



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.07.1998
COM(1998) 452 final

98/0249 (SYN)

**PROPOSAL FOR A COUNCIL DIRECTIVE
ON PORT RECEPTION FACILITIES
FOR SHIP-GENERATED WASTE AND CARGO RESIDUES**

(presented by the Commission)

LIST OF CONTENTS

EXPLANATORY MEMORANDUM

GENERAL INTRODUCTION	2
PURPOSE AND SCOPE OF THE LEGISLATION	7
JUSTIFICATION FOR A COUNCIL DIRECTIVE	7
CONTENT OF THE COUNCIL DIRECTIVE	9
SPECIAL CONSIDERATIONS	10

<u>LEGISLATIVE ACT</u>	19
-------------------------------	----

<u>DECISION OF THE EEA JOINT COMMITTEE</u>	33
---	----

<u>FINANCIAL STATEMENT</u>	35
-----------------------------------	----

IMPACT ASSESSMENT FORM	38
-------------------------------	----

EXPLANATORY MEMORANDUM

GENERAL INTRODUCTION

1. It is generally recognised that the amount and extent of discharges of waste and cargo residues from ships at sea are at an unacceptable level. It is equally recognised that the reasons for this have to be sought both on board ships and on shore. While it is clear that the frequent occurrence of illegal discharges at sea can be partly explained by the ignorance of ships' masters and crews of the application of international rules and standards, it is also a fact that there are sometimes not adequate reception facilities in ports. Ships which cannot deliver their waste and residues in the port will often have no alternative but to discharge it at sea. In order to combat marine pollution caused by operational discharges from ships there is therefore a need for, on the one hand, requirements for ports to provide adequate reception facilities and, on the other hand, requirements for ships to use these facilities.
2. The necessity of such a dual approach is recognised in the International Convention for the Prevention of Pollution from Ships, 1973 and the Protocol of 1978 related thereto (Marpol 73/78). In the technical annexes of that Convention, detailed standards and strict conditions for discharge of waste and residues at sea are laid down, with more stringent requirements for sea areas which have been designated as 'special areas'. The Convention also addresses ports, by obliging the Contracting Parties to ensure the provision of reception facilities for different kinds of waste, without causing undue delay to ships using these facilities and according to the needs of the ships.
3. The discrepancy between existing rules and prevalent practice was acknowledged by the Commission in its communication 'A Common Policy on Safe Seas' of 24 February 1993¹ which stated that compliance with the requirements of Marpol 73/78, to which all Community Member States are Contracting Parties, could be improved and that further initiatives were required to improve implementation of international rules and standards, both those laid down in Marpol 73/78 and in other relevant instruments of the International Maritime Organization (IMO).

The Council shared the views of the Commission and included in its Resolution on a Common Policy for Safe Seas the improvement of the availability and use of reception facilities within the Community among its priority actions.²

4. This Directive has exactly the same objective as Marpol 73/78, that is to protect the marine environment from operational pollution by ships, regardless of their flag, with a view to eliminating such pollution. However, rather than regulating discharges of ships while at sea, which is the aim of the Marpol 73/78 rules, here the focus is on the operations of ships while in (Community) ports.

¹ COM(93) 66 final.

² Council Resolution of 8 June 1993 on a common policy on safe seas (93/C 271/01), O.J. No. C 271, 7.10.93, p. 2.

5. The reasons for the port approach are pragmatic, policy-based and legal. As already indicated, the occurrence of operational discharges at sea is very closely linked to the availability and accessibility of reception facilities in ports. It is only by considerably improving the latter that discharges at sea can effectively be reduced. It is furthermore generally accepted that the main problems in the current international regime for operational ship-source pollution are not primarily related to insufficient standards, but rather to the inadequacy in their implementation and enforcement. Since the harmonised implementation of internationally agreed rules - where necessary complemented by specific Community requirements - is one of the fundamental pillars of Community maritime safety policy, it is natural in this context to concentrate the Community efforts on the effective implementation of Marpol 73/78 and its underlying objectives instead of introducing new discharge rules for ships at sea. The legal reasons for favouring a port approach are found in the international law of the sea, in particular in the provisions of the 1982 UN Convention on the Law of the Sea. The careful jurisdictional balance between coastal and maritime interests which is laid down in that Convention involves considerable restraints on the prescription and enforcement of national - and regional - rules on ship-source pollution in the coastal jurisdictional zones, but confirms a wide jurisdiction for States to prescribe and enforce rules while ships are voluntarily present in their ports.
6. The different approach from that adopted in Marpol 73/78 by necessity implies that the Directive has to address a number of matters which are not dealt with in the current international regime. In order to be effective, the Community regime will first of all have to lay down much more specific standards covering the requirements for ports and port States to provide adequate reception facilities. Secondly, the obligations of ships to use those facilities need to be improved and specified. Thirdly, a regime for effective control of compliance is needed to ensure the effectiveness of the measures.
7. In relation to the first issue, the requirements on ports and port States, there is little question about the need for considerable specification and improvement of the present situation, where the short reference to adequate reception facilities in the relevant Annexes of Marpol 73/78 forms the only international legal requirement. A fundamental element of the proposed Directive in this context is the obligation to develop waste reception and handling plans in all ports for the reception and treatment of waste and residues. This plan requires ports firstly to estimate the needs of the ships (normally) visiting them and secondly to take appropriate measures to meet those needs. The approval and monitoring of the waste reception and handling plan by the Member State should ensure the correctness and reasonableness of the plan.

Ports are also required to encourage the use of the facilities, inter alia, by ensuring that they are available at any given time at reasonable costs, that they have a good service performance and that delivery of waste does not involve costly or time-consuming formalities for ships and their crew. The Marpol 73/78 obligation not to cause undue delay to ships remains unchanged. On the other hand, the costs for the provision of adequate reception facilities shall be borne by the ships visiting the port.

8. In relation to the second issue, obligations for ships, it must of course be ensured that the ports' efforts are not in vain, and that ships will actually use the facilities. The proposed Directive tries to ensure the use of reception facilities in ports through a number of steps. Firstly, the mandatory discharge principle means that all ships, subject to necessary exceptions, shall deliver their ship-generated waste before leaving a Community port or at least that the master is able to demonstrate that the storage capacity for ship-generated waste is sufficient. The onus of proving that failure to use the facilities is legitimate thus rests with each ship which does not deliver its waste. Ships which do not deliver their waste without having a valid reason for exemption will not be allowed to leave the port until delivery has taken place. Secondly, the mandatory discharge principle is coupled with the requirement for ports to establish cost recovery systems which encourage the use of the facilities. The Directive does not specify any particular cost recovery system to be employed for this purpose, but leaves a degree of discretion to the Member States by laying down some general principles which shall apply. Whatever system is applied, the general requirement is that the fee system shall provide no incentive for ships to discharge their waste at sea. A 'direct' fee system whereby only those who deliver waste pay for the service is thus effectively excluded. As with the mandatory discharge principle, certain exceptions in the payment of fees have to be provided for, inter alia, in respect of ships with frequent port calls and proven arrangements with other ports along their route.

In order to ensure co-operation between ships and the other authorities and persons involved, the master is obliged to report in advance, to the next port of call, information on storage capacities and the amounts of waste and residues on board together with his intention to use reception facilities. This information as well as being necessary for the ports in order to provide adequate facilities, also has a bearing on the enforcement of the regime.

9. The third element, concerning control of compliance with the Directive, relates to the establishment of a system for ensuring that the regime works in practice. Both in the case of inadequacy of facilities and in the case of failure by ships to use them, there must be means of ensuring that the provisions of the Directive are applied. It might not be practically possible to control all ships which do not deliver their waste in ports. The main tool for ensuring compliance by the ships, therefore, will be spot-checks carried out by the authorities of the Member States. The latter would be informed about certain vessels which are not considered likely to deliver their waste or which have not complied with the notification requirements for the purpose of establishing inspection priorities. The inspector will not allow a ship which has not complied with the waste delivery requirements to proceed to sea until delivery has taken place. On the other hand, ships which comply with the Directive, but are unduly delayed because of inadequacy of reception facilities shall have the right to be compensated for any losses thereby incurred.
10. To conclude, the Directive builds upon the obligations which all Member States have already accepted under the Marpol 73/78 regime, but goes one step further by addressing in detail the legal, financial and practical responsibilities between the different players involved in the delivery of waste and residues in ports. It was agreed at the 1992 UN Conference on Environment and Development in Rio de

Janeiro that States shall assess the need for enforcing the Marpol 73/78 discharge provisions more rigorously.³ Within the Community such a need has been clearly recognised and the Directive is an important tool in implementing the Marpol 73/78 obligations in a harmonised way in Europe.

