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# Quarterly EU Report



*Logos has completed this report with the help  
and input of ICOMIA's Environmental and  
Technical Consultants*

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## Executive Summary

There have been important updates concerning the developments of the **Ship Recycling Regulation**, as yards in Norway (5), Denmark (2) and Turkey (1) will be added to European list of 'approved' ship recycling yards. The European Community Shipowners' Associations (ECSA) has also released a report of its fact-finding mission to India's ship-recycling facilities in Alang, in the State of Gujarat.

Regarding the **Biocidal Products Regulation**, this last quarter has not seen key updates on Product Type 21, but it is essential to mention that a Commission Report on the regulatory Fitness of all chemicals legislation (excluding REACH) will be released before the Commission's high-level EU Chemicals Policy 2030 conference in Brussels on 27-28 June. Moreover, during the Chemical Watch Biocides Symposium in Rome, stakeholders dealing with BPR and even institutional representatives called for the complexity of BPR regulations, stating that according to estimates, bringing a new substance to the EU market takes at least 5 years and a minimum cost of 750k€, making ROI extremely shallow especially for SMEs.

On **Port Reception Facilities**, the key developments since the last report relate to the fact that the European Parliament and the Council reached an agreement on the Commission's proposal. These new EU rules on the delivery of waste from ships are expected to enter into force in the second quarter of 2019. According to statements made by the Council, the Commission also took note of the co-legislators' call to assess the need to review Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements to provide an adequate legislative framework to address ship pollution and also to align it to the PRF Directive. The new PRF Directive would in fact have a wider scope by covering waste as defined in MARPOL Annexes I, II, IV, V and VI. The German delegation also submitted a statement, explaining that it does not support the agreement reached during the last trilogue, stressing that it opposes the introduction of compulsory arrangements for cost recovery systems. With regard to this, the delegation indicated that the compromise reached does not take in sufficient account the different size and structure of ports, and that fees fall under the competence of Member States.

On the **Marine Strategy Framework Directive**, we provide an update mainly related to ICOMIA Environmental Consultant's report serving as a contribution to the public consultation as part of the Fitness Check of the EU WFD. In this report, among many other issues, ICOMIA stresses that there are many issues to be solved which directly affect MSFD topics, including Transitional and Coastal Water Bodies and a lack of policy coherence between the MSFD and WFD in a series of areas such as hydromorphology, new projects in coastal waters, etc. Logos also comments on the GloFouling Partnership, a project to address the transfer of harmful aquatic species through biofouling in some of the developing regions of the world.

As mentioned above, on the **Water Framework Directive**, we focus our reporting on the Fitness Check of the WFD, providing a general view of ICOMIA's feedback to the European consultants dealing with this. Some key issues put forward by ICOMIA include the lack of recognition of the role of sediments, overlaps between the WFD and the MSFD, the impact of climate change in WFD implementation, a sheer need to ensure better coordination between different EU regulations and directives (as there are incompatibility issues between some of the objectives of these texts), diffuse pollution, etc. ICOMIA concludes by stating that the 2027 is not realistic

considering past experiences. Logos also mentions that there is a preparatory study being prepared assessing the economic value of water and water services in the EU.

The 8-week public consultation on the Revision of the **Monitoring, Reporting and Verification of CO2 emissions from maritime transport** file showed disagreement among the stakeholders with regards to evaluation of vessels' performance and reporting parameters. However, the European Elections represented a considerable obstacle for the activity of the co-legislators on the legislative proposal. Substantial developments are only expected to start after the summer 2019.

Regarding the **Proposal on the Protection of Workers from the Risks related to Carcinogens and Mutagens at Work**, the most important update related to the fact that a fourth amendment is expected (but not confirmed yet) which would include the following substances: nickel compounds, acrylonitrile and benzene. On the third amendment, it is key to mention that the Council formally adopted the compromise agreement reached on the Commission's third proposal on 21 May 2019.

On the **EU Timber Regulation**, the FLEGT/EUTR Expert Group met in Brussels on the 30th of April of 2019, and covered highly relevant topics including concerns on Myanmar and an application of the joint non-negligible risk assessment, updates on EUTR implementation, reports on trade in illegally harvested timber and derived products from Myanmar and Africa-China (EIA), update on support services for implementing the EUTR and FLEGT Regulation (UNEP WCMC), etc. Moreover, starting from June 1, Vietnam will be able to export only verified legal timber products to the European Union (EU) markets as the Voluntary Partnership Agreement on Forest Law Enforcement, Governance and Trade (VPA/FLECT) will officially enter into force.

In what concerns the **EU-US Trade War**, there are very relevant ongoing updates. EU trade ministers met on the 27<sup>th</sup> of May to discuss state of play of the EU-US trade war after the decision by President Trump to postpone by 6 months the imposition of duties (up to 25 %) on auto parts. However, President Trump made the request to find a solution within that timeframe to restrict import of cars and auto parts from the EU and Japan. In parallel, negotiations with the US on tariff reductions have stalled upon the scope of these tariff eliminations. The US is asking for agriculture products to be covered. The threat of imposing tariffs on cars has started to raise some discording voices among Member States, notably Sweden which has an approach to extend the scope of products covered by the tariff elimination to all sectors in order to avoid tariff on cars. This approach was rejected by the French government, so the discussions promise to be complex.

On **Brexit**, the 2019 European elections and pending change of the Commission have moved the EU to make changes to its Brexit negotiation team. Large changes to the British negotiation team are expected as a result of the Conservative leadership contest and the pending change of Prime Minister. The European Council summit on 20-21 June will assess the developments in the UK and its conduct in the EU Institutions will be subject to a review. Once taking office, the new UK Prime Minister is expected to attempt to renegotiate the Withdrawal Agreement with the EU. The decision on how the UK leaves the EU will therefore be for the next Prime Minister to decide, with a more hardline stance expected to be adopted. This is likely to lead to more opposition and as such could precipitate a General Election. The 25 September is the latest date for the opposition to force a General Election and be able to install a new UK Government before the withdrawal of the UK from the EU on 31 October.

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## SECTION I – Environmental Legislation and Initiatives

### 1. SHIP RECYCLING REGULATION

#### Latest developments

At EU level, yards in Norway, Denmark and Turkey will be added to European list of 'approved' ship recycling yards (you can access the draft regulation [here](#)). The main modifications amending Implementing Decision (EU) 2016/2323 establishing the European List of ship recycling facilities pursuant to Regulation (EU) No 1257/2013 are as follows:

- Denmark has informed the Commission that two ship recycling facilities (FAYARD A/S and Stena Recycling A/S) located in its territory have been authorised by the competent authority in accordance with Article 14 of Regulation (EU) No 1257/2013.
- Norway has also informed the Commission that five ship recycling facilities (AF Offshore Decom, Green Yard AS, Kvaerner AS (Stord), Lutelandet Industrihamn and Norscrap West AS) located in its territory have been authorised by the competent authority in accordance with Article 14 of that Regulation.
- The Commission has received an application in accordance with Article 15(1) of Regulation (EU) No 1257/2013 for a ship recycling facility (Isiksan Gemi Sokum Pazarlama Ve Tic. Ltd) located in Turkey to be included in the European List. Having assessed the information and supporting evidence provided or gathered in accordance with Article 15 of that Regulation, the Commission considers that the facility complies with the requirements to conduct ship recycling and to be included in the European List.
- Moreover, it is necessary to correct an error in relation to the information with regard to the inclusion in the European List for a ship recycling facility located in Finland.

Denmark, Norway and Turkey have all provided the European Commission with all information relevant for the facilities to be included in the European list, and the European List should therefore be updated to include all of these facilities.

Moreover, it's also worth mentioning that recently, the European Community Shipowners' Associations (ECSA) released a [report](#) of its fact-finding mission to India's ship-recycling facilities in Alang, in the State of Gujarat that took place from 25-27 February. The aim of the mission was to gain a better understanding of the possible threats to and opportunities for the Indian ship-recycling and European shipping industries. The facilities ECSA visited exhibit huge strides made over the past 3 years to raise standards, guided by the HKC and the prospect to be included in the EU list. To this effect, the EU must act as a true enabler of further progress by giving the audited facilities a fair chance to get on the EU list.

The mission was marked by the willingness of the side of the ship-recycling facilities, the Ship Recycling Industries Association (India) SRIA and the Gujarat Maritime Board (GMB), to transparently demonstrate and critically discuss the actual state of play towards healthy, safe and environmentally-sound recycling operations in Alang. The EU should apply its own principles of sustainable development also in their relations with third countries.

The HKC is the only applicable international instrument that can provide a meaningful regulation for the development of sustainable global recycling facilities. As a matter of priority, EU Member States must now ratify the HKC and, in conjunction with the EU Commission, strive to ensure key Recycling States and Flag States follow suit.

## Background

The [Regulation \(EU\) No 1257/2013](#) on Ship Recycling entered into force on 30 December 2013. It was published in the Official Journal on 10 December 2013, however, certain provisions of the Regulation will start to apply between 31 December 2014 and 31 December 2020.

The Regulation transposes the Hong Kong Convention on International Ship Recycling into EU law and sets out the requirements for ships recycling, ship-owners, hazardous materials, recycling facilities (authorisation and inspection, prevention of impact on human health and the environment) as well as rules on reporting (reporting requirements for ship-owners and ship recycling facilities) and enforcement by the Member States. The Regulation aims to ensure that ships linked to the EU in terms of flag or ownership are only dismantled in safe and environmentally sound facilities within the EU or OECD.

The Regulation, with the exception of Article 12, applies to ships flying the flag of a Member State. Article 12 applies to ships flying the flag of a third country calling at a port or anchorage of a Member State. According to the Regulation, the installations or use of hazardous materials on ships have to be prohibited or restricted as specified in Annex I (for instance asbestos and ozone-depleting substances). The Regulation requires for each new ship to have on board an inventory of hazardous materials, which has to identify at least hazardous materials referred to in Annex II and contained in the structure or equipment of the ship, their location and approximate quantities.

The Regulation states that the inventory of hazardous materials has to: be specific to each ship; provide evidence that the ship complies with the prohibition or restrictions on installing or using hazardous materials in accordance with Article 4; be compiled taking into account the relevant IMO guide-lines; and be verified either by the administration or a recognised organisation authorised by it. Among other things, the Regulation sets out rules with regard to general requirements for ship owners; ship recycling plans; surveys; insurance and endorsement of certificates; port state control; requirements for ships flying the flag of a third country; requirements necessary for ship recycling facilities to be included in the European list; and authorisation of ship recycling facilities located in a Member State.

At legislative level, it is worth noting that in May 2018, the Commission put through [Commission Implementing Decision \(EU\) 2018/684](#) amending EU

rules establishing a European List of ship recycling facilities. This text updates the entries in the European List of ship recycling facilities set out in the Annex to [Commission Implementing Decision \(EU\) 2016/2323](#), which entered into force back on 9 January 2017.

Decision (EU) 2016/2323 sets out the European List of ship recycling facilities, in line with Article 16 of the Regulation on Ship Recycling. The list contains 18 ship recycling facilities, and sets out information of these facilities, including: the method of recycling; the type and size of ships that can be recycled; limitations and conditions under which the ship recycling facility operates; details on the explicit or tacit procedure; the maximum annual ship recycling output; and the date of expiry of inclusion in the list.

LOGOS is aware that the Commission is expected to adopt a draft measure amending EU rules establishing a European List of ship recycling facilities, therefore updating the entries in the European List of ship recycling facilities according to the latest updates. Moreover, it is worth noting that the Commission is expected to publish a Report reviewing EU rules on ship recycling, according to Article 30(2) of the text. The expected review should also consider the inclusion of ship recycling facilities authorised under the [Hong Kong Convention on International Ship Recycling](#) in the European List in order to avoid duplication of work and administrative burden.

Furthermore and in relation to Brexit, ICOMIA stakeholders which deal with business with the UK are also advised to consider the following [notice](#) (published in March 2018) pertaining to the withdrawal of the United Kingdom from the European Union and impact on the EU Ship Recycling Regulation.

#### Relevance for marine sector

Ship recycling is the complete or partial dismantling of a ship enabling the re-use of valuable materials, and it is what ships face in the end of their lifespan which for the modern ships is 25-30 years. By then, corrosion, metal fatigue and lack of parts make them uneconomical to run. The materials of the ships, especially steel, are recycled and made into new products. Any re-usable equipment, electrical devices and other items on board are also recycled. Even many hazardous wastes can be recycled into new products such as lead-acid batteries of electronic circuit boards. In this way, ship recycling is a notable part of the circular economy, keeping resources at use for as long as possible and minimising waste.

Considering that many of ICOMIA's members are in the shipbuilding business, it is key to follow the updates of this Regulation, which could cascade into other initiatives covering environmental issues in the maritime sector. This Regulation, with the exception of Article 12, shall apply to ships flying the flag of a Member State, and to ships flying the flag of a third country calling at a port or anchorage of a Member State. It will not apply to any warships, naval auxiliary, or other ships owned or operated by a state and used, for the time being, only on government non-commercial service. Moreover, it will also not apply to ships of less than 500 gross tonnage (GT), nor to ships operating throughout their life only in waters subject to the sovereignty or jurisdiction of the Member State whose flag the ship is flying.

Notwithstanding, the bottom line that's derived from the evolution of this Regulation and generally of other texts in the environmental domain, is that the European Commission is pushing more and more into environmentally friendly legislation, thus putting more pressure on the maritime industry (among others) to meet increasingly restrictive requirements and limits. Thus, being on top of these texts is advisable to ICOMIA members, particularly in what concerns the developments that take place in the European Commission's Expert Group on Ship Recycling, ESGR (described below), which is the first point of contact between the Commission and Member States on this Regulation.

It is key to highlight that an issue of great importance regarding the Ship Recycling Regulation relates to its connection to the Waste Framework Directive in what concerns hazardous materials. Article 4 of the Regulation states that the installation or use of hazardous materials referred to in Annex I on ships shall be prohibited or restricted. Moreover, each new ship shall have on board an inventory of hazardous materials, which shall identify at least the hazardous materials referred to in Annex II and contained in the structure or equipment of the ship, their location and approximate quantities. Both Annexes are included below.

## ANNEX I

### CONTROL OF HAZARDOUS MATERIALS

Hazardous Material	Definitions	Control measures
Asbestos	Materials containing asbestos	For all ships, new installation of materials which contain asbestos shall be prohibited.
Ozone-depleting substances	<p>Controlled substances defined in Article 1(4) of the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, listed in Annexes A,B,C or E to that Protocol in force at the time of application or interpretation of this Annex.</p> <p>Ozone-depleting substances that may be found on board ships include, but are not limited to:</p> <ul style="list-style-type: none"> <li>Halon 1211 Bromochlorodifluoromethane</li> <li>Halon 1301 Bromotrifluoromethane</li> <li>Halon 2402 1,2-Dibromo-1,1,2,2-tetrafluoroethane (also known as Halon 114B2)</li> <li>CFC-11 Trichlorofluoromethane</li> <li>CFC-12 Dichlorodifluoromethane</li> <li>CFC-113 1,1,2-Trichloro-1,2,2-trifluoroethane</li> <li>CFC-114 1,2-Dichloro-1,1,2,2-tetrafluoroethane</li> <li>CFC-115 Chloropentafluoroethane</li> <li>HCFC-22</li> <li>Chlorodifluoromethane</li> </ul>	New installations which contain ozone-depleting substances shall be prohibited on all ships.
Polychlorinated biphenyls (PCB)	'Polychlorinated biphenyls' means aromatic compounds formed in such a manner that the hydrogen atoms on the	For all ships, new installation of materials which contain

	biphenyl molecule (two benzene rings bonded together by a single carbon-carbon bond) may be replaced by up to ten chlorine atoms	Polychlorinated biphenyls shall be prohibited.
Perfluorooctane sulfonic acid (PFOS) <sup>(1)</sup>	'perfluorooctane sulfonic acid' (PFOS) means perfluorooctane sulfonic acid and its derivatives	New installations which contain perfluorooctane sulfonic acid (PFOS) and its derivatives shall be prohibited in accordance with Regulation (EC) No 850/2004 of the European Parliament and of the Council <sup>(2)</sup> .
Anti-fouling compounds and systems	Anti-fouling compounds and systems regulated under Annex I to the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (AFS Convention) in force at the time of application or interpretation of this Annex.	<p>1.No ship may apply anti-fouling systems containing organotin compounds as a biocide or any other anti-fouling system whose application or use is prohibited by the AFS Convention.</p> <p>2.No new ship or new installations on ships shall apply or employ anti-fouling compounds or systems in a manner inconsistent with the AFS Convention.</p>

## ANNEX II

### LIST OF ITEMS FOR THE INVENTORY OF HAZARDOUS MATERIALS

1. Any hazardous materials listed in Annex I
2. Cadmium and Cadmium Compounds
3. Hexavalent Chromium and Hexavalent Chromium Compounds
4. Lead and Lead Compounds
5. Mercury and Mercury Compounds
6. Polybrominated Biphenyl (PBBs)
7. Polybrominated Diphenyl Ethers (PBDEs)
8. Polychlorinated Naphthalenes (more than 3 chlorine atoms)
9. Radioactive Substances
10. Certain Shortchain Chlorinated Paraffins (Alkanes, C10-C13, chloro)
11. Brominated Flame Retardant (HBCDD)

#### Next steps

From 31 December 2018, large commercial seagoing vessels flying the flag of an EU Member State may be recycled only in safe and sound ship recycling facilities included in the [European List of ship recycling facilities](#), which will be further updated in the future through Implementing Acts (as those seen above) to add more compliant facilities or to remove facilities which have ceased to comply.

#### Key stakeholders

The main unit in the European Commission dealing with the Ship Recycling Regulation is DG ENV's B3 Unit on Circular Economy and Green Growth - Waste Management and Secondary Materials

- Sarah NELEN - Head of Unit
- J. W. LANGENDORFF - Deputy Head of Unit

**Expert Group  
on Ship  
Recycling**

- P. KOLLER – Policy Officer

**Latest developments:**

The EGSR's most recent meeting took place on the 3<sup>rd</sup> of October 2018, and you can find the meeting's agenda [here](#). The meeting is not public, but a summary of the contents of the discussions will be released in due time. The main points to be discussed include a Technical note by DG ENV on the capacity of the European List of ship recycling facilities, a reminder on key obligations for Member States and a follow-up to discussions and conclusion on pending issues related to articles 5, 11 and 12 of the regulation.

The Commission will also present an [Explanatory note on the analysis by the European Maritime Safety Agency of vessels dismantled during the period 2013-2017](#), which comes as a follow-up of a European Commission request for assistance from EMSA on the calculation of the recycling needs of the EU shipping fleet. EMSA has estimated for the years 2013 to 2017:

- (i) the number of vessels flying the flag of an EU Member State sent annually to recycling facilities;
- (ii) the number of non-EU flagged vessels sent annually to ship recycling facilities;
- (iii) the number of vessels which were flagged to an EU Member State but changed flag to a non-EU Member State one year before getting dismantled.

On this basis of the above figures, it is estimated that, during the period 2013-2017:

- The yearly overall average weight of EU-flagged vessels which were dismantled amounted to 588.000 Light Displacement Tonnes (LDT);
- The yearly overall average weight of vessels which were flying the flag of an EU Member State and have changed flag to a non-EU country one year before dismantling amounted to 432.000 LDT.

The latest meeting before this one took place on the 18<sup>th</sup> of June. You can access a summary record of the meeting [here](#).

**Membership:**

The EGSR is formed by the Environment Ministries/Permanent Representations of the EU Member States.

**Background:**

The European Commission's Expert Group on Ship Recycling was set up ahead of the launch of the Regulation as a platform to liaise with the European Commission, exchange views and ideas on Ship Recycling and coordinate with Member States.

## 2. BIOCIDAL PRODUCTS REGULATION (EU) No 528/2012

### Latest developments

There have not been any key updates on BPR, and more precisely on Product Type 21.

It is still worth mentioning that the Commission Report on the regulatory Fitness Check of all chemicals legislation (excluding REACH Regulation) will not set out any follow-up actions, leaving the new Commission to decide on this. The Report will be released before the Commission's high-level EU Chemicals Policy 2030 conference in Brussels on 27-28 June.

