

| INCEPTION IMPACT ASSESSMENT | | | |
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| TITLE OF THE INITIATIVE | REFIT Revision of EU Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues | | |
| LEAD DG – RESPONSIBLE UNIT – AP NUMBER | DG MOVE – UNIT D.2 | DATE OF ROADMAP | December 2015 |
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| INDICATIVE PLANNING | http://ec.europa.eu/atwork/pdf/cwp_2015_refit_actions_en.pdf | | |
| ADDITIONAL INFORMATION | http://ec.europa.eu/transport/modes/maritime/safety/actions_en.htm | | |
| This Inception Impact Assessment is provided for information purposes only and can be subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure. | | | |

A. Context, Subsidiarity Check and Objectives

| Context |
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| <p>1. Introduction</p> <p>Discharges from shipping are estimated to account for about 20% of global discharges at sea. The protection of the marine environment can be greatly enhanced by reducing these discharges of ship generated waste and cargo residues into the sea. Achieving zero-waste in maritime transport is one of the Commission's policy goals, as set out in the Commission Communication on strategic goals and recommended actions for the EU's maritime transport policy until 2018 (COM(2009) 8)¹.</p> <p>Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues ("the PRF Directive") aims "to reduce the discharges of ship generated waste and cargo residues into the sea, especially illegal discharges from ships using ports in the EU, by improving the availability and use of facilities in ports for receiving the waste from ships – "port reception facilities" (Article 1 – Purpose).</p> <p>The Directive is based on the requirements contained in the International Convention for the Prevention of Pollution from Ships (the MARPOL Convention). MARPOL requires the Contracting Parties² to provide for port reception facilities for waste from ships that is not allowed to be discharged into the sea. Those facilities must be adequate to meet the needs of ships using the port, without causing undue delay.</p> <p>2. EU policy context</p> <p>The PRF Directive forms part of EU transport policy and at the same time aims at protecting the marine environment and waters from certain negative effects of maritime transport activities. As such, the Directive also supports the objectives of EU Environmental Policy, in particular EU waste policy and EU water policy. The Marine Strategy Framework Directive (Directive 2008/56/EC) is particularly relevant in this context as it aims to achieve good environmental status for all marine waters by 2020. The Directive is the main EU legal instrument for reducing marine litter from sea-based sources, in line with the 7th Environment Action Programme and as required by EU and MS international obligations (Rio+20 conference and implementation of Sustainable Development Goals).</p> <p>In addition, recent initiatives by Regional Sea Conventions³, such as HELCOM for the Baltic Sea, the Barcelona Convention for the Mediterranean, OSPAR for the North-East Atlantic and the Bucharest Convention for the Black Sea on issues such as marine litter, plastics waste and special areas for sewage benefit from an efficient implementation of the Directive. Since the PRF Directive aims at the environmentally sound management of</p> |

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52009DC0008&from=EN>

² i.e. Contracting Parties to the MARPOL Convention: 152 states, representing 99.2% of the world's tonnage.

³ Member States and the EU are contracting parties to these conventions, except for the Bucharest Convention, where the EU has observer status

ships in conformity with the main principles of EU waste legislation, it is also highly relevant in the context of the circular economy strategy.

The PRF Directive also fits with a number of other EU acts applicable to maritime transport, which implement some of the obligations in the MARPOL Convention and aim at the protection of the marine environment, including: Regulation (EC) No 417/2002 on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers, Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements and Directive 2012/33/EU on the sulphur content of marine fuel. Furthermore, Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system has a direct bearing on the PRF Directive⁴.

Finally, the Commission Communication on Ports⁵ refers to the PRF Directive in the context of modernising port services. The accompanying proposal for a Regulation establishing a framework on market access to port services and financial transparency⁶ aims at modernising port services and operations, creating framework conditions to attract investments in ports and particularly foresees the variation of port infrastructure charges to promote high environmental performance.

3. Implementation of the Directive

The Commission services have assessed the implementation and effectiveness of the Directive over time:

- In a first stage, implementation reports were received from the Member States;
- Several workshops were organised by the EC and the European Maritime Safety Agency for the Member States and different stakeholders⁷;
- The European Maritime Safety Agency undertook a cycle of visits to Member States to verify the implementation of the PRF Directive, the findings of which have been summarized in a horizontal assessment report.⁸;
- A REFIT Evaluation of the PRF Directive was completed in May 2015⁹. It identified difficulties to implement the Directive in certain areas, and highlighted that regulatory developments have taken place at international level with potential impacts on the effectiveness of the Directive. The report has pointed out problem areas which could be addressed in a review of the Directive. Based on the Evaluation Report a Commission Report will be prepared and will be submitted to EP and Council before the end of 2015.