11. Various efforts to ensure the effective implementation of Marpol 73/78 have indeed been introduced earlier, in particular during the 1990's. The scope of those efforts has been at the level of individual ports or individual States and even at a sub-regional level. None of those initiatives, however, is as comprehensive as the regime proposed in this Directive. And none of them has the same extensive geographical coverage.
12. The most notable of the sub-regional regimes referred to above is the regime for the Baltic Sea adopted within the framework of the Baltic Strategy for Port Reception Facilities. In March 1998 the Parties to the 1974/1992 Convention for the Protection of the Marine Environment in the Baltic Sea Area, including the Community, adopted amendments to that Convention which, upon entry into force, will introduce stringent disposal requirements for all ships visiting the ports in the Baltic Sea. This Directive has been developed with the compatibility of that regime in mind and is not intended to restrict in any way the applicability of the Baltic approach in that area.
13. Marine pollution by its very nature has transboundary implications and it is therefore desirable from an environmental protection perspective to involve as many States as possible in a regime of this kind. An individual State, let alone an individual port, acting alone only partly reduces ship-source pollution within its waters, since only a limited number of potential polluters will actually call at its ports. Regional action, on the other hand, may have a considerable impact, as it can be demonstrated that much of the coastal ship-source pollution in a specific region arises from ships calling at ports in that region.

Unilateral action in this area also has the disadvantage of creating unfavourable competition conditions for the port(s) concerned. Obviously, initiatives by individual ports or States by applying a mandatory discharge principle or a fee system imposing additional burdens on ships risks endangering their competitiveness. Vigorous unilateral enforcement of such regimes would probably lead to diversion of traffic to other neighbouring ports which have less stringent requirements. While it cannot be denied that a Community regime, like the one proposed here, has such effects - most evidently in the peripheral areas of the Community - the overall risks of competitive disadvantage clearly decrease the larger the region which applies uniform standards.

Finally, a strict delivery regime like the one proposed requires considerable co-operation between neighbouring States in terms of information inputs and control procedures. Within the Community such instruments already exist or can be relatively easily created. The Community already has a comprehensive waste management system in place and this Directive will form a part thereof. Additionally, other relevant international institutions, whether regional or global,

³ Agenda 21 para. 17.30(a)(iii)

lack the adequate means of supervising the implementation of measures of this kind.

Action at Community level therefore appears to be the most appropriate method of combating operational pollution by ships.

PURPOSE AND SCOPE OF THE LEGISLATION

14. The purpose of the legislation is to provide further protection of the marine environment from ship-source pollution by improving the availability and use of port reception facilities.

JUSTIFICATION FOR A COUNCIL DIRECTIVE

15. a) What are the objectives of the envisaged action in relation to the obligations of the Community and what is the Community dimension of the problem (for instance how many Member States are involved and what is the present solution)?

The Treaty provides for the establishment of a common transport policy and the measures envisaged to implement such a policy include measures to improve the protection of the marine environment from maritime activities.

To this end, the main objective of the envisaged action is to harmonise the implementation of the international provisions for the protection of the marine environment in the Community, as contained in the International Convention for the Protection of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto (Marpol 73/78). An improvement of the required facilities ashore for ships' waste is required in order to encourage ships to deliver their ship-generated waste and cargo residues to such facilities before proceeding to sea. The obligations of ports are complemented by obligations for ships to use those reception facilities.

Although not all Member States are concerned with the obligation to provide reception facilities due to their lack of coastline and ports, the Directive will affect all Member States to a certain extent, since all Member States have ships flying their flag.

16. b) Is the envisaged action solely the responsibility of the Community or is the responsibility shared with the Member States?

It is a responsibility shared between the Community and the Member States.

17. c) What is the most efficient solution taking into account the resources of the Community and the Member States?

In view of the internal market dimension of maritime transport, an action at Community level is the only possible way to protect the marine environment in Community waters while reducing the distortion of competition between ports.

18. d) What is the concrete added value of the action envisaged by the Community and what would be the cost of inaction?

The Community has a major interest in the protection of the marine environment and therefore in the provision of port reception facilities for ships' waste and residues and the delivery of such wastes and residues to those facilities.

Appropriate rules have been initiated at international level. However, these rules allow for a different implementation at national level, for example the setting of fee systems for the delivery of waste, and do not involve stringent delivery conditions to be met before ships are allowed to proceed to sea.

The costs of no action would be further pollution which causes, especially in enclosed sea areas, serious damage to the marine environment including marine ecosystems. Also, no action would maintain the distortion of competition between ports in relation to services provided and fee systems used for the delivery of ships' waste to shore reception facilities. Furthermore, inaction would do nothing to overcome the existing problems ships experience in finding adequate port reception facilities in European ports.

19. e) What forms of actions are available to the Community? (recommendation, financial assistance, regulation, mutual recognition)

International agreements have resulted in rules which are difficult to enforce in relation to the protection of the marine environment. In addition, different implementation in the Member States, especially regarding the fee systems for port reception facilities, creates a distortion of competition between ports. Hence it is necessary to introduce binding measures, either in the form of a Directive or a Regulation. By embodying a broad Community system in an enforceable legislative framework, divergent national measures can be avoided.

20. f) Is uniform legislation necessary or does a Directive setting the general objectives and leaving the execution to the Member States suffice?

In accordance with the subsidiarity principle, a Directive will be sufficient as this will establish common requirements at Community level to ensure the harmonised implementation and enforcement of internationally agreed rules and principles for the protection of the marine environment, while leaving the choice of practical and technical procedures for their implementation to each Member State.

In doing so, this Directive makes each Member State responsible for deciding on the implementation tools which best fit its internal system.

CONTENT OF THE COUNCIL DIRECTIVE

21. The Directive forms a part of the overall Community Waste Policy. It imposes an obligation on all ports to provide adequate reception facilities for ship-generated waste and cargo residues. The facilities shall meet the needs of the ships using them without causing undue delay.

Waste reception and handling plans are seen as an important tool for the improvement of the provision of facilities for ships' waste in ports. Adequate facilities can only be provided if there is a full and constructive dialogue between the port, harbour authority or marina and the regular users about which facilities should be provided in order to meet their needs for types and quantities of waste, and for any other special requirements. The need for port reception facilities may change considerably over time. The type and volume of traffic using a particular port is also subject to change. For port waste reception and handling planning to remain up-to-date, it is necessary to set dates for formal reviews. These should be undertaken every three years, although significant developments or changes within the port may prompt an earlier review.

22. The main tool for preventing ships from discharging their ship-generated waste at sea is the principle of mandatory delivery, meaning that any master of a ship which has not delivered all ship-generated waste in the port must be able to demonstrate that non-delivery was legitimate. If this cannot be done, the ship will not be allowed to proceed to sea until delivery has taken place. This rule shall apply to all ships calling at a Community port. Waste is generated on board all ships, therefore the delivery principle applies to every category of ship, whether engaged in commercial or recreational activities.

For logistical purposes the operators of the facilities need advance notice of the use of the facilities in order to avoid undue delay to ships. The Directive therefore includes a notification obligation for ships and includes a model form which specifies the information to be provided. For practical reasons, fishing vessels and recreational craft are excluded from this obligation.

Also the establishment of fee systems for the charging for delivery of ship-generated waste to a port reception facility shall be based on common principles. The principles adopted exclude the 'direct' fee system in which only the users of the facilities share the costs.

Ships regularly calling at ports at short intervals may be exempted from the obligations above if they have arrangements which ensure that waste is delivered in one of their regular ports of call.

The delivery of cargo residues is dealt with by reference to the provisions of Marpol 73/78.

SPECIAL CONSIDERATIONS

Article 1

This Article defines the purpose of the Directive: to protect the marine environment by improving the availability and use of facilities in ports for ship-generated waste and cargo residues.

Article 2

This Article contains the definitions of the key concepts of the Directive. The Directive strives, as far as possible, to ensure consistency with definitions in international legal instruments such as Marpol 73/78 and existing EC legislation in the maritime field.

