COMMISSION OF THE EUROPEAN COMMUNITIES

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2003/0037 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

Recent accidents, most notably the sinkings of the *Prestige* in November 2002 and of the *Erika* in December 1999, have highlighted the need for tightening the net relating to ship-source pollution. Despite the wide range of measures to improve safety that have been adopted at EU-level in the last decade, ships of dubious quality loaded with polluting cargoes continue to sail in European waters and continue to cause massive pollution through accidents, without the responsible parties being adequately penalised for it.

High-profile accidents is not the only problem, however. The main part of world-wide ship-source pollution by oil is the result of deliberate discharges. The unacceptable practice of 'operational', that is, intentional discharges from ships, including tank-cleaning operations and waste oil disposal is still widely practiced in the coastal waters of Member States and beyond. While it is true that various measures adopted at international and EU-level, in combination with a number of initiatives led by the shipping industry to cut ship-source pollution, have reduced these practices, the problem is still widespread. In the year 2001, aerial surveillance detected 390 oil slicks in the Baltic Sea[1] and 596 in the North Sea[2]. A Commission study for the Mediterranean Sea reports 1638 illicit discharges in 1999.[3] Only a small portion of the ships illegally discharging is actually detected and only a handful is eventually prosecuted.

In line with the Commission's proposal for a Directive on the protection of the environment through criminal law,[4] the proposed Directive establishes that discharges in violation of Community laws shall constitute a criminal offence and that sanctions, including criminal sanctions, are to be imposed if the persons concerned have been found to have caused or participated in the act by intent or grossly negligent behaviour. For natural persons this may include, in the most serious cases, the deprivation of liberty. The introduction of adequate sanctions for pollution offences is particularly important in relation to pollution by shipping, as the international civil liability regimes that govern ship-source pollution incidents involve significant shortcomings with respect to their dissuasive effects.

In light of recent pollution incidents, the urgency of arriving at a particular measure related to ship-source pollution has been forcefully stressed at the highest political level within the EU. At the European Council Summit in Copenhagen on 13 December 2002, the Heads of State/Government of all EU Member States expressed their grave concerns with respect to the *Prestige* accident and specifically referred to the need for further specific measures relating to liability and the corresponding sanctions. For its part, the Transport and Telecommunications Council on 6 December 2002 welcomed "the intention of the Commission to present a proposal to ensure that any person who has caused or contributed to a pollution incident through grossly negligent behaviour should be subject to appropriate sanctions."[5] In addition, the Justice and Home Affairs Council on 19 December 2002 agreed that complementary

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1 http://www.helcom.fi/sea/maps2001.pdf. Since 1988 a total of 7216 confirmed ship-source pollution discharges have been detected in the Baltic Sea by means of aerial surveillance.

2 http://www.bonnagreement.org/

3 http://europa.eu.int/comm/environment/civil/marin/reports_publications/jrc_illicit_study.pdf

4 COM(2001) 139 final of 13 March 2001, as modified by COM(2002) 544 final of 30 September 2002.

5 Paragraph 14 of the Council's conclusions on Ship Safety and Pollution Prevention of 6 December 2002.

measures should be considered "to strengthen the protection of the environment, in particular the seas, through criminal law".[6]

The Commission fully shares the views of Member States about the urgency of this proposal and considers that in light of the above, a specific measure relating to sanctions for ship-source pollution offences is justified, without prejudice to a more general regime applicable for the protection of the environment through criminal law.[7] Consequently, the Commission, as already announced in its Communication on improving safety at sea in response to the *Prestige* accident (COM(2002) 681 final), proposes to fill some of the most important remaining regulatory gaps in this area, relating to both deliberate and accidental discharges.[8]

2. BACKGROUND AND JUSTIFICATION

2.1. The need for Community-wide rules relating to ship-source pollution

It is generally recognised that deliberate discharges of waste and cargo residues from ships at sea are unacceptably common. The main part of these discharges are illegal, that is, in contravention of the international rules on ships' discharges as laid down in the Marpol 73/78 Convention (the International Convention for the Prevention of Pollution from Ships, 1973 and the Protocol of 1978 related thereto, as subsequently amended), which is very widely ratified worldwide. Nevertheless, only a fraction of the offenders are brought to justice.