The Report concludes three years of assessing hazard and risk management processes across the EU chemicals policy framework, and will be released before the Commission's high-level EU Chemicals Policy 2030 conference in Brussels on 27-28 June. The conference will feature speakers including Commissioner for DG MARE Karmenu Vella, Commissioner for DG GROW Elżbieta Bieńkowska, European Chemicals Agency's (ECHA) executive director Bjorn Hansen, as well as some ministers from Member States and high-level industry and NGO representatives.

However, it is understood that the Report will not set out any follow-up actions, like the Commission Communication on REACH review has, as these will have to be determined under the new Commission. Several working documents and annexes will accompany the Report.

Moreover, as previously informed in prior reports, biocides stakeholders are continuously calling for a rethink of the biocidal products Regulation's (BPR) authorisation processes, amid concerns that the law's costs and complexity are pushing biocidal products off the European market with a "silent effect". Representatives from biocides manufacturers, Echa and consultancies reflected on the five and a half years since the BPR entered into effect, at the [Chemical Watch Biocides Symposium in Rome](#) recently. While the experts agreed that the law has introduced structure and harmonisation to the regulation of biocides in Europe, concerns over the BPR's impact on industry overshadowed its achievements.

Representatives from Dupont stated that not only the industry, but also the regulators are struggling under the weight of this regulation, with extremely high costs and reviews taking too long, somehow decreasing the number and variety of biocides on the EU market. According to a representative from Reckitt Benckiser, it takes at least five years to bring a new active substance to market, coupled with a minimum cost of €750,000.

The Chair of ECHA's BPC Committee, Erik van de Plassche, added that there must be a possibility for reducing complexity and doing things in a simpler and more balanced way. He added that regulators and industry should focus on finishing the biocides review programme to free up resources to work on "actually achieving the objectives of the Regulation".

It's also important to outline that the Commission's Joint Research Centre (JRC) has published a [policy report](#) on the **definition of nanomaterial**, providing clarification of the key concepts and terms of the definition, which

in a way relates to the Biocidal Products Regulation, as the definition of nanomaterial has been used in the BPR, as well as REACH. The Commission Recommendation (2011/696/EU) provides a general basis for regulatory instruments in many areas. However, in the context of a survey done by the JRC, many respondents expressed difficulties with the implementation of the definition, in particular due to the fact that some of the key concepts and terms could be interpreted in different ways. The Report concludes that the definition is horizontal and not sector-specific. It is outlined that the definition is a Recommendation and is thus not legally binding. It is generally in line with other approaches worldwide, but it is more specific and quantitative than most other definitions.

Regarding **Brexit and the BPR**, further legislation to ensure that EU rules on chemicals and biocidal products will continue to operate under UK law after Brexit have been laid before Parliament. It follows similar legislation creating a 'UK REACH' and a UK chemicals agency. As with the draft regulations creating a UK REACH, these rules will only come into force on exit day in the absence of an EU-UK deal, but whether or not a deal is reached before or after 29 March 2019, the draft regulations provide us with an insight into the approach government is taking to the regulation of chemicals after Brexit. The draft regulations address the following areas of EU chemicals regulation:

- Biocidal Products Regulation
- Classification, Labelling and Packaging of substances and mixtures Regulation
- The Export and Import of Hazardous Chemicals Regulation ('the PIC Regulation')

Although each particular regime covered by the draft regulations requires specific amendments in order to function appropriately after Brexit, there are a number of common themes. Many of these common themes are also present in the draft regulations creating a UK REACH and it is worth comparing our comments here with the more detailed analysis in our UK REACH article. The main points to note are as follows:

Where the European Chemicals Agency ('ECHA') previously undertook functions acting as the 'Agency' on behalf of the UK, these functions are to be transferred to the Health and Safety Executive ('HSE'). HSE's functions will include undertaking technical equivalence assessments under the amended BPR and dealing with notifications made by manufacturers and importers under the amended CLP Regulation.

As with UK REACH, there are also questions over the potential for significant divergence between the decisions of the EU and the UK, with two separate agencies coming to different conclusions on near-identical facts under near-identical regulatory regimes. Once the UK has left the EU, the HSE will need to evaluate applications for national authorisations and make decisions on behalf of the UK. **Biocidal product authorisations and active substance approvals that were in place before exit day will continue to be valid after exit until their normal expiry date (provided that, for product authorisations, the company is established within the UK within 12**

**months of exit day).** These draft regulations are largely consistent with previous implementing legislation published ahead of Brexit. As the UK looks to chart its own course after Brexit, its strategy for the future of chemicals regulation is yet to be seen. This strategy has been promised by DEFRA as one component of its 25 Year Environment Plan and, while we don't yet have a date for the strategy, the broad expectation is that it will appear this year.

## Background

The European Biocide Directive was established back in 1998, which already laid the ground towards banning TBT tributylétain in 2003. In order to meet technological updates in the field, the Biocidal Products Regulation (BPR, [Regulation \(EU\) 528/2012](#)) came into play in 2012, and covers the placing on the market and use of biocidal products, which are used to protect humans, animals, materials or articles against harmful organisms like pests or bacteria, by the action of the active substances contained in the biocidal product. This regulation aims to improve the functioning of the biocidal products market in the EU, while ensuring a high level of protection for humans and the environment.

The Regulation is divided into four different categories, counting up to a total of 22 different products. These categories are Disinfectants (Group 1), Preservatives (Group 2), Pest Control (Group 3) and Other Biocidal Products (Group 4).

In 2021, the Commission will launch an Implementation Report on the Biocidal Products Regulation, which is expected to cover the Union authorisation procedure.

According to the Report on Union authorisation under BPR, published on 28 May 2018, the trend in the submission of applications for Union authorisation shows that the procedure is increasingly used in the recent years. However, the Report noted that it would only be possible to fully assess the success of this procedure some years after the actual delivery of Union authorisations. While decision-making on the first four applications is in the final stage, so far no Union authorisation has been granted. A more comprehensive assessment of the Union authorisation would therefore be included in the Commission Implementation Report expected in 2021.

## Relevance for marine sector

The key product in the list which is be of interest to ICOMIA would be:

- **Product 21 (Other Biocidal Products) - Antifouling products:**  
These are products used to control growth and settlement of fouling organisms (microbes and higher forms of plant and animal species) on vessels, aquaculture equipment or other structures used in water.

Antifoulings used in the boating industry represent a very small percentage compared to other sectors such as agriculture, buildings or gardening.

The active substance/product-type combinations listed are all those for which an application for approval has been submitted under BPR, including "existing" active substances included in the Review Programme and "new" active substances. In this regulation, active substances are classified according to their category: human hygiene, wood protection products, insecticides, taxidermy, etc. Active substances for antifouling are classified

as product type 21 and represent 12 molecules. The 12 molecules are submitted to eco-toxicology tests and environment impacts tests.

Here is active substances allowed for antifouling paints according to the European Chemicals Agency (ECHA):

- 4,5-Dichloro-2-octylisothiazol-3(2H)-one(4,5-Dichloro-2-octyl-2H-isothiazol-3-one (DCOIT))
- Bis(1-hydroxy-1H-pyridine-2-thionato- O,S) copper (Copper pyrithione)
- Copper
- Copper thiocyanate
- Dichloro-N-[(dimethylamino)sulphonyl],fluoro-N-(p-tolyl) methanesulphenamide (Tolylfluamid)
- Dicopper oxide
- Medetomidine
- N-(Dichlorofluoromethylthio)-N',N'-dimethyl-N-phenylsulfamide (Dichlofluamid)
- Tralopyril
- Zineb
- Pyrithione zinc (Zinc pyrithione) – UNDER REVIEW
- N'-tert-butyl-N-cyclopropyl-6-(methylthio)-1,3,5-triazine-2,4-diamine (Cybutryne) – NOT APPROVED

Research and Development methodologies are making huge strides in improving the potency, efficacy and environmental fallout of antifouling products, from polymer binder design to the biocide content and overall formulation. Beyond current biocidal formulations, paint companies are also busy investigating next-generation technologies that could eliminate the need for biocides altogether. This obviously includes the consideration of the regulatory landscape, as trends will have to be analysed to assess what could be the way forward with the objective of adopting innovative solutions to meet increasingly restrictive regulations such as the BPR, which calls into question even the less harmful copper-based antifouling paints.

The text requires that all key biocides used in antifouling yacht paints in the EU be assessed. Applying and maintaining these paints is very costly for recreational vessels, and can be huge for large ships. The combination of environmental concerns, rising costs, and technological changes has spurred the search for better solutions.

ICOMIA members should follow the developments in the BPR closely, and when investigating into future products to be put into the market, consider the fact that requirements from the European Commission are going to be stricter and stricter, which is surely not the best situation for antifouling producers, who face a time-consuming, confusing, and expensive process to cope with the most recent updates of the BPR.

### Next Steps

Member States would have to submit their national reports on the implementation of the Regulation by 30 June 2020.

Following analysis of national reports the Commission will begin drafting a composite Report, which is expected to be presented by 30 June 2021.

The Report will then be submitted to the European Parliament and Council for examination.

### Key players

The key Commission Officials dealing with this file are in DG SANTE's E4 - Food and feed safety, innovation - Pesticides and biocides, Sub-unit 3 on Biocides:

- Klaus BEREND - Head of Unit (E3)
- BITTERHOF - Deputy Head of Unit (E3)
- A. LAS HERAS - Policy Officer – Biocides
- M. NAGTZAAM - Policy Officer - Biocides and REACH

### 3. PORT RECEPTION FACILITIES FOR SHIP-GENERATED WASTE AND CARGO RESIDUES + UPDATES ON EU PORT SERVICES REGULATION

#### Latest developments

Regarding the PRF, the key developments since the last report relate to the fact that the European Parliament and the Council reached an agreement on the Commission's proposal.

The latest updates include the fact that COREPER (Member State Ambassadors) approved the text on 3<sup>rd</sup> of April. The statements put forward by the Commission and the German delegation have been made available and you can access them here. Moreover, the General Affairs Council adopted the interinstitutional agreement on the Commission's proposal on PRF on the 9<sup>th</sup> of April. These new EU rules on the delivery of waste from ships are expected to enter into force in the second quarter of 2019.

Following the approval by COREPER on 3 April, the deal was submitted to the Council for final adoption. The General Affairs Council adopted the text without debate (as an "A item" of the agenda) on 9 April. Member States will have two years from the entry into force of the Directive to transpose the new EU rules into national legislation.

According to the statements, the Commission took note of the co-legislators' call to assess the need to review Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements to provide an adequate legislative framework to address ship pollution. In particular, the Directive would have to be reviewed to align its scope to the Port Reception Facilities (PRF) Directive. The new PRF Directive would in fact have a wider scope by covering waste as defined in MARPOL Annexes I, II, IV, V and VI, and it would also refer to discharge norms of those Annexes. The Commission therefore indicated that, further to Recital 23a of the interinstitutional agreement, the Commission would consider undertaking such review process.

The German delegation also submitted a statement, explaining that it does not support the agreement reached during the last trilogue.

While agreeing with the need to review Directive 2005/35/EC to align its scope with international obligation and protect the marine environment from ship waste, the German delegation stressed that it opposes the introduction of compulsory arrangements for cost recovery systems under Article 8(4b). With regard to this, the delegation indicated that the compromise reached does not take in sufficient account the different size and structure of ports, and that fees fall under the competence of Member States.

Under the agreed rules, ships will have to pay an indirect fee, which gives them the right to deliver their waste to a port, and which must be paid regardless of whether or not they deliver any waste. This fee will also apply to fishing vessels and recreational craft, which means that it aims to prevent end-of-life fishing nets and passively fished waste going directly into the sea. The fee will be based on the principle of cost recovery.

In certain cases, however, if a ship delivers an exceptional amount of waste, an additional direct fee may be charged to ensure that the costs related to receiving

such waste do not create a disproportionate burden for a port's cost recovery system. In contrast, a **reduced waste fee** will be applied for short sea shipping and for 'green ships', meaning vessels that can demonstrate reduced quantities of waste and sustainable on-board waste management.

Finally, the new Directive will **align EU legislation with the International Convention for the Prevention of Pollution from Ships (MARPOL)**, which has been amended since the current Directive was adopted in 2000. Landlocked Member States which do not have ports or ships flying their flag will not be obliged to transpose the Directive or certain parts of it.

The main objective is to ensure that more ship-generated waste is offloaded in ports and not discharged into the sea. The proposal also aims to **improve efficiency of maritime operations in port by reducing the administrative burden of national authorities and operators**. The proposal was presented together with other initiatives which are part of the circular economy action plan, including: a strategy on plastics in the circular economy, a monitoring framework for the circular economy, and an analysis on the interface between chemicals, products and waste legislation. The proposal is based on the findings of the Commission Report on the evaluation of the Directive which was published on 4 April 2016. In particular, it aims to address the problems emerged during the Fitness Check of the Directive.

Reducing Marine Litter (Single Use Plastics and Fishing Gear), Jurist-Linguistics experts from the Council are scheduled to meet to finalise the text of the provisional agreement on the Commission's proposal on the reduction of the impact of certain plastic products on the environment on 8 March. The Commission has notified the provisional agreement to the World Trade Organization (WTO), and the WTO Consultation is open until 13 April 2019.

It is key to remember that the European Parliament and the Council managed to reach a provisional agreement on the Commission proposal during the third round of trilogue negotiations which took place over 18-19 December. If approved, the new rules will ban the use of certain throwaway plastic products for which alternatives exist. In addition, specific measures will be introduced to reduce the use of the most frequently littered plastic products.

The following products would be banned in the EU: Plastic cutlery (forks, knives, spoons and chopsticks), plastic plates, plastic straws, food containers made of expanded polystyrene, beverage containers and cups made of expanded polystyrene, products made from oxo-degradable plastic and cotton bud sticks made of plastic.

On a further note, it's worth echoing that the European Commission is expected to come forward with Commission Staff Working Document reviewing the [2011 Transport White Paper](#).

Stakeholders had until 7 March to submit comments to [4-week public consultation](#) on the roadmap for the evaluation of the white paper. A total of 33 comments were submitted and most of the comments focused on road infrastructures, passengers' right, and reduction of pollutant emissions.

The Commission intends to launch a further public consultation on the evaluation, and its results are expected to feed into a Commission Staff Working Document to be published by the end of 2020;

In relation to maritime transport, “Union des Ports de France” welcomed the initiatives relating to ports (i.e. the proposal on European maritime single window environment, and on port reception facilities for the delivery of waste from ships.

## Background

Earlier in 2018, the Commission presented a [Proposal for a Directive on Port Reception Facilities for the Delivery of Waste from Ships](#), which would repeal and replace the Port Receptions Facilities Directive and includes changes to the Directive on Port State Control. The proposal aims to align the EU regime as far as possible with MARPOL, in particular as regards scope, definitions and forms. The main objective is to ensure that more ship-generated waste is offloaded in ports and not discharged into the sea. The proposal also aims to improve efficiency of maritime operations in port by reducing the administrative burden of national authorities and operators. The proposal is based on the findings of the [Commission Report](#) on the evaluation of the Directive which was published on 4 April 2016. In particular, it aims to address the problems emerged during the Fitness Check of the Directive. The most important changes introduced by the proposal are:

**Incentives for delivery** - To ensure that the right incentives are provided for the delivery of the different types of waste to port reception facilities, Article 8 lays down the main principles to be incorporated and employed in every fee system set up under the proposal. This includes the relationship between the fee charged and the costs of PRF, the calculation of the ‘significant contribution’ to be covered by the indirect fee, and the main transparency requirements. A new Annex 4 is included in the proposal, which provides an overview of the different types of costs of the PRF system, distinguishing between direct and indirect costs.

**Enforcement of the mandatory delivery requirement** – As stated above, the proposal aims to align the advance waste notification form (referred to in Article 6) with IMO Circular MEPC/834 and is provided in a new Annex 2. The scope of the delivery obligation for all waste would be in accordance with MARPOL, so that the PRF Directive mirrors the MARPOL discharge regime. Where MARPOL prohibits the waste from being discharged at sea, the proposal requires the delivery of this waste to port reception facilities on shore, including the cargo residues.

Additionally, Article 7 requires the issuing of a waste receipt to the ship upon delivery of the waste, containing the information that should be electronically reported by the ship into the information, monitoring and enforcement system, i.e. SafeSeaNet, before departure. On the inspection regime, Article 10 specifies that the PRF inspections must be fully integrated into the Port State Control regime set up under Directive 2009/16/EC and follow a risk-based approach, when the ship falls within the scope of that Directive.

**Exemption regime for ships in scheduled and regular traffic** - Article 9 of the proposal introduces a standard exemption certificate for ships in scheduled traffic with frequent and regular port calls. Member States may exempt a ship calling at their ports from the obligations in Articles 6, 7(1) and 8 if there is an arrangement

to ensure the delivery of the waste and payment of the fees in a port along the ship's route.

**Recreational craft and fishing vessels** - The proposal would redefine the position of fishing vessels and small recreational craft given their relative importance in contributing to the problem of marine litter at sea. Whereas under the current Directive both fishing vessels and small recreational craft are exempted from some of the key obligations, these exemptions have been redefined in the proposal, so that the larger vessels are included based on length and gross tonnage to ensure proportionality of the regime. Reporting of the information from the waste notification and waste receipt would only be required for fishing vessels and recreational craft of 45 metres and above.

It is key to mention that the proposal was presented together with other initiatives which are part of the Circular Economy Action Plan, which include a [strategy on plastics in the circular economy](#), a [monitoring framework for the circular economy](#), and an [analysis on the interface between chemicals, products and waste legislation](#), accompanied by a [public consultation](#) which ICOMIA is invited to complete (deadline is 29<sup>th</sup> of October 2018).

Regarding the European Union (EU) [Port Services Regulation \(PSR\)](#), it came into force on March 24, after it was adopted by the European Council early 2017.

The new regulation establishes a framework for the provision of port services and common rules on financial transparency, port services and port infrastructure charges. The PSR is expected to make it easier for new providers of certain port services to enter the market, creating a more level playing field and reducing legal uncertainties for ports, port service providers and investors.

Furthermore, the new rules are expected to ensure transparency of port charges and public funding of ports. This would lead to better use of public funds and the effective and fair application of EU competition rules in ports. The Regulation was part of the EU ports policy package, which also includes the Communication on further EU actions to develop European ports.

There have been submissions by UK port representatives to the Department of Exiting the EU (DExEU) to omit the regulation from the repeal bill, but these have largely gone unheeded. The British Ports Association (BPA) has stated that it has been pushing for areas around ports to be classified with a special planning and consenting status to help stimulate port development and growth with many of the rules on environmental regulation stemming from the EU. However, the British ports industry has anyway admitted that they will have to prepare for the introduction of the PSR before Brexit.

**Relevance for marine sector**

According to the text, "ship" means a seagoing vessel of any type operating in the marine environment, and shall include fishing vessels, **recreational craft**, hydrofoil boats, air-cushion vehicles, submersibles and floating craft.

Under the reform, ships will have to pay an indirect fee, which will give them the right to deliver their waste to a port and which will have to be paid regardless of whether or not they deliver any waste. This fee will also apply to fishing vessels and recreational craft, which means that it will also tackle the disposal of end-of-life

fishing nets and passively fished waste in the sea. The fee will be based on the principle of cost recovery.

This will therefore have a direct effect on recreational craft. The Commission believes that although the majority of marine litter originates from land-based activities, the shipping industry, including the fishing and **recreational sectors** is also an important contributor, with discharges of garbage, including plastic and derelict fishing gear, going directly into the sea.

#### Next steps

The proposal follows the ordinary legislative procedure (previously co-decision).

The new Directive will be published in the EU Official Journal and enter into force, likely by the end of the second quarter of 2019.