A number of actions are currently being pursued to improve implementation of the Directive in the short term, and as such to address some of the shortcomings that have been identified by the Evaluation:

- I. To address the lack of data on the actual delivery of waste to port reception facilities, as well as the outdated categories contained in the waste notification form, a Commission Directive has been drafted for the amendment of Annex II of the PRF Directive¹⁰, which contains the waste notification form. The objective of this revision is to bring Annex II in line with the latest changes in Annex V MARPOL (revised garbage categorization), and to incorporate information on types and quantities of waste delivered. The revision is due to be adopted officially by the Commission and subsequently published in the O.J. It is expected that the measure enters into force at the beginning of 2016. However, it should be noted that full alignment with IMO measures will only be possible through a legislative revision, as it would involve changing some of the definitions in the Directive, which has the potential of broadening its scope.
- II. To achieve an effective exchange of information between Member State authorities and a proper monitoring and enforcement of the Directive, the Commission has asked the European Maritime Safety Agency (EMSA) to further develop the system as required in article 12(3) of the Directive by building as much as possible on existing databases, which are used for this purpose. This concerns a further

⁴ Commission Directive 2014/100/EU amending Annex III of the VTMIS Directive directly refers to the PRF Directive in relation to the use of SafeSeaNet.

⁵ COM(2013)295 fin.; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0295&from=EN>

⁶ COM(2013) 296; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013PC0296&from=EN>

⁷ Reports from the different workshops can be found at the dedicated EMSA website: <http://www.emsa.europa.eu/implementation-tasks/environment/port-waste-reception-facilities.html>

⁸ EMSA Horizontal Assessment Report – Port Reception Facilities Directive (Directive 2000/59/EC), EMSA 2010

⁹ http://ec.europa.eu/transport/modes/maritime/studies/maritime_en.htm

¹⁰ Commission Directive (EU).../.. amending Annex II to Directive 2000/59/EC.

integration of reporting into SafeSeaNet (SSN) as well as the development of a separate module for PRF inspections within THETIS (The Port State Control information system) and linking this module to SSN. The information that will become available through the revised waste notification of Annex II (see above) is expected to facilitate the operation of the system and make the monitoring of the Directive more effective. The work on SSN to incorporate the changes in the waste notification message, as well as other areas for information exchange and reporting relevant in the context of the PRF Directive, will be undertaken in 2016. It is also expected that this new module in THETIS will become operational in 2016.

- III. To address the different interpretation and implementation of the key provisions of the Directive, the Commission is developing a set of Interpretative Guidelines. The Guidelines aim to clarify certain key concepts and provide technical input for practical application, in order to further harmonize practices in EU MS. In particular, the Guidelines cover the application of the mandatory delivery of ship generated waste (article 7), the application of exemptions (article 9) and the development of waste reception and handling plans (article 5). In parallel, the European Maritime Safety Agency has developed a set of technical recommendations for the implementation of the Directive, which will be subject to a consultation of stakeholders in the context of the PRF Subgroup set up under the European Sustainable Shipping Forum (ESSF-PRF), as well as a consultation of EU Member States.

Further to the issues which are addressed by the actions above, the Evaluation has also identified additional issues as described below, which will be addressed by the present initiative. The three actions listed above will be taken into account and included as appropriate in the baseline scenario.

Issues

This initiative is expected to respond to the following main issues that have come to light with respect to the overall functioning of the Directive:

- the inadequate reception and handling of ship-generated waste and cargo residues by port reception facilities;
- the inadequate delivery by ships of their waste and cargo residues;
- the lack of a level playing field between ports and between port users; and,
- the unnecessary administrative burden on port users.

These problems are triggered by the five following drivers:

1. Port Reception Facilities are not always adequate and/or available to receive and handle the waste and cargo residues delivered by ships

Adequate port reception facilities are a *sine qua non* for increasing the delivery of waste onshore and reducing discharges at sea. Reception facilities are considered "adequate" if they are capable of receiving the types and quantities of ship-generated waste and cargo residues from ships normally using a port, taking into account the operational needs of port users, the size and the geographical location of the port, the type of ships calling at the port and the exemptions provided for in the Directive. In particular, there still remain problems in terms of the reception and handling of waste namely:

- Waste segregated on board in accordance with international norms and standards¹¹, is not always separately collected on land. This inconsistent application discourages compliance with the applicable norms for the segregation of waste on board of ships.
- The increased use of exhaust gas cleaning systems, also referred to as "scrubbers", to reduce air pollution from ships (as required under Directive 2012/33/EU on sulphur limits for marine fuel) necessitates adequate reception of the sludge generated by the use of these systems in port reception facilities. However, the mandatory discharge requirement of the Directive is currently not applicable to the waste generated by scrubbers which are used to clean exhaust gases.
- Waste Reception and Handling (WRH) plans developed by ports and approved by the relevant competent authorities do not always sufficiently take into account the waste hierarchy as required by the Waste Framework Directive¹², as it is not properly reflected in the PRF Directive. This also leads to inefficiencies

¹¹ ISO 21070:2011 Ships and marine technology -- Marine environment protection -- Management and handling of shipboard garbage.