Paragraph 1: The term 'ship' is very broadly defined so as to include all kinds of ships, from the smallest leisure boat to the biggest supertanker. Recreational craft in many areas cause significant pollution of the marine environment and it is therefore important to include them within the scope of the Directive. Restrictions in the application of the Directive are, where appropriate, laid down in the different operational articles.

Paragraph 2 defines Marpol 73/78

Paragraph 3: The definition of 'ship-generated waste' is related to Marpol 73/78 and, more specifically, its Annexes I on oil and V on garbage. In addition, the detailed definition of cargo-associated waste in the Guidelines for the implementation of Annex V of Marpol 73/78 is included. Cargo-associated waste refers to matters like dunnage, shoring, pallets, lining, packing materials, plywood, paper, cardboard, wire and steel strapping etc., and is therefore regarded as waste which may be illegally discharged into the sea, though not being 'ship-generated' in the strict sense. It therefore falls within the scope of the Directive. Sewage, on the other hand, is not included in the definition. This is because Annex IV of Marpol 73/78 which regulates sewage is not yet in force internationally and since, even if it were in force, discharge of sewage is, subject to certain conditions, in most cases permitted in sea areas beyond 12 nautical miles from the coast. In this respect the scope of the Directive will have to be reconsidered when the outcome of the ongoing revision of Annex IV of Marpol 73/78 at the IMO is known.

Paragraph 4: 'Cargo residues' refers to remnants of any material which is carried as cargo. This also includes any spillage which may occur during loading and unloading procedures. The common practice of removing such spillage by washing it over-board at sea is harmful to the environment and the Directive therefore addresses this problem.

Paragraph 5: 'Port reception facility' is broadly defined in order to cover every facility which is used for this purpose. Since floating and other mobile reception facilities are included in the scope of the Directive, the term 'port reception facility' is preferred over 'shore reception facility'.

Paragraphs 6 & 7: The definition of 'fishing vessel' is taken directly from Council Directive 97/70/EC setting up a harmonised safety regime for fishing vessels of 24

metres in length and over⁴, while the definition of 'recreational craft' is a shorter version of the one in Directive 94/25/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft⁵. The two definitions are relevant in this Directive for the purpose of excluding them from the notification obligation and for leaving Member States a degree of flexibility in applying the enforcement regime to the two categories of vessel.

Paragraph 8: 'Port' is defined as broadly as possible, and the definition does not allow for any restriction.

Paragraph 9 clarifies that this Directive forms an integral part of the Community waste management policy.

Article 3

This Article defines the scope of application of the Directive. It covers all ships calling at, and operating within Community ports, the sole exception being ships protected by immunity. It is obvious, that in order for the regime to be workable it has to cover all ships, irrespective of their flag. This is true both from a competition and an environmental protection perspective. Marpol 73/78 has been widely ratified by the world's maritime States and every merchant ship is expected to meet the requirements of that Convention. The reason for excluding State-owned ships on non-commercial service is that such ships are excluded from the application of most relevant treaties, including Marpol 73/78 and Part XII of the 1982 United Nations Convention on the Law of the Sea, meaning that the enforcement with respect to those ships could be complicated. As regards the substantive obligations of ships, however, it is clear that such ships should comply with the requirements of the Directive. From an environmental or moral point of view, there is certainly no reason for treating warships and State-owned ships on non-commercial service differently from commercial vessels. The normal passage in maritime treaties, providing that such ships should, so far as is reasonable and practicable, act in a manner consistent with the relevant provisions, is therefore expected to apply in the context of this Directive as well.

The inclusion of all ships within the scope of the Directive by necessity implies that all ports should be included as well. Consequently, all types of harbours, terminals and installations, fishing ports and marinas are covered, with the potential exclusion of ports which are exclusively used for military vessels.

Article 4

The obligation, which already exists under Marpol 73/78, for States to provide port reception facilities which are adequate to meet the needs of the ships using them is here brought within the scope of Community law. The delivery of waste and residues from ship to shore should not hamper the normal commercial activities of ships or otherwise

⁴ Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over, OJ No. L 034, p. 1, 9.2.1998.

⁵ Directive 94/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft, OJ No. L 164, p. 15, 30.6.1994.

discourage the use of the facilities. 'Adequate' should be seen in the context of the whole Directive and the concept therefore includes, inter alia, proper waste reception and handling planning, clear notification guidelines and adequate final treatment of the waste and residues. Facilities and services shall be available at any time a ship needs to use them, provided that the Master has given adequate prior notification.

The wide range of 'ports', however, may justify certain exceptions to this interpretation. It is not reasonable, for instance, to require marinas which are exclusively used for pleasure craft purposes to offer a 24 hours waste reception service and the same may apply in other small ports. Similarly, it might not be necessary for a small port which is located close to a well-equipped port to provide all reception services itself, if the ship may reasonably be expected to use the neighbouring port's facilities instead. Reasonableness is thus a key feature of this article, and should also be reflected in the provision of facilities for cargo residues. The need for facilities capable of receiving cargo residues obviously depends on the type of ships which use that port. In this respect the principal purpose of this article is to ensure that ports provide reception facilities which are adequate for receiving wastes and residues from ships which normally use the port.

The third paragraph seeks to ensure uniformity in the formats of reporting inadequacies of reception facilities to port States. When the master, shipowner or agent wishes to challenge the adequacy of any reception facility, procedures and formats, such as those currently being developed at the Marine Environment Protection Committee of IMO, should be followed. These, or similar guidelines, will be incorporated in the Directive at a later stage.

Article 5

Waste reception and handling planning is one of the key features of the Directive. Through this process each individual port has the possibility, and indeed the obligation, to evaluate the adequacy of its own reception facilities in light of the needs of ships using that port. The plans should reflect the best waste management practice and the common elements of such plans, which are listed in Annex I, will be tailor-made for the specific circumstances prevailing in each individual port.

The obligation to develop a waste reception and handling plan concerns every port. While ports used for commercial traffic are expected to develop plans which include the full range of information indicated in Annex I, the word 'appropriate' in paragraph 1 indicates that the plans of small ports used only by recreational craft might be more limited in scope. For a small marina the purpose of this plan may well be served by enumerating the existing facilities and their utilisation, services and contact details on no more than one page, possibly even as part of the municipality waste management plan.

Planning for waste reception and handling is an on-going process and apart from the initial approval of the plan by the designated authority of the Member State, there is a need for continuous monitoring and evaluation of the adequacy of the facilities. The frequency of re-assessment of the formal plan will depend on individual ports, but will be done at least every three years, or after significant changes in the operation of the

port. Comments and complaints regarding the facilities will obviously form an important part of the assessment of the adequacy of the facilities.

Article 6

Article 6 ensures that advance notice of the use of reception facilities is given by ships bound for ports located in the European Community. This notification has a dual purpose. On the one hand, adequate notification is a prerequisite for the proper planning of availability of facilities in the port. On the other hand, notification is also used as a tool in the Directive's enforcement regime. The information contained in the notification, as laid down in Annex II, is designed to serve both purposes. Given the dual purpose, however, the addressee of the information may vary. While in some cases the port authority might be the body which is best placed to receive and examine the information, in other cases it might be more appropriate to send the information directly to the provider of the facilities. Article 6 does not impose a specific information route for this purpose, but leaves a degree of discretion for the Member States to consider which method and what bodies best fulfil their specific needs in this respect. Some form of notification of arrival to the port is already common practice for merchant vessels and the port authority may therefore be the most appropriate body to inform the masters of the addressees of the notification information.

In this context reference should also be made to Article 12.1.d, in which Member States are required to ensure that this information is appropriately examined and to Article 11.1 which stipulates that ships which have not adequately completed the notification form shall be particular targets for inspection. The article does not spell out which body should submit that information to the inspecting authority, but it might be assumed that in most cases the port authority will be the most appropriate body for this purpose.

In order to ensure the smoothness of the provision of reception facilities, the notification has to be made well in advance. In this context, the 24 hour limit, which is widely used for arrival notice, is considered to be appropriate. The reference to proper notification in Article 12.1.g on compensation for undue delay should serve as a further incentive for masters to comply with the obligation to notify.

The information which has been notified to the next port of call shall be kept on board and be made available to the authorities of the Member State in which that port is located upon request.