On the EU Port Services Regulation (PSR) EU member states will be required to implement the legislation within two years of the abovementioned date meaning that the PSR will be effective from March 24, 2019

#### Key stakeholders

Within the European Parliament, as outlined above, the lead Committee is TRAN. The Rapporteur is Gesine Meißner (ALDE, DE), while the Shadow Rapporteurs are Deirdre Clune (EPP, IE), Keith Taylor (Greens/EFA, UK), Maria Grapini (S&D, RO), Peter van Dalen (ECR, NL), Tania González Peñas (GUE/NGL, ES) and Rolandas Paksas (EFDD, LT)

Within the European Commission, it is DG MOVE — Directorate-General for Mobility and Transport, Unit D2, Waterborne - Maritime Safety

- Christine BERG - Head of Unit
- B. SELLIER - Deputy Head of Unit
- A. BOBO REMIJN. – Policy Officer

#### 4. MARINE STRATEGY FRAMEWORK DIRECTIVE 2008/56/EC

##### Latest developments

The main update over the last quarter is mainly related to ICOMIA's Environmental Consultant's report serving as a **contribution to the public consultation as part of the Fitness Check of the EU WFD**. In this report, among many other issues, ICOMIA stresses that there are many issues to be solved, and one of them relates to **Transitional and Coastal Water Bodies**. This is due to the fact that many Marinas are based within seaports and or lying in an estuary where the river meets the sea and particularly in relation to the connection between the WFD and the MSFD, the WFD overlaps with the Marine Strategy Framework Directive at the coast (i.e. in coastal water bodies). ICOMIA noticed that there is a lack of adequate implementation attention to transitional and coastal waters generally, as well as poor links with the MSFD notably in relation to hydromorphology, scale and new projects in coastal water.

Moreover, there is a clear **subpar policy coherence between different legislative texts**. ICOMIA is pleading for better coordination between the different EU Regulations and Directives. Especially between Water related and Industry related legislative measures and processes. There is at least a need for better coordination between WFD/MSFD, IED, REACH, the Biocidal Products Regulation and the Waste Framework Directive. There are already existing issues regarding the relationship between IED, BPR, REACH, etc. and the WFD; including incompatibility between the respective objectives of these instruments for example in relation to invasive alien species (i.e. which is worse, invasive non-native species introductions or the risk of contamination associated with antifoulant use?)

In parallel to EU developments, it is also key to highlight some updates on **Invasive Aquatic Species (IAS)** identified as a major threat to the world's oceans and to the conservation of biodiversity. Marine bio-invasions are the source of significant environmental and socioeconomic impacts that can affect fisheries, mariculture, coastal infrastructure and other development efforts, ultimately threatening livelihoods in coastal and inland communities. Because of the technical, scientific, environmental and economic implications, the biofouling issue is one of the most complex pollution threats faced by countries and the global marine ecosystem. Furthermore, under the baseline scenario, rapid and effective implementation of any international guidelines could be severely restricted by a lack of capacity in developing countries. Therefore, it is anticipated that, without further technical cooperation and proper mobilization of existing resources, unilateral management efforts will go through an unnecessarily long process of implementation, leading to the proliferation of detrimental, and sometimes devastating, impacts on populations, the marine environment and aquatic biodiversity. Such a scenario would also result in diminishing the momentum generated by GEF interventions to address vectors for IAS transfer.

Another root cause of the difficulty in fully and effectively stemming the spread of IAS through biofouling is the complex, multi-sectoral nature of biofouling sources, which makes it essential to tackle biofouling across the full range of anthropogenic structures in the marine environment. In addition to the problem of biofouling on ships, there are a growing number and variety of fixed surfaces in marine waters

(e.g. oil and gas platforms, aquaculture nets, ocean energy equipment, etc.) that can provide the substrate for potentially invasive species to settle and grow in proximity to ships. These structures thus can serve as a source for organisms which can attach to a ship, with the organisms then transported to a location where they can become invasive. Furthermore, such structures are also capable of translocation between regions, like Mobile Offshore Drilling Units (MODUs) which are regularly being moved across ocean basins and LMEs, and structures like aquaculture nets or cages being regularly moved domestically and regionally, resulting in the potential for transboundary introductions of IAS.

The [GloFouling Partnership](#), is a project to address the transfer of harmful aquatic species through biofouling in some of the developing regions of the world. Based on its initial focus in 12 developing countries in 7 maritime regions, the Project will help develop global best practices and tools, and demonstrate practical ways of overcoming barriers for their implementation, creating and enabling an environment for technology development and transfer. It is expected that by the end of the project all participating countries will demonstrate significant improvement in their legal, policy and institutional structures, with corresponding reduced risks from IAS introduction through biofouling. Participating countries are also expected to lead the outreach to other countries in their region, with a view to harmonize biofouling management at the regional level.

In addition to the Legal, Policy and Institutional Reform (LPIR), the GloFouling Partnerships will include a series of activities designed to partner with the industry in pursuit of cost-effective technology solutions for biofouling management, catalysing investment and opportunities for North-South and Triangular cooperation.

Finally, measures related to the management of ships' biofouling are expected to lead to reductions in fuel consumption by ships, thereby achieving consequential reductions in GHG emissions. In this regard, the project will act as a catalyst for the uptake of biofouling management measures and contribute to efforts that are underway by the maritime industry in fighting climate change.

The solutions catalysed by the GloFouling project (e.g. more effective hull maintenance, reduced fouling rates due to use of advanced hull coatings and timely propeller polishing) have the potential to reduce drag and energy consumption by ships, contributing to a reduction of GHG emissions of anything between [5 to 23%](#). Even if a relatively small proportion of these potential emission reductions is achieved, this contribution to reduced GHG emissions by the shipping sector will still represent a significant environmental benefit that could amount to hundreds of millions of US dollars per year. This would complement efforts under the GEF-UNDP-IMO [GloMEEP](#) project, which addresses energy efficiency within the shipping sector. The Convention on Biological Diversity (CBD) and its [Aichi Biodiversity Targets](#) address the underlying causes of biodiversity loss by mainstreaming biodiversity across government and society, reducing the direct pressures on biodiversity, preserving genetic diversity and promoting sustainable use of ecosystem services.

Since 2017, the pathway that the Commission is taking seems to be directed towards water-related legislation. This is so considering the fact that the Marine

Strategy Framework Directive (and the WFD) are being put ahead in terms of importance of other files, being more connected towards nature and technical environmental laws, thus indirectly dominating product legislation. It is interesting to see the contrast to the United States, where air-related legislation seems to be the dominating force. This is pictured by the diagram below, as shown in the past by ICOMIA Environmental Consultant (also shown in topic 5 for convenience).



Regarding the MSFD, there is an increasing importance in relation to invasive species, being catalogued as the main cause of loss of Biodiversity. This is being globally recognized as very harmful, and it's being highly prioritised, being in fact catalogued by the UN with a same importance level as Climate Change.

## Background

The [Marine Strategy Framework Directive \(MSFD - 2008/56/EC\)](#) was adopted in June 2008, and it aims to protect the marine environment across Europe while allowing the continuation of sustainable uses of the sea. The Directive enshrines in a legislative framework the ecosystem approach to the management of human activities having an impact on the marine environment, integrating the concepts of environmental protection and sustainable use.

The Commission also produced a set of detailed criteria and methodological standards to help Member States implement the Marine Directive. These were revised in 2017 leading to the new [Commission Decision on Good Environmental \(GE\) Status](#). GES is determined at the level of the marine region or sub-region on the basis of eleven qualitative descriptors. These relate to biological diversity, non-indigenous species, commercially exploited fish and shellfish, food webs, human-induced eutrophication, sea floor integrity, hydrographical conditions, contaminants, contaminants in fish and other seafood, marine litter and introduction of energy (including underwater noise). It is the responsibility of MS to identify ways of measuring each descriptor and determining a baseline, targets and indicators for each descriptor.

In order to achieve its goal, the Directive establishes European marine regions and sub-regions on the basis of geographical and environmental criteria. The Directive lists four European marine regions – the Baltic Sea, the North-east Atlantic Ocean, the Mediterranean Sea and the Black Sea – located within the

geographical boundaries of the existing [Regional Sea Conventions](#). Cooperation between the Member States of one marine region and with neighbouring countries which share the same marine waters, is already taking place through these Regional Sea Conventions.

In order to achieve GES by 2020, each Member State is required to develop a strategy for its marine waters (or Marine Strategy). In addition, because the Directive follows an **adaptive management** approach, the Marine Strategies must be kept up-to-date and reviewed every 6 years.

[Annex III of the Directive](#) was also amended in 2017 to better link ecosystem components, anthropogenic pressures and impacts on the marine environment with the MSFD's 11 descriptors and with the new Decision on Good Environmental Status. The MSFD mainly applies to marine waters and may influence activities such as navigation, dredging and new construction. It is possible that Member States will require consideration of MSFD as part of Environmental Impact Assessments for large projects thereby forming part of the consenting process potentially including mitigating measures and monitoring programmes. The key requirements of the Directive, which apply on a six yearly cyclical basis, are:

- The initial assessment of the current environmental status of national marine waters and the environmental impact and socio-economic analysis of human activities in these waters
- The determination of what GES means for national marine waters
- The establishment of environmental targets and associated indicators to achieve GES by 2020
- The establishment of a monitoring programme for the ongoing assessment and the regular update of targets
- The development of a programme of measures designed to achieve or maintain GES by 2020
- The process is cyclical and the second cycle starts again in 2018.

It is key to say that the MSFD does not seek to replicate existing legislation rather to build upon it and fill in any gaps that may exist. It will not, for example, seek to replicate the efforts of the Water Framework Directive (WFD) or the Common Fisheries Policy (CFP) or indeed to undermine any regulations put in place by the International Maritime Organization (IMO).

Some of the links and differences between MSFD and WFD are worth highlighting. MSFD applies to marine waters (waters, seabed and subsoil on the seaward side of the baseline from which the extent of territorial waters is measured). MSFD therefore applies to coastal waters as defined by the WFD and therefore there is an overlap. However, MSFD only applies for the practical aspects of environmental status that are not already addressed through the WFD. The scope of MSFD is therefore broader than that of the WFD, covering a greater range of biodiversity components and indicators such as marine mammals and seabirds. In other words, where both directives apply in coastal waters, the MSFD covers those aspects of good environmental status not covered by the WFD such as litter, noise and marine mammals. The MSFD should therefore make as much use as possible of existing measures and agreements within the WFD because many of the measures to meet the objectives of the WFD will also deliver MSFD targets.

This is of particular relevance to the contaminants descriptor where source control in riverine and coastal waters may have significant positive consequences for marine waters. The implications of the extensive geographical overlap with the WFD are also relevant for several other descriptors (e.g. biodiversity, eutrophication, hydrographical conditions).

Over the past 6 years (2011 – 2017), after the implementation of the MSFD, the EU Member States have been developing marine strategies to comply with the MSFD. Moreover, as stated above, the MSFD was published ten years ago but in connection with technological advancements and in line with the European Commission's drive towards a circular economy (Circular Economy Action Plan), revising the current situation of the MSFD and preparing the grounds for a future revision makes complete sense.

Some of the past key updates on the MSFD cover invasive species (very important for all yards, paint manufacturers, applicators and marinas), litter (of special relevance to marinas) and underwater noise (key for superyachts and small craft). Other descriptors such as descriptor 5 (eutrophication) and descriptor 8 (contaminants) were also assessed.

**Descriptor 1; Loss of Biodiversity (connection to Invasive Species and biofouling)** - A report on harmonised and coordinated approaches for setting threshold values/reference levels for GES determination was drafted in December 2018. The JRC requested Member States to update their nominated experts and the lists of species and habitats used for assessment. An inventory of available relevant threshold values used in Habitats and Birds Directives (HBD) and RSCs is being currently prepared. The JRC will make the report available to the Member States' nominated experts by the end of the year as the background document for a workshop aiming to identify gaps and produce recommendations on methods for threshold setting for species, planned for January 2019. **The outcomes of this work will be presented at the 21st WG GES meeting (March 2019).**

**Descriptor 2; NIS (Invasive species)** - Recent work on D2 has aimed to prepare baseline inventories of marine NIS per Member State up to the year of the initial assessment of the MSFD (2012); 18 Member States responded to requests for information on this topic. It would seem that the number of NIS in 2012 reporting was largely underestimated. This work is particularly important for assessing the number of “newly-introduced” NIS for criterion D2C1 and for the establishment of monitoring systems. **There are currently over 1,300 marine non-indigenous species (NIS) in the European seas, several of which have a high impact on marine ecosystem services and biodiversity, causing adverse effects on environmental quality**

Building upon the baseline inventories already available, work during 2019 will focus on introduction pathways, to support threshold setting for D2C1. Some Member States asked how the NIS reported in 2018 would be considered in the baselines and how can the issue of shifting baselines be addressed. Another Member State mentioned the lack of new NIS species in the web-form reporting tools leading to a the risk of making mistakes with species names, and the lack of plankton species despite their importance since several are harmful species. The Commission highlighted the difficulty of including in the lists new NIS species as

they are, by definition, not yet known in our waters, and identified the need to review the species added in the 2018 reporting. In relation to the shifting baseline, the Commission clarified that the focus of D2C1 criterion is on assessing the number of new introductions since the previous 6-year report which, as such, did not represent a shifting baseline.

In fact, according to a report drafted by Helcom in July 2018 on trends in arrival of new non-indigenous species, **twelve new non-indigenous species (NIS) or cryptogenic species (CS) have appeared for the first time in the Baltic Sea during the assessment period 2011-2016**. The new NIS have been detected both through regular environmental monitoring activities, and in many cases based on incidental sightings. Monitoring is not considered to sufficiently cover all areas of the Baltic Sea and hot spot areas for new introductions (e.g. ports) to allow for the conclusion that in areas where no new NIS have been observed there have not been any new introductions. Monitoring data does not cover all habitats, taxonomical groups or port areas in most of the countries surrounding the Baltic Sea. The confidence in the assessment for areas where detections of new NIS have been made is **high**. In assessment units where no detections have been made, the confidence may be **low** if no regular monitoring is conducted. This however varies between assessment units. The indicator is applicable in the waters of all countries bordering the Baltic Sea and operational only in the assessed areas due to availability of monitoring data.

**Descriptor 10 MSFD; Litter** – During the last Litter TG’s meeting, JRC’s D2 Unit on Scientific Resources - Water and Marine Resources Georg Hanke, TG Litter’s co-chair provided a detailed presentation of the activities undertaken by the group, covering activities implementing its part of the CIS MSFD work programme. The Group is active towards monitoring guidance review, and for this purpose several dedicated workflows have been set up and workshops have been/are being organised: on sea-floor litter (30-31.5.2018, Bremerhaven, Germany), on entanglement/ingestion (November 2018, Corsica, France) and on floating macro-litter (including monitoring guidelines and protocol, February 2019, Rome, Italy). The master list of litter items is expected to be finalised in 1<sup>st</sup> quarter 2019.

JRC concluded that TG Litter works well but there is need of continued active contribution from Member States and also of intensifying efforts for using results from the many EU-funded projects (INDICIT was mentioned, as an example). Several Member States joined the discussion pointing out, inter alia, the possibility of a follow-up project under JPI Oceans for micro-plastics, the urgent need for harmonised protocols and data quality assurance, as well as the necessity to consider the related work at regional level. The Commission pointed out that collaboration with RSCs is indeed essential but must be mutual and TG Litter is tasked with promoting work and deliverables harmonised at EU level. Moreover, such deliverables, such as monitoring protocols, once produced and agreed, should be used by the Member States, as demonstrated through MSFD reporting, such as monitoring programmes. It was broadly acknowledged that compared to hazardous substances and eutrophication, marine litter monitoring and assessment is in an early development stage.

The presentation triggered several remarks/suggestions from Member States /NGOs/Commission:

- Some concepts (e.g. harm, precautionary approach, distinction threshold/target) are not clear
- Should we start with TV setting for litter elements rather than criteria?
- Maybe set TVs at national level?
- Consider to use another approach based on statistical analysis
- How to deal with socioeconomic aspects? Are they relevant for TV setting? What is their role in the political acceptability of thresholds?
- Setting TVs based on socioeconomic criteria is technically feasible for beach litter
- Would it be possible to simulate the outcome in terms of TV that each approach of the discussion paper would deliver?

Plus, JRC is working on the assessment and harmonisation of monitoring methods, with the aim of enhancing consistency, comparability and coherence of monitoring and assessment of marine biodiversity. Results from the ongoing work will be presented at the 21st WG GES meeting (March 2019), and will provide the basis to review and refine recommendations and guidelines to support Member States in the Art. 17 updates of their biodiversity monitoring programmes, due in 2020.

**Progress on underwater noise** - The co-chair of TG Noise (Rene Dekeling, NL) presented a progress report on the last TG Noise meeting. EU-funded projects such as EJOMOPANS and Quiet MED are delivering useful results, as underwater noise receives more attention internationally as a form of marine pollution. Concerning TV setting, a methodology is under development for impulsive noise, but knowledge on impacts at population level is very scarce. TVs will be considered at various steps of the “effect chain” and could take the form of % of yearly reduction of the population or % of population or habitat exposed to levels above disturbance. It is difficult to set a reference condition, because impulsive noise does not occur naturally, meaning that the pristine condition would be zero impulsive noise. For continuous noise, there are fundamental knowledge gaps and emphasis is given to the generation of noise maps with temporal information.

**Descriptor 5 (eutrophication)** – The Commission informed that a review of methodological standards and threshold values at national and RSC level is ongoing, as well as a draft report prepared by the JRC which was shared with MS nominated experts in January 2019. The final report will be presented at the 21st WG GES meeting (March 2019). Concerning the harmonization of integration methods for criteria and criteria elements beyond coastal waters to assess overall eutrophication status, the JRC will apply selected integration methods on a common dataset and compare degree of environmental protection. A report describing the outcome of the assessment will be submitted to MS nominated experts for feedback in March 2019. Other work is ongoing on a reference list for algae species causing harmful algal blooms (HAB).

**Descriptor 8 (contaminants)** – Results were published by the JRC (Marine chemical contaminants in support to harmonized MSFD reporting) with considerations for consistent grouping of substances and recommendations to

improve coherence and comparability. The Commission also informed that outcomes will be presented at the 21stWG GES meeting (March 2019). Regarding further work, a dedicated workshop is envisaged for May 2019, to discuss lists of substances and matrices, threshold values and monitoring strategies, with a view to providing recommendations to support consistency of monitoring data (updates of MS monitoring programmes due by 2020)

#### Relevance for marine sector

In a similar way to the WFD, it is key to mention that the MSFD's scope is applied to all areas where ICOMIA has activities in: i.e. marine and coastal waters (as described in the MSFD).

The recreational boating industry will therefore have a substantial interest in key areas such as non-indigenous species, invasive species, recreational fishing, nutrient input, hydrographical changes, contaminants in sea and seafood, marine litter, energy use including underwater noise or biodiversity & habitats. These areas are all linked to the qualitative descriptors listed in Annex I of the text (referred to in Articles 3(5), 9(1), 9(3) and 24).

**Non-indigenous species** can threaten marine biodiversity when they become 'invasive'. In EU waters, Member States identify shipping and aquaculture as the two main activities that can lead to the introduction and spread of non-indigenous species. Adherence to the IMO's Biofouling guidelines is recommended.

**Invasive species:** Measures mentioned by 16 Member States in their programmes often draw on regional work and existing EU law. Some MS have already introduced targeted measures to reduce the risk of introducing non-indigenous species like Sweden, which has introduced a national warning and response system for early detection that will immediately alert authorities when a new non-indigenous species is spotted. ICOMIA and partners need to inform the Swedish Governmental Authorities that with the help and support of the Department of Transport a potential solution can be to follow IMO Guidelines.

**Recreational fishing:** There must also be good synergies with the requirements of the common fishery policy in their national programmes. Belgium has undertaken measures to target better control and monitoring of recreational fishing via the introduction of a legal measure that makes monitoring simpler and will improve data collection. There is a need for more detailed info and data to determine if it will become a threat for the recreational industry.

**Nutrient input** will mostly affect marinas. Excessive inputs of nutrients and organic substances into the sea promote algal blooming, leading to eutrophication. While it affects all marine waters in the EU to some extent, its impacts are most notable in the Baltic Sea. Nutrient enrichment has mainly been attributed to agriculture, industry, urban discharge, aquaculture and, to a lesser extent, shipping. Most Member States in the Baltic Sea do not expect to achieve this by 2020, while in the Mediterranean Sea most Member States have indicated that it has already been achieved. Finland is reducing nutrient inputs to the environment by spreading gypsum in fields, reducing the concentration of phosphorus in the soil and thus reducing leaching of phosphorus into freshwater systems.

**Hydrographical changes** include measures that can potentially affect dredging activities in marinas and yards (as well as sand extraction, desalination or others). Impacts can be seen in changes to sea currents or wave action, tidal regimes, temperature, pH levels, salinity or turbidity and can all adversely affect marine species and habitats. France is currently developing a guidance document to help the relevant stakeholders assess the cumulative impacts of human activities. This will be particularly relevant for hydrological pressures, for which cumulative impacts have until now rarely been addressed.