¹² The EU Waste Framework Directive prescribes that waste legislation and policy of the EU Member States shall apply the waste management hierarchy, whereby waste prevention, followed by re-use and recycling are given priority over recovery and disposal.

between ships and ports. The great differences in the size of ports in the EU may further contribute to this inconsistent application.

- Port users are not always properly consulted *on a continuous basis* in the development and implementation of WRH plans. Although the Directive expressly requires consultation of the relevant parties at the stage of development of a new plan (article 5.1 and Annex I), it is less clear on consultations at the stage of evaluation and re-approval. The lack of consultation often contributes to perceived inadequacies in port reception facilities.

2. Insufficient (cost) incentives to deliver the waste to Port Reception Facilities

The Directive requires that the costs of port reception facilities shall be covered through the collection of a fee from ships. In order to ensure that the cost recovery systems do not provide an incentive for ships to discharge their waste into the sea, all ships shall contribute significantly to the costs of the facilities, irrespective of their actual use of the facility ("the indirect contribution"). At the same time, ports have the possibility to differentiate on basis of category, type and size of the ship, as well as on basis of the environmental performance and operation (reduced fees for ships producing reduced quantities of waste). The minimum percentage of the indirect contribution (i.e. irrespective of delivery) is set at 30% of the costs.

The incentive not to discharge into the sea, as well as the "significant contribution" referred to in article 8 of the Directive, have been interpreted by MS in many different ways. As a result, a large variety of cost recovery systems for charging port users for the delivery of waste to port reception facilities has been set up in the EU, including different systems for different types of waste. The REFIT Evaluation has shown that the 100% direct fees systems, which are not in line with the principles of the Directive, were associated with significantly lower volumes of waste being delivered to ports with such a system in place. At the same time, however, the Evaluation did not show major differences in delivery behaviour in relation to the cost recovery systems that are in compliance with the Directive, i.e. which provide for a significant part of the costs of PRF to be covered by an indirect fee. Although generally there is a need for more alignment on how the different principles and incentives of article 8 should be interpreted and applied, the majority of stakeholders are of the opinion that one particular system for all ports should not be the favoured approach, as this would not respect the regional differences between ports¹³.

Furthermore, the non-transparent nature of the fees, and the basis of their calculation, is an issue of concern, since this leads to the fees not being considered fair, non-discriminatory and reflecting actual costs, as required by the Directive (article 8.3). Irrespective of the type of cost recovery system in place, ports need to be transparent in their calculation of the costs charged to port users for waste handling. Often, however, the relationship between fees charged to ships and the costs of PRF is unclear.

3. Ineffective enforcement

The following problems have been encountered in terms of enforcement of the different provisions in the Directive, which have contributed to an inadequate delivery of waste and to a non-level playing field between port users:

- The unclear definition of "sufficient storage capacity" and the inconsistency between the Directive's mandatory discharge requirement (for "all" ship generated waste) and the MARPOL discharge norms, in particular when the next port of call is a non-EU port, has led to insufficient enforcement of the mandatory discharge requirement. Although this issue will be partly addressed by the Interpretative Guidelines in terms of providing the Commission's views on how the mandatory delivery of waste should be applied and enforced, this is meant as an interim solution to address implementation problems. A legislative revision of the Directive will strengthen this key requirement by removing legal uncertainties, in particular in relation to the MARPOL discharge norms, and updating the enforcement regime.
- The insufficient use and examination of the waste notification forms by the relevant Member State authorities (no automatic notification check) has resulted in the fact that the information from the waste notification form is often not shared with the enforcement bodies, and hence not used to select ships for inspection based on the criteria laid down in the Directive (article 11(2)). Likewise, information on the results from inspections is often not sufficiently exchanged between Member States. Ship inspections are therefore insufficiently targeted. The latter point will be partly addressed and supported by the development of the information and monitoring system described above.
- Although the Directive provides that PRF inspections may be conducted within the framework of the Port State Control Directive, these PRF inspections are not the same as Port State Control inspections (i.e. they go beyond checking the international requirements and certificates). The correct application and enforcement of the Directive has to be ensured, based on inspections using specific criteria based on the PRF Directive.

¹³ Main conclusion from the last meeting of the ESSF-PRF Subgroup, held on 1 October 2015 on the cost recovery systems set up under article 8 of the Directive.