Fishing vessels and recreational craft are excluded from the requirement of advance notification.

Article 7

Article 7 introduces the so-called mandatory delivery principle. The term 'delivery' is used rather than 'disposal' because the latter term is used specifically, in European legislation, to denote final disposal of waste within an over-all waste management plan. In the context of this Directive 'disposal' only refers to the ultimate destination of the waste or residue after it has been delivered to the reception facility.

Under this article, the general rule is that all ships calling at a Community port are obliged to deliver all ship-generated waste to a port reception facility. However, it might not be either appropriate or feasible to require such delivery for all ships at every port call. Member States may therefore provide for exceptions to this main rule in cases where the master can demonstrate that the ship has sufficient storage capacity for all ship-generated waste that will be accumulated during the forthcoming voyage. More stringent exceptions, such as those adopted within the framework for the protection of the marine environment of the Baltic Sea, are consequently also possible under this Article. The fundamental implication of the mandatory discharge principle is that whenever a ship does not deliver all its ship-generated waste to a port reception facility, the onus of demonstrating the legitimacy of non-delivery lies with the master.

Article 8

This article addresses the fees associated with the delivery of ship-generated waste to port reception facilities. Paragraph 1 sets out the general principle, building upon the 'polluter pays' principle, or, more accurately, the 'potential polluter pays' principle. Costs related to the delivery and further treatment of the waste shall be covered by fees from ships.

In paragraph 2, certain principles for the cost recovery systems are laid down. Subparagraph (a) contains the main rule that all ships shall contribute substantially in the costs, irrespective of actual use of the facilities. This principle thus clearly endorses the so-called 'no special fee' system, whereby all ships calling at the port pay the waste fee. Subparagraph (b) gives some room for a fee system where amounts and types of wastes actually delivered of are also taken into account. This might be necessary in a 'no special fee' system in cases where exceptional quantities of waste are delivered, but it also makes possible the so-called 'combined' system where the fee is composed of a general fee which all ships pay and an additional fee which is dependent on amounts actually delivered. The appropriate dividing line between the two systems in a combined system, that is, the question of how big a part of the total fee shall be borne by all ships, is left open in this paragraph in order to allow the Member States some flexibility. The word 'substantially', however, indicates that the part of the costs to be shared by all ships must be considerable and have a real effect of recovering the overall costs. In addition, whatever fee system is chosen, the basic requirement, that is that cost recovery systems have to encourage the delivery of ship-generated waste to shore and provide no incentive to discharge waste at sea, has to be met.

The 'direct' fee system, in which only the users of the facilities pay, is thus in effect excluded, since such a system can never constitute an encouragement for delivery in ports.

In paragraph (c) a third principle allows for reductions to the fees for 'environmentally friendly' ships. In this context, no detailed guidelines are given as to what should constitute such determining factors. Member States might have differing needs and priorities in this respect. It is clear, however, that at least compliance with voluntary environmental standards which are agreed upon internationally or at a European level should constitute an important factor in making any such determination.

Safeguards to ensure that the fee systems are fair, transparent and non-discriminatory are included in the last paragraph of the Article.

If, despite these common principles, a situation were to arise, where fee systems established under this Article proved to have adverse effects on competition or trading patterns between ports or Member States, the Commission may remedy the situation, through the powers granted to it in the Treaty. Therefore, competition matters are not explicitly addressed in this Article.

Article 9

A sizeable percentage of the ships calling at Community ports are engaged in scheduled traffic with frequent and regular port calls, such as ferries, short sea liners etc. The patterns of such ships, as far as the need for reception facilities is concerned, are usually predictable and they often have longer-term arrangements with a certain port on their itinerary which ensure that all ship-generated waste is properly delivered. There is therefore no immediate reason for covering such ships in the regime of ship-generated waste under this Directive, provided that Member States are assured that the arrangement with the port the ship uses for waste delivery is workable and that there are no incentives for the masters of those ships to discharge any waste at sea. Whether arrangements with ports in third States may be accepted in this context will depend on the general policy of the Member State and on each individual case. It is left for the Member States to judge whether such arrangements are reliable enough to admit an exemption. It is clear, however, that even ships which are exempted under this article may not proceed to sea if the master fails to demonstrate that the storage capacity referred to in Article 7.2 is sufficient.

Article 10

The delivery of cargo residues is dealt with by reference to existing obligations under Marpol 73/78. Hence, the Marpol obligations will become part of Community law and the possibilities of ensuring compliance with them will be improved. Apart from this Article, cargo residues are explicitly or implicitly included in a number of provisions of the Directive, including the articles on provision of facilities, notification, enforcement and waste reception and handling planning. However, the mandatory delivery principle and the harmonisation of fee systems only cover ship-generated waste. The reasons for not including cargo residues within those schemes relate to the very different commercial nature of cargo residues and ship-generated waste. While the latter is generated by the operation of the ship and therefore 'belongs' to the ship, cargo materials remain the property of cargo interests and arrangements for ensuring - and paying for - delivery of residues are normally dealt with by the cargo interests. The considerable variations in the nature and value of substances which are carried as cargo on board a ship also renders any standardisation of rules for their delivery impracticable.

Article 11

Since it is acknowledged that it might not be feasible to inspect all ships calling at a port for the purpose of this Directive, the main tool for ensuring ships' compliance with the Directive is spot checks. Such spot checks can be undertaken within the existing port State control regime, but cannot be limited to that regime, *inter alia*, because port State control inspections only cover ships flying the flag of a State other than the port State. Although not all ships are required to be inspected, Member States must ensure that a sufficient number of inspections are carried out to ensure that compliance with the Directive is adequately monitored. Therefore, in selecting ships for inspection, attention should in particular be paid those which have not complied with the notification obligation, or for which the examination of the notification information (as required by Article 12.1.d) has revealed inaccuracies. This, of course, necessitates that the inspecting authority or authorities are appropriately informed of such ships. The cooperation between authorities of the Member States is addressed in Article 12.1.c. As far as the inspections which are undertaken under Directive 95/21/EC⁶ are concerned, the detailed extent of this regime and the target factor of the relevant ships will be specified within the regime under that Directive before the deadline for implementation of this Directive is reached.

The main rule of enforcement is simple. If the ship is found not to be in compliance with the national rules adopted under Articles 7 and 10, it shall not be allowed to proceed to sea until it has fulfilled its obligations. Paragraph 2 makes it clear that if the master of a ship fails to demonstrate that the ship can proceed to the next port of call with sufficient waste storage capacity, the ship shall be prevented from leaving the port before having delivered its ship-generated waste. If a Member State chooses to apply less permissive exceptions to Article 7.1, those national rules shall consequently apply for the purpose of the enforcement regime as well.

In cases where it can be shown that a ship has left a port without having complied with Articles 7 and 10, it shall be subject to appropriate penalties according to Article 13. In addition, the next port of call (if within the Community) shall be informed thereof and the vessel shall be subjected to a more detailed inspection as defined in Directive 95/21/EC in that port.

Fishing vessels and recreational craft, which are not covered by the present port State control regime, will be subject to enforcement mechanisms adopted 'to the extent required'.

Article 12

This article lists a set of accompanying measures which should contribute to a coherent and efficient implementation of the provisions of the Directive.

They include:

- providing proper information to masters and others concerned by the Directive on their obligations under this Directive and ensuring that they observe those obligations;

⁶ Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control), OJ No L 157, 7.7.1995, p. 1.

- designation of appropriate authorities or bodies for performing functions under the Directive;
- co-operation between the authorities and persons involved in order to ensure the effective implementation of the Directive;
- adequate examination of the information provided to ports in accordance with the notification procedure;
- elimination of costly and time-consuming formalities in connection with delivery of waste and residues;
- submission of copies of complaints regarding reception facilities to the Commission;
- establishment of appropriate procedures for compensation of ships which are unduly delayed due to inadequacy of reception facilities or procedures. Such compensation is linked to the proper notification of use of facilities and should also be seen in the context of Article 4.2; and
- compliance with existing Community legislation in relation to further treatment of delivered waste and residues.

Paragraph 2 exempts ship-generated waste and cargo residues delivered in a port from any obligation for Customs declaration under the Community Customs Code.

Paragraph 3 indicates the on-going nature of the process of ensuring adequate information is collated to facilitate identification of ships which do not comply with the provisions of the Directive. Further actions in this respect might be needed in the future and the paragraph lays down a duty of co-operation of Member States and the Commission to find appropriate solutions.