There are a number of reasons for this. First, the occurrence of illegal discharges is promoted by lack of adequate waste reception facilities in ports. Second, the enforcement of the Marpol 73/78 rules is not consistent in the world, or even within the EU. Third, discharges are not always detected in time. Fourth, even if the discharge is detected and traced to a particular ship, the offence is rarely brought to justice and if it is, there is frequently lack of sufficient evidence for convicting the offender. Finally, even where an offender is convicted, many States implement rather light penalties for this kind of offences, sometimes only imposed on the master of the ships, rather than the shipowning company, whose instructions the master may follow.

The Marpol 73/78 Convention, which is globally accepted, lays down detailed standards and strict conditions for discharge of waste and residues at sea, with more stringent requirements for sea areas which have been designated as 'special areas' (including, in the case of oil pollution, the Baltic Sea, the Mediterranean and the North Sea area). Given the strictness and general acceptance of these standards, the problem with the frequent occurrence of illegal discharges may be summarised as being related to lack of implementation and enforcement of the applicable rules, rather than insufficient standards as such. At international level, there are presently few mechanisms to enforce the Marpol 73/78 Convention. If masters, shipowners or States choose to ignore its provisions, the international community as such has few enforcement measures, but relies on national or regional enforcement measures for this purpose.

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6 Statement by the Justice and Home Affairs Council of 19 December 2002.

7 As proposed by the Commission in March 2001. See footnote 4 above.

8 See also the Commission's Communication "Towards a strategy to protect and conserve the marine environment", COM(2002) 539 of 2 October 2002 where the regulation of illegal ship-source pollution is listed as one of the key short-term objectives.

The discrepancy between existing rules and prevalent practice in this area was acknowledged by the Commission already in its communication 'A Common Policy on Safe Seas' of 24 February 1993 which stated that compliance with the requirements of Marpol 73/78, to which all Member States are Contracting Parties, could be improved and that further initiatives were required to improve implementation of international rules and standards. Since then, a number of such initiatives have been taken at Community level. First, this type of offences are controlled through port State control under Directive 95/21/EC, where oil and other record books are among the documents to be checked at each inspection. Inconsistencies or doubts may lead to further inspections or to the detention of the ship. Second, in order to combat marine pollution caused by operational (deliberate) discharges from ships, the Community adopted Directive 2000/59/EC which establishes, on the one hand, requirements for ports to provide adequate reception facilities for ships' waste and, on the other hand, requirements for ships to use these facilities. The purpose of this directive is to eliminate the incentives for ships to discharge polluting substances into the sea, by providing detailed rules for delivering waste and cargo residues in ports. In addition, the directive involves specific waste inspections which, like port State control inspections, are spot checks. Third, the traffic monitoring directive (2002/59/EC) will further improve the availability of information by coastal State on ships in their waters and the cargoes they carry. This directive also lays down procedures for detecting illegal discharges at sea and for the follow-up measures to be taken by Member States at sea when such discharges have occurred.

While all these instruments represent important steps to eliminate illegal discharges, they do not go all the way in addressing the problem at Community level. Within the regulatory framework an element is missing. The actual offence, that is the violation of applicable pollution standards, is not fully covered by EC law. The implementation of Marpol 73/78 by Member States shows variations, both in practice and in law.[9] The keenness of Member States to inspect and prosecute potential offenders varies largely. In addition, the imposition of penalties for offenders varies between Member States, both as regards the persons to be penalised and as regards the size and nature of penalties awarded.

Therefore, a specific Directive on ship-source discharges would have the dual benefit of completing and clarifying the Community's regulation in this area and of achieving a harmonisation of the enforcement of the rules. Providing the legal framework specifying the offence and sanctions relating to ship-source discharges will also greatly facilitate the setting up of further co-operative measures relating to the implementation of such rules. For example, it is accepted that there is a need for Member States to co-operate more closely in a number of related fields, including the monitoring of oil spills, the identification of polluters and the gathering of evidence which would be effective in court proceedings. Such a legal instrument would finally provide the legal platform for the European Maritime Safety Agency (EMSA) to engage in this matter. EMSA is well-equipped to follow up matters relating to surveillance and proof of illegal discharges, and there is wide political support for mandating it with this type of activities, but the legal basis under Community law is currently lacking.