The present situation has created legal uncertainties, which is one of the reasons why, in reality, less PRF-compliance inspections are being conducted than required by the PRF Directive. At the same time the minimum 25% inspections referred to in the Directive is not in line with the inspection regime introduced by Directive 2009/16 and therefore should be aligned accordingly.

- Not all port authorities keep track of the specific amounts of waste delivered to their port over time, as the electronic means for doing this are generally not in place and there is no legal requirement to do so. Ports that collect this information act on the basis of their own data needs, using their own units of measurement, which complicates the monitoring of compliance and progress with the overall objectives and requirements of the PRF Directive. In particular, this data is necessary to be able to monitor compliance with the mandatory discharge requirement of the Directive contained in article 7, to allow the port to identify and assess the need for adequate PRF, and to assess the effectiveness of the Directive in terms of amounts and types of waste delivered to PRF. Again, the differences in the size of ports in the EU may contribute to this inconsistent application. This issue will be partly addressed by the revision of Annex II, which will lead to more information becoming available and being reported on the actual types and quantities of waste that have been delivered in the previous port. This information should feed the Information and Monitoring System foreseen in article 12(3) and thus provide the necessary data overtime to enable the development of waste statistics on deliveries.

4. Inconsistent and outdated definitions causing unnecessary administrative burden and costs for authorities, ports and port users

There are differences in definitions used in the Directive and those contained in the MARPOL Convention. This is particularly the case for the definition of "ship-generated waste" in the Directive, which only covers certain categories of waste covered by MARPOL (Annex I, IV and V), and its definition of "cargo residues" which apart from the MARPOL Annex V cargo residues, also covers the remnants of cargo material after cleaning operations, and thus covers tank washings falling under MARPOL Annex I and II. Furthermore, the Directive currently does not include waste as defined in MARPOL Annex VI in its definition of ship-generated waste (as explained above in relation to the adequacy of port reception facilities).

This current misalignment between the Directive and MARPOL creates a lot of confusion among the different actors in implementing the Directive, while at the same time complicates compliance with the MARPOL norms and requirements. For example, the differences in definitions hinder the full alignment with the IMO circular for the waste notification as there are significant differences in the different categories of waste and cargo residues. As explained above, full alignment with current IMO forms will only be possible through a legal revision of the definitions of the PRF Directive (to bring those in line with the definitions used in MARPOL).

5. Inconsistent application of exemptions for ships in scheduled traffic with frequent and regular port calls

The parameters for granting exemptions under article 9 of the Directive are not well defined and leave room for different interpretation and application by MS. Different criteria are thus employed to evaluate exemption requests across the EU, which lead to an increased administrative burden on some port users, while limiting the potential for relevant authorities in different Member States to coordinate the exemptions granted to vessels.

The evaluation study highlighted the example of a ship-owner having a contract in place with a specific waste operator in a certain port to receive and handle the waste coming from his ship. For each port on the ship's route, exemptions have to be requested from the competent authorities of the different MS involved. If these requirements are different in each Member State, this can present a considerable administrative burden. Port users also indicated that Member States are not necessarily informed of exemptions already granted in other Member States and that this may lead to problems during enforcement activities. This inconsistent application leads to an unnecessary administrative burden on some port users and does not contribute to a level playing field between them.

Although this issue will be addressed by the Interpretative Guidelines, through a unified interpretation of the terms "scheduled", "regular" and "frequent", this is only meant as an interim solution to address implementation problems, and will not provide a solid legal basis at the EU Level for the harmonisation of the process of granting and applying the exemptions in Member States.

The problems described above, if not addressed properly, will lead to a situation where there is still an incentive for ships to discharged waste at sea, with the associated negative environmental consequences for the marine environment. In addition, waste may be delivered to some ports at disproportionately higher costs, while negatively impacting maritime transport and operations in ports. As a result, the Member States and different stakeholders have been calling on the Commission in recent years to address the situation. In particular, industry/ship-owners have recently called on the Commission to review the Directive to achieve further harmonisation and simplification of procedures.

Stakeholder mapping:

The problematic issues and inconsistencies of the current Directive affect ship-owners and ship operators, administrations and inspectorate bodies of EU Member States, waste operators, ports, and EU public at large, especially in coastal communities.

In general, the actions of the Member States and ports to develop harmonised implementation tools have not been completely successful, i.e. administrative and management systems are not harmonised, therefore adding a layer of complexity and unnecessary bureaucracy for ships.

Waste operators and ports operating under different national legal frameworks encounter comparative disadvantages (or advantages) depending on where they conduct their business.

The administrations and inspectorate bodies of the concerned EU Member States are not working as efficiently as they could if a better exchange of PRF related information could be achieved and forms and procedures could be further harmonised. Likewise, port users would benefit from more transparency in procedures and more targeted inspections resulting in reduced turn-around time in port.