**Contaminants in the sea and in seafood:** It is important for both environmental and human health reasons to ensure that the levels of contaminants in the marine environment remain low, so that marine life is not affected. In discussions related to heavy metals several MSs stated that historical pollution is one of the sources of contamination. Emissions from Recreational Craft (AF's Coatings etc.) could be a contributor too. Poland has adopted a mix of measures to target different contaminants, includes measures that regulate contaminants such as dredged materials, paraffin and their derivatives. It is also embarking on a reconstruction of its storm water and sewage systems, while introducing measures to reduce contaminants from water discharged from the exhaust treatment systems. Other measures include plans to modernise its inland waterway fleet or permitting provisions for discharging industrial waste water.

**Marine litter** is a pressure on the marine environment that potentially affects the seafloor and beaches. To fight marine litter, MD draw on a number of existing EU laws on waste management, urban waste water or port reception facilities, as well as on international agreements. In the fisheries sector the most common measures are beach clean-ups, 'fishing for litter' and communication initiatives. While these have a modest impact on reducing the pressure, they help to raise awareness. France has two noteworthy measures for marine litter. The first one is part of the national waste prevention programme and consists of extending producers' responsibility; limiting certain products, such as single-use plastic bags; promoting voluntary actions to reduce and recycle marine litter; and aligning regional litter prevention and management plans with the water and marine policy tools, the port waste reception and treatment plans. The second measure tackles shellfish aquaculture, an activity which can be a significant source of litter.

**Energy, including underwater noise** (in the form of heating and electricity systems, noise, electromagnetic radiations, radio waves or vibrations) can also be a pressure on the marine environment. So far, most Member States have focused their efforts on underwater noise, which may come from shipping, boating, marine research, etc. Measures being taken include protecting specific areas from both impulsive and continuous noise; developing 'eco-friendly' ships or limiting the use of certain types of lights on oil and gas platforms. Cyprus has reported a measure that addresses impulsive underwater noise by requiring 'soft-start/slow-start' conditions in the exploration and exploitation of hydrocarbons.

**Marine biodiversity** potentially affects marine spatial planning. Avoiding the negative impacts of pressures on the marine environment should improve conditions for marine species and habitats Member States have measures that deal with various marine habitats, such as spatial protection measures, although

these are limited in spatial scope and may not be targeting areas where pressures are most predominant (e.g. seabed trawling outside protected areas).

**Water column and seabed habitats** are mostly focused on management plans for marine protected areas, the implementation of the Habitats Directive's Natura 2000 Network and the adoption of other national spatial protection. Sweden has strongly linked its biodiversity measures to tackle specific pressures in water column habitats, addressing commercial fish and shellfish through fishing regulations and management, marine protected areas and seasonal closure areas; Eutrophication by reducing long-term nutrient load locally in eutrophic bays and in the Baltic Sea; Contaminants, by managing the discharge of hazardous substances, such as antifouling substances and sewage; And non-indigenous species through indirect measures that include awareness-raising, management plans and risk-reduction measures. 4 MSs noted that damage is also caused by recreational activities including recreational boating. Various human activities have the potential to impact the seabed, particularly through physical disturbance, the most widespread being bottom-trawl commercial fishing. Seabed damage may also occur through recreational activities, such as the anchoring of recreational boats or recreational fishing. Spain for instance has introduced guidelines for recreational marine activities

Having a fundamental interest in coastal waters, ICOMIA and its members should therefore keep abreast of any developments related to the MSFD, including future consultations and other political developments that could somehow affect the current framework of action for the MSFD.

#### Next steps

The Commission is expected to review the MSFD, probably during the next European Commission legislature. The Directive obliges Member States to develop a Marine Strategy for European waters, requiring an assessment of current status and human impact, then establishment of targets. The Directive also requires Member States to take the necessary measures to achieve or maintain good environmental status in their marine environment by the year 2020.

#### Key stakeholders

Within the European Commission, the key unit is in DG ENV — Directorate-General for Environment - Unit C2, Quality of Life - Marine Environment and Water Industry

- Matjaž MALGAJ - Head of Unit
- M. SPONAR - Deputy Head of Unit
- Fabio PIROTTA - Team Leader - Policy assistance / Marine Protection

## 5. WATER FRAMEWORK DIRECTIVE, GROUNDWATER DIRECTIVE AND BATHING WATER DIRECTIVE

### Latest developments

As informed in the last report, DG ENV is currently performing a [Fitness Check](#) of the Water Framework Directive, the Groundwater Directive and the Environmental Quality Standards Directive (the so-called "daughter-directives" of the Water Framework Directive) alongside the Floods Directive. The Fitness Check will assess whether the current regulatory framework is 'fit for purpose'.

ICOMIA recently provided the European consultants with a contribution to the public consultation as part of the Fitness Check of the EU Water Framework Directive, acknowledging that the WFD is crucial in order to achieve the good ecological and chemical status for all EU water bodies. Although good progress has been made on the national and European level within the River Basin Commissions there are still issues to be solved, mainly on the topics below.

One key issues related to the **lack of recognition of the role of sediments** in terms of quantity, quality and dynamic in achieving WFD objectives, as they play an important role in achieving WFD ecological and chemical status objectives. WFD implementation and processes must recognise both the important natural role of sediments in aquatic systems, whilst also acknowledging the need for several 100 million cubic metres to be dredged annually in Europe.

Concerning **Transitional and Coastal Water Bodies**, ICOMIA stated that many marinas are based within seaports and or lying in an estuary where the river meets the sea, and the WFD overlaps with the Marine Strategy Framework Directive at coastal level. ICOMIA noticed the following issues: lack of adequate implementation attention to transitional and coastal waters; Poor links with the MSFD notably in relation to hydromorphology, scale and new projects in coastal water bodies; Chemical status data is lacking in coastal and transitional (TraC) waters and different analytical techniques are applicable; it does not make sense to analyse total water samples in TraC waters, and therefore the EQS standard setting process is questionable.

**Climate Change** will impact the water cycle and water resources in Europe and world-wide. These potential impacts will affect and interact with WFD implementation activities at different states in the process. For example, the increasing frequent problems with saline intrusion are linked to climate change (but are also symptomatic of Member States' general lack of attention to transitional waters). Drought and water scarcity issues are very relevant to navigation as if vessels cannot use the river, freight has to move to road – with consequences for both carbon emissions and PAHs, etc.

ICOMIA is pleading for better coordination between the different EU Regulations and Directives due to **subpar policy coherence**. As indicated in the MSFD section above, There is a need for better coordination between WFD/MSFD, IED, REACH, BPR and the Waste Framework Directive.

Currently, there are incompatibility issues between the respective objectives of these instruments for example in relation to invasive alien species (i.e. which is worse, invasive non-native species introductions or the risk of contamination associated with antifoulant use?).

Diffuse pollution issues are also relevant to port and marina estates, as these gradually trickle into the water environment. Diffuse pollution concerns small sources of pollution that occur in large numbers and, therefore potential an impact on the water environment and does not meet the WFD goals.

ICOMIA also highlights that the 2027 deadline is not realistic based on past experiences, as indicated by the Commission in the WFD implementation report. Overall, the Report found that knowledge and reporting on the WFD have significantly improved, as well as compliance, but progress still needs to be made. In addition, the Report found that a large majority of groundwater bodies has achieved good status, while less than half of surface water bodies is in good status. According to the Report, Member States would benefit from the involvement of civil society and market actors in order to ensure a better implementation of the polluter pays principle. The Report finally suggests that further measures would be needed beyond 2021.

Finally, there are also concerns from ICOMIA about the possibility of introducing a rush of poorly informed measures in

- TraC water bodies vs. setting of less stringent objectives.
- Chemical status scope
- Parallel tracks for ecological and chemical status sometimes make practical implementation difficult
- Microplastics in freshwater are subject to increasing attention in their own right as well as being a main input source to the marine environment

Moreover, Logos has learnt that there is a preparatory study assessing the economic value of water and water services in the EU is being prepared. It was initially expected to be completed by the end of 2018. The preparatory study, which is being carried out by an external consultant (a consortium led by Ramboll Denmark AS) would assess the economic value of clean water and water services in the EU as well as how water resources contribute to economic development and citizens' well-being.

In particular, according to the Commission, the study would perform an integrated EU policy assessment of the economic benefits of EU water acquis and on the costs of its non-implementation. It would aim to collect and generate economic arguments supporting the full implementation of EU water policy and develop an integrated policy assessment method for the EU water acquis. At this stage of the procedure, it is not yet known if the results of the study would feed into a separate initiative assessing the economic value of water and water services. However, according to the tender specifications of the study, the results of this project could feed into the future

review of the EU water acquis, including the Water Framework Directive, the Marine Strategy Framework Directive and the Nitrates Directive.

As highlighted in Section 4 on the MSFD, since 2017, the pathway that the Commission is taking seems to be directed towards water-related legislation. This is so considering the fact that the Water Framework Directive (and the MSFD) are being put ahead in terms of importance of other files, being more connected towards nature and technical environmental laws, thus indirectly dominating product legislation. It is interesting to see the contrast to the United States, where air-related legislation seems to be the dominating force. This is pictured by the diagram below, as shown in the past by ICOMIA Environmental Consultant (also shown in topic 4 on the MSFD for convenience).



The Water Framework Directive will be reviewed in 2019, and will have effects on the marine industry regarding specific processes and priority substances, as this upcoming review includes 10 recommendations underpinning the practical implementation of the WFD with regard to chemical pollution (affecting REACH and also the BPR). In fact, a **legislative proposal revising the list of priority substances under the Water Framework Directive (WFD), is now expected to be presented by the end of 2019**, the Commission confirmed. The possible Commission initiative reviewing the list of priority substances in water would identify new priority substances or priority hazardous substances or priority substances as priority hazardous substances. It would also set corresponding Environmental Quality Standards for surface water, sediment or biota. This would be the second review of the list of priority substances. The priority substances list was initially set up by the WFD and then updated by Directive 2013/39/EU. The current list of priority substances in the field of water policy contains 45 substances, 12 substances more than the first priority substances list. Once priority substances are identified, they are placed in Annex X to the WFD. They must then be progressively reduced or phased out from the aquatic environment.

On the **Groundwater Directive**, the Commission is expected to review Annex I and II to the Groundwater Directive (GWD) by 2019. As indicated above, the Commission public consultation on the evaluation of the Groundwater Directive (GWD) has been prolonged until 12 March 2019.

Regarding the **Bathing Water Directive**, the Commission is expected to carry out a review by 2020. The expected review would focus on the parameters for bathing water quality, including whether it would be appropriate to phase out the "sufficient" classification or modify the applicable standards.

## Background

The **Water Framework Directive** is a European Union directive which commits European Union Member States to achieve good qualitative and quantitative status of all water bodies (including marine waters up to one nautical mile from shore) by 2015. It is a framework in the sense that it prescribes steps to reach the common goal rather than adopting the more traditional limit value approach. Much progress has been made in water protection in individual Member States, but also in tackling significant problems at European level. However, it is worth noting that the Directive's aim for 'good status' for all water bodies will not be achieved, with 47% of EU water bodies covered by the Directive failing to achieve the aim.

There have already been 4 implementation reports released (2007, 2009, 2012 and 2015). The latest implementation report compiled an assessment of the Water Framework Directive Programmes of Measures and the Flood Directive, and was adopted on 9 March 2015. It consisted of the following documents:

- A Commission Communication: "[The Water Framework Directive \(WFD\) and the Floods Directive \(FD\): Actions towards the 'good status' of EU water and to reduce flood risks](#)"
- A European Overview – 2 Commission Staff Working Documents on the [WFD Programmes of Measures](#) (including specific recommendations for each Member State as a result of the Commission's assessment) and on the [Floods Directive](#).
- 5 Assessments of the River Basin Management plans of [Belgium](#), [Greece](#), [Spain](#), [Portugal](#) and [Croatia](#).
- A report was released by the European Environmental Agency, on the quality of drinking and bathing water in Europe, titled "[European water policies and human health — Combining reported environmental information](#)", which again states that Member States will need to coordinate and implement the requirements of the Directive.

On a further note, the **Groundwater Directive** establishes a regime that sets underground water quality standards and introduces measures to prevent or limit inputs of pollutants into groundwater. It sets out criteria for assessing the chemical status of groundwater; criteria for identifying significant and sustained upward trends in groundwater pollution levels, and for defining starting points for reversing these trends and provisions

preventing and limiting indirect discharges (after percolation through soil or subsoil) of pollutants into groundwater.

Moreover, the European Union's revised [Bathing Water Directive \(2006/7/EC\)](#) came into force in March 2006 and replaced the older BWD and complementing the current WFD. The overall objective of the revised directive is the protection of public health, but it also offers an opportunity to improve management practices at bathing waters and to standardise the information offered to bathers across Europe. It introduces a new classification system with more stringent water quality standards and puts an emphasis on providing information to the public through the so-called bathing water profiles (these profiles contain for instance information on the kind of pollution and sources that affect the quality of the bathing water and are a risk to bathers' health). It also requires Member States to monitor and assess the bathing water for at least two parameters of (faecal) bacteria. The present Directive also complements other water-related policies, namely the Water Framework Directive, under which bathing waters are one of the Protected Areas and the Marine Strategy Framework Directive (MSFD), in contributing to reaching "good environmental status" by 2020.

#### Relevance for marine sector

Regarding the applicability of the Directive, it is clear that it covers all ranges of water in which ICOMIA's members have an activity. This means that the WFD can have significant implications for recreational boating, both for ongoing activities such as dredging and disposal, and for new development proposals. One of the main issues that the WFD deals with is the discharge of polluting substances.

It is also very important to highlight that considering the political reorganisation of several legislative initiatives including REACH, BPR and others, the Water Framework Directive appears to be dominating these other texts. Thus, developments in all legislative and regulatory sectors that are somehow related to water will be subject to the key premises established in the WFD.

According to the Directive, Community water policy should be based on a combined approach using control of pollution at source through the setting of emission limit values and of environmental quality standards. Moreover, common environmental quality standards and emission limit values for certain groups or families of pollutants should be laid down as minimum requirements in Community legislation.

This wording is exactly what the original text proposes, without any further clarifications regarding the source of the pollution. Therefore one could assume that "this pollution at source" should be considered at a horizontal level (coming from any source). The legal text also reads that pollution through the discharge, emission or loss of priority hazardous substances must cease or be phased out. Penalties are foreseen to those cases that pose breaches of the national provisions adopted pursuant to this Directive.

There is a special stress on groundwater, with a prohibition on direct discharges to groundwater, and (to cover indirect discharges) a requirement

to monitor groundwater bodies so as to detect changes in chemical composition, and to reverse any anthropogenically induced upward pollution trend.

Below you can find a list of the main pollutants which appear in the WFD.

**ANNEX VIII - INDICATIVE LIST OF THE MAIN POLLUTANTS**

1. Organohalogen compounds and substances which may form such compounds in the aquatic environment.
2. Organophosphorous compounds.
3. Organotin compounds.
4. Substances and preparations, or the breakdown products of such, which have been proved to possess carcinogenic or mutagenic properties or properties which may affect steroidogenic, thyroid, reproduction or other endocrine-related functions in or via the aquatic environment.
5. Persistent hydrocarbons and persistent and bioaccumulable organic toxic substances.
6. Cyanides.
7. Metals and their compounds.
8. Arsenic and its compounds.
9. Biocides and plant protection products.
10. Materials in suspension.
11. Substances which contribute to eutrophication (in particular, nitrates and phosphates).
12. Substances which have an unfavourable influence on the oxygen balance (and can be measured using parameters such as BOD, COD, etc.).

Regarding the **Bathing Water Directive**, the legal text describes pollution as “the presence of microbiological contamination or other organisms or waste affecting bathing water quality and presenting a risk to bathers' health”, which could also mean ‘short-term pollution’, or microbiological contamination as referred to in Annex I, column A, (faecal matter).

The potential implications for ICOMIA resulting from this Directive appear to be rather limited as it focuses on bacterial pollution. There is reference made to other potential pollution sources in the last EEA 2016 report but only to “pollution from sewage, water draining from farms and farmland or animals and birds on or near beaches” rather than any fuel-related pollution. ICOMIA should therefore simply monitor any potential amendment or change of focus in the implementation and monitoring of the Directive which may lead to take into account other elements.

### Next steps

The Commission Report on the implementation of the **Water Framework Directive (WFD)** would aim to understand the development that the Directive has brought about to contribute to a sound water management in Member States and at the EU level, evaluating the progress in the implementation of the Directive and the status of surface water and groundwater as well as a survey of the river basin management plans submitted by Member States, including suggestions for the improvement of future plans. Currently, the Commission is expected to present it by the end of 2018. Once published, the Report will be sent to the European Parliament and the Council which may decide to formally respond to it in the following months. However, considering the European Parliament's elections scheduled for May 2019, a response from this Parliament seems unlikely. The European Parliament

would respond through the adoption of an Own-initiative Resolution, while the Council would adopt Conclusions in response to the Report.

Plus, the Commission is expected to review the **Bathing Water Directive**. The expected Commission Review would focus on the parameters for bathing water quality, including whether it would be appropriate to phase out the "sufficient" classification or modify the applicable standards. The review could be accompanied by legislative proposals. The future Review is required by Article 14 of the Bathing Water Directive. The Bathing Water Directive sets out rules for the monitoring and classification of bathing water quality; the management of bathing water quality; and the provision of information to the public on bathing water quality.

As regards the **Groundwater Directive**, the Commission is expected to review Annex I and II to the Groundwater Directive by 2019.

**Key  
stakeholders**

The relevant Directorate for the WFD is DG ENVI - Dir C Quality of Life, Water and Air, Unit 1. Water. As the implementation of the WFD is extremely horizontal and covers all Member States, there is a large number of EC officials dealing with this piece of legislation:

- MISIGA Pavel - Head of Unit
- RODRIGUEZ ROMERO J. - Deputy Head of Unit
- CAPITAO J. - Policy Officer - Implementation WFD
- ALVARELLOS L. - Policy Officer - Implementation WFD
- PARENTI A. - Policy Officer - Implementation WFD

## 6. COMMISSION REVISION OF REGULATION (EU) 2015/757 ON THE MONITORING, REPORTING AND VERIFICATION OF CO<sub>2</sub> EMISSIONS FROM MARITIME TRANSPORT

### Latest developments

The [8-week public consultation](#) – launched on 4<sup>th</sup> February together with the presentation of the proposal itself – closed on 1<sup>st</sup> April. Stakeholders submitted a total of 6 comments to the Commission's consultation on the text of the proposal. Some concerns have been expressed by stakeholders with regard to the introduction of deadweight tonnage as a reporting parameter and the removal of the obligation of reporting the cargo carried.

More specifically, the business association, *Danish Shipping*, and the company, *Maersk*, called for the reporting on cargo carried to remain mandatory in the EU MRV Regulation. The two organisations stressed that a fair evaluation of the performance of vessels cannot be based on a fixed cargo carried considering that the efficiency of vessels is directly linked to the relation between CO<sub>2</sub> emissions and the delivered transport work.

For these organizations, together with an EU citizen, the use of nominal deadweight tonnage as a proxy for the cargo carried will remove the incentives to reduce emission and improve the energy efficiency of vessels.

On the other hand, *EMISA*, a representative of the independent manufacturers and suppliers in the marine diesel industry, advocated for the use of the Direct CO<sub>2</sub> Emissions Measurement Method as the main mean for monitoring. This method will simplify the obligations on ship operators to collect and record data and will minimise the administrative burden, they maintained.

Similarly, the *International Association of Classification Societies (IACS)* declared that the submission of data online is problematic and suggested to the Commission to consider a more convenient way.

Regarding the amendment to article 11 of MRV Regulation on the content of the emissions report, the *Association of North German Chambers of Commerce and Industry (IKH Nord)* expressed its regrets that the proposal does not remove the obligation of their publication nor take into account the acquisition between different shipping companies.

Finally, while the *IACS* suggested aligning the requirements of the MRV Regulation with the IMO DCS, *IKH Nord* calls for a full harmonisation.

On 9<sup>th</sup> April, the Council's Working Group on the Environment discussed the proposal for the first time, to then resume its work on 6<sup>th</sup> and 22<sup>nd</sup> May.

### Background

[European Parliament and Council Regulation \(EU\) 2015/757](#) on the monitoring, reporting and verification (MRV) of CO<sub>2</sub> emissions from maritime transport entered into force on 1 July 2015.