In conclusion, there are a number of legal, practical and political justifications for a new Community measure, in which rules relating to ship-source pollution are brought within the scope of Community law and their enforcement is regulated in detail.

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[9] See, for example, IMO Document MEPC 48/12

2.2. The justification for sanctions, including criminal sanctions, against offenders

Ensuring the safety of maritime transport and protecting the Community waters from ship-source pollution is undisputedly an objective of the Community. This objective is to be pursued by the Community policy according to Title V of the Treaty, in particular Article 80.2 thereof. The Community has the power to regulate behaviour in order to achieve a Community objective and it has the competence to legislate that the regulated behaviour (or the non-compliance with the regulated behaviour) be sanctioned at national level.

There is no explicit substantive Community competence in relation to criminal matters *per se*. However, to the extent that this is necessary for the achievement of Community objectives, the Community can oblige Member States to provide for criminal sanctions. Moreover, even where Community law does not provide expressly for sanctions (or criminal sanctions), Member States can be obliged to take appropriate steps to enforce Community law. Where criminal law is the only means to guarantee that Community law is enforced effectively, Member States can be obliged to provide for criminal sanctions. The relevant questions when determining whether a proposed measure falls within the competence of the Community therefore relate to the nature and the object of the intended action. As far as the measure in question is designed to improve maritime safety or protect the marine environment the Community is competent to deal with it.

In line with its policy on offences against environmental crime, the Commission considers that only criminal sanctions will be sufficiently effective for ensuring the intended effects of the ship-source pollution rules. A measure of a penal nature will serve as a Community-wide application of a deterrent sanction for those involved in the transport of polluting goods by sea. Sufficiently dissuasive effects will only be achieved by establishing that illegal discharges is a criminal offence, which demonstrates a social disapproval of a qualitatively different nature compared to compensation mechanisms under civil law or administrative measures. It therefore sends a strong signal, with a greater dissuasive effect, to potential offenders.

Aside from such considerations, however, there is another important feature of existing maritime law which particularly calls for criminal measures as far as pollution by shipping is concerned. This has to do with the international civil liability regimes that govern ship-source pollution incidents, which involve significant shortcomings with respect to their dissuasive effects.

As far as compensation of oil pollution is concerned, pollution by tankers is presently regulated at international level by the regime set up by the International Convention on Civil Liability for Oil Pollution (CLC) and the International Convention setting up the Oil Pollution Compensation Fund (Fund Convention), as amended by their Protocols of 1992, to which all coastal Member States are parties. The two conventions establish a two-tier liability system, which builds upon a strict – but in practically all cases limited – liability for the registered shipowner and a Fund, financed collectively by oil receivers, which provides supplementary compensation to victims of oil pollution damage who cannot obtain full compensation for the damage from the shipowner.

Thus, the focus of the international regime on oil pollution (and pollution by other hazardous and noxious substances, which is regulated by a convention which is yet to come into force) is mainly on the *compensation* of victims. The *liability* of the actual polluter is a considerably less prominent feature in these regimes, as the personal liability of the polluter is diluted by an almost unbreakable right of the shipowner to limit the liability and by collective compensation by cargo receivers through the Funds, irrespective of their actual role in the accident in question. The maritime pollution liability and compensation regime as they stand therefore provide few dissuasive elements to discourage those involved in the transport of dangerous or polluting goods by sea from engaging in negligent practices and is therefore of limited value for helping to prevent accidents from happening in the first place. However, because of international legal constraints, this international liability regime cannot be modified by means of EU-legislation. In the so-called Erika II Communication (COM(2000) 802 final), the Commission highlighted the need for two amendments in particular which would have such effects:

– The liability of the shipowner should be unlimited if it is proved that the pollution damage resulted from gross negligence on his part; and

– The prohibition of compensation claims for pollution damage against the charterer, manager and operator of the ship shall be removed from the relevant conventions.

The Commission has added that if efforts to achieve the appropriate improvements to the international liability and compensation rules fail, it will make a proposal for adopting Community legislation introducing a Europe-wide maritime pollution liability and compensation regime. Such an EU regime would necessitate the denunciation of the existing oil spill liability and compensation conventions. The Commission continues to pursue its efforts to amend the international regime along the line described above, but the outcome of these efforts is not yet certain.