Article 13

This Article obliges Member States to lay down a system of penalties for the breach of national provisions adopted pursuant to this Directive and to ensure that those penalties are applied.

Article 14

The Committee instituted under Article 12 of Council Directive 93/75/EEC is incorporated in this article, which also describes the procedure which must be followed when the Directive refers to Committee procedures.

Article 15

This Article allows the Commission to amend this Directive, in accordance with the procedure laid down in Article 14, to ensure the application, for the purpose of this Directive, of any subsequent amendments to the international Conventions or Community instruments which may enter into force after the adoption of this Directive,

as well as with IMO resolutions recognised as being important under the regime established by this Directive.

Article 16, 17, 18 and 19

No comments.

Annexes

Annex I contains requirements for the development of the waste reception and handling plans referred to in Article 5. It contains a part which has to be completed by all ports and more detailed information to be provided by commercial ports.

Annex II is a model form for providing the notification which Article 6 requires to be forwarded to the port prior to arrival.

Proposal for a Council Directive on Port Reception Facilities for ship-generated waste and cargo residues from ships

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84(2) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure referred to in Article 189(c) of the Treaty,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of Regions,

1. Whereas Community policy on the environment aims at a high level of protection; whereas it is based on the precautionary principle and the principles that the polluter should pay and that preventative action should be taken;
2. Whereas Community action in the sector of maritime transport should aim for the reduction of pollution of the oceans; whereas this can be achieved through compliance with international conventions, codes and resolutions while maintaining the freedoms of navigation and the provision of services;
3. Whereas the Community is seriously concerned about the pollution from ships of the seas and coastlines of the Member States, and consequently about the implementation of International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (Marpol 73/78); whereas all Member States have ratified and implemented the Marpol 73/78 Convention;
4. Whereas Marpol 73/78 regulates what wastes can be discharged from ships into the marine environment; whereas Marpol 73/78 also requires States Parties to ensure the provision of adequate reception facilities in ports;
5. Whereas action at Community level is the most effective way of establishing a common minimum level of environmental standards for ships and ports throughout the Community;
6. Whereas, in view of the subsidiarity principle, a Council Directive is the appropriate legal instrument as it provides a framework for the Member States' uniform and compulsory application of environmental standards, while leaving each Member State the right to decide which implementation tools best fit its internal system;
7. Whereas the Community has a major interest in the establishment of harmonised reception facilities for ship-generated waste and cargo residues;
8. Whereas the main pillar of Community action is to improve maritime safety and prevention of pollution of the sea through the elimination of substandard

operators, vessels and crews from Community waters, irrespective of the flag of the ships;

9. Whereas, in its Resolution of 8 June 1993 on a common policy on safe seas⁷, the Council included the improvement of availability and use of reception facilities within the Community among its priority actions;
10. Whereas the Council adopted Directive 95/21/EC on 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)⁸ by which ships posing an unreasonable threat of harm to the marine environment may not proceed to sea;
11. Whereas pollution of the seas by its very nature has transboundary implications; whereas the development for preventative action as regards the seas is best done at Community level, since Member States cannot take adequate and effective action in isolation;
12. Whereas the protection of the marine environment can be enhanced by reducing discharges into the sea of ship-generated waste and cargo residues; whereas this can be implemented by improving the availability and use of reception facilities; whereas it can also be implemented by improving enforcement against deliberate polluters;
13. Whereas in the interest of improving pollution prevention and avoiding distortion of competition the environmental requirements should apply to all ships, irrespective of the flag they fly; whereas adequate reception facilities shall be made available in all ports of the Community; whereas adequate reception facilities will not cause undue delay to ships using them;
14. Whereas port reception facilities should meet the needs of users, from the largest merchant ship to the smallest pleasure craft, and of the environment; whereas adequate facilities can only be determined if there is a full and constructive dialogue between the port authority, the provider of reception facilities and all the users of the port; whereas planned waste management provides a mechanism for this dialogue to operate effectively to improve the provision and use of port reception facilities; whereas it shall be ensured that plans should be relevant and up to date;
15. Whereas the effectiveness in providing port reception facilities can be improved by requiring vessels to notify authorities of the Member States of their need to use reception facilities; whereas this information will also provide information for effectively planned waste management; whereas this notification shall be in a standard format for all the Community; whereas this information can be included in the normal notification from ships to port; whereas this notification should only be made by vessels other than fishing vessels and recreational craft;

⁷ OJ No C 271, 7. 10. 1993, p. 1.

⁸ OJ No L 157, 7. 7. 1995, p. 1.

16. Whereas ships should not discharge ship-generated waste at sea; whereas this should be achieved by requiring all ships to deliver their waste to port reception facilities; whereas exceptions to this rule may be made if it can be demonstrated that there is sufficient storage capacity for all ship-generated waste that will be accumulated during the next stage of the voyage of the ship;
17. Whereas high fees charged for using port reception facilities can provide a disincentive to use these facilities; whereas Member States should ensure that the fee for using reception facilities encourages the delivery of waste to ports; whereas all ships should contribute substantially in the costs for the reception and handling of ship-generated waste; whereas additional fees may be imposed with respect to quantities and types of waste actually delivered by a ship; whereas charges for using these facilities should be fair, non-discriminatory and transparent;
18. Whereas vessels engaged in regular or scheduled port visits may be exempted from notifying and contributing to port reception facilities; whereas an exemption should only be given where there is clear evidence that the ship is fully complying with the requirements of this Directive;
19. Whereas cargo residues should be delivered to port reception facilities in accordance with Marpol 73/78; whereas any fee for such delivery shall be borne by the user of the reception facility;
20. Whereas inspections shall be undertaken in order to verify compliance with this Directive; whereas the number of such inspections shall be sufficient to deter non-compliance with the Directive; whereas ships which have not complied with the notification obligation should comprise a particular target group for inspection; whereas ships shall not be permitted to leave the port until compliance with the delivery requirements is established; whereas if there is evidence that a ship has not complied with those requirements it shall be subject to sanctions in accordance with the Directive and also subject to a more detailed inspection in the next port of call; whereas control procedures should also ensure that fishing vessels and recreational craft also comply with this Directive;
21. Whereas Member States shall ensure that masters, providers of reception facilities and other concerned persons are informed of, and observe, the requirements addressed to them under this Directive; whereas Member States shall designate appropriate authorities or bodies for performing functions under this Directive and shall make provision for co-operation between them; whereas the notification information shall be appropriately examined; whereas the formalities for the use of port reception facilities shall be simple and expeditious; whereas ships which have complied with the notification requirements but nevertheless are unduly delayed due to inadequacy of port reception facilities shall be appropriately compensated; whereas the treatment of waste shall be in accordance with relevant Community legislation;
22. Whereas enforcement of this directive can be enhanced by the establishment of an appropriate information system for the identification of polluting, or potentially polluting ships;

23. Whereas it is necessary for a Committee consisting of representatives of the Member States to assist the Commission in the effective application of this Directive;
24. Whereas certain provisions of the Directive may be amended by that Committee to take into account future amendments of Marpol 73/78 which enter into force and to ensure a harmonised implementation of amendments to IMO Resolutions in relation to the protection of the marine environment;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to reduce the discharges of ship-generated waste and cargo residues into the sea, especially illegal discharges, from ships using ports in the European Community, by improving the availability and use of port reception facilities for ship-generated waste and cargo residues, thereby enhancing the protection of the marine environment.

Article 2

Definitions

For the purpose of this Directive including its Annexes:

1. 'ship' shall mean a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft;
2. 'Marpol 73/78' shall mean the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as in force at the date of adoption of this Directive;
3. 'ship-generated waste' shall mean all waste and residues, other than cargo residues, which are generated during the service of the ship and fall under the scope of Annexes I and V of Marpol 73/78 and cargo-associated waste as defined in the Guidelines for the implementation of Annex V of Marpol 73/78;
4. 'cargo residues' shall mean the remnants of any cargo material on board in cargo holds or tanks which remain after unloading procedures and cleaning operations are completed and shall include loading/unloading excesses and spillages;
5. 'port reception facility' shall mean any provision, which is fixed, floating or mobile and capable of receiving ship-generated waste or cargo residues;

6. 'fishing vessel' shall mean any vessel equipped or used commercially for catching fish or other living resources of the sea;
7. 'recreational craft' shall mean a boat of any type, regardless of the means of propulsion, intended for sports or leisure purposes;
8. 'port' shall mean all ports, harbours, terminals and marinas.