Subsidiarity check

The PRF Directive is based on the transport Article of the Treaty on the Functioning of the European Union (Art. 100 TFEU). Within the framework of the common transport policy, the Union also needs to pursue its objective of achieving a higher level of protection and improvement of the quality of the environment.

The successful implementation of the Directive largely depends on co-operation between different authorities/bodies in Member States, because the problems associated with the discharge of ship-generated waste into the sea are of a cross-border nature. Member States which put sufficient resources into PRF related inspections may contribute disproportionately to achieving the Directive's goals compared to other Member States who do not provide an adequate inspection regime. Therefore, the incentive for Member States to invest in the setting up and maintaining of an appropriate inspection system is limited if other Member States do not take similar measures.

Since all EU Member States are a party to MARPOL, it could be argued that many policy developments would still have taken place respecting the MARPOL requirements for PRF, without the PRF Directive in place. However, the Evaluation Report concluded that the Directive's EU added-value relies greatly on the specific mandatory delivery requirement and the incentive structures put in place, which have contributed positively to the objectives of waste delivery and reduction of discharges at sea. Moreover, the PRF Directive creates a legal base on which non-compliance with MARPOL can be subject to sanctions by the European Court of Justice, whereas the UN system does not foresee such a legal mechanism.

Main policy objectives

The overall objective of the Directive on port reception facilities is to "reduce the discharges of ship-generated wastes and cargo residues into the sea, especially illegal discharges, from ships using ports in the Community, by improving the availability and use of port reception facilities".

To achieve this goal, the specific policy objectives of this initiative can be defined as follows:

- To ensure the availability of adequate facilities
- To provide effective (cost) incentives to deliver waste at port reception facilities
- To remove barriers to effective and efficient enforcement
- To harmonise and update definitions and forms
- To clarify the rules for exemptions

B. Option Mapping

Baseline scenario – no EU policy change

The baseline scenario will allow an analysis of the likely future developments under the assumption that the existing legislative framework will be unchanged.

Under this scenario it will not be possible to adapt the PRF Directive to accommodate the substantial changes in MARPOL or to fully align the definitions in the Directive with those used in MARPOL, as this would broaden the scope of the Directive, which requires a revision through the ordinary legislative procedure. Also, this scenario will not allow for increasing incentives to deliver waste at ports or the update of the inspection regime, as well as other changes necessitated by new/amended EU legislation to improve coherency.

It will take into account certain actions which are already being pursued:

- Amendment of Annex II of the PRF Directive (Information to be notified) through comitology, to bring Annex II in line with the recent changes to MARPOL Annex V and IMO Circulars as well as to include data on quantities and types of waste delivered.
- The PRF Interpretative Guidelines (still under development).
- Development of the Common Information and Monitoring System based on existing reporting systems

(SafeSeaNet and THETIS), as required by article 12(3) of the Directive. The efficient integration of reporting tools in SafeSeaNet should be pursued in order to reduce administrative burden for port users, while increasing the effective use of information collected and exchanged with the overall objective to improve implementation and enforcement of the provisions of the PRF Directive.

- The adoption of the Proposal for a Regulation establishing a framework on market access to port services and financial transparency (currently in the legislative process and expected to be adopted in 2016).

Options of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation

A number of measures have been identified in reply to the problem drivers identified above, which will be further developed and complemented. Most of these measures should not be considered as mutually exclusive, and so they can be combined in different option packages, which will be further defined in the Impact Assessment process. The following preliminary option packages could already be envisaged at this stage:

1. Soft law approach; 2. Simplification through a strict alignment with MARPOL leading to a decrease of administrative burden; 3. Regulatory control based on a strict and improved enforcement of the mandatory delivery of waste to further reduce discharges into the sea; 4. Use of incentives to improve delivery of waste; and 5. Combination of option package 3 and 4 to present the most comprehensive approach in strengthening the regime.

Driver 1: Port Reception Facilities are not always adequate and available

- Measure 1a: Broaden the scope of the Directive to include MARPOL Annex VI waste (residues from exhaust gas cleaning systems).
- Measure 1b: Introduce a reference to the waste hierarchy presented in the Waste Framework Directive, as a means to involve local authorities in ensuring that the waste legislation is well implemented, particularly with respect to segregated garbage at the ship-port interface.
- Measure 1c: Strengthen the requirements for systematic consultation of stakeholders in the development and updating of waste reception and handling (WRH) plans, supplemented by an exchange of good practices of port user involvement.