For such reasons, the Commission considers that a measure of a penal nature needs to be introduced at EU-level to complement the existing regime for the civil liability and compensation for pollution damage. In this way, the mechanism of direct responsibility of those involved in the accident can be introduced and a regime providing for adequate punitive – and preventive – effects can be established without the aforementioned legal constraints and without any repercussions on the rapid and full compensation of victims. The so-called COPE Fund proposal, which formed part of the second Erika package (COM(2000) 802 final) already contained an article on financial penalties (article 10), but since that regulation as a whole has not been discussed in detail by the Council, that particular issue has not advanced.

In light of these considerations, the Commission, as announced in its Communication of 3 December 2002 on improving safety at sea in response to the *Prestige* accident (COM(2002) 681 final) and welcomed by the Council, proposes that ship-source pollution offences, when committed intentionally or by means of grossly negligent behaviour, shall be subject to sanctions, including criminal sanctions. The proposed Directive covers pollution from any ship, whether or not a tanker and covers not only oil pollution, but illegal discharges by noxious liquid substances as well. As explained, a measure of this nature is necessary to ensure a sufficiently clear link between the cause of the pollution and the accountability of the persons responsible for it. Considering the international legal constraints and the need to ensure efficient and full compensation of victims, a measure of a penal nature is the most effective mechanism to achieve that aim. Article 6 of the proposed Directive is therefore a

necessary element in ensuring an effective maritime safety and environment protection policy of the Community.

The proposed measure does not oblige Member States to change their fundamental system of criminal law, comprising, for instance, the doctrine of criminal responsibility or the general definitions of guilt. Measures approximating such principles and general definitions are not related specifically to the Community objectives in question. Nor does the scope extend as far as providing for (minimum) requirement of criminal sanctions, or address general principles of criminal law, administration of justice, and/or criminal jurisdiction and criminal procedure.

3. CONTENT OF THE PROPOSAL

This proposal consists of two distinct, but equally important measures. Firstly, it incorporates the applicable international discharge rules for ship-source pollution into Community law and regulates the enforcement of these rules in detail. This part of the proposal includes certain important new features, notably the inclusion of violations that have taken place in the high seas (sea areas beyond the jurisdiction of any State). Secondly, the proposed Directive establishes that violations of the discharge rules shall be criminal offences and provides guidance on the nature of the penalties to be awarded.

Both these measures fill important legal voids, as ship-source discharges are not currently sufficiently regulated by Community law, and as existing maritime law does not provide sufficient dissuation from engaging in dangerous practices by those involved in the carriage of polluting substances by sea. Both measures go beyond the problem of oil pollution, as they address pollution offences more generally, including pollution by chemical substances.

4. SPECIFIC CONSIDERATIONS

4.1. Purpose

The first article makes clear that the underlying objective of the Directive is to improve maritime safety and the protection of the marine environment and that the measures proposed are necessary means to this effect.

4.2. Definitions

The definitions serve to specify the extent of the measures proposed. The determination of whether discharges are illegal or not will be made on the basis of the Marpol 73/78 standards, while the definition of polluting substances incorporates oil and noxious liquid substances, as specified therein. The Marpol 73/78 standards are widely applicable worldwide and therefore well-known by the parties involved. As to the stringency of the standards, there is, in the assessment of the Commission, no immediate reason go beyond those standards. Marpol 73/78 covers any form of oil, for instance, and it generally refers to a maximum effluent of a mixture containing no more 15 parts per million). In layman's terms, the rules could be simplified by concluding that any discharge of oil which is actually visible in the water will most likely constitute a breach of the Marpol 73/78 standards. Using the Marpol 73/78 standards as the reference will also provide the legal basis to apply the rules beyond the territorial waters of the Member States, in accordance with the rules of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), to which the Community is a Contracting Party. Since the Directive is intended to cover any illegal discharge, the definition

includes pollution resulting from damage to the ship or its equipment, which is largely exempted from the Marpol 73/78 regime. It is worth noting, however, that according to article 6 of the proposal, sanctions for illegal discharges shall only be imposed if the pollution results from the intentional or grossly negligent conduct of the parties involved. The definition of ships is wide, covering all kinds of seagoing ships, as any kind of ship may engage in illegal discharges of polluting substances. For similar reasons, the definition of persons subject to sanctions covers a very wide range of potential offenders, including both natural and legal persons.