This text lays down rules for the accurate monitoring, reporting and verification of carbon dioxide (CO<sub>2</sub>) emissions and of other relevant information from ships arriving at, within or departing from ports under the jurisdiction of a Member State, in order to promote the reduction of CO<sub>2</sub>

emissions from maritime transport in a cost effective manner. The Regulation amends Directive 2009/16/EC on port State control.

This Regulation applies to ships above 5 000 gross tonnage in respect of CO2 emissions released during their voyages from their last port of call to a port of call under the jurisdiction of a Member State and from a port of call under the jurisdiction of a Member State to their next port of call, as well as within ports of call under the jurisdiction of a Member State. The MRV system shall not apply to: warships, naval auxiliaries, fish catching or processing ships, wooden ships of a primitive build, ships not propelled by mechanical means as well as to government ships used for non-commercial purposes.

Under the Regulation, among other things:

- The annual CO2 emissions calculation shall be based on fuel consumption and fuel type and energy efficiency;
- The Commission is given the power to adopt delegated acts to amend the methods for the monitoring and reporting, as well as to refine the elements of the monitoring methods in light of technological and scientific developments;
- Companies shall check at least once a year whether the ship's monitoring plan reflects the nature and the functioning of the ship and whether the monitoring methodology can be improved;
- From 2019, by 30 April of each year, companies shall submit to the Commission and to the authorities of the flag States concerned, an emissions report concerning the CO2 emissions and other relevant information for the entire reporting period for each ship under their responsibility;
- Member States shall set up a system of penalties for failure to comply with the monitoring and reporting obligations and shall take all the measures necessary to ensure that those penalties are imposed; and
- Protection of commercial interests is guaranteed by limiting the disclosure of information which would exceptionally undermine the protection of commercial interest deserving protection as a legitimate economic interest in accordance with Regulation 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental matters to EU institutions and bodies

The Commission [public consultation](#) on the expected proposal revising EU rules on the monitoring, reporting and verification of CO2 emissions from maritime transport closed on 1 December 2017 (launched on 8 September 2017). With the public consultation, the Commission aimed to gather stakeholder input on the possible alignment of the EU MRV with the legal framework for the global data collection system (DCS) set by the International Maritime Organisation (IMO) in June 2017.

The questionnaire attached to the public consultation focused on the following main aspects:

(1) **Policy options:** The Commission proposes to stakeholders three possible policy options for the alignment between EU MRV and IMO DCS: No alignment, Full alignment and Partial alignment.

(2) **Priorities in the potential alignment process:** The Commission exposes to the respondents five main differences between EU MRV and IMO DCS and asks how these aspects could be potentially aligned. These diverging aspects are: scope of application of the two systems, parameters to be monitored, verification system and the responsible authorities that have to perform it, level of transparency of the data collected and monitoring activities and use of templates while reporting.

The results of the public consultation are expected to feed into the forthcoming proposal (discussed in the section below).

On 4<sup>th</sup> February, the Commission presented a [proposal for a Regulation](#). The proposal would amend existing EU rules in order to take into account the global data collection system for fuel oil consumption of ships established by the International Maritime Organisation (IMO DCS) in 2016.

More specifically, pursuant to Article 22 of the MRV Regulation, the proposal would introduce the "deadweight tonnage" as a new compulsory parameter to be included by companies in their emissions report. The latter would be defined as the difference in tonnes between the displacement of a ship in water of relative density of 1025 kg/m<sup>3</sup> at the summer load draught and the lightweight of the ship. "Cargo carried" would be kept as a voluntary monitoring parameter for those companies willing to provide a calculation of their ships' average energy efficiency based on cargo carried. The proposal would also align with the IMO DCS regarding the methods of calculating distances and travel times. Hence, the travel time determined by the port departure and arrival information would be replaced by the hours underway calculated as aggregated duration while the ship is underway under its own propulsion. The travel distances would no longer be calculated on the basis of the most direct route between the two ports but as the distance over ground.

With regards to the list of documentation to be provided, while the emission factors and the type of ship, fuel and engine would have to be submitted, the port of registry or home port and the description of methods used to update the list of Co<sub>2</sub> emission sources would no longer be requested. The definition of "company" would be modified in order to specify that the person or organisation acting in place of the shipowner would have to agree to assume all duties and responsibilities imposed by the International Safety Management Code under Regulation 336/2006.

Finally, the proposal would provide that acquired companies would have 3 months from the day of the completion of the change of Company to submit a report equivalent to an emissions report but limited to the period corresponding to the activities carried out under its responsibility.

## Relevance for marine sector

As stated above, this Regulation does not apply to warships, naval auxiliaries, fish-catching or fish-processing ships, wooden ships of a primitive build, ships not propelled by mechanical means, or government ships used for non-commercial purposes.

It only applies to ships above 5000 gross tonnage in respect of CO2 emissions released during their voyages from their last port of call to a port of call under the jurisdiction of a Member State and from a port of call under the jurisdiction of a Member State to their next port of call, as well as within ports of call under the jurisdiction of a Member State. In this regard, 'voyage' means any movement of a ship that originates from or terminates in a port of call and that serves the purpose of transporting passengers or cargo for commercial purposes.

As ICOMIA's interests are mostly recreational, the key aspect to consider would be the potential cascading initiatives that could arise as a result of the development of increasingly restrictive CO2 regulations for the maritime sector.

It is worth adding that in the most recent legislative discussions, shipping and maritime emissions at large are receiving increasing attention. This has been signalled also by the presentation of long-awaited *Clean Planet for all - A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy*. The Commission has been increasingly calling for a combination of decarbonised, decentralised and digitalised power, coupled with more efficient and sustainable batteries, as they offer prospects to decarbonise the entire transport sector with strong overall benefits including clean air and reduced noise. More specifically, *the calls for an electrification of short sea shipping and inland waterways were presented as a viable option, as the power to weight ratio makes it feasible. Hence, Logos suggests maintaining a high level of attention on the co-legislators' debates, as ripple effects and request for stronger contributions from waterborne transportation are expected.*

## Next steps

The Working Party and the COREPER are expected to further discuss the proposal under the Romanian Presidency, in order to prepare the Council's internal position (General Approach). In parallel, as the mandate of the current European Parliament is about to come to an end, the work on the proposal by the Parliament is expected to be delayed until after the new Parliament is elected in May 2019. This would delay progress on the file until after the summer of 2019, as the Parliament will need to reorganise following the elections.

Moreover, towards the end of the year, the Commission will publish the first annual Report on CO2 emissions, based on the information provided by MRV companies. As a matter of fact, by 30<sup>th</sup> April of each year, MRV companies are required to submit to the Commission through THETIS MRV (a dedicated European Union web-based information system) an Emissions report for each of the ships having performed EEA related maritime transport in the previous reporting period.

Logos perceives that the results of the forthcoming Report can be intended as a useful verification of whether maritime transport is proceeding on the right trend or it would require additional decarbonisation efforts.

**Key  
stakeholders**

The responsible unit for this file is DG CLIMA's Unit B3 — European and International Carbon Markets - International Carbon Market, Aviation and Maritime:

- Laurence GRAFF - Head of Unit
- M. HESSION - Policy Officer - Carbon market mechanisms and GHG reductions in maritime transport
- C. MICALLEF-BORG - Policy Officer - International shipping, emission reduction strategy (IMO)

## SECTION II – Other Relevant EU Policies

### 1. COMMISSION PROPOSAL FOR A DIRECTIVE AMENDING DIRECTIVE 2004/37/EC ON THE PROTECTION OF WORKERS FROM THE RISKS RELATED TO CARCINOGENS AND MUTAGENS AT WORK

#### Latest developments

There have been some key updates for ICOMIA in the carcinogens files (found below in the third amendment section). There is also news on a potential fourth amendment, which is expected to come with the next European Commission, particularly regarding the substances that are *expected* to be included, which in this case are nickel compounds, acrylonitrile and benzene.

As mentioned in the background, there have been three recent amendments to the original text.

The first amendment to EU rules on occupational exposure to carcinogens and mutagens entered into force on 16 January 2018. The new text was published in the EU's Official Journal on 27 December 2017, amending Directive 2004/37/EC to bring it into line with scientific progress. According to Directive, the key changes to the current framework include:

**1. Health surveillance (Article 14(1) and (8)):** Requires Member States to carry out relevant health surveillance of workers for whom the results of the assessment referred to in Article 3(2) reveal a risk to health or safety. All cases of cancer identified as resulting from occupational exposure to a carcinogen or mutagen must be notified to the competent authority

**2. Evaluation and review (New Article 18a):** The Commission will, as part of a future evaluation of the implementation of the Directive (third Amendment), assess modifying the limit value for respirable crystalline silica dust and if appropriate, propose the necessary amendments. Taking into account the latest developments in scientific knowledge, the EC will also assess amending the scope of the Directive to include reprotoxic substances no later than in the first quarter of 2019 and submit a proposal if appropriate.

**3. Respirable crystalline silica dust:** Includes a new entry for occupational exposure to respirable crystalline silica dust produced by a work process in Annex I to the Directive by adding a new point to Annex I '6. Work involving exposure to respirable crystalline silica dust generated by a work process'. The new limit value is introduced in Annex III.

**4. Annex III:** It is replaced by the text in the Annex to the Directive. Specifically this introduces a number of changes to:

#### 4.1 Existing limit values in Annex III for two substances in the light of available scientific data:

*4.1.1 Hardwood dust (2 mg/m<sup>3</sup>)* - The distinction between hardwood and soft wood dust will be further assessed. As mixed exposure to more than one species of wood is very common, the limit value set in Annex III for hardwood dusts applies to all wood dusts present in that mixture. An

exposure limit value of 3mg/m<sup>3</sup> applies for five years after the entry into force of the Directive and thereafter of 2mg/m<sup>3</sup>.

4.1.2 Vinyl chloride monomer (2.6 mg/m<sup>3</sup>, 1 ppm).

4.1.3 Benzene (0.325mg/m<sup>3</sup>, 1 ppm, with skin notation) - no change to the previous entry.

**4.2 Replaces Annex III with a new Annex listing the new limit values for carcinogenic substances, including 11 new entries:**

4.2.1 1,2-Epoxypropane (2.4 mg/m<sup>3</sup>, 1 ppm);

4.2.2 1,3-Butadiene (2.2 mg/m<sup>3</sup>, 1 ppm);

4.2.3 2-Nitropropane (18 mg/m<sup>3</sup>, 5 ppm);

4.2.4 Acrylamide (0.1 mg/m<sup>3</sup> with skin notation);

4.2.5 Bromoethylene (4.4 mg/m<sup>3</sup>, 1 ppm);

4.2.6 Chromium (VI) compounds (0.005 mg/m<sup>3</sup>);

4.2.7 Ethylene Oxide (1.8 mg/m<sup>3</sup>, 1 ppm, with skin notation);

4.2.8 Hydrazine (0.013 mg/m<sup>3</sup>, 0.01 ppm, with skin notation)

4.2.9 o-toluidine (0.5 mg/m<sup>3</sup>, 0.01 ppm, with skin notation)

4.2.10 Refractory ceramic fibres (RCF) (0.3 f/mL)

4.2.11 Respirable crystalline silica dust (0.1 mg/m<sup>3</sup>.)

The [second amendment](#), was proposed in January 2017 and has gone through the European Parliament's EMPL Committee. [Directive \(EU\) 2019/130](#) entered into force on 20 February 2019, being published in the EU Official Journal on 31 January 2019. The final text amends Annex III to the Directive 2004/37/EC (Carcinogens and Mutagens Directive) and sets limit values for the following substance. According to text of the Directive, the key changes to the current framework include:

- New Article 13a - Social partners' agreements (Article 1) - A new Article is added, which outlines that Social Partners' agreements possibly concluded in the field of this Directive will be listed on the website of the European Agency for Safety and Health at Work (EU-OSHA). That list will be regularly updated.
- Annex I (Article 1) - In Annex I the following points are added:
  - 7. Work involving dermal exposure to mineral oils that have been used before in internal combustion engines to lubricate and cool the moving parts within the engine;
  - 8. Work involving exposure to diesel engine exhaust emissions.
- Annex III (Annex)
  - **Hardwood dusts** - Limit value 2 mg/m<sup>3</sup> for 8 hours. Limit value 3 mg/m<sup>3</sup> until 17 January 2023;
  - **Chromium (VI) compounds** which are carcinogens within the meaning of point (i) of Article 2(a) - Limit value 0,005 mg/m<sup>3</sup> for 8 hours. Limit value 0,010 mg/m<sup>3</sup> until 17 January 2025. Limit value 0,025 mg/m<sup>3</sup> for welding or plasma cutting processes or similar work processes that generate fume until 17 January 2025;

- Refractory ceramic fibres which are carcinogens within the meaning of point (i) of Article 2(a) - Limit value 0,3 f/ml for 8 hours;
- Respirable crystalline silica dust - Limit value 0,1 mg/m<sup>3</sup> for 8 hours;
- **Benzene** - Limit value 3,25 mg/m<sup>3</sup>, 1 ppm for 8 hours. Skin notation;
- Vinyl chloride monomer - Limit value 2,6 mg/m<sup>3</sup>, 1 ppm for 8 hours;
- Ethylene oxide - Limit value 1,8 mg/m<sup>3</sup>, 1 ppm for 8 hours. Skin notation;
- 1,2-Epoxypropane - Limit value 2,4 mg/m<sup>3</sup>, 1 ppm for 8 hours;
- Trichloroethylene - Limit value 54,7 mg/m<sup>3</sup>, 10 ppm for 8 hours. 164,1 mg/m<sup>3</sup>, 30 ppm for short term. Skin notation;
- Acrylamide - Limit value 0,1 mg/m<sup>3</sup> for 8 hours. Skin notation;
- 2-Nitropropane - Limit value 18 mg/m<sup>3</sup>, 5 ppm for 8 hours;
- o-Toluidine - Limit value 0,5 mg/m<sup>3</sup>, 0,1 ppm for 8 hours. Skin notation;
- 4,4'-Methylenedianiline - Limit value 0,08 mg/m<sup>3</sup> for 8 hours. Skin notation;
- Epichlorohydrine - Limit value 1,9 mg/m<sup>3</sup> for 8 hours. Skin notation;
- Ethylene dibromide - Limit value 0,8 mg/m<sup>3</sup>, 0,1 ppm for 8 hours. Skin notation;
- 1,3-Butadiene - Limit value 2,2 mg/m<sup>3</sup>, 1 ppm for 8 hours;
- Ethylene dichloride - Limit value 8,2 mg/m<sup>3</sup>, 2 ppm for 8 hours. Skin notation;
- Hydrazine - Limit value 0,013 mg/m<sup>3</sup>, 0,01 ppm for 8 hours. Skin notation;
- Bromoethylene - Limit value 4,4 mg/m<sup>3</sup>, 1 ppm for 8 hours;
- **Diesel engine exhaust emissions** - Limit value 0,05 mg/mg<sup>3</sup> for 8 hours. The limit value will apply from 21 February 2023. For underground mining and tunnel construction the limit value will apply from 21 February 2026;
- **Polycyclic aromatic hydrocarbons mixtures**, particularly those containing benzo[a]pyrene, which are carcinogens within the meaning of this Directive - Skin notation;
- **Mineral oils that have been used before in internal combustion engines** to lubricate and cool the moving parts within the engine - Skin notation.

The [third amendment](#) was presented by the European Commission in April 2018. The European Parliament's Employment and Social Affairs Committee (EMPL) has postponed its discussions on the text to October.

This third proposal would amend Annex III to Directive 2004/37/EC to set Occupational Exposure Limit Values (OELs) for chemical substances assessed in 2017 - 2018 and not included in the first or second amendments

to Annex III. Earlier in December, the European Parliament has published a [study](#) on the Commission's third proposal to amend Directive.

On the 18<sup>th</sup> of February, the European Parliament published a [briefing document](#) on the Commission's third proposal to amend Directive 2004/37/EC (Carcinogens and Mutagens Directive). The European Parliament's briefing gives an overview of the Commission's proposal, the changes the proposal could bring and the views of the Member States and stakeholders. **It is noted that a provisional agreement was reached at the second trilogue meeting held on 29 January 2019.**

The agreement sets new limit values and invites the Commission to assess, by mid-2020, the possibility to extend the scope of the Directive to a list of hazardous medicines, including cytotoxic ones. Furthermore, as regards cadmium, the Commission is requested, within three years after entry into force of this third amendment to the Directive, to consider a further amendment, which would add the combination of an airborne occupational exposure limit value with a biological limit value. It is also explained that the new rules will improve working conditions for over 1 million EU workers and prevent over 22000 cases of work-related illness. Sectors that will benefit include nickel-cadmium battery manufacturers, zinc and copper smelting, laboratories, electronics, construction, plastics and recycling sectors.

It is key to mention that the [Council formally adopted the compromise agreement reached on the Commission's third proposal on 21 May 2019](#), during the General Affairs Council meeting. Ministers unanimously adopted the text of the agreement, as adopted by the European Parliament's Plenary on 27 March 2019. Prior to the Council meeting, COREPER (Member States Ambassadors) approved the agreement on 15 May 2019.

Following the approval of the European Parliament's position by the Council, the legislative act can be adopted. After being signed by the President of the European Parliament and the President of the Council, the Directive would be published in the EU Official Journal. This is expected during the third quarter of 2019.

According to the text of the agreement, the following key changes are made to the Carcinogens and Mutagens Directive:

- Article 1 - Three years after the Directive has entered into force, the Commission is required to assess the option to amend the Directive to add provisions on a combination of an airborne occupational exposure limit with a biological limit value for cadmium and its inorganic compounds. Furthermore, no later than the end of second quarter of 2020, the Commission will assess whether to amend this Directive to include hazardous drugs, including cytotoxic drugs, or to propose a more appropriate instrument for the purpose of ensuring occupational safety of workers from exposure to such drugs.
- Article 2 - Member States are obliged to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 2 years after the Directive has entered into force.

- Annex III is amended as follows: in point A the following rows are added:
  - Cadmium and its inorganic compounds: 8h – 0,001mg/m<sup>3</sup> (inhalable fraction); Transitional measures: Limit value 0,004 mg/m<sup>3</sup> for 8 years;
  - Beryllium and inorganic beryllium compounds: 8h – 0,0002mg/m<sup>3</sup> (inhalable fraction) with dermal and respiratory sensitisation notation; Transitional measures: Limit value 0,0006 mg/m<sup>3</sup> for 7 years;
  - Arsenic acid and its salts, as well as inorganic arsenic compounds: 8h – 0,01mg/m<sup>3</sup> (inhalable fraction) and for the copper smelting sector the limit value will come into force in 4 years;
  - Formaldehyde: 8h – 0,37mg/m<sup>3</sup>, 0,3ppm; short-term 0,74mg/m<sup>3</sup>, 0,6ppm with dermal sensitisation notation
  - 4,4'-Methylene-bis(2-chloroaniline): 8h – 0,01mg/m<sup>3</sup> with skin notation.

On a further note, the consultation on the **possible revision of the EU legal framework regulating occupational exposure to reprotoxic substances** has closed. Stakeholders had until 23 November 2018 to submit their comments on five policy options. The purpose of the consultation was to assess the impacts of five policy options for amending the Directive 2004/37/EC (Carcinogens and Mutagens Directive, CMD) and/or Council Directive 98/24/EC (Chemical Agents Directive, CAD). The final study report is expected to be presented to the Commission during the first quarter of 2019. The results of the study on five policy options will be taken into account by the Commission, who may come forward with a proposal to amend the Carcinogens and Mutagens Directive in order to include in its scope category 1A and 1B reprotoxic chemicals or, based on a possible merger of the Directive and Chemical Agents Directive, the necessary additional requirements to address risks from reprotoxic chemicals. The five policy options are:

- 1) No changes to EU Occupational Safety and Health (OSH) legislation;
- 2) Inclusion of reprotoxic 1A and 1B chemicals into the scope of the CMD with full application of the requirements in the CMD;
- 3) Inclusion of reprotoxic 1A and 1B chemicals into the scope of the CMD but with derogations from the substitution, closed systems, minimisation and record keeping requirements, unless an EU scientific committee confirms that the substance in question has no threshold for reprotoxic effects;
- 4) Merging the CMD and CAD into a single Directive, applying CMD-equivalent requirements to reprotoxic 1A and 1B substances but no further changes
- 5) Merging the CMD and CAD into a single Directive, applying CMD-equivalent requirements to reprotoxic 1A and 1B

substances and updating OSH-related terminology and requirements:

- a. CMD-equivalent requirements would apply to CMR 1A and 1B substances and CAD-equivalent requirements would apply to other types of hazardous substances;
- b. Skin and respiratory sensitisers would also be subject to CMD-equivalent requirements;
- c. Common terminology for substances subject to CMD-equivalent and CAD-equivalent requirements;
- d. Terminology to be brought into line with REACH;
- e. Use of biological limit values (BLVs) as part of health surveillance would not be mandatory.