Driver 2: Different and non-transparent cost recovery systems providing insufficient incentives for delivery of waste

- Measure 2a: Introduce the use of a shared methodology, either at EU level or at regional (sea basin level), to calculate the fee to port users, starting with providing a more specific definition of 'indirect contribution'.
- Measure 2b: Require higher levels of transparency on the various elements of costs charged to port users for the use of port reception facilities through mandatory publication in the WRH Plans.
- Measure 2c: Incentivise measures that reduce the amounts of waste produced on-board. For this the current provisions for green ships should be further improved by defining minimum criteria for a more uniform application of the "Green Ship" concept, as referred to in article 8(2)..
- Measure 2d: Incentivise the delivery of all waste from fishing vessels to port reception facilities, including waste collected from the sea when fishing, either by providing a specific derogation from the payment of a fee for passively fished waste (, or including fishing vessels in the indirect contribution scheme.

Driver 3: Barriers to effective and efficient enforcement

- Measure 3a: Replace the 25% minimum inspection requirement with a risk based approach for PRF inspections in line with Directive 2009/16/EC, and revise the inspection and monitoring provisions in the current Directive to improve the monitoring and selection of vessels for inspection, as well as the exchange of information between inspection authorities.
- Measure 3b: Include provisions on the periodic reporting by the Member States / port authorities of delivery statistics to enable EU-level statistics on waste delivery in ports, which should allow for performance monitoring of the Directive.
- Measure 3c: Require waste operators to issue a waste receipt after delivery, in line with the IMO Circular 645/rev, in order to enable reporting of accurate information on types and quantities of waste being delivered in ports, which in turn should facilitate the monitoring and enforcement of the mandatory discharge of ship generated waste.
- Measure 3d: Seek further consistency between the PRF Directive and Directive 2005/35/EC on ship source pollution and on the introduction of penalties for infringements, by aligning in terms of scope and measures (i.e. penalties).

Driver 4: Inconsistent and outdated definitions and forms

- Measure 4a: Align with the definitions used in MARPOL for "cargo residues" and "ship-generated waste".

- Measure 4b: Align/update the notification form (Annex II of the PRF Directive) to reflect the IMO standard and its definitions and categories, and reflect these updates in the electronic reporting into SafeSeaNet (SSN) through the National Single Reporting Window (NSW). In addition, introduce the "electronic signature" as agreed for electronic reporting into SafeSeaNet, and delete the requirement for a formal signature on the waste notification form.

Driver 5: Inconsistent application of exemptions

- Measure 5a: Develop common criteria to be applied for the approval of exemption requests, as well as the application of exemptions, while also setting minimal requirements on information exchange between relevant authorities, for example by means of mandatory reporting and exchange of information on exemptions granted into SafeSeaNet.
- Measure 5b: Introduce a possibility for exempting vessels that are operating exclusively within one port (tug vessels, pilot vessels, etc.).

Alternative policy approaches/ Alternative policy instruments

The implementation of the Directive could also be reinforced by the Guidelines mentioned above, which should provide clarification of the key concepts and definitions in the Directive. In addition, the development of the Common Information and Monitoring System would address many of the problems that have been identified. In particular:

- Alternative 1c: Address consultation requirements in the PRF Interpretative Guidelines, supplemented by an exchange of good practices of port user involvement.
- Alternative 2a: Promote the use of a shared methodology to calculate the fee to port users by defining the 30% indirect contribution part for the different existing cost recovery systems in place.
- Alternative 2b: Define transparency criteria for cost recovery systems.
- Alternative 2c: Further define the green ships concept in PRF Guidelines to provide better incentives for environmentally friendly shipping operations, producing reduced quantities of ship-generated waste
- Alternative 3b: Extend the existing Information and Monitoring System in order to include and exchange between MS all the relevant information on the application of the mandatory delivery of ship generated waste and cargo residues, contributing to better enforcement and understanding of waste flows in ports. As such, the information and monitoring system (based on SafeSeonet and THETIS) will progress from a mere data collection platform to a data analysis system, with a risk based approach. Enhancing the Common Information and Monitoring System beyond its current scope, could envisage including the information from the Waste Reception and Handling Plans to determine the adequacy of facilities. In fact, this alternative is already being developed by the Commission and EMSA, as set out in the baseline scenario.

All of these alternatives will be looked at in more detail in the upcoming impact assessment.

At the same time, the different concepts and definitions elaborated in the Commission Interpretative Guidelines, will also have to be looked at in the context of assessing the measures listed above, as the two are intrinsically linked.

Alternative/differentiated scope

The IA will assess whether exemptions for small ports (in which often SMEs provide the PRFs) could be foreseen in the framework of certain options, in particular in relation to the development and monitoring of Waste Reception and Handling Plans to ensure the availability of adequate port reception facilities. The Impact Assessment will look at a possible differentiation between ports based on size and geographical location.