4.3. Geographical scope

The Directive covers ship-source marine pollution in all coastal waters of the Community, but goes beyond it by addressing the high seas as well. The exclusive economic zone is covered to the extent that such a zone has been established, in accordance with international law, by a Member State.

4.4. Enforcement within ports

Article 4 is based on the regime of port State enforcement as provided for in UNCLOS Part XII. The prohibition of discharges in sea areas beyond the jurisdiction of any State (the high seas) is a major step in emphasising the unacceptability of illegal discharges and the universality of the offence in question. Few States currently implement the possibility to enforce rules relating to discharge offences in the high seas, which is provided for in article 218.1 of UNCLOS. However, this aspect is of crucial relevance to many Member States, in particular to those Member States which have not established exclusive economic zones, which is notably the case in the Mediterranean Sea. When coupled with appropriate common surveillance and identification efforts, this rule will greatly enhance the possibilities of identifying offenders, even when the discharge has taken place outside the national boundaries of the States concerned. This, in the view of the Commission, is essential as pollution does not recognise national boundaries either and any limitation of the possibilities for States to take action which is based upon the sea area where the discharge took place is bound to be artificial. Some further specification of the grounds for undertaking an examination of a ship is dealt with by reference to existing Community law instruments, thus making full use of the information and data-sharing system which has been established within the Community for the monitoring of ships and ship-related discharges. The article does not address the nature of the judicial follow-up to alleged discharges, this issue being left for each Member States' national laws.

4.5. Enforcement with respect to ships in transit

UNCLOS implies some considerable limitations as to the methods of enforcing ship-source pollution laws for ships in transit in the coastal zones. However, by several States participating in a network of information-sharing and enforcement co-operation, a signifant share of the Community transit traffic can be covered through the mechanism outlined in article 5.

4.6. Criminal sanctions

Article 6 establishes that violations of the rules of this Directive shall be considered as criminal offences, in line with the Commission's proposal for a directive on the protection of the environment through criminal law.[10] Sanctions are to be imposed if any of the persons concerned have been found to have caused, participated in or instigated the act by intent or grossly negligent behaviour.

Article 6 further specifies that the sanctions against the offences shall be adequate as to their dissuasive nature, which is of evident importance if the discharge prohibitions are to be effective. Given the diverging practices between Member States when it comes to the imposition and nature of sanctions against pollution offences, the proposed article serves an important function in harmonising the Community approach to discharge violations, inter alia as to the persons subject to such sanctions, including, importantly, the shipowning company. In the view of the Commission, little is achieved by imposing light penalties on pollution offenders. Violations related to the deliberate spill of polluting substances, by for example by-passing an oily water separator or through the falsification of the record books should, in the view of the Commission, in themselves give rise to very substantial fines. Similarly, grossly negligent conduct leading up to major oil spills and significant damage needs to be very severely penalised in order to have the intended dissuasive effects. The sanctions will presumably frequently be in the form of monetary penalties, or fines, but as regards natural persons they may include, in the most serious cases, the deprivation of liberty. With regard to the effectiveness of the measure, it is essential that legal persons can be held liable and that sanctions against legal persons are taken throughout the Community. However, for some Member States the provision of criminal sanctions against legal persons may be difficult without changing fundamental principles of their national legal systems. Therefore, Member States would be able to foresee sanctions other than of criminal nature, as long as they are effective, proportionate and dissuasive. For instance they could include non-criminal fines, confiscation of proceeds, exclusion from entitlement to public benefit or aid and the placing under judicial supervision or judicial winding up orders. A reference to international law serves to take into account various restriction that may exist in this area, including Article 230 of UNCLOS. It is also clarified that the sanctions do not need to be related to the civil liabilities of the persons involved and that they shall not be insurable. The latter point is far from self-evident in current maritime insurance practices, where the insurance cover provided to ships through the policies of the mutual Protection and Indemnity Clubs (which provide cover for some 90% of the world's tonnage), may include monetary penalties, including sanctions of penal nature related to pollution offences.

4.7. Safeguards

Article 7 contains a number of safeguards which are established to ensure that measures taken in accordance with the Directive are not discriminatory or otherwise contrary to international law, including Section 7 of Part XII of the 1982 United Nations Convention on the Law of the Sea.

