposes to set a limit on the quantities to be covered by the fixed fee, allowing to charge on top of the indirect fee** when **unreasonable quantities** of waste are delivered. Furthermore, **dangerous waste**, which usually needs special and costly treatment, should not be covered by the 100% indirect fee. Additionally, it has to be clarified that the differentiated fee system for **waste delivered outside normal operating hours** in the port should allow charging a **premium** on top of the indirect fee in order to reflect increased operational or labour costs (24/7 services). It should also be

possible to differentiate the **fees with respect to the type of waste**, additionally to the type and size of the ship and the type of the traffic which are already included under the new proposal.

With regard to the enhanced transparency requirements, **ESPO fully supports** the principle that the fees need to be **fair, transparent, non-discriminatory and should be clearly communicated** to the users. In that respect, ESPO believes that the obligations should be **aligned with the recently adopted Port Services Regulation 2017/352**. Article 15 par. 3 stipulates that “the providers of port services shall make available to port users adequate information about the **nature and level of the port service charges**”. Moreover, Article 12 lays down that charges for services, which are not exposed to effective competition (for instance those provided under public service obligations), shall be set in a transparent, objective and non-discriminatory way, and shall be proportionate to the cost of the service provided. The new proposal aims to ensure that ‘the costs of operating port reception facilities’ are covered by the cost recovery systems (par. 1 of Article 8). Therefore, all cost categories included in new Annex 4 should relate to the operation of waste facilities.

3. Green rebates - Article 8 par. 5 of the proposal

Under the existing Directive, voluntary application of reduced fees is already possible for vessels that demonstrate good waste management practices (beyond the required standards) that in turn lead to the generation of reduced quantities of waste. Several ports have been using existing bottom-up standards and schemes have been used as the basis for defining good waste management practices and providing with green rebates.

The ESPO Green Guide ([Link](#)) encourages ports to implement incentive schemes for ships that introduce sustainable policies. According to the ESPO Sustainability Report 2017, half of the European ports provide rebates for ‘green ships’, while many of them take into account the ships’ waste policy.

However, the new proposal aims to introduce mandatory reduced fees for ships, which are expected to produce less waste and manage waste in an environmentally sound manner. However, the introduction of **mandatory rebates** fails to take into account that the waste fee system is already highly regulated. Ports are actually obliged to incorporate indirect elements at least up to one third of the waste reception fees in order to give incentives to waste facilities’ users to abide by the law. The introduction of mandatory rebates would be an **unreasonable interference with ports’ strategy** to award ships that perform beyond standards set by law on the basis of their own priorities. It would also fail to take into account different business and governance models implemented in ports across Europe. Any rebate, if not corresponding to a real cost reduction, has to be borne by the port authority. Not all port managing bodies have the financial ability to cover this cost and to give rebates.

ESPO believes that regulating the port-incentive system should not come at the expense of measures that directly address environmental issues on the basis of the **“polluter pays principle”**. This principle

should not be compromised by measures financially targeting a third party, in this case the port authority, which does not bear responsibility for the pollution.

ESPO therefore proposes to maintain the voluntary application of reduced fees for vessels generating reduced quantities of waste. An **overview of current good practices** might be helpful for ports and Member States but ESPO sees no role for the Commission to develop new standards and criteria. ESPO believes that **further coordination could be achieved by the sector, within the existing voluntary charging schemes** (ESI, CSI etc.). This could relate to working on a more common indicator of the environmental score of ships. Where relevant and possible, steps towards streamlining the conditions and/or entitlement for a rebate (which score can trigger a rebate) or any other incentive (labelling, communication, etc.) should be explored.

4. Collection of waste - Article 4 of the proposal

Under the existing Directive, waste reception facilities in ports should have **the capacity** to receive the types and quantities of waste from **ships normally using** the port, taking into account the size, the geographical location of the port and the type of the ships received.

The same logic is followed by the new proposal. Additionally, the requirement for **separate collection of waste** set out in the Waste Framework Directive is explicitly mentioned in the new proposal. **ESPO supports the separate collection of waste** from ships as a measure to increase **waste recycling**. However, as waste is segregated onboard following the international rules of MARPOL, it has to be made clear that the **separate collection follows the same international norms**.

Catering waste generated in international shipping has to be incinerated or buried in an authorised landfill (EU Regulation 1069/2009). However, EU law is currently not providing a definition of international shipping. In this context, it should be noted that according to international law, international shipping covers both journeys outside the EU and journeys between two EU Member States. The lack of definition on **catering waste from international shipping** has created uncertainty whether plastic and other catering waste generated during EU journeys also has to be incinerated or buried.