Options that take account of new technological developments

The IA will look into a more efficient use of the already existing electronic systems SafeSeaNet and THETIS, which are developed and operated by EMSA and form the basis of the CMIS for PRF, in view of their potential to reduce the administrative burden for the different actors involved, and to improve overall monitoring and enforcement. In addition, the IA could assess the benefits of extending the scope of the current CMIS to include information on the availability and adequacy of facilities based on the information contained in the Waste Reception and Handling Plans.

The possibility to use satellite or aerial surveillance to monitor illegal discharges will also be looked into. For oil pollution such a system already exists (CleanSeaNet, see: <http://www.emsa.europa.eu/csn-menu.html>). However, for the other categories of ship generated waste covered by the PRF Directive (in particular sewage and garbage), a future impact assessment will have to look into the technical feasibility, as well as the cost-effectiveness of implementing a similar monitoring system.

Preliminary proportionality check

A large majority of the envisaged measures would streamline/update the existing legislation without bringing substantial additional costs to stakeholders.

As far as the new data reporting requirements proposed (including the waste receipt) is concerned, the initiative will ensure that only the necessary minimum of data would be collected.

The analysis under the impact assessment will look more in detail into proportionality of options and make sure that none of the options goes beyond what is strictly needed to address the problems identified.

C. Data Collection and Better Regulation Instruments

Data collection

An ex-post Evaluation of the PRF Directive is already available (http://ec.europa.eu/transport/modes/maritime/studies/maritime_en.htm). It contains a large data set and results from the stakeholder consultation (responses to questionnaires) in its Annexes. The evaluation report also draws on the information from an EMSA horizontal assessment report from 2011, which contains a compilation of the findings from an extensive round of visits of Member States national administrations and ports, as well as studies undertaken by EMSA on various aspects of the Directive (and which can be consulted on the EMSA website).

A study to support the development of measures to combat a range of marine litter sources, including sea-based sources of marine litter, was undertaken on for the Commission services and the final report will be made available in December 2015.

In addition, an external support study will be launched in order to collect further information needed to substantiate the impact assessment process.

Data gaps which remain after the Evaluation study and which are unlikely to be completed include:

- limited data on volumes of waste delivered in ports (waste delivery volumes of the dataset extrapolated to total EU-level)
- volumes of waste discharged at sea (comparable indicators have been used)
- data on level of costs for using PRF (market-sensitive information)

Consultation approach

Stakeholders were largely consulted in the framework of the ex-post Evaluation of the PRF Directive¹⁴.

In the course of the impact assessment, further stakeholder consultation will take place, in particular in the context of the targeted consultation under the external study foreseen, and through an open public consultation planned during the first quarter of 2016. The following stakeholders will be consulted in particular:

- Ports: Port Authorities and Harbour Masters;
- Port users: Users of Port Reception Facilities, Shipping Companies, Fishing Operators, Recreational Vessel Operators;
- PRF operators: Providers of Port Reception Facilities, Waste Operators and Terminal Operators;
- MS: Member States, National or Regional Authorities;
- Other organisations: Non-Governmental Organisations, Fisheries Commissions, Advisory Councils, Regional Seas Conventions, other types of commissions and environmental protection organisations.

In addition the PRF Subgroup, which was set up in January 2015 under the European Sustainable Shipping Forum (ESSF) and which brings together all relevant stakeholders, will be regularly consulted and is expected to assist the Commission with the implementation of the current Directive, as well as data collection in view of the future revision of the Directive.

Will an Implementation plan be established?

Yes No

The Commission has drafted Interpretative Guidelines for the PRF Directive, which intend to further harmonise certain key aspects of the Directive (see baseline scenario). These Guidelines may have to be updated accordingly in case legislative changes will take place. An additional set of technical recommendations on the implementation of the Directive, following the interpretative Guidelines as well best practices developed in EU Member States, is currently being developed by EMSA, and stakeholders will be consulted on these Guidelines as soon as the interpretative Guidelines have been adopted by the Commission.

D. Information on the Impact Assessment Process

¹⁴The results of this targeted stakeholder consultation have been incorporated in the final Ex-post Evaluation study that is accessible through the following link: http://ec.europa.eu/transport/modes/maritime/studies/maritime_en.htm

A preparatory IA support study will be contracted out to fill data gaps and consult stakeholders. It is foreseen to be launched in Q1 2016.

An Inter-service Steering Group (ISG) will be set up in Q4 2015. It is planned to have a minimum of four meetings and to involve the Directorate Generals for Transport (MOVE), Environment (ENV), Maritime Affairs and Fisheries (MARE), Internal Market, Industry, Entrepreneurship and SMEs (GROW), Employment, Social Affairs and Inclusion (EMPL)) as well as the Secretariat-General (SG). The European Maritime Safety Agency (EMSA) will also participate in this Steering Group, and the Joint Research Centre (JRC) will also be invited to take part in the discussions.