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[10] See footnote 4 above.

4.8. Accompanying measures

In order to be fully effective, the rules relating to the prohibition of pollution and their enforcement need to be accompanied by measures of a practical nature. This relates to the sharing of information between Member States and the establishment of common procedures for monitoring and identification of ships discharging polluting substances, many of which are already under way at EU or sub-regional level.[11] In addition, technologies allowing on-board equipment to record discharges as they occur and alert the relevant persons on board or ashore should be fully exploited, as such devices may significantly assist in determining in an objective way if and to what extent discharges have taken place.

4.9. Reporting

In order to ensure a harmonised application of the Directive and to evaluate its effectiveness, it is vital that the Commission is informed about the extent to which it has been applied in practice and the nature of penalties awarded. For this purpose Member States shall provide a report to the Commission every three year, as laid down in article 9.

4.10. Committee and amendments

Articles 10 and 11 refer to the new Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), created by Regulation 2099/2002 of 5 November 2002. The involvement of this Committee will facilitate, *inter alia*, the updating of the Directive in light of the continuous amendments of the Marpol 73/78 Convention at international level.

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[11] Reference is in particular made to the establishment of a trans-European data exchange network for vessel traffic monitoring (SafeSeaNet) and the on-going efforts to harmonise the policy for prosecuting and convicting offenders of ship-source discharge violations which are undertaken within the framework of the environmental protection of the Baltic Sea (HELCOM) and the North Sea (the Bonn Agreement). Furthermore, research financed by the Commission seems to indicate that 'tagging' oil by its DNA may be a very useful method of linking spilled oil at sea with a particular ship. See e.g. IMO Documents BLG 7/INF.5 and BLG 6/11.

2003/0037 (COD)

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on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission[12],

Having regard to the opinion of the European Economic and Social Committee[13],

Having regard to the opinion of the Committee of the Regions[14],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[15],

Whereas:

(1) The Community's maritime safety policy is aimed at a high level of safety and environmental protection and is based on the understanding that all parties involved in the transport of goods by sea have a responsibility for ensuring that ships used in Community waters comply with applicable rules and standards;

(2) The material standards for ship-source pollution discharges in all Member States are based upon the Marpol 73/78 Convention; but these rules are being ignored on a daily basis by ships sailing in Community waters, without corrective action being taken;

(3) The implementation of Marpol 73/78 shows discrepancies among Member States and there is thus a need to harmonise its implementation at Community level; in particular the practice of Member States relating to the imposition of sanctions for illegal discharges by ships shows significant differences;

(4) Measures of a dissuasive nature form an integral part of the Community's maritime safety policy, as they ensure a link between the responsibility of the parties involved in the transport of polluting goods by sea and their exposure to sanctions; in order to achieve effective protection of the environment, there is therefore a need for effective, dissuasive and proportionate sanctions;

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12 OJ C …, …, p. …
13 OJ C …, …, p. …
14 OJ C …, …, p. …
15 OJ C …, …, p. …

(5) Neither the international regime for the civil liability and compensation of oil pollution nor that relating to pollution by other hazardous or noxious substances provide sufficient dissuasive effects to discourage the parties involved in the transport of hazardous cargoes by sea from engaging in substandard practices; the required dissuasive effects can only be achieved through the introduction of sanctions of a penal nature, which apply to any person who causes or contributes to marine pollution deliberately or through gross negligence;

(6) Legal persons should also be subject to sanctions throughout the Community, because breaches may be committed in the interest of legal persons or on their behalf;

(7) Measures of a penal nature are not related to the civil liability of the parties concerned and are thus not subject to any rules relating to the limitation or channelling of civil liabilities, nor do they limit the efficient compensation of victims of pollution incidents;

(8) There is a need for further co-operation among Member States to ensure that illegal discharges are detected in time and that the offenders are identified;

(9) The Directive is in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty. The incorporation of the international ship-source pollution standards into Community law and the establishment of sanctions, including criminal sanctions for violations of them is a necessary measure to achieve a high level of safety and environmental protection in maritime transport. This can be effectively achieved only by the Community by means of harmonised rules. The Directive confines itself to the minimum required in order to achieve this objective and does not go beyond what is necessary for that purpose;

(10) The Directive fully respects the Charter of fundamental rights.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to incorporate the international standards for ship-source pollution into Community law and to ensure that persons responsible for illegal discharges are subject to adequate sanctions, including criminal sanctions. The underlying objective of the Directive is to improve maritime safety and to protect the marine environment from pollution by ships.