Regarding the **fourth amendment** to the Directive, the Commission has announced that it will leave the new file for the next Commission, but an impact assessment for the proposal will be conducted in July 2019. However, a timeline when the proposal might be presented is currently not available and it will be left for the next Commission to decide.

The Commission is expected to take into account the opinions of Scientific Committee for exposure limits to chemical agents (SCOEL), the European Chemicals Agency (ECHA), and the Advisory Committee on Safety and Health at Work (ACSH) when drafting the proposal.

The Commission's proposal is expected to include the following substances: **Nickel compounds; Acrylonitrile and Benzene**.

## Background

[Directive 2004/37/EC](#) of the European Parliament and of the Council on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC) was published in 2004. As shown below, this text has seen **three updates** in recent years in the form of amendments. **There will be a fourth amendment probably including nickel compounds, acrylonitrile and benzene**

The base text states that the employer shall assess and manage the risk of exposure to carcinogens or mutagens. This process shall be renewed regularly and data shall be supplied to the authorities upon request. Special attention should be paid to investigate and take account of all possible ways of exposure, and to persons at particular risk. Workers' exposure must be prevented. If replacement is not possible, the employer shall use a closed technological system. The employer shall reduce the use of carcinogens or mutagens by replacing them with a substance that is not dangerous or less dangerous. Wherever a carcinogen or mutagen is used, the employer shall:

- Limit the quantities of carcinogens or mutagens at the place of work;
- Keep the number of workers exposed as low as possible;
- Design the work processes so as to minimise the substance release;
- Evacuate carcinogens or mutagens at source
- Use appropriate measurement procedures (especially for early detection of abnormal exposures in the event of unforeseeable events or accidents);

- Apply suitable working procedures and methods;
- Use individual protection measures if collective protection measures are not enough;
- Provide the necessary hygiene measures (regular cleaning);
- Keep workers informed about related issues;
- Demarcate risk areas and use adequate warning and safety signs (including "No smoking" signs);
- Draw up emergency plans;
- Use sealed and clearly/visibly labelled containers for storage, handling, transportation and waste disposal.

Employers shall make certain information available to the competent authority upon request (activities, quantities, exposures, number of exposed workers, preventive measures) and inform workers if abnormal exposure has happened. Member States shall establish arrangements for health surveillance of workers if there is a risk to their health and safety. If a worker is suspected of suffering ill-health due to exposure, then the subsequent health surveillance of other exposed workers may be required, and the risk shall be reassessed.

Information and advice must be given to workers regarding any health surveillance that they may undergo following the end of exposure. Workers shall have access to the results of the health surveillance that concern them. Workers concerned, or the employer, may request a review of the results of the health surveillance. All cases of occupational cancers shall be notified to the competent authority. Records shall be kept for at least 40 years following the end of exposure, and transferred to the authority concerned if the firm ceases to exist.

Moreover, back In 2017, the European Commission launched a Communication under the title "[Safer and Healthier Work for All – Modernisation of the EU OSH Legislation and Policy](#)". Generally speaking, the Communication sets out new principles for a modernised EU Occupational Safety and Health policy and legislation, The Communication included the next steps that the Commission will take with regards to possibly revising the current EU acquis based on the results of the evaluation study and fitness check of EU OSH legislation. Further actions include: **fighting occupational cancer and dealing with dangerous chemicals**; Helping businesses comply with OSH rules; Removing/updating outdated rules and refocussing efforts on facilitating compliance to ensure a broader coverage of people and better enforcement.

#### Relevance for marine sector

Considering that the European Commission and the European Agency for Safety and Health at Work are more and more adamant regarding exposure to carcinogenic chemicals at the workplace, ICOMIA members falling under the scope of the amendments to the Carcinogens and Mutagens Directive should carefully monitor the levels of chemicals that their workers could be exposed to.

Political developments especially in what concerns Amendment II and the addition of work involving exposure to mineral oils that have been used in

marine engines should obviously be carefully followed. The Draft Report on Amendment II put forward by the European Parliament's EMPL Committee didn't make any specific mention to marine engines, but it did add a whole new paragraph on diesel engines.

Basically, the Rapporteur (MEP Rolin, EPP, BE) stated that there is sufficient evidence of the carcinogenicity of diesel engine exhaust emissions arising from the combustion of diesel fuel in compression ignition engines. He took note of the reasons given by the Commission in its Impact Assessment for choosing not to include exhaust gases from diesel engines in Annex I to Directive 2004/37/EC and not to impose any corresponding exposure limit value in Annex III. However, in his view it is necessary to recall that, according to the Institute of Occupational Medicine, 3.6 million workers in the EU are potentially exposed to diesel engine exhaust above background levels and that the geometric average of the estimated exposure is 13µg/m<sup>3</sup> (or 0.013 mg/m<sup>3</sup>). Therefore, and on the basis of Recital 14 of Directive 2004/37/EC stating that the precautionary principle should be applied to the protection of workers' health, the rapporteur recommends considering emissions from all diesel engines, without distinguishing between them.

If this were to go through in the European Council, this would mean that any ICOMIA member whose workforce operates with or around diesel engines would fall under this modification to the Directive.

### Next steps

Regarding the **first amendment**, as the Directive is already in force, Member States have until 17/01/2020 to transpose the new rules into national law.

On what concerns the **second amendment**, COREPER (Member States Ambassadors) endorsed the agreement on 19 December 2018. The Environment Council approved the agreement as an "A" item without a debate during its meeting held on 20 December 2018.

The **third amendment** is now adopted. The Directive is expected to be published during the third quarter of 2019.

### Key stakeholders

The key unit dealing with this file is DG EMPL's B3 – Health & Safety at Work.

- Zinta PODNIECE - Acting Head of Unit
- Charlotte GREVFORS ERNOULT - Head of Unit
- L. GIEDRAITYTE - Policy Officer - OSH Committees and International relations team
- A. J. MORRIS - Policy Officer - Risk management policy team (chemicals at work)
- L. VICENTE - Policy Officer - Risk Management Policy team (chemical issues)

Considering that Amendments I and II are already into force, below you will find the European Parliament's key players for:

**Amendment III:** European Parliament EMPL Committee

Rapporteur Laura Agea (EFDD, Italy) / Shadow Rapporteurs: Claude Rolin (EPP, Belgium), Marita Ulvskog (S&D, Sweden), Anthea McIntyre (ECR,

UK), Enrique Calvet Chambon (ALDE, Spain), Patrick Le Hyaric (GUE/NGL, France), Karima Delli (Greens/EFA, France), Joëlle Mélin (ENF, France).

## 2. EU TIMBER REGULATION

### Latest developments

There are several ongoing initiatives as regards timber in the regulatory agenda at EU level. The FLEGT/EUTR Expert Group met in Brussels on the 30<sup>th</sup> of April of 2019. The minutes of the meeting are still not available but the agenda items included:

- Update on EUTR implementation
  - Substantiated concerns: Myanmar – application of the joint non-negligible risk assessment (MS/COM)
  - Non-negligible risk in other countries/areas (MS/COM)
  - MS updates on other issues related to the implementation of the EUTR (MS)
  - Capacity building: implementation (checks); risk based planning; prosecutors; judges (COM)
- EUTR Guidelines development
  - Consideration of prevalence of armed conflict and sanctions in Due Diligence Systems(COM): draft guidance document
  - Consideration of the need for an update of the Commission guideline on due diligence
- Presentations
  - Reports on trade in illegally harvested timber and derived products from Myanmar and Africa-China (EIA)
  - Traffic and illegal commerce of timber”, in the framework of EMPACT 2019 (ES SEPRONA)
  - Slovakia’s EUTR implementing legislation (SK CA)
- Information points
  - Update on support services for implementing the EUTR and FLEGT Regulation (UNEP WCMC)
  - Update on the preparations towards a Communication on Stepping up EU Action on Deforestation and Forest Degradation (COM)
  - BCM China (COM)
  - Outcome of the Informal EUTR Enforcement Group meeting of 29 April (NL CA)
- Update on FLEGT implementation
  - MS updates on lessons learned from implementing the FLEGT Regulation (MS/COM)
  - Update on the publication of the FLEGT Annual Synthesis Report 2017 (COM/UNEP-WCMC)
- Update on FLEGT processes
  - Update on VPA process with Vietnam (COM)
  - Update on VPA process with Ghana and Guyana (COM)

As indicated in the last report, the Austrian presidency of the Council reached a provisional agreement with the European Parliament on **improving the reporting requirements across a range of environmental legislation, including the EU Timber Regulation**. During the last days of May, the Romanian Presidency managed to move this forward and adopt new rules which simplify reporting obligations in environmental legislation, increasing

the coherence and consistency of ten legislative acts including the EUTR. The purpose of the regulation is to streamline reporting obligations, reduce administrative costs, improve the quality of available data for future evaluations and increase transparency.

Moreover, ICOMIA members will also be interested in the fact that starting from June 1, **Vietnam will be able to export only verified legal timber products to the European Union (EU) markets as the Voluntary Partnership Agreement on Forest Law Enforcement, Governance and Trade (VPA/FLEGT) will officially enter into force.** To implement the VPA/FLEGT, Vietnam will develop a timber legality assurance system (VNTLAS) to ensure that its exports of timber and timber products come from legal sources, including systems to verify that Vietnamese businesses were only importing timber that had been legally harvested and traded in accordance with the relevant legislation in the country of harvest.

Both the EU and Vietnam have also agreed to establish a joint implementation committee (JIC) to oversee how the provisions of the agreement were put into practice. JIC would also facilitate dialogue and exchange of information between the both sides. This is the second country in Asia signing such a deal with the EU after Indonesia.

## Background

[Regulation \(EU\) No 995/2010 of the European Parliament and of the Council of 20 October 2010](#) lays down the obligations of operators who place [timber products](#) (which are listed in its Annex, using EU Customs code nomenclature) on the market. Also known as the EU Timber Regulation or EUTR, it entered into application in 2013 and counters the trade in illegally harvested timber and timber products through three key obligations:

1. It prohibits the placing on the EU market for the first time of illegally harvested timber and products derived from such timber;
2. It requires EU traders who place timber products on the EU market for the first time to exercise '[due diligence](#)';
3. Keep records of their suppliers and customers.

The core of the 'due diligence' notion is that operators undertake a risk management exercise so as to minimise the risk of placing illegally harvested timber, or timber products containing illegally harvested timber, on the EU market. The three key elements of the "due diligence system" are:

- **Information:** The operator must have access to information describing the timber and timber products, country of harvest, species, quantity, details of the supplier and information on compliance with national legislation.
- **Risk assessment:** The operator should assess the risk of illegal timber in his supply chain, based on the information identified above and taking into account criteria set out in the regulation.
- **Risk mitigation:** When the assessment shows that there is a risk of illegal timber in the supply chain, that risk can be mitigated by requiring additional information and verification from the supplier.

The Regulation covers a broad range of timber products including solid wood products, flooring, plywood, pulp and paper. Not included are recycled products, as well as printed papers such as books, magazines and

newspapers. The product scope can be amended if necessary. The Regulation applies to both imported and domestically produced timber and timber products. Timber and timber products covered by valid [FLEGT](#) or [CITES](#) licenses are considered to comply with the requirements of the Regulation.

The Regulation is legally binding on all 28 EU Member States, which are responsible for laying down effective, proportionate and dissuasive penalties and for enforcing the Regulation. To ensure cooperation between Member States Competent Authorities and with the European Commission, in order to ensure compliance with the EU Timber Regulation (in the spirit of Article 12 of the EUTR), and to assist the Commission in ensuring uniform implementation of the EUTR and FLEGT Regulation across the European Union, the Commission has set up an **Expert Group on the EU Timber Regulation and the Forest Law Enforcement, Governance and Trade (FLEGT) Regulation**. The Expert Group meets four to five times per year. Regarding the EUTR, it is tasked to exchange information, between the Competent Authorities and with the Commission, on shortcomings detected through the checks referred to in Articles 8(4) and 10(1) of the EUTR and on the types of penalties imposed in accordance with Article 19 of the EUTR, identifying best practices and sharing lessons learnt.

One of the latest key updates regarding the EUTR relates to the Commission's 12-week public consultation on the product scope of the EU Timber Regulation, which closed on 24 April 2018. The consultation aimed to collect views on possible changes to the product scope of the EUTR. The consultation was structured around the main question whether the current product scope of the EU Timber Regulation should be amended or not, and if yes, to what extent. The consultation was part of an impact assessment which aims to analyse the possible changes to the EU Timber Regulation and to support the drafting of the Commission's possible delegated act.

The Commission is currently analysing possible changes to the EU Timber Regulation product scope. The three different options that are being considered at the moment by the Commission are the following:

1. No change in the product scope;
2. Change by adding some products that contain timber;
3. Change by including all products that contain timber.

#### Relevance for marine sector

Following a consideration of the products included in the scope of the EUTR, it is quite clear that ICOMIA and its members are affected by the Regulation, considering that timber is an absolutely essential element in what relates to boatbuilding, as it is used in multiple areas, ranging from decks, keels or masts to bulkhead sheathing, engine beads or stringers. At regulatory level, and as included in the next steps section below, ICOMIA members should follow updates in what relates to a potential extension of the product scope.

Moreover, as shown throughout this chapter, the latest developments in the EUTR show that there have been multiple cases of noncompliant operators, as Member States have presumably stepped up their enforcement efforts. Many stakeholders believe that there is currently a huge disparity between how countries monitor operators placing imported timber on the EU market.

Some countries importing significant quantities of tropical high-risk timber are carrying out very few checks on companies. The disparity in the number of checks on companies conducted by different countries creates a loophole whereby companies know they will face minimal or no checks in some countries. Many NGOs believe that the only way to close this loophole is by ensuring adequate enforcement across the EU, including the quality and quantity of checks, and adequate follow-up action.

On a further note, following the first waves of EUTR enforcement cases linked to imports from Myanmar, the Ministry of Natural Resources and Environmental Conservation (MONREC) in Myanmar has released statements committing to streamlining their systems. MONREC has been working on developing a comprehensive Timber Legality Assurance System (MTLAS) that will meet international best practice standards.

It goes without saying that ICOMIA members should therefore obviously exercise caution when dealing with timber imports, and carefully execute due diligence processes to ensure that the timber that is imported meets the highest standards and come from legal sources.

Furthermore, a further longer-looking concern particularly regarding teak is that the material will eventually run out. Exports for wood systems and sawn timber entering the EU from Myanmar totalled \$45.1 million in 2015, according to the Milan-based Federlagno Arredo Centre and Conlegno Consortium in Italy. However, this figure could actually be higher, as those cited in the report do not include indirect imports from Myanmar.

One of the alternative options to consider is synthetic teak, whose advantages include greater longevity, and minimal maintenance. Although it has been available for over a decade, recent improvements seem to be winning new customers over. Certain woods (cedar/iroko/certain varieties of oak) may be used for sea-faring vessels, thanks to their flexibility, durability, and ability to withstand deterioration from things like wood rot. Notwithstanding, teak is still considered the best-quality timber for boats thanks to unrivalled durability, stability, and workability.

#### Next steps

The Commission is currently analysing possible changes to the EU Timber Regulation's product scope. Based on the results of the public consultation closed on 24 April 2018, the Commission will decide whether to go forward with the presentation of a measure revising the Annex to Regulation (EU) No 995/2010. This potential modification would take the shape of a Delegated Act.

#### Expert Group on EU TR

The European Commission's Expert Group on the EUTR and the FLEGT Regulation's main task is to ensure cooperation between Member States Competent Authorities and with the Commission in order to ensure compliance with EUTR (in the spirit of article 12 of the EUTR), and to assist the Commission in ensuring uniform implementation of the EUTR and FLEGT. Its other duties include the exchange of information on shortcomings detected through the checks referred to in articles 8(4) and 10(1) of the EUTR and on the types of penalties imposed in accordance with article 19 of the

EUTR between the Competent Authorities and with the Commission, identifying the best practices and share lessons learned.

The FLEGT/EUTR Expert Group met in Brussels on 19 June 2018. The Group noted recent NGO reports from the Amazon Basin in Brazil relating to overestimated tree densities and links between illegal timber harvesting and violent crimes. They advised that 'Market operators importing from Brazil's natural forests in the Amazon basin should therefore take mitigation measures and not rely only on document checks.'

Following meetings with a Delegation from Myanmar, the Expert Group welcomed recent developments towards increasing transparency and accountability in the supply chain including the Chain of Custody (CoC) dossier and steps taken towards establishing independent third-party verification mechanisms. The level of risk for timber harvested prior to 2017 remains very high, and the Expert Group stresses the continued impossibility to adequately mitigate the risk of illegality when sourcing from Myanmar, due to the very specific circumstances in that country.

Among other items on the agenda, the COM biennial EUTR report will be published soon, the COM FLEGT annual synthesis report for the year 2016 is now available, a draft guidance document on conflict timber was discussed, the outcome of the second meeting of the Central-European EUTR Enforcement Group was presented and there were updates on VPA negotiations with Honduras and Lao PDR and VPA implementation in Indonesia.

### Key stakeholders

The relevant staff in the Commission pertains to DG ENVI – Unit F3 Global Sustainable Development - Multilateral Environmental Cooperation

- Emmanuelle MAIRE - Head of Unit
- J. RODRIGUEZ ROMERO - Deputy Head of Unit
- A. ZERVA - Policy Officer - International Forest Policy
- D. PARDO LOPEZ - Policy Officer - International Forestry Policy and Multilateral Environmental Agreements
- L. PEREZ - Team Leader - International Forest Policy
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### 3. EU – US TRADE WAR

#### Latest developments

#### Auto parts

- On May 27, EU trade ministers met to discuss state of play of the EU-US trade war.
- The Council meeting came after the decision by President Trump to postpone by 6 months the imposition of duties (up to 25 %) on auto parts. However, President Trump made the request to find a solution within that timeframe to restrict import of cars and auto parts from the EU and Japan.
- The Romanian Presidency of the Council welcomed the US decision to postpone tariffs on imported cars by 180 days, but firmly rejects the notion that EU car exports are a national security threat to the US. They stated that they trust that a mutually beneficial and WTO compatible solution can be found through a limited trade agreement on industrial goods, based on the July 2019 statement. The EU is ready and willing to engage in constructive talks.
- On the particular case of cars, the EU reinstated that it will not negotiate a voluntary export quota which is in any case unlawful under WTO rules. This was actively pushed and supported by France, Sweden, Italy and Romania.

#### EU/US Trade negotiations

- In parallel, negotiations with the US on tariff reductions have stalled upon the scope of these tariff eliminations. The US is asking for agriculture products to be covered. The threat of imposing tariffs on cars has started to raise some discording voices among Member States, notably Sweden which has an approach to extend the scope of products covered by the tariff elimination to all sectors in order to avoid tariff on cars. This approach was rejected by the French government, so the discussions promise to be complex.

#### Airbus/Boeing

- More recently, following the WTO's appellate body decision which confirmed that the UE had failed to scrap illegal aids regarding Airbus, the US announced that it would seek to retaliate through compensatory measures i.e. import duties. A list of products targeted worth \$11 billion will be discussed with the Congress and US stakeholders and submitted to the WTO arbitrator. These could cover, cheese, helicopters and steel.
- New tariffs will not be enforced before 6 months and the EU will in between appeal to the WTO dispute settlement body, stating that it already complies with the judgment.
- Experts estimate these aids amounts for \$ 22 billion which has been challenged by the EU.

- On the EU side, the Council of Ministers for trade, counterattacked against Boeing, referring to the WTO final compliance report from April 11 in the Boeing dispute. The Council conclusion reads “WTO adopted its final compliance report in the Boeing dispute, confirming that US subsidies to Boeing continue to cause significant harm to Airbus, including lost sales. As a consequence, the European Commission launched a public consultation on a preliminary list of products from the US on which the EU may take countermeasures”
- Commentators estimate that the WTO appellate body found the EU probably more in breach of its WTO commitments than the US. This puts the EU in more difficult situation to negotiate a settlement with the US on the Boeing/Airbus disputes.