E. Preliminary Assessment of Expected Impacts

Likely economic impacts

Improved adequacy and availability of port reception facilities, harmonised and transparent procedures, and improved monitoring and reporting (resulting in reduced turn-around time in ports) should reduce the operational costs for ships. Increased business for PRF operators/providers is to be expected if the proposed options are implemented and lead to more waste being delivered to PRF.

Regarding the costs for authorities, most of the necessary monitoring and enforcement tools already exist, though proposed improvements would bring one-off costs to some Member States. However, these are expected to be off-set by long term administrative savings (better flow of information between authorities, better targeting of inspections).

Ports have to bear some costs to ensure that the waste reception and handling plans are adequate and appropriately updated. Changes in the IMO regulations have already required investments in additional reception facilities. Therefore, the associated investment cost is not due to proposed EU intervention alone, but also to international obligations undertaken by each Member State as a contracting party to the international IMO Conventions. A risk based approach for inspections is expected to result in an overall lower number of inspections for the PRF Directive (lower enforcement costs).

Likely social impacts

No significant social impacts are expected.

Likely environmental impacts

The environmental impacts to be expected are defined in terms of protection of the marine environment, and more specifically a reduction in discharges at sea of ship generated waste and cargo residues, including a reduction of marine litter from shipping. Reduced levels of ship generated waste in the marine environment result in cleaner seas and have a positive effect on marine ecosystems and associated ecosystem services. For example, reduction in oily waste or garbage discharged at sea reduces the number of sea animals immobilised, entangled, smothered and killed through ingestion. Moreover, reduced sea pollution has a positive impact on economic activities, such as fishing and tourism.

The benefits of reduced waste discharges at sea are undisputed, but at the same time are difficult to quantify. Comparable indicators may be applied in this case to assess the avoided costs of discharges of ship generated waste, such as those developed in relation to marine litter. As regards the impact from marine litter, recent reports have indicated that costs are substantial : the potential cost across EU for coastal and beach cleaning was estimated at almost €630 million per year, while the cost to the fishing industry could amount to almost €60 million, which would represent approximately 1% of total revenues of the EU fishing fleet (in 2010). Marine litter also poses a navigational hazard and creates costs for vessels in general.

The evaluation has shown that improving the adequacy and availability of port reception facilities has a positive impact on the marine environment. Improving the administrative and operational management in ports should also have a positive impact on the collection, treatment and disposal of waste from ships.

Likely impacts on simplification and/or administrative burden

The revision should lead to more harmonised procedures, which should have a positive cost impact for all stakeholders. There is great potential for simplification of reporting leading to a decreased administrative burden and reduced turnaround time in ports.

To be determined are the administrative burdens associated with:

- the advance waste notification (both for ports and port users)
- enforcement costs (for authorities and port users)

Likely impacts on SMEs

The evaluation has shown that several Member States would like to reduce the detailed requirements of the Waste Reception and Handling (WRH) plans for smaller ports in a harmonised way, paying specific attention to the lack of resources of smaller ports to draw up these plans, and difficulties encountered with privately owned small ports. Such a reduction in the detail of the requirements would also have positive effects on small and

medium-sized waste handling enterprises which are active in small ports. In addition, the position of small ship operators, such as operators of fishing vessels, will be considered in the IA.

Likely impacts on competitiveness and innovation

The level of the fees charged for port reception facilities has an impact on ports' competitiveness. However, the Directive aims at creating a level playing field for all ports in the EU, and it is therefore not expected that it will have a significant effect on competition between ports.

It is expected that the proposed revision will increase competitiveness of shipping by reducing turn-around time in port thanks to better reporting and exchange of information between MS, as well as more effective targeting for inspection.

Improved implementation of the PRF Directive is expected to stimulate technological innovations which can be used to comply with the provisions of the Directive, such as on-board waste treatment plants, oil filters or waste incinerators. These innovative products can substantially reduce the amount of on-board waste produced, and reduce the quantity and the impact on the marine environment of the waste that has to be discharged in port reception facilities.

Likely impacts on public administrations

The further development of an electronic Information and Monitoring System, based on existing reporting requirements, as well as the use of existing systems already developed and in use for reporting and exchange of information between MS authorities, could on the one side limit the investment costs associated with the development of IT tools, and on the other side simplify procedures and reduce administrative burden for implementing the Directive. Associated investment costs for Member States in principle follow from international commitments undertaken by Member States as contracting party to International Conventions (MARPOL).

Likely impacts on third countries, international trade or investment

There may be a positive effect on shipping operators from third countries which should be better able to fulfil their requirements under MARPOL due to the improved availability of port reception facilities in EU ports. The IA will also look at the effects on the EU's outermost regions.