ECSA
European Community Shipowners' Associations

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on port reception facilities for the delivery of waste from ships, repealing Directive 2000/59/EC and amending Directive 2009/16/EC and Directive 2010/65/EU

ECSA ASSESSMENT DOCUMENT (Final Draft_28.02.2018)

	ECSA assessment	**Need for clarification / Proposals by ECSA**
Port reception facilities (Article 4)		
§2. Member States shall ensure that: **(a)** The port reception facilities have the **capacity to receive the types and quantities** of waste from ships normally using that port, taking into account the operational needs of the users of the port, the size and geographical location of the port, the type of ships calling at that port, and the exemptions provided for under Article 9;	It is questionable as whether a ship should pay the full indirect fee if the PRF has not the capacity to receive the types and quantities the ship has to deliver (See below **Article 8** on Cost recovery systems). It is however welcomed that transparency[1] on the costs and description of the PRF installation will have to be ensured by MS, and that where required for reason of efficiency the Waste reception and handling plan will have to be developed in conjunction by	The general principle of the directive that all the waste must be delivered to PRF before departure is described under **Article 7 §5.** To provide greater clarity, the opportunity that the ship can proceed to the next port if the PRF has eventually not the capacity to receive the waste should be specified.

[1] **Article 8 §6**: In order to ensure that the fees are fair, transparent, non-discriminatory, and that they reflect the costs of the facilities and services made available, and, where appropriate, used, the amount of the fees and the basis on which they have been calculated shall be made available to the port users.

	neighbouring ports (Reference to be made to Article 5 on Waste reception and handling plan).	
Delivery of waste from ships (Article 7)		
§2. Upon delivery, the waste operator or the authority of the port where the waste was delivered shall accurately complete the form in Annex 3 and issue the receipt to the ship.	In alignment with MARPOL, the new directive foresees the delivery of a waste receipt to be communicated to the ship before departure. This is welcomed by ECSA as it provides evidence on quantity and waste delivered.	-
§4. The information referred to in paragraph 2 shall be kept on board for at least two years and shall be made available upon request to the Member States' authorities.	-	Since the information has been distributed via the electronic single window, the requirement to keep the information on board so that it can be supplied to MS authorities is redundant and impose unnecessary administrative burden on ships,. Same concern goes for the delivery receipt which needs to be kept on board for 2 years.
§5. Without prejudice to paragraph 1, a ship may proceed to the next port of call without delivering the waste, if: **(a)** the ship only calls at anchorage for **less than 24 hours** or under adverse weather conditions; **(b)** the information provided in accordance with Annexes 2 and 3 shows that there is **sufficient dedicated storage capacity** for all waste that has been accumulated and will be accumulated during the intended voyage of the ship until the next port of call.	The 'less than 24 hours' requirement for ships at anchorage appears to be unrealistic and impracticable for ships to be required to deliver all the waste when the ship is at anchorage, whilst sufficient dedicated capacity is available for the ship to proceed to berth. ECSA welcomes the sufficient dedicated storage capacity requirement and invite a stakeholder consultation by the Commission on the methodology envisaged and to be regulated through an Implementing act.	Need to clarify the impracticality under the 24 hours requirement for ships at anchorage in a port jurisdiction. There are two possible situations: A. Under **Article 6**, the 24 hours advance waste notification prior to arrival to port (including the anchorage in the jurisdiction of the port) should provide sufficient guarantee and traceability for the ship to proceed to the port of the jurisdiction of the anchorage without any time restriction, in case

		the ship goes alongside in the same port. B. In case the ship proceeds to another port of call following a stay at anchorage, the delivery of waste should then be conditional upon the available capacity on board in case the ship stays for a longer period than e.g. 48 hours.
§7. If the next port of call is located outside the Union or there are good reasons to believe that adequate facilities are not available in the next port of call, or this port is unknown, the Member State shall require the ship to deliver all its waste before departure.	One can understand the interest from the Commission to ensure that ocean-going ships deliver all their waste before leaving the EU. But, by definition, ships engaged in shortsea services are always operated in short trades between EU ports and with close third countries. For, instance, in trades with North Africa, it will be unpractical to force ships calling for instance 2 or 3 times per week to deliver each time they leave from the EU last port when the ship has the capacity to keep on board waste for one or two weeks.	Duly appreciating the importance of the Directive's objectives, ECSA believes that Short Sea Shipping services should not be penalized and therefore suggests the following amendment to **Article 9 §1** to include a reference to **Article 7. §7**[2]. "Member States may exempt a ship calling at their ports from the obligations in Articles 6, 7(1)**, 7(7)** and 8 cumulatively, where there is sufficient evidence that: [...]"
Cost recovery systems (Article 8)		
§2 (a) part of the fee to be paid by ships shall be an **indirect fee**, to be paid **irrespective of delivery of waste to a port reception facility**;	Apart from the alignment of PRF waste definitions with those of the MARPOL Convention, the new Directive on PRF should aim to achieve the set overall objectives, while safeguarding that unreasonable, excessive and unduly charges of shipowners for	The distribution between direct and indirect costs for the application of direct/indirect fee on operation and administration of PRF under Annex 4 to be clarified.