Moreover, following MARPOL rules, clean and food-contaminated plastics are disposed together onboard and clean plastics often become food-contaminated. They are then considered as catering waste and have to be incinerated or buried.

In order to avoid the resulting administrative burden and increase the volumes of recycled plastics, **ESPO believes that a definition** should be included in the new Directive limiting **international shipping only to journeys outside the EU**.

5. Alignment with international law - Article 7 par. 1 and Annex 2 and 3 of the proposal

Under the existing Directive, all waste should be delivered at every port call unless ships have sufficient storage capacity or are exempted under Article 9.

The new proposal, aims to align the **delivery obligation for all waste** under the Directive with the discharge regime of MARPOL. With regard to the **advance waste notification form**, it has also been fully aligned with IMO Circular MEPC/834 and is provided in Annex 2 of the new proposal. Furthermore, the issuing of a new **waste receipt** to the ship upon delivery of the waste is introduced, which is also aligned with MARPOL. The requirement with regard to the waste receipt does not apply to small unmanned ports or to remotely located ports.

ESPO supports the alignment with MAPROL as these provisions are expected to address any uncertainties arising from differences between EU and international law and to **decrease the administrative burden**. In that respect, **ESPO pleads for the full alignment of the delivery requirements with international law**. ESPO also supports the provision that the waste receipt requirement does not apply to small unmanned ports or to remotely located ports as it aims to **decrease the administrative burden in understaffed ports** and, to this end, believes that it should apply to all small ports.

6. New waste types - Article 2 c and 8 par. 2 d

The new proposal includes for the first time waste types of MARPOL Annex VI, i.e. scrubber waste and ozone depleting substances. European ports support the extension of the scope of the Directive and especially the **inclusion of scrubber waste under the direct fee system**.

The new proposal makes a reference to waste residues from scrubbers, i.e. sludge and bleed-off water. However, the **lack of definition of bleed-off water** in the proposal may create uncertainties with regard to which scrubber types are covered. Therefore, ESPO believes that clarification is needed on this point.

ESPO supports that scrubber waste is not made subject to any indirect fee. Scrubber is one of the solutions to comply with the sulphur limits on marine fuel (0.1% in Emission Control Areas and 0.5% internationally as from 2020). The introduction of any indirect fee could penalise ships using cleaner fuels such as LNG or low sulphur fuel, as they would indirectly have to pay for the extra quantities of waste generate by scrubbers.

Furthermore, lack of quality data with regard to the quantities delivered was also a reason for not including scrubber waste in the indirect fee applied to other waste types. However, this is also the

case for ozone depleting substances of MARPOL Annex VI. Therefore, **ESPO believes that the direct fee should also be introduced for ozone depleting substances.**

7. Exceptions and Exemptions - Article 7 and 9 of the proposal

Under the existing Directive all vessels need to deliver all their ship waste before leaving the port unless they have “sufficient dedicated storage capacity” on board until the next port of call (exception of Article 7). Further exemptions for ships that are engaged in “scheduled traffic with frequent and regular port calls” are set out in the Directive (exemption of Article 9).

The new proposal provides the Commission with the power to define the methods for calculating sufficient storage capacity through the comitology procedure. **ESPO supports the clarification of the exception** of “sufficient storage capacity”. In the new proposal, the exception only applies if the next port is located within the EU. ESPO believes that this could create a lot of disruption especially in ports located in the **outermost regions of France** and may fail to take into account the **future status of the UK after Brexit**. ESPO, therefore, believes that non-EU ports should not be excluded from the exception unless adequate facilities are not available.

Furthermore, **ESPO supports the introduction of new definitions on the exemption criteria**. However, under the proposed definitions, specific ship types, such as vessels involved in operations in the port (e.g. pilotage vessels, dredging vessels, etc.), would be left out. Therefore, a broadened definition of the exemption criteria, which would provide more flexibility, is needed.

The European Sea Ports Organisation (ESPO) represents the port authorities, port associations and port administrations of the seaports of 23 Member States of the European Union and Norway at political level. ESPO has also observer members in Iceland and Israel. ESPO is the principal interface between the European seaport authorities and the European institutions. In addition to representing the interests of European ports, ESPO is a knowledge network which brings together professionals from the port sector and national port organizations. ESPO was created in 1993.