Without prejudice to the definitions in paragraphs 3 and 4, 'ship-generated waste' and 'cargo residues' shall be considered to be waste within the meaning of Article 1(a) of Directive 75/442/EEC on waste.⁹

Article 3

Scope

This Directive shall apply to:

1. all ships unless expressly provided otherwise, irrespective of their flag, calling at, or operating within, a port of a Member State, with the exception of any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service; and
2. all ports of the Member States.

Article 4

Port reception facilities

1. Member States shall ensure the provision of port reception facilities adequate to meet the needs of the ships using these facilities without causing undue delay to ships.
2. The reception facilities shall be capable of receiving all categories of ship-generated waste and cargo residues originating from ships normally visiting the port and shall be developed according to the size of the port and the category of ships calling at that port.
3. Alleged inadequacies in the provision of port reception facilities should be notified to the port State in accordance with the procedures agreed at the International Maritime Organization.

Article 5

Waste reception and handling plans

⁹ OJ No. L 194, 25. 7. 1975, p. 39.

1. An appropriate waste reception and handling plan shall be developed and implemented in each port, having regard to the requirements of Articles 4, 6, 7, 10 and 12. Detailed requirements for the development of such plans are set out in Annex I.
2. Member States shall monitor and evaluate the waste reception and handling plan and ensure its approval at least every three years and after significant changes in the operation of the port.

Article 6

Notification

1. The master of a ship other than a fishing vessel or recreational craft bound for a port located in the Community shall complete truly and accurately the form in Annex II and provide that information to the authority or body designated for this purpose by the Member State in which that port is located:
 - a. at least 24 hours prior to arrival, if the port of call is known; or
 - b. as soon as the port of call is known, if this information is available less than 24 hours prior to arrival; or
 - c. at the latest upon departure from the previous port, if the duration of the voyage is less than 24 hours.
2. The information referred to in paragraph 1 shall be kept on board and be made available to the authorities of that Member State upon request.

Article 7

Delivery of ship-generated waste

1. The master of a ship calling at a Community port shall before leaving the port deliver all ship-generated waste to a port reception facility.
2. A ship may, however, be allowed to proceed to the next port of call without delivering the ship-generated waste, if the master can confirm, on the basis of the information in Annex II, that there is sufficient storage capacity for all ship-generated waste that will be accumulated during the intended voyage of the ship

Article 8

Fees for ship-generated waste

1. Member States shall ensure that the costs of port reception facilities for ship-generated waste, including the treatment and disposal of the waste, shall be covered through the collection of a fee from ships.

2. The cost recovery systems for using port reception facilities shall encourage the delivery of ship-generated waste to shore and provide no incentive for ships to discharge that waste into the sea. To this end the following principles shall apply:
 - a. All ships calling at a port of a Member State shall contribute substantially in the costs referred to in paragraph 1, irrespective of actual use of the facilities. Arrangements to this effect may include incorporation of the fee in the port dues or a separate standard waste fee. The fees may be differentiated with respect to, *inter alia*, the category and size of the ship.
 - b. Additional fees may be imposed with respect to quantities and types of waste actually delivered by the ship.
 - c. Fees may be reduced if the ship's environmental management, design, equipment and operation is such that the master of the ship can demonstrate that it produces reduced quantities of ship-generated waste.
3. In order to ensure that the charged fees are fair, transparent, non-discriminatory and reflect the costs of the facilities and services made available and, where appropriate, used, the amount and the basis on which the fees have been calculated should be made clear for the port users.

Article 9

Exemptions

1. When ships are engaged in scheduled traffic with frequent and regular port calls and there is sufficient evidence of an arrangement to ensure the delivery of ship-generated waste and payment of fees in a port along the ship's route, Member States of the other ports involved may exempt these ships from the obligations in Articles 6, 7 and 8.
2. The Commission shall be kept informed by the Member States of exemptions granted in accordance with paragraph 1.

Article 10

Delivery of cargo residues

The master of a ship calling at a Community port shall ensure that cargo residues are delivered to a port reception facility in accordance with the provisions of Marpol 73/78. Any fee for delivery of cargo residues shall be paid by the user of the reception facility.

Article 11

Enforcement

1. Member States shall ensure that any ship may be subject to an inspection in order to verify that it complies with Articles 7 and 10 and that a sufficient number of such inspections are carried out. Such inspections may, when applicable, be undertaken within the framework of Directive 95/21/EC¹⁰.

In selecting ships for inspection, Member States shall pay particular attention to:

- ships which have not complied with the notification requirements in Article 6;
 - ships for which the examination of the information provided by the master in accordance with Article 6 has revealed inaccuracies.
2. If a Member State is not satisfied with the results of this inspection, it shall ensure that the ship does not leave the port until it has delivered its waste to a reception facility to the extent that it complies with Articles 7 and 10.
 3. When there is evidence that a ship has proceeded to sea without having complied with Articles 7 or 10, the next port of call shall be informed thereof and such a ship shall, without prejudice to the application of the penalties referred to in Article 13, neither be permitted to load or unload its cargo nor to embark passengers until a more detailed inspection as defined in Articles 2.7 and 6.3 of Directive 95/21/EC has taken place. Such an inspection shall include an assessment of factors relating to the ship's compliance with this Directive, such as the accuracy of any information provided in accordance with Article 6.
 4. Member States shall establish control procedures, to the extent required, for fishing vessels and recreational craft to ensure compliance with the applicable requirements of this Directive.

Article 12

Accompanying measures

1. Member States shall:
 - a. take all necessary measures to ensure that masters, providers of port reception facilities and other concerned persons are adequately informed of the requirements addressed to them under this Directive and that they observe those requirements;
 - b. designate appropriate authorities or bodies for performing functions under this Directive;
 - c. make provision for co-operation between their relevant authorities and commercial organisations to ensure the effective implementation of this Directive;

¹⁰ Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control), OJ No L 157, 7.7.1995, p. 1.

- d. ensure that the information provided by masters in accordance with Article 6 is appropriately examined;
 - e. ensure that the formalities relating to the use of port reception facilities are simple and expeditious in order to create an incentive for the master to use port reception facilities and to avoid undue delays to ships;
 - f. ensure that the Commission is provided with a copy of the allegations of inadequate reception facilities referred to in Article 4.2;
 - g. establish and maintain appropriate procedures in accordance with their national legislation for the appropriate compensation of ships which have complied with Article 6 but are unduly delayed due to inadequacy of port reception facilities; and
 - h. ensure that the treatment, recovery or disposal of ship-generated waste and cargo residues shall be carried out in accordance with Directive 75/442/EEC on waste¹¹ and other relevant Community waste legislation, in particular Directive 75/439/EEC on the disposal of waste oils¹² and Directive 91/689/EEC on hazardous waste¹³.
2. Delivery of ship-generated waste and cargo residues shall be considered as release for free circulation within the meaning of Article 79 of Regulation 2913/92/EEC establishing the Community Customs Code¹⁴. The customs authorities shall not require the lodging of a summary declaration in accordance with Article 45 of the Community Customs Code.
 3. Member States and the Commission shall co-operate to establish an appropriate information system to enhance the identification of ships which have not delivered their ship-generated waste and cargo residues in accordance with this Directive.

Article 13

Penalties

Member States shall lay down a system of penalties for the breach of national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided shall be effective, proportionate and dissuasive.

Article 14

Regulatory Committee

¹¹ OJ No. L 194, 25. 7. 1975, p. 39.

¹² OJ No. L 194, 25. 7. 1975, p. 23.

¹³ OJ NO. L 377, 31. 12. 1991, p. 20

¹⁴ OJ No L 302, 19. 10. 1992.

The Commission shall be assisted by the Committee set up pursuant to Article 12, paragraph 1, of Directive 93/75/EEC¹⁵. The Committee shall operate in accordance with the procedure laid down in paragraphs 2 and 3 of that Article.