[2] **Article 7. §7:** If the next port of call is located outside the Union, or there are good reasons to believe that adequate facilities are not available in the next port of call, or this port is unknown, the Member State shall require the ship to deliver all its waste before departure.

§2 (b) the **indirect fee** shall cover the indirect administrative costs, as well as a significant part of the direct operational costs, as determined in Annex 4. The significant part of the direct operational costs shall represent at least 30 % of the total yearly direct costs for actual delivery of the waste;	disposing ship-generated wastes in EU ports are avoided. Cargo residues are excluded from the scope of Article 8. The fee for the delivery of cargo residues should be paid by the user of the reception facility, as specified in the contractual arrangements (**Recital 20**). According to **Article 8 §3**, the part of the costs not covered by the indirect fee will be covered on the basis of type of waste/quantities actually delivered ashore (direct fee).	The application of the 'at least 30%' rule: how the total yearly costs could be retroactively applied for actual delivery of the waste? This implies that there can be a profit or a loss. It should be clarified how the related costs will be passed on in a transparent manner. The application of "at least 30% rule" to cover the significant part of the direct operational costs should therefore be clearly defined as an integral part of EU-wide functional, transparent and standardized cost recovery systems.
§2 (c) in order to provide for a maximum incentive for the delivery of waste as defined in **Annex V** to the **MARPOL** Convention, including the waste that has been collected in nets during fishing operations, the **indirect fee** to be charged shall **cover all the costs** of port reception facilities for this waste, in order to ensure a right of delivery **without any additional direct charges**;	This indirect fee will for MARPOL Annex V waste specifically amount to **100%** to be charged to cover all the costs of port reception facilities. ECSA definition of 'right of delivery' (ECSA circular C.10144/17 of 06.10.2017): - A principal according to which, a fee x corresponds to the delivery of quantity of waste y during the port's normal working hours. - The 'right of delivery' indicates the type and quantity of waste disposed in a port reception	The intended '100% indirect fee' proposed by the Commission raises some questions: - What will be the incentive for operators to provide efficient PRF installation at a competitive price if ships have to pay a fee irrespective of delivery of waste? - MARPOL Annex V includes 'operational wastes'[3] of which

[3] In addition, following the entry into force of amendments to the Regulations (Annex V, Marpol) on 01.03.2018, operational waste will also include wastes deriving from carriage of solid bulk cargo carried mainly by bulk carriers, which by their nature have increased cleaning requirements. De facto, we are leading to increased flows of cargo-related wash-water from cargo holds that require management onshore. Therefore, the imposition of an indirect charge covering 100% of the total cost of port reception facilities will become impracticable considering the varying amounts of wastes.

	facility without additional costs. The quantity and type of this waste and the related fee should always be clearly stated together with the charge for any additional waste delivered. - Any additional charge should be calculated on the basis of the ship's category, type and size of vessel and type of trade. The incentive scheme for delivery of Annex V waste at ports **should exempt hazardous waste** of this Annex. The Commission Impact Assessment Support study identified that this approach would be reasonable. This exemption would not limit the effectiveness of any measures as most waste types will be covered. On the contrary, omission of this exemption would make the whole system much more costly and would undermine in the end its effectiveness. The Commission has provided to following clarification to ECSA: *The fees may be differentiated based on category, type, size of the vessel and the type of traffic it is engaged in (SSS for example). This differentiation applies across the board, i.e. also as regards the delivery Annex V waste (garbage). The 100% indirect fee merely specifies that no additional direct fees should be due for this type of waste (charged on basis of volumes delivered), it does not refer to the level of the fee, which as explained may differ depending on the ship.*	volumes may vary significantly from one ship to another. How a 100% indirect fee system would encompass the variation in volumes and the higher costs of handling hazardous products (such as cleaning agents and additives contained in cargo hold wash water)? ECSA suggests to have operational waste be differentiated avoiding to make the whole system unnecessarily costly.
§4. The fees may be differentiated with respect to, inter alia, the category, type and size of the ship and the **type of traffic** the ship is engaged	The Commission proposal includes the possibility to have a differentiated fee according to the 'type of traffic'. <u>In this way, short sea vessels operating on</u>	ECSA would like to emphasize that it would be more appropriate to