Article 2
Definitions

For the purpose of this Directive:

1. "Marpol 73/78" shall mean the International Convention for the prevention of pollution from ships, 1973 and its 1978 Protocol, as amended[16];

2. "Polluting substances" shall mean substances covered by annexes I (oil) and II (noxious liquid substances in bulk) of Marpol 73/78;

3. "Illegal discharges" shall mean discharges in violation of Marpol 73/78 and shall include discharges resulting from damage to the ship or its equipment, which are exempted under Marpol 73/78 Annex I, Regulation 11(b) and Annex II, Regulation 6(b).

4. "Ship" shall mean a seagoing vessel, irrespective of its flag, of any type whatsoever operating in the marine environment and shall include hydrofoil boats, air-cushion vehicles, submersibles and floating craft;

5. "Person" shall mean natural or legal person.

6. "Legal person" shall mean any legal entity having such status under the applicable national law, except for States or any other public bodies acting in the exercise of their prerogative of public power, as well as public international organisations.

Article 3
Scope

1. This Directive shall apply to discharges of polluting substances in:

   (a) the internal waters, including ports, of a Member State;

   (b) the territorial sea of a Member State;

   (c) straits used for international navigation subject to the regime of transit passage, as laid down in Part III, section 2, of the 1982 United Nations Convention on the Law of the Sea, to the extent a Member State exercises jurisdiction over such straits;

   (d) the exclusive economic zone of a Member State, established in accordance with international law; and

   (e) the high seas.

2. This Directive shall apply to illegal discharges of any ship, irrespective of its flag, 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.

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[16] For reference purposes, a summary of the relevant Marpol 73/78 discharge rules relating to the discharge of oil and noxious liquid substances is provided in Annex I (Part I and Part II).

Article 4

Enforcement Measures with respect to ships within a port of a Member State

1. If irregularities or information give rise to suspicion that a ship which is within a port or at an off-shore terminal of a Member State has engaged in an illegal discharge of polluting substances in any of the sea areas referred to in Article 3.1, the Member State shall ensure that an appropriate examination is undertaken in accordance with its national law.

2. A non-exhaustive list of irregularities or information within the meaning of paragraph 1 is provided in Annex II.

3. As far as the examination referred to in paragraph 1 reveals facts that could constitute evidence on such an illegal discharge, the competent authorities in criminal matters shall be informed.

Article 5

Enforcement with respect to ships in transit

If the suspected illegal discharge takes place in a sea area referred to in points (b), (c), (d) or (e) of article 3.1 and the ship which is suspected of the discharge does not call at a port of the Member State holding the information relating to the suspected discharge, the following shall apply:

- If the next port of call of the ship is another Member State, the Member States concerned shall co-operate closely in the examination referred to in article 4 paragraph 1 and in deciding on the appropriate administrative measures in respect of any such discharge;

- If the next port of call of the ship is a port of a State outside the Community, the Member State shall take the necessary measures to ensure that the next port of call of the ship is informed about the suspected discharge and shall request the State of the next port of call to take the appropriate measures in respect of any such discharge.

Article 6

Criminal offence and sanctions

1. Member States shall ensure that the illegal discharge of polluting substances, the participation in and instigation of such discharge are regarded as criminal offences, when committed intentionally or by gross negligence.

2. Any person (i.e. not only the shipowner but also the owner of the cargo, the classification society or any other person involved), who has been found by a court of law responsible within the meaning of paragraph 1, shall be subject to sanctions, including, where appropriate, criminal sanctions.

3. The sanctions referred to in paragraph 2 shall be effective, proportionate and dissuasive.

4. As concerns natural persons, criminal penalties shall be provided, including in the most serious cases, the deprivation of liberty, having regard to applicable international law.

5. As regards natural and legal persons, the Member States shall provide for, *inter alia*, the following sanctions:

(a) fines;

(b) confiscation of the proceeds gained by the offences referred to in paragraph 1.

In appropriate cases, Member States shall also provide for the following sanctions:

(c) a permanent or temporary ban on engaging in commercial activities;

(d) placing under judicial supervision;

(e) judicial winding-up;

(f) a ban on access to public assistance or subsidies.