Article 15

Amendment procedure

1. The annexes, definitions, references to Community instruments and references to IMO Resolutions may be amended in accordance with the procedure laid down in Article 14 in order to bring them in line with Community or IMO measures which have entered into force, insofar as such amendments do not broaden the scope of this Directive.
2. The Annexes may also be amended in accordance with that procedure when necessary to improve the regime established by this Directive, but without broadening the scope of the Directive.

Article 16

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 18 months following the date of its entry into force and forthwith inform the Commission thereof.
2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.
3. The Member States shall immediately notify to the Commission all provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

Article 17

Evaluation

1. Member States shall submit to the Commission a status report concerning the implementation of this Directive every three years.
2. The Commission shall submit an evaluation report on the operation of the system as provided for in this Directive to the European Parliament and the Council, on the

¹⁵ Council Directive concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods, OJ No L 247, 5.10.1993, p. 19.

basis of the reports of the Member States as provided for in paragraph 1 together with proposals as necessary, concerning the implementation of this Directive.

Article 18

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 19

Addressees

This Directive is addressed to the Member States and the Commission.

ANNEX I

REQUIREMENTS FOR WASTE RECEPTION AND HANDLING PLANS IN PORTS

(as referred to in Article 5)

The plan shall cover all categories of ship-generated waste and cargo residues originating from ships normally visiting the port and it shall be developed according to the size of the port and the category of ships calling at that port.

The following elements shall be addressed in the plan:

- an assessment of the need for reception facilities, in light of the need of the ships normally visiting the port;
- a description of the type and capacity of facilities;
- a detailed description of the procedures for the reception and collection of ship-generated waste and cargo residues;
- description of the charging system;
- procedures for reporting alleged inadequacies of reception facilities;
- procedures for ongoing consultations with port users, waste contractors, terminal operators and other interested parties; and
- type and quantities of ship-generated waste and cargo residues received and handled.

In addition, the plan should include:

- a resume of relevant legislation and formalities for delivery;
- identification of a person or persons to be responsible for the implementation of the plan;
- description of the pre-treatment equipment and processes in the port, if any;
- methods of recording actual use of the facilities;
- methods of recording amounts of ship-generated waste and cargo residues received; and
- description of how the ship-generated waste and cargo residues are disposed of.

The procedures for reception, collection, storage, treatment and disposal should conform in all respects to an environmental management scheme suitable for the progressive reduction of the environmental impact of these activities. Such

conformity is presumed if the procedures are in compliance with the International Standard ISO 14001:1996 and the European Standard EN 14001:96, establishing specification for environment management system as recognised in the Commission Decision 97/265/EC of 16 April 1997.

Information to be made available to all port users:

- brief reference to fundamental importance of proper delivery of ship-generated waste and cargo residues;
- location of facilities applicable to each berth with diagram/map;
- list of ship-generated waste and cargo residues normally dealt with;
- list of contact points;
- description of procedures for delivery;
- description of charging system; and
- procedures for reporting alleged inadequacies of reception facilities.

ANNEX II

INFORMATION TO BE NOTIFIED

(as referred to in Article 6)

1. Name, call sign and, where appropriate, IMO identification number of the ship:
2. Flag State:
3. Port of destination:
4. Estimated time of arrival (ETA):
5. Estimated time of departure (ETD):
6. Last port of call:
7. Next port of call:
8. Last port and date when ship-generated waste was delivered:
9. Type and amount of waste and residues to be delivered and / or remaining on board, and percentage of maximum storage capacity.

TYPE	MAXIMUM STORAGE CAPACITY m ³	AMOUNT ON BOARD m ³	% OF MAXIMUM CAPACITY	TO BE DELIVERED? Y/N	SEPARATED? Y/N
Waste Oils					
sludge					
bilge water					
others (specify)					
Garbage					
food waste					
plastic					
other					
Cargo-associated waste (specify)					
Cargo Residues (specify)					

Note: this information may be used for port State control purposes.

* May be estimates.

Draft
DECISION OF THE EEA JOINT COMMITTEE

N° (..) .. / 9.
of (..) (.....) 199.

amending Annex XIII (Chapter V) of the Agreement on the European Economic Area by adding Council Directive (.././EC) on port reception facilities for ship-generated waste and cargo residues from ships.

THE EEA JOINT COMMITTEE

Having regard to the Agreement on the European Economic Area as adjusted by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof,

Whereas Directive (.././EC) of the Council of the European Union of (.. 19..), of which a copy is annexed to this Decision, is to be integrated into the Agreement,

Whereas the horizontal adaptation in Protocol 1 and the sectoral and other adaptations in the introduction of Annex XIII to the Agreement shall apply,

HAS DECIDED AS FOLLOWS:

Article 1

Annex XIII, Transport, to the Agreement shall be amended as specified below. The text of the new Act is at Appendix.

Article 2

The following new point shall be inserted in Chapter V after point XXX:

“XXX: Council Directive (.././EC) on port reception facilities for ship-generated waste and cargo residues from ships:

The provision of the Directive shall, for the purposes of the present Agreement, be read with the following adaptation:

Article nn.n shall be replaced by the following:

The Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than
(.. 199.)”

Article 3

The decision shall enter into force on (... .. 199.)

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the Official Journal of the European Communities.

Done at Brussels, (... .. 199.)

For the EEA Joint Committee
The President

.....

The Secretaries
to the EEA Joint Committee

.....

FINANCIAL STATEMENT

1 TITLE OF OPERATION

Proposal for a Council Directive on Port Reception Facilities for Ship-Generated Waste and Cargo Residues.

2 BUDGET HEADING INVOLVED Part A (see § 10)

3 LEGAL BASIS

Safety and pollution prevention in maritime transport: Article 84(2) of the Treaty

4 DESCRIPTION OF OPERATION

4.1 General objective

The protection of the marine environment by improving the availability and use of port reception facilities for ship-generated waste and cargo residues.

4.2 Period covered and arrangements for renewal

Indefinite

5 CLASSIFICATION OF EXPENDITURE OR REVENUE

5.1 Non-compulsory expenditure

5.2 Non-differentiated appropriations

6 TYPE OF EXPENDITURE OR REVENUE

Administrative expenses

7 FINANCIAL IMPACT

Financial impact on Part B (Operational Appropriations) - Nil

8 FRAUD PREVENTIVE MEASURES

Control of adherence to the procedures for inviting Member States' experts to the Regulatory Committee meetings.

9 ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1 Specific and quantified objectives, target population

Reducing the discharges of waste and cargo residues from ships into the marine environment by measures which provide a regime for delivering the waste and residues to a port reception facility to such an extent that the ship can proceed to sea without creating an unreasonable threat of harm to the marine environment. The Directive requires a harmonised cost-recovery system for these facilities.

9.2 Monitoring and evaluation of the operation

Monitoring and evaluation of the operation will be carried out by the annual meeting of the Committee on Maritime Safety and by missions (see § 10.3)

10 ADMINISTRATIVE EXPENDITURE (SECTION III, PART A OF THE BUDGET)

Actual mobilisation of the necessary administrative resources will depend on the Commissions' annual decision on the allocation of resources, taking into account the number of staff and additional amounts authorised by the budgetary authority

10.1 Effect on the number of posts.

Type of post		Staff to be assigned to manage the operation		Source		Duration
		<u>Permanent posts</u>	<u>Temporary posts</u>	Existing resources in the DG or department concerned	Additional resources	
Officials or temporary staff	A	1		1		
	B	1		1		
	C					
Other resources		NIL				
Total		2		2		

10.2 Overall financial impact of additional human resources

No additional human resources are requested. The existing resources necessary to manage the operation per annum are:

Type of post	Amounts	Total
--------------	---------	-------

Officials *	2 x 108.000 ECU	216.000 ECU
Total		216.000 ECU

* For the officials calculation based on the titles A-1, A-2, A-4, A-5 and A-7

10.3 Increase in other administrative expenditure annually as a result of the operation

ECU

Budget heading	Amounts	Method of calculation
A 7031	9750	The Committee of Maritime Safety is already meeting for issues related to other EC Directives dealing with maritime safety. One additional 1-day meeting/year is valued necessary to discuss particular issues related to this proposal (travel expenses valued at 650 ECU/person x 15 persons)
Total	9750	

The credits will be found in the existing envelope of DG VII

ECU

Budget heading	Amounts	Method of calculation
A 2510	20.000	The Committee of Maritime Safety is already meeting for issues related to other EC Directives dealing with maritime safety. One additional 1-day meeting/year is valued necessary to discuss particular issues related to this proposal (travel expenses valued at about 20.000 ECU)
Total	20.000	

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS with special reference to small and medium-sized enterprises

Title of the proposal:

PROPOSAL FOR A COUNCIL DIRECTIVE ON PORT RECEPTION FACILITIES FOR SHIP-GENERATED WASTE AND CARGO RESIDUES.