#### Analysis :

- Decision by President Trump to invoke national security concerns on car imports mirrors the steel and aluminum decision of last year. It is part of a strategy to force trading partners to negotiate a trade agreement. These retaliatory measures should be seen as the normal course or tactic to seek a resolution and apply political pressure in the context of a larger US and third-country trade agenda.
- It was successfully done as part of the NAFTA or USMCA negotiations where Mexico and Canada decided to impose import quotas. And is in the process with Japan and notably with Korea.
- For instance, the US has announced that it will reopen the US-South Korea Trade agreement, aiming at expanding import quotas on US cars as well as to have the Korean authorities accept US technical and environmental standards.
- Of course, using national security concerns to raise tariffs or imposing import quotas will likely be deemed illegal by a WTO panel. However, the length of the WTO process gives the US some margin to maneuver and put pressure on their trading partners.
- Eventually, using threat of tariffs to force to renegotiate trade agreement is a strategy that has been used also with the Europeans. One of the problems is that France has already refused to back tariff elimination (as well as to include agriculture products). This is a limited scope option that was rejected by the US administration.
- The EU has already announced, as in the case of auto parts, that it would retaliate for an amount of 20 billion on US industrial and foods products, should the US impose tariffs. Can Europe hold firm as the US is threatening to slam auto parts? This is currently uncertain.
- Taking the example of steel and aluminum, the Europeans have in fact started to float the idea that it could enforce some kind of export

caps to the US in exchange of the US abandoning tariffs. This could be seen as a sign that the EU is giving up to US claims.

- The problem lies in the capacity of the EU, at a time of leadership changes, to hold firm on these principles (no import quotas, no agriculture products and little concessions on conformity assessment). And to resist to car manufacturing countries such as Germany and Sweden which are calling for a more pragmatic approach. The choice of the next trade commissioner will provide the beginning of an answer.

## Background

The EU's response to Trump's actions up to now has consisted of a three-track approach:

### **1) Imposing tariffs on imports of certain US products that would match the economic loss suffered by the EU**

On the 16<sup>th</sup> of March, DG TRADE published a document containing a series of American products which you can find [here](#) that the EU will target if U.S. President Donald Trump imposes increased tariffs on EU exports of steel and aluminum. A senior European official said the EU's response list was for "[stakeholder consultations](#)" and added that the total value of American exports targeted could reach €6.4 billion all added together.

The Commission needed to act now to make sure it notified the lists to the WTO within a 90-day deadline, but the decision whether to use the lists would be taken only after three months.

Part A of the list includes products worth €2.8 billion, which the EU can target with tariffs of 25 percent at any moment after notifying the list to the WTO, the official said. Part B lists those products which would only be targeted after three years. This is because World Trade Organization rules allow immediate retaliation only on that amount of trade for which EU steel exports to the U.S. have not increased over the past years. The US already said it would target cars and food products if the EU was to seek compensation. Essentially, there is no change in the EC official approach, namely US tariff increases are economic safeguards and not security measures, therefore breach of WTO safeguard agreement. EC is awaiting UTSR clarification on the criteria for eligibility and carve out. In case of failure, EU will decide safeguards measures and take the US to the WTO appellate body and in parallel it will still work with the US and Japan on Chinese overcapacity issue

In page 5 of the retaliation list, there is a short list of vessels that have been included:

- Sea-going sailboats and yachts with or without auxiliary motor, for pleasure or sports (excluding seagoing vessels)
- Sailboats and yachts, with or without auxiliary motor, for pleasure or sports (other than outboard motor boats).
- Sea-going motor boats and motor yachts, for pleasure or sports (other than outboard motor boats)

- Motor boats for pleasure or sports, of a length smaller than 7,5m (other than outboard motor boats)
- Motor boats for pleasure or sports, of a length greater than 7,5m (other than outboard motor boats)
- Vessels for pleasure or sports, rowing boats and canoes of a weight greater than 100kg each and lower than 7,5m (excluding motor boats powered other than by outboard motors)
- Vessels for pleasure or sports, rowing boats and canoes of a weight greater than 100kg each and greater than 7,5m (excluding motor boats powered other than by outboard motors)
- Vessels for pleasure or sports, rowing boats and canoes of a weight lower than 100kg each (excluding motor boats powered other than by outboard motors)

### **2) Filing a complaint against the USA at the WTO**

The European Union and Canada have requested WTO dispute consultations with the United States regarding US duties on certain imported steel and aluminium products. The requests were circulated to WTO members on 6 June. The EU and Canada claim in their separate filings that the US duties of 25% and 10% on imports of steel and aluminium products respectively are inconsistent with provisions of the WTO's General Agreement on Tariffs and Trade (GATT) 1994 and the Agreement on Safeguards. Further information is available in documents [WT/DS548/1](#) and [WT/DS550/1](#).

### **3) Protecting EU markets against potential surges in steel and aluminium imports through the adoption of safeguard measures**

This was done via [Commission Implementing Regulation \(EU\) 2018/1013](#) imposing provisional safeguard measures with regard to imports of certain steel products, which entered into force on 19 July 2018. The key aspect of the text relates to the establishment of tariff rate quotas (TRQs) on imports into the EU of 23 steel products for a period of 200 days from 19 July 2018. When the tariff quota is exhausted or where imports of the product categories do not benefit from the relevant tariff quota, an additional duty of 25% of the customs value of the product being imported must be applied. For this purpose, the Commission initiated an investigation in order to determine whether imports of steel products have increased so much that they cause, or threaten to cause, serious harm to EU producers. This investigation will continue until the end of 2018. Depending on the results of its investigation, it may impose definitive safeguard measures by 26 December 2018, with a possible extension of two months until 26 February 2018. The Commission's plan has received overwhelming support by Member States gathered in the Safeguards Committee.

The safeguard measures aim to protect EU markets against potential surges in steel, including increase in imports that would result from US tariffs on imports of steel and aluminium. This is intended to prevent the negative effects of trade diversion, but at the same time maintain traditional supply and effective competition on the EU market. The Commission has also put

in place a surveillance system for imports of aluminium to be prepared in case action will be required in that sector.

On July 21<sup>st</sup>, the US president Donald Trump met with President Juncker and Commissioner Malmström to re-establish an EU-US trade dialogue. Both the US and the EU agreed to:

1. Work toward zero tariffs, zero non-tariffs barriers and zero subsidies on non-auto industrial goods. With a specific focus as well on services, chemicals, pharmaceuticals, medical products and soybeans.
2. Strengthening strategic cooperation with respect to energy, Liquefied Natural Gas from the USA in order to reduce EU energy dependency.
3. Establish a close dialogue on standards to reduce bureaucracy and reduce costs.
4. Tackling unfair global trade practice like subsidies, reform of the WTO, forced technology transfer, industrial subsidies, distortions created by state owned enterprises, and overcapacity.

In order to achieve all of these, the two parties agreed to create an **Executive Working Group of Advisors**. This group will also be in charge of addressing existing tariff measures. The composition and agenda of this group has not been made public yet.

This end of July meeting organized in haste was seen mostly as a signed truce between the US and EU as the Trump administration had a series of other disputes to deal with, including a loaded political agenda ahead of the upcoming midterm elections in the US.

Moreover, the Trump administration has launched a series of trade dispute with other countries and in particular with China. For instance, the US has imposed new tariffs of \$200 billion on Chinese goods which come after the tariffs imposed earlier this year on steel and aluminum. China eventually retaliated with \$60 billion worth of tariffs on US goods.

An agreement was finally found on September 30<sup>th</sup> with Canada on the renegotiation of NAFTA. The future USMCA, will be replacing the highly criticized NAFTA deal. At least from a media coverage perspective, Trump scored political points, by assuring greater access to the Canadian dairy and poultry market. He also secured an increase in value if vehicles made in North America up to 75%, against 62% now and secured a requirement that 40 to 45% of each car produced is manufactured by workers earning at least \$16 an hour.

The US's aggressive trade policy towards China was expected to continue to escalate until the midterm elections and as long as this "trade war" continues to serve the narrative of his administration. This may change when and if the economy starts to be impacted.

## Reactions

**Industry bodies warn against trade war** - Industry associations on both sides of the Atlantic have issued a joint statement warning of the impact of the worsening tariff dispute between the US and the European Union. The Trump administration recently imposed a 10% import tariff on aluminium and a 25% tariff on steel. In response, the EU has proposed putting a range of US-made products, including recreational vessels, on a retaliatory tariff list. The joint statement issued by the US-based National Marine Manufacturers Association (NMMA) and the European Boating Industry (EBI), and endorsed by the International Council of Marine Industry Associations (ICOMIA), calls for a “constructive solution” to the dispute.

The EU is the second biggest trading partner for US boat manufacturers with \$217.4 million worth of boats and \$148.3 million worth of engines exported to the EU market in 2016, totalling 18.4% of all US exports. The statement refers to a previous trade dispute in 2002 when the Bush administration imposed tariffs ranging from 8% to 30% on a wide range of steel products for a three-year period. As a result, 200,000 jobs were lost in the US in the steel industry and in downstream industries.

The statement adds that the inclusion of recreational boating in a retaliatory EU tariff list will not protect the European industry and will further burden American boat manufacturers. The US boating industry is also fighting a proposed anti-dumping measure targeting China which would see tariffs on imported sheet aluminium rise by as much as 60%.

**Tariffs pose threat to local economy** - Tariffs on imported metals will have a negative impact on boat and recreational vehicle producers, and unfortunately, consumers will have to pay more for the purchase of a boat if the tariff goes through. The steel tariff will be 25 percent and the aluminium tariff 10 percent.

Boat manufacturers have been experiencing good sales volumes the past few years, and the National Marine Manufacturers Association believes the tariffs will harm the industry. Recreational vehicle manufacturers took a similar angry stance against the tariffs. This negative impact could stretch beyond the marine and RV industries and the higher cost of the two metals will hit the local automotive parts industry as well as tool and die shops

## 4. BREXIT

### Latest developments

- The 2019 European elections and pending change of the Commission have moved the EU to make changes to its Brexit negotiation team. Large changes to the British negotiation team are expected as a result of the Conservative leadership contest and the pending change of Prime Minister.
- EU Deputy Brexit Negotiator Sabine Weyand has been appointed Director General of the EU's DG Trade. By appointing EU Deputy Brexit Negotiator Sabine Weyand to be the Director General of DG Trade, the EU's Trade Ministry, the Commission has made clear that it considers the negotiations on the withdrawal of the UK from the EU are final. At the same time, it reinforces DG Trade, which will lead the negotiations on the future relationship between the EU and the UK, with an experienced negotiator familiar with Brexit.
- EU Chief Brexit Negotiator Michel Barnier has been considered as a possible candidate to become the Commission President. Meanwhile, EU Chief Brexit Negotiator Michel Barnier is now an unofficial and unlikely candidate to become the next Commission President, however it is more likely that he will continue the negotiations on the future relationship in some capacity. It is further likely that the current Commission President Jean-Claude Juncker is changing the personnel of DG Trade to ensure the involvement of the EU Deputy Brexit Negotiator after his departure in November 2019.
- In the UK, the negotiation team is likely to change depending on the new Prime Minister. As it is likely that a hard-line Conservative MP will become Prime Minister, the negotiation team is likely to seek a less comprehensive partnership between the EU and the UK. However, with the threat of a leaving the EU without an agreement likely to lead to a majority for a motion of no-confidence a general election in the UK would change the composition in the House of Commons and could create a majority for a closer relationship.
- The negotiations are being carried out in two phases. The first phase focused on the withdrawal of the UK from the EU and related matters, notably Ireland, the financial settlement and citizens' rights. In addition, it covered timetables, pensions, and shared investment programmes.
- As the Withdrawal Agreement was not approved by 12 April, the UK Government has secured a flexible extension

until 31 October 2019. The Prime Minister will officially resign as Prime Minister of the UK on 7 June. A leadership contest to replace her begins on 10 June. The winner of the leadership contest will become the new Prime Minister. Candidates can be nominated during the week of 10-15 June. This will immediately be followed by a number of votes by Conservative MPs. A series of meetings and debates will enable members of the Conservative Party to make a decision, which is expected in mid-July.

- The European Council summit on 20-21 June will assess the developments in the UK and its conduct in the EU Institutions will be subject to a review. Once taking office, the new UK Prime Minister is expected to attempt to renegotiate the Withdrawal Agreement with the EU. The decision on how the UK leaves the EU will therefore be for the next Prime Minister to decide, with a more hardline stance expected to be adopted. This is likely to lead to more opposition and as such could precipitate a General Election.
- The 25 September is the latest date for the opposition to force a General Election and be able to install a new UK Government before the withdrawal of the UK from the EU on 31 October.
- Negotiations on a possible Association Agreement between the UK and the EU are then expected to start on 1 November 2019 and continue during the transition period, with a view to concluding an agreement applying from 1 January 2021, when the transition period would end.
- If more time is needed then, to be assessed in July 2020, a decision can be made to extend the transition period accordingly.
- A no-deal Brexit would likely result in a delay of negotiations, as both parties would need to reorganize their negotiation strategy. This scenario would likely result in animosity of the EU during the beginning of these negotiations.
- Should the negotiations be concluded, the legal scrubbing would start, meaning that legal experts would review the negotiated texts, which would be followed by the translation of the final text in all EU official languages. Then, the Chief Negotiators of both parties would initial the English text of the proposed agreement and the Council would decide on the signature of the agreement following a proposal of the Commission on conclusion and signing of the Agreement.
- After consent of the Parliament, the Council would adopt the final Decision to conclude the agreement.

- The future EU-UK agreement is expected to cover trade in goods, services, customs, voluntary regulatory cooperation, technical barriers to trade, sanitary and phytosanitary measures, public procurement markets, investments, protection of intellectual property rights and other areas of mutual interest and will be extended to (a) law enforcement and judicial cooperation in criminal matters; (b) foreign, security and defence policy (c) transport (d) energy
- Alternatively, the EU and the UK might decide to negotiate sectorial agreements on transport, fisheries and education as well as to adopt an adequacy decision allowing the free flow of data between the EU and the UK.
- Finally, rules on the overall governance of the future relationship, a dispute resolution mechanism as well as provisions aiming to ensure a level-playing field between the EU and the UK markets are also expected to be negotiated.

**Commission Communication  
- Addressing the impact of a  
withdrawal of the UK from the  
EU without an agreement: the  
Union's coordinated approach**

The [Commission Communication](#) "Addressing the impact of a withdrawal of the United Kingdom from the Union without an agreement: the Union's coordinated approach" was presented by the Commission on 10 April 2019.

The text assesses the status of the Contingency Action Plan and the implementation of the Contingency Action Plan in preparation for the withdrawal of the UK from the EU, published respectively on 13 November and 19 December 2018 respectively.

It is accompanied by six annexes. These contain a timeline for key EU contingency measures, information on citizens' residence and social security entitlements, police and judicial cooperation in criminal matters, medicinal products and medicinal devices, fishing activities, and data protection.

The Contingency Action Plan aims to prepare stakeholders as well as national and EU authorities for the consequences of the UK's withdrawal from the EU in the absence of a Withdrawal Agreement. The Communication follows both the Communication on the Contingency Action Plan and the Communication Implementing the Contingency Action Plan. Thus, a formal response from either of these institutions would therefore cover all Communications. The present Communication addresses the possibility of a no-deal scenario and identifies key areas and key actions to be taken.

- **Action at EU level**
- **Action by citizens, businesses and Member States**
  - Measures by the EU27 Member States

- Action by citizens and businesses
- **Contingency action at EU level**
  - Principles for contingency measures:
    - EU contingency measures should not replicate the benefits of membership of the EU
    - EU contingency measures will be temporary in nature
    - EU contingency measures will be adopted unilaterally
    - EU contingency measures respect the division of competences
    - National contingency measures must be compatible with EU law
    - Contingency measures are not to remedy delays that could have been avoided by public authorities or stakeholders
- **Assessment of contingency needs**
  - (i) Citizens (ii) Financial services (iii) Air transport (iv) Road transport (v) Customs (vi) Sanitary/phytosanitary requirements (vii) Personal data (viii) EU climate policy
- **Next steps on contingency**
  - The timeline envisages:
    - The proposal of all necessary legislative measures and the adoption of all delegated acts before 31 December 2018.
    - The adoption of the legislative acts through the ordinary legislative procedure during a European Parliament plenary in March 2019.
    - The submission of implementing acts to the committees until 15 February 2019.
    - The coordination through the Council Working Party (Art. 50) in November and December 2018 on these measures.

**What does the current withdrawal agreement mean for UK-EU trade?**

The withdrawal agreement would limit the UK from striking its own trade deals. The political declaration says the shared customs territory in the Northern Ireland backstop will be built on and improved in a future trade deal. However the UK insists that this does not bind the British government to a customs union. Nevertheless, *de facto* a customs union is now the baseline for the future relationship. British access to European markets will therefore depend on the UK respecting EU standards on

competition, tax, environment, as well as social and employment protection.

Transition period (set to end on 31 December 2020):

- During the transition period, the UK will have to comply with the EU's trade policy and will continue to be bound by the Union's exclusive competence, in particular in respect of the Common Commercial Policy.

The UK will remain bound during the transition period by the obligations stemming from all EU international agreements. In the area of trade, this means that third countries keep the same UK market access. During this period, the UK cannot become bound by new agreements on its own in areas of Union exclusive competence unless authorised to do so by the EU.

**Brexit and impact on trading  
between the EU and the UK**

Currently, the three likely scenarios until March 29 are:

1. **Current EU-UK deal;**
2. **No deal; and**
3. **No Brexit**

1. **Current EU-UK deal**

The negotiated agreement is an exit deal, and it says little about what may be the future trade relationship. Attached to the to this deal, there is a draft Political Declaration – non-binding document – outlining what could be a future EU/UK trading arrangements namely for goods:

- Comprehensive arrangements creating a free trade area combining deep regulatory and customs cooperation, underpinned by provisions ensuring a level playing field for open and fair competition as described below;
- Zero tariffs, no fees, charges or quantitative restrictions across all goods sectors, with ambitious customs arrangements that build on the single customs territory provided for in the Withdrawal Agreement, respecting the Parties' legal orders;
- The extent of the United Kingdom's commitments on customs and regulatory cooperation, including with regard to alignment of rules, to be taken into account in the application of checks and controls at the border;
- In this context, recalling the Union's and the United Kingdom's intention to replace the backstop solution on Northern Ireland by a subsequent agreement that establishes alternative arrangements for ensuring the

absence of a hard border on the island of Ireland on a permanent footing.

**What does the current withdrawal agreement mean for UK trade policy:**

- The withdrawal agreement would limit the UK from striking its own trade deals. The political declaration says the shared customs territory in the Northern Ireland backstop will be built on and improved in a future trade deal. However, the UK, bafflingly, insists this does not bind the British government to a customs union. Nevertheless, de facto a customs union is now the baseline for the future relationship;
- British access to European markets will depend on the UK respecting EU standards on competition, tax, environment, as well as social and employment protection.

The Deal also includes a **Transition period**, set to end on December 31<sup>st</sup>, 2020. This would imply:

- During the transition period, the UK will have to comply with the EU's trade policy and will continue to be bound by the Union's exclusive competence, in particular in respect of the Common Commercial Policy; and
- The UK will remain bound during the transition period by the obligations stemming from all EU international agreements. In the area of trade, this means that third countries keep the same UK market access. Moreover, during this period, the UK cannot become bound by new agreements on its own in areas of Union exclusive competence unless authorised to do so by the EU.