6. Fines referred to in this article shall not be insurable.

Article 7
Safeguards

Member States shall apply the provisions of this Directive without any discrimination in form or in fact among foreign ships and in accordance with applicable international law, including Section 7 of Part XII of the 1982 United Nations Convention on the Law of the Sea, and they shall promptly notify the flag State of the vessel and any other State concerned of measures taken in accordance with this Directive.

Article 8
Accompanying measures

Member States and the Commission shall co-operate, in close collaboration with the European Maritime Safety Agency and, where appropriate, in the framework of the action programme to respond to accidental or deliberate marine pollution as set up by Decision N° 2850/2000/EC[17] in order to:

(a) develop the necessary information systems required for the effective implementation of this Directive;

(b) establish common practices and guidelines for, in particular:

[17] Decision No 2850/2000/EC of the European Parliament and of the Council of 20 December 2000 setting up a Community framework for cooperation in the field of accidental or deliberate marine pollution OJ L 332 , 28.12.2000, p. 1.

- the monitoring and early identification of ships discharging polluting substances in violation of this Directive, including, where appropriate, on-board monitoring equipment;

- reliable methods of tracing polluting substances in the sea to a particular ship; and

- the effective legal enforcement of this Directive.

Article 9
Reporting

Every three years, Member States shall transmit a report to the Commission on the application by their courts and other relevant authorities of this Directive. Based on these reports, the Commission shall submit a Community report to the European Parliament and the Council.

Article 10
Committee

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), created by article 3 of Regulation (EC) No 2099/2002 of 5 November 2002 of the European Parliament and of the Council establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS).[18]

2. Where reference is made to this paragraph, articles 5 and 7 of Decision 1999/468/EC[19] shall apply, having regard to the provisions of article 8 thereof. The period laid down in article 5.6 of Decision 1999/468/EC shall be set at three months.

3. The Commission shall regularly inform the Committee set up by Decision 2850/2000 of any proposed measures or other relevant activities concerning the response to marine pollution.

Article 11
Amendment procedure

1. The annexes of this Directive and the references to Marpol 73/78 may be amended in accordance with the procedure laid down in article 10.2.

2. The amendments to the Marpol 73/78 referred to in paragraph 1 may be excluded from the scope of this Directive, pursuant to article 5 of Regulation (EC) No 2099/2002.

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[18] OJ L 324, 29.11.2002, p.1.
[19] OJ L 184, 17.7.1999, p. 23.

Article 12
Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than six months following the date of its entry into force and forthwith inform the Commission thereof.

2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 13
Entry into force

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

Article 14
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

Summary, for reference purposes, of the Marpol 73/78 discharge regulations relating to discharges of oil and noxious liquid substances, as referred to in article 2.2

Part I: Oil (Marpol 73/78, Annex I)

For the purposes of Marpol 73/78 Annex I, 'oil' means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals which are subject to the provisions of Marpol 73/78 Annex II) and 'oily mixture' means a mixture with any oil content.

Excerpts of the relevant provisions of Marpol 73/78 Annex I:

Regulation 9: Control of discharge of oil

(1) Subject to the provisions of regulations 10 and 11 of this Annex and paragraph (2) of this regulation, any discharge into the sea of oil or oily mixtures from ships to which this Annex applies shall be prohibited except when all the following conditions are satisfied:

(a) for an oil tanker, except as provided for in subparagraph (b) of this paragraph:

(i) the tanker is not within a special area;

(ii) the tanker is more than 50 nautical miles from the nearest land;

(iii) the tanker is proceeding en route;

(iv) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile;

(v) the total quantity of oil discharged into the sea does not exceed for existing tankers 1/15,000 of the total quantity of the particular cargo of which the residue formed a part, and for new tankers 1/30,000 of the total quantity of the particular cargo of which the residue formed a part; and

(vi) the tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required by regulation 15 of this Annex.

(b) from a ship of 400 tons gross tonnage and above other than an oil tanker and from machinery space bilges excluding cargo pump-room bilges of an oil tanker unless mixed with oil cargo residue:

(i) the ship is not within a special area;

(ii) the ship is proceeding en route;

(iii) the oil content of the effluent without dilution does not