Reference number: 98010

The Proposal

1. *Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?*

The obligation of the Community is the achievement of a high level of protection for the environment based on the *precautionary* principle and as far as possible eliminating pollution by giving priority to intervention at source in compliance with the *polluter pays* principle (Article 130r of the Treaty).

It is estimated that between 5 and 7 million tonnes of oily residues, and 1 million tonnes of solid waste are generated annually by ships visiting EU ports. At present only a small proportion of this amount is being delivered ashore in these ports. Some ports have extensive reception facilities which are currently being grossly under-utilised. Others have lesser, or negligible facilities. A large proportion of the undelivered waste and residue is currently discharged at sea, of which a great amount is assumed to be discharged illegally.

The Directive aims to reduce discharges of ship-generated waste and cargo residue into the sea by improving the required facilities in ports and also by improving communications between the providers and the users of such facilities.

Referring to the principle of subsidiarity, it will be the responsibility of each Member State to ensure that adequate port reception facilities are provided and to implement an appropriate cost-recovery system. Member States are responsible for adopting, within their national legislation, measures designed to ensure an effective application of the Directive.

The impact on business

2. *Who will be affected by the proposal?*
- *which sector of business?*
 - *which sizes of business?*
 - *are there particular geographical areas of the Community where these businesses are found?*

The business sectors affected by this proposal are the shipping companies, the ports and the operators of shore reception facilities.

The Directive addresses all ships regardless of type or size. Therefore, there is no differentiation between the size of companies and ports, as all sea-borne trade to every Community port is affected by the Directive. It is not possible to give a reliable estimate of ships calling at Community ports since recreational craft and fishing vessels are included within the scope of the Directive and port-calls of these ships are not registered. According to the report carried out for the Commission, nearly 700 commercial ports in the EU receive at least 750,000 visits annually from ships loading or unloading cargo. Additionally ports in the EU receive an estimated 900,000 car and passenger ferry visits annually.

There is no special geographical area within the Community where these businesses are found: all except the two land-locked Member States have sea ports catering for commercial ships, recreational craft and fishing vessels. Austria and Luxembourg are thus excluded from applying the Directive. However, as both these countries are maritime flag States, their ships are affected by it.

The expected reduction of environmental pollution caused by ship-generated waste and cargo residues will have a beneficial effect on the region's marine ecosystems and fisheries. The reduction in pollution reaching the shore from these sources will result in an improvement of amenity values in all coastal areas. This should in turn have a positive effect upon fishing and coastal recreational industries.

3. *What will business have to do to comply with the proposal?*

The Directive requires the shipping industry to deliver all ship-generated waste and cargo residues to port reception facilities. Compliance with this requirement by masters of ships is of an operational and procedural nature and requires no additional hardware provision. The technical provisions related to the design and equipment of ships are already mandated by provisions of relevant international conventions and related instruments.

Each port is required to provide adequate reception facilities. This is already an obligation under Marpol 73/78. However, this Directive introduces a stricter regime for the delivery of ship-generated waste and cargo residues in ports, therefore the capacity and operation of existing reception facilities might need adjustment in some ports for them to be able to receive an increased quantity from ships. This may particularly be the case in ports with a high number of visits from merchant ships. Any such increase in volume will directly effect the operator of the facility who will be required to improve the facility to meet the demand.

4 *What economic effects is the proposal likely to have*

- *on employment?*
- *on investment and the creation of new business?*
- *on the competitive position of business?*

With regard to the shipping industry no impact on employment is expected.

As explained in paragraph 3, in certain ports the capacity and operation of reception facilities might need adjustment. This could require additional employment in the port sector, although any such increase in employment will be marginal.

For the same reasons additional investment may be needed for the adjustment and improvement of reception facilities. This will vary from port to port, mainly depending on traffic characteristics and the current provision of facilities. It is expected that the stricter regime imposed by the Directive will create improved commercial viability for companies which collect and process ship-generated waste and cargo residues, as the volume received will increase.

Harmonisation of the principles governing fee systems for collection and delivery will help to create a level playing field for ports. The present disparity in fee systems, which are based on widely differing principles, tends to distort competition between ports. It not only discourages ships from using some port facilities, it also positively encourages illegal discharge of waste and residues at sea.

The harmonised principles proposed by the Directive will substantially reduce the present imbalance between systems employed by different ports, and ensure that costs are recovered equitably from all visiting ships.

As stated in paragraph 3, the resulting improvement in the marine environment will have a positive economic impact on the coastal leisure and fishing industries.

5. *Does the proposal contain measures to take account of the specific situation of small and medium sized firms (reduced or different requirements)?*

Although the Directive applies to all ports and all ships, individual Member States shall determine the enforcement procedures to apply to fishing vessels and recreational craft. Exemptions may also be made from mandatory delivery at every port for vessels engaged on routine voyages with regular port visits. Many small and medium sized shipping operations fall within these categories.

Cost-recovery systems should be structured so they do not place small shipping companies or occasional users at any financial disadvantage. The over-all aim should be positively to encourage masters to discharge ships' wastes and residues to port reception facilities rather than retain them on board.

Reception facilities and waste reception and handling plans for small ports and marinas will be proportionally less complex than those for larger commercial ports. The geographical situation of such ports may be such that they can make economies by utilising facilities in nearby larger ports.

6. *Organisations which have been consulted about the proposal and outline of their main views:*

European Community Shipowners Association (ECSA):

ECSA considers that illegal discharges at sea are largely caused by ports not providing sufficient reception facilities. However evidence shows that even where adequate facilities are provided they are not used to anywhere near full potential. It considers that the Directive should place emphasis on ports providing facilities for vessels to fulfil their Marpol 73/78 obligations rather than on a requirement for ships to deliver their waste and residues. In particular, ECSA feels that a mandatory requirement to use facilities which is not related to actual storage capacity is unworkable.

International Association of Independent Tanker Owners (INTERTANKO):

Intertanko also opposes a mandatory delivery system, which does not take into account waste storage capacity and stresses that a mandatory system must have adequate safeguards against undue delay or administrative procedures. Intertanko favours the 'no special fee' system, in which all ships calling at a port pay the delivery fee, irrespective of actual use of the facilities.

Association of Shore Reception Facilities in Europe and beyond (EUROSHORE INTERNATIONAL):

EUROSHORE points out that at present even when adequate facilities are provided they are largely under-utilised. It emphasises that exemptions for using reception facilities should not be granted easily and that policy on granting exemptions has to be uniform throughout the region. EUROSHORE proposes that all waste and residues should be exempted from any excise duties. The fee system should not inhibit competition which EUROSHORE sees as the key to providing economic reception facilities.

European Sea Ports Organisation (ESPO):

ESPO suggests that in addition to cargo residues being differentiated from ship-generated waste, the latter should be further subdivided into "ship-generated" and "cargo-generated" waste.

ESPO considers that the 24 hour notification obligation and the envisaged procedures for obtaining an exemption for delivery could make the system complex and burdensome for both ports and ships. It agrees that it should be left to Member States and competent authorities to allocate responsibilities to the various bodies. It queries who will be responsible for paying compensation for undue delay and how it will be assessed. ESPO considers that no preferred option for cost-recovery should be stipulated and this should be decided upon by Member States and the concerned authorities.

Federation of European Private Port Operators (FEPOR):

FEPOR agrees with the main provisions of the Directive. Because of potential difficulties in complying, it is of the opinion that exemption should be obtained from requirements under other Community legislation for operators to sort ship-

generated waste. FEPORT agrees that cost-recovery systems should be such as to dissuade ships from discharging waste at sea, but is concerned that leaving Member States to decide on cost-recovery systems for such a wide range of competing port facilities could lead to distortions between ports.

ISSN 0254-1475

COM(98) 452 final

DOCUMENTS

EN

07 14

Catalogue number : CB-CO-98-463-EN-C

ISBN 92-78-38221-3

Office for Official Publications of the European Communities

L-2985 Luxembourg