**2. No deal (or “Hard Brexit”)**

- The UK would be leaving both the customs union and single market (either from March 29 or after the transition period). Rules governing trade between third country and World Trade Organisation would apply and Most Favoured Nation (MFN) Tariffs would apply on the trading of goods between the UK and the EU;
- In addition, the UK would have to negotiate its own WTO commitment, as it will be no longer part of the EU WTO commitments. A commitment is according to WTO rules, individual countries commitment to open or restrict markets access in specific sectors to non-nationals;

**Duties**

- In case of hard Brexit, UK and the EU would have to deal with a new border including the related MFN tariffs. It could eventually lead to erection of non-tariff barriers as the UK

could decide to adopt a complete different regulatory regime, as for example getting rid of REACH Regulation. In order to protect consumers the EU could decide non-tariff barriers to prevent non-REACH compliant products to be banned from the EU single market;

- According to Trade Secretary Liam Fox on [5 February 2019](#), the UK Cabinet is considering bringing down import taxes on goods to 0 percent in an effort to counterbalance price inflation due to the expected drop in value of the GBP after Brexit. The Financial Times, however, notes that the complication is that under World Trade Organization rules, the UK would not be able to limit its zero-tariff stance to the EU and would have to apply the policy across the world. But those countries would not be obliged to cut their tariffs in return.

### **Control/Customs**

- In terms of control, the customs control agencies in the EU and the UK would have to treat imports /exports of goods the same way as non-EU and EEA trading partners. Resulting in new burdens in terms of technical and safety controls, certification, certificate of rules of origin *et alia*; and
- Companies will have to anticipate physical borders and inspections and their disruptive effect on their supply and distribution chains. These effects could result in higher cost, delay or bottlenecks along the chains; and
- In the case of a company wanting to sell the same product in Belgium and the UK and in the absence of common rules or an FTA, this company will have to:
  - Get an import and export clearance both in the UK and in the EU;
  - Get registration formalities in Belgium (EU) and in the UK; and
  - Comply twice to any regulatory requirements such as CE and UK marked products; testing process and related increased costs of production and of placing a product on a specific market; and
- In official advice released on 4 February [2019](#), HM Revenue & Customs said that “for a temporary period” it would allow “most” shipments into the country before companies have even informed them they have arrived. Exporters would have just over 24 hours to then fill in an electronic declaration.
- HMRC also [announced](#) on 5 February 2019 that it planning to simplify import procedures in case of a hard Brexit for EU

goods by putting in place transitional simplified procedures (TSP) for customs that will be in place for 1 year.

- HMRC is also reminding businesses to get an economic operator registration and identification (EORI) number if they do not already have one. This number is crucial to be able to trade after Brexit in the event of no deal. Obtaining an EORI number can be done online and takes ten minutes. Businesses can register for TSP if they have an EORI number, are established in the UK, and are importing goods from the EU into the UK. Registration for TSP opens on 7 February.

### **Contractual law**

- In terms of invoicing and contractual law, Rome I may no longer apply and seller will have to decide which law (UK or EU) would apply for its contract in case of a dispute.

### **Third countries**

- In term of UK relation with third countries, the UK will have to renegotiate every single trade agreement with non-EU countries.
- As of 13 February, Liam Fox, UK Trade minister, indicated that the UK has rolled over just £16bn out of £117bn trade deals, i.e. has agreed deals with only seven of 69 countries covered by EU arrangements.
- 21 February 2019 - UK government [update](#) on existing trade agreements if the UK leaves the EU without a deal
- On the EU side, the European Commission published its "[Contingency Action Plan](#)" on 19 December 2019 in case of a no deal scenario. It has also issued a number of preparedness notes for businesses.

### **Specific - EU Contingency plans provisions - Customs and the export of goods**

- In a no-deal scenario, all relevant EU legislation on the importation and exportation of goods will apply to goods moving between the EU and the UK. The Commission has adopted the following technical measures:
  - A Delegated Regulation to include the seas surrounding the UK in the provisions on time-limits within which entry summary declarations and pre-departure declarations have to be lodged prior to leaving or entering the Union's customs territory.

- A proposal for a Regulation to add the UK to the list of countries for which a general authorisation to export dual use items is valid throughout the EU.
- It is essential, however, that Member States take all the necessary steps to be in a position to apply the Union Customs Code and the relevant rules regarding indirect taxation in relation to the United Kingdom.
- February 18, the EC stepped up its “no-deal” outreach to EU businesses in the area of customs and indirect taxation such as VAT. It launched a campaign aiming to raise awareness amongst the EU’s business community, especially SMEs.
- In order to prepare for a “no-deal” scenario and to continue trading with the UK, these businesses should:
  - Assess whether they have the necessary technical and human capacity to deal with customs procedures and rules, e.g. on [‘preferential rules of origin’](#).
  - Consider obtaining various customs authorisations and registrations in order to facilitate their trading activity if the UK is part of their supply chain.
  - Get in touch with their [national customs authority](#) to see what other steps can be taken to [prepare](#).
- Finally, the EU provided with a check list of what EU companies trading with the EU should contemplate ahead of a no deal [Brexit](#).

### 3. **No Brexit**

The UK would effectively remain a member of the EU.

Below a slide presented by Michel Barnier, European Commission Chief Negotiator, to the Heads of State and Government at the European Council (Article 50) on 15 December 2017.

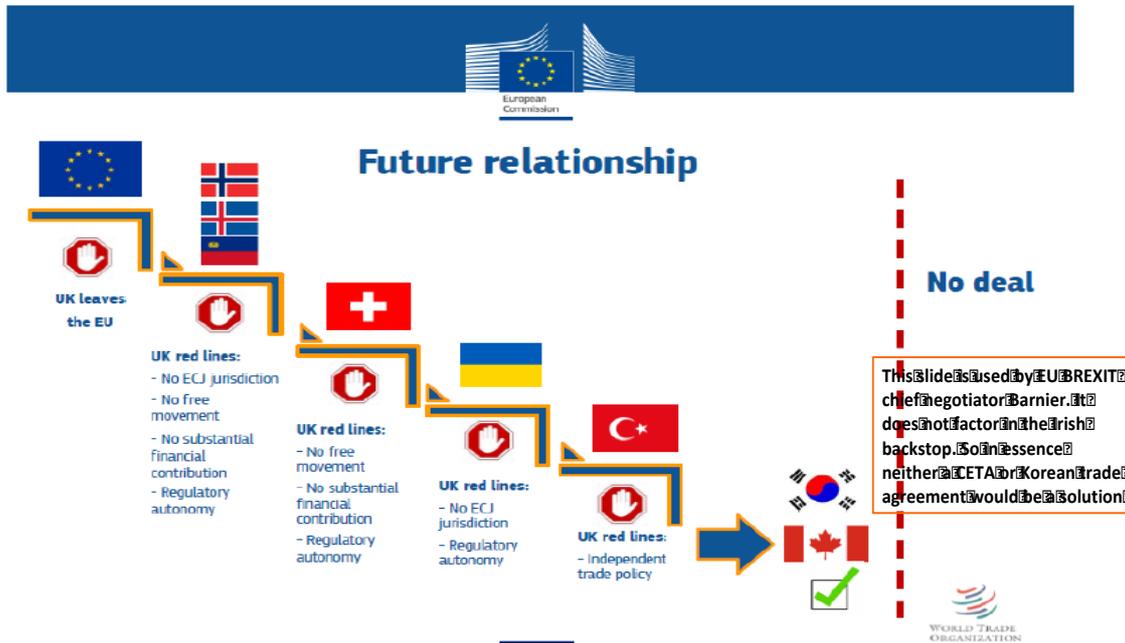
The slide presents all the possible templates EU proposes to non-EU countries and that the UK could possibly use for the post Brexit negotiations.

The so-call UK red lines are the inherent features required by each of these models which may not be acceptable by the UK government.

One caveat regarding the comprehensive Free Trade Agreement such as the Canada EU FTA model is that it would not solve the problem of a hard border with Northern Ireland.

This slide reflects the EU’s negotiation position; it ignores deliberately the desire expressed by the UK to have a bespoke deal.

POTENTIAL FUTURE RELATIONSHIPS



**Background**

After the EU’s official refusal of May’s Chequers plans during the Salzburg Summit on 12th and 13th September, European Council President Donald Tusk issued a statement to ensure EU’s full dedication to find a deal. However, in parallel, EU institutions and Member States have been intensifying the preparation of no-deal Brexit plans. A leaked Council document discusses the EU’s “preparedness” for a no-deal Brexit. The document calls to intensify preparations in the months ahead at national as well as EU level, “as uncertainty remains about the outcome of the negotiations and the ratification of a possible deal”. On 27th September, Michel Barnier, Chief Brexit negotiator, and Jeremy Corbin, UK Labour Party Leader, met, following Labour’s call for a second BREXIT referendum.

Additionally, on 26th September, the European Parliament published a study focusing on the impact and consequences of a potential ‘no-deal’ scenario in the ongoing negotiations. The no-deal scenario – the hypothetical situation where no formal agreement between the EU and the UK is achieved – represents a challenge for the economies and societies of the EU-27 and the UK and are deeply integrated through the existing freedoms of movements for people, goods, services and capital. The study then analyzed the impact of the no-deal scenario on the different transport modes. In the case of maritime transport, the study found that, as the provision of maritime transport services within EU Member States is restricted to EU ship-owners, it would no longer be possible for UK nationals to provide maritime transport

services. Simply put, the conditions to qualify as an EU ship-owner would not be fulfilled, unless EU or (alternatively) MS' legislation allows access to cabotage for vessels bearing the flag of a third country. Regarding the International Maritime Organization (IMO), post-Brexit, UK vessels and shipping companies operating in EU waters would mostly still have to comply with EU regulations (through IMO). Concerning the European Maritime Safety Authority (EMSA), and maritime safety matters, in case no agreements between the EU and the UK were signed, the UK would not have to adopt and apply EU law in the field of maritime safety and prevention of pollution by ships, which is obviously of great importance.

The long-awaited vote in the British Parliament planned for December 11<sup>th</sup> was delayed for lack of majority and announced by PM Theresa May statement at House of Commons on afternoon of December 10<sup>th</sup>. The PM argued that further reassurances from EU on Irish backstop was needed before putting the withdrawal agreement to vote, in line with the strong opposition to the envisaged Deal from many Tory backbenchers and DUP allies in Parliament.

However, the PM vowed to go ahead with the Brexit process and refused to consider a second referendum or revoking the Article 50.

In this situation of high political instability, the PM managed to survive a vote of no confidence by the Conservative Party on December 12<sup>th</sup>, thereby securing her position for 12 months. However, she had to agree to step down ahead of next general elections.

At the time of writing, no certainty exists on the date of the eventual vote on the Withdrawal Agreement in the House of Commons. It has been reported that the vote has been scheduled for January, possibly in the week of January 14<sup>th</sup>.

The European Commission has repeatedly opposed the idea of reopening the renegotiations, with EU leaders clarifying during the European Council on December 14<sup>th</sup>–15<sup>th</sup> that they will only consider political discussions rather than reopening the main tenets of the withdrawal agreement.

Interestingly, on December 10<sup>th</sup>, the European Court of Justice ruled that the UK can unilaterally revoke the invocation of Article 50, thereby keeping the UK in the EU (with current terms, i.e. rebate, etc.). However, Theresa May did not – and does not – seem to be considering such a move.

## Impact of Brexit on marine sector

It is worth highlighting that the cost of **raw materials** needed for the construction of boats, such as glass fiber or resins, will definitely increase in price given that the UK will no longer be in

the European Economic Area and these materials will have to get to the UK from European countries (or others) facing tariffs at UK level, and perhaps being one of the main issues affecting ICOMIA. It is also very likely that critical items to be installed in boats such as engines, electrical systems, batteries, or transformers will also see their price increased in British yards. It is also worth mentioning that the effects of Brexit could also have an effect in VAT and of course in passport checks in areas in between UK and EU waters, and in terms of traffic to and from the EU27.

Brexit could also take a toll in **fuels** and particularly in red diesel. In the UK, red diesel is dyed gas oil for registered agricultural or construction vehicles such as tractors, excavators, cranes and some other non-road applications such as boats. Red diesel has a significantly reduced tax levy compared to un-dyed diesel fuel used in ordinary road vehicles. On 14 July 2014, the European Commission announced it was referring the United Kingdom to the European Court of Justice over the use of red-diesel in propelling private pleasure craft on water, as it believes the UK is not properly applying EU regulations for the fiscal marking of fuels. Brexit would therefore have an implication in this area, given that the UK would no longer be subject to a ruling coming from the European Court of Justice. Plus, there would be ramifications in terms of the legality of red diesel of UK boats when cruising in EU waters.

The outcome of the Brexit vote took many completely by surprise, and it is evident that Brexit will affect the maritime/marine industry. It is true that in the short term, certain parties such as boat dealers took advantage of the fall of the pound and have promoted their vessels overseas, increasing percentages of sales significantly. Notwithstanding, its implications in the long term for the whole industry are very hard to predict given the complexness of the international maritime industry organizational structure.

On a further note, it is worth noting that [RYA members encouraged to contact local MPs to highlight recreational boating issues](#). Following a summer of discontent within the Conservative Party over the Chequers proposal, the British Royal Yachting Association (RYA) has been continuing to engage with government and supportive Parliamentarians to ensure that the needs and concerns of the recreational boating community are heard amidst the background noise of the negotiations. In particular, the Association has expressed concerns about what the Brexit related bills may mean for border controls, time limits on duration of stay both for individuals and vessels wishing to visit Europe, the future ability of recreational craft and their contents to travel freely throughout Europe without

customs restrictions, and the ability of RYA qualification-holders to work in EU territory.

## 5. OTHER TRADE ISSUES (INCLUDING AGREEMENTS WITH AUSTRALIA, NEW ZEALAND, JAPAN, SINGAPORE, VIETNAM AND MERCOSUR).

### Australia

#### Status

- On 22 May 2018, the Council of the European Union adopted the decision authorising the opening of negotiations for a trade agreement.
- On 18 June 2018, EC and Australia launched negotiations for a comprehensive trade agreement.
- The first formal round of talks took place in Brussels from 2 to 6 July 2018, followed by another round in November 2018.
- EC published the [first negotiating proposals](#).
- The latest round was held between the 25<sup>th</sup> and the 29<sup>th</sup> of March in Canberra, which included discussions on goods and market access and on services and investment.

#### Next steps

- The fourth round of negotiations will be held in July 2019.

### New Zealand

#### Status

- On 22 May 2018, the Council of the European Union adopted the decision authorizing the opening of negotiations for a trade agreement
- On 21 June 2018, EC and Australia launched negotiations for a comprehensive trade agreement
- EC published the [first negotiating proposals](#)
- The first formal round of talks took place in Brussels from 2 to 6 July.
- EC [published](#) the second round of negotiations held in October 2018 in New Zealand
- Negotiating session in Brussels on 12-14 December.
- The European Parliament's Research Service published a briefing on the negotiations with Australia and New Zealand which you can access [here](#).
- The next round took place in the week of 18th February 2019 in Brussels. Here is the [report](#), discussions covered SPS, TBT, Trade in services, Digital trade, Investment and capital movement, IPR, GIs, Public Procurement, ILO conventions, Energy and raw materials.

#### Next steps

- The EU and New Zealand want to wrap up an FTA in 2019

### Japan

#### Status

- On 6 July 2017 the EU and Japan reached an agreement in principle on the main elements of an Economic Partnership Agreement at the EU-Japan summit. The Agreement was finalised on 8 December 2017.

- The EPA removes the vast majority of duties paid by EU companies, which sum up to €1 billion annually, opens the Japanese market to key EU agricultural exports and increases opportunities in a range of sectors. It sets the highest standards of labour, safety, environmental and consumer protection, data protection, fully safeguards public services and has a dedicated chapter on sustainable development. For the first time, an agreement includes a specific commitment to the Paris climate change.
- EU Japan FTA is a EU only trade agreement.
- It only require approval at Council and consent by the EP – there will be no ratification at member states level (unlike with CETA)
- Council adopted a decision on the signature of the EPA on July 2018.
- Text is being debated in INTA and will be put to the plenary vote before end of 2018
- Both text (EPA and Strategic Partnership Agreement) should enter into force in 2019.
- The agreement was ratified by the Japanese Diet on 8 December and by the European Parliament on 12 December 2018.

#### **Next steps**

- The agreement came into force on 1st of February 2019.
- Negotiations continue separately for an Investment Protection Agreement (IPA) with Japan. While the substantive provisions have been agreed, the procedural ones (ICS) are still not accepted by Japan. The next round for the IPA was tentatively scheduled for the week of 28 January.
- The entry into force of the Strategic Partnership Agreement requires also the ratification by EU Member States, but a large part of the Agreement can be applied on a provisional basis already in early 2019.

#### **Singapore**

#### **Status**

- The EU-Singapore Trade Agreement deals with trade and foreign direct investment (FDI) liberalisation. It is a 'new generation' trade agreement, with an ambitious, comprehensive scope.
- It covers areas such as tariff liberalisation; reduction of non-tariff trade barriers; and promotion of services and investment. Other trade-related issues include, for example, stronger protection for certain geographical indications (GIs), based on a register of GIs. The agreement will also provide improved access to government procurement opportunities.

- This trade agreement, as it was separated from the investment protection agreement, includes only provisions under the exclusive competence of the EU and can be concluded by the EU on its own.
- October 28, EU (EC and Council) and Singapore signed the EU-Singapore Trade Agreement, the EU-Singapore Investment Protection Agreement and the Framework Agreement on Partnership and Cooperation.
- The trade agreement could then enter into force before the end of the current mandate of the European Commission in 2019, while the investment protection agreement will also follow ratification procedures at Member States level. The Partnership and Cooperation Agreement will need to be ratified by EU Member States and submitted to the European Parliament before it enters formally into force.
- The draft trade and investment agreements were signed on 19 October 2018 and received the consent of the European Parliament on 13 February 2019 ([press release](#)).

#### Next steps

- Following the EP's consent, the FTA should enter into force once Singapore concludes its own internal procedures and both sides complete the final formalities. The IPA will further need to be ratified by all EU Member States according to their own national procedures before it can enter into force.

## Vietnam

#### Status

- On 2 December 2015, the formal conclusion of the negotiations for an EU-Vietnam FTA.
- On 1 February 2016, the [preliminary text](#) of the Agreement was published on DG Trade's website together with a Commission Staff Working Document on Human Rights and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement.
- Following the Opinion 2/15 of the European Court of Justice on 16 May 2017 on the Singapore FTA, the Agreement with Vietnam was split into a Free Trade Agreement (FTA) and an Investment Protection Agreement (IPA).
- On 19 October 2018, a voluntary partnership agreement (VPA) between the European Union and the Socialist Republic of Vietnam on forest law enforcement, governance and trade (FLEGT) was signed in Brussels in the margins of the EU-ASEM summit.
- The legal review of the text is completed.
- December 11, Trade attachés from EU Member States, have reached an agreement "at technical level" to ratify the

EU-Vietnam trade deal.

### Next steps

- The FTA text is currently being translated into the other 22 EU official languages. Once translated, the Commission will make a proposal to the Council for signature and conclusion of the agreements.
- After signature, the Council will send the agreements to the European Parliament, aiming for the entry into force of the trade agreement in 2019.
- The investment protection agreement with Vietnam will follow its ratification procedure also at Member State level.
- Preparations are on-going in the EP for an effective and timely implementation of the Agreements before the end of the current mandate. There is no indication so far that there is a majority to oppose the text.
- There are no major political hurdles for the adoption of EU Member States, what may slow down the process is the translation and legal check of the agreement by the Council which is already busy with Brexit.
- The agreements have been formally approved by the European Commission and need to be agreed upon by the Council and the European Parliament before they can enter into force. The Romanian Presidency hopes to see the EU Vietnam agreements concluded before the summer.

### MERCOSUR

#### Status

- 34th negotiation round of the Trade Part of the EU-Mercosur Association Agreement took place from 9 to 17 July in Brussels which was followed by a ministerial meeting on 18 and 19 July.
- The meeting confirmed the strong political commitment of both sides to reach an agreement, but there is still work to be done and differences to bridge in several areas, notably on cars and car parts, geographical indications, **maritime services (services and establishment)** and dairy. Solutions to very important EU interests in these areas are still outstanding and will need to be addressed to allow a successful conclusion of the process, said the EC. A summary of the talks can be found [here](#)
- Resume of the XXXV talks can be found here [here](#); the XXXVI hold in November can be found [here](#).
- The negotiation process continues and the last round took place in Montevideo from 10 to 13 December 2018.
- The negotiations continued on the week of the 11<sup>th</sup> of March in Buenos Aires.
- The negotiations covered trade in goods, specific rules applicable to wines and spirits, rules of origin, government procurement, intellectual property including geographical

indications, rules in respect of state-owned enterprises and subsidies. Find report [here](#)

**Next steps**

- The next round will take after summer, most probably in Europe.