in, as well as with respect to services provided outside normal operating hours in the port.	tramp would be able to benefit from a differentiated fee. However, it is unclear whether the differentiated fee system can apply to the entire cost recovery system under **Article 8** or exclusively to the direct fee under **Article 8 §3**.	replace the word "traffic" with the word "trade" so that SSS vessels operating on tramp (other than liner ferries) which face similar compliance and cost challenges can also benefit from a differentiated fee system. **Article 8 §4** should read as follows: "§4. The fees may be differentiated with respect to, inter alia, the category, type and size of the ship and the ~~**type of traffic**~~ **type of trade** the ship is engaged in, as well as with respect to services provided outside normal operating hours in the port."
§5. The fees shall be reduced if the ship's design, equipment and operation are such that it can be demonstrated that the ship produces reduced quantities of waste, and manages its waste in a sustainable and environmentally sound manner. The Commission shall be empowered by means of delegated acts in accordance with Article 19, to define the criteria for determining that a ship meets the requirements stated in this paragraph in relation to the ship's on-board waste management.	ECSA encourages a careful and transparent approach when identifying criteria for applying reduced waste fees to 'green ships', as such reward conditions should not result in an indexing of ships.	Since there is no such definition of 'green ships' in the IMO regulatory framework, ECSA would recall the prerogative role of IMO and the EU should avoid elaborating such a definition. In addition, the Delegated Act should regulate the technical implementation of a measure rather than the concept of a "green ship".
Exemptions (Article 9)		
§1. Member States may exempt a ship calling at their ports from the obligations in Articles 6, 7(1) and 8 **cumulatively**, where there is sufficient evidence that:	The definitions of scheduled traffic, frequent and regular port calls, combined with the proposed cumulative conditions appears to be too stringent for an exemption to be granted to short sea shipping vessels.	ECSA would like to suggest the following deletion from **Article 9 §1**:

(a) **the ship is engaged in scheduled traffic with frequent and regular port calls**; (b) there is an arrangement to ensure the delivery of the waste and payment of the fees in a port along the ship's route; (c) the arrangement under point (b) is evidenced by a signed contract with a port or waste contractor, waste delivery receipts and **confirmation that the arrangement has been accepted by all ports on the ship's route.** The arrangement for delivery and payment of the fee shall be made in a port located in the Union in order to constitute sufficient evidence in accordance with this paragraph.	More generally, it is contrary to the EMSA technical recommendation (November 2016) wisely advising that exemptions could be given to ships if the vessels on other international voyages to non-EU countries, provide sufficient proof that they meet the exemption criteria, the MS is satisfied that the SGW on that vessel is being managed in accordance with the PRF Directive and it is proven that there are sufficient PRF in the third country port. The requirement for the "arrangement to be accepted by all ports on the ship's route" is too prescriptive and should not preclude a Member State from delivering an exemption certificate.	**"§1.** Member States may exempt a ship calling at their ports from the obligations in Articles 6, 7(1)**, 7(7)** and 8 cumulatively, where there is sufficient evidence that: (a) the ship is engaged in scheduled traffic with frequent ~~and regular~~ port calls; […]" This would offer a more flexible approach regarding the possibility to have international voyages to non-EU countries and to mitigate the burden on short sea shipping (esp. tramp SSS) which is equally characterized by frequent port calls. Also, we suggest the following deletion and additions: (c) the arrangement under point (b) is evidenced by a signed contract with a port or waste contractor, waste delivery receipts ~~**and confirmation that the arrangement has been accepted by all ports on the ship's route.**~~ The arrangement for delivery and payment of the fee shall be made in a port located in the Union **or in the case of SSS services in the ship's route** in order to constitute sufficient evidence in accordance with this paragraph.

§2. If the exemption is granted, the Member State where the port is located, shall issue an exemption certificate, based on the format set out in Annex 5, confirming that the ship meets the necessary conditions and requirements for the application of the exemption and stating the duration of the exemption.	-	It should be clarified whether ships that have currently an exemption under the current directive will have to apply for a renewed certificate according to the new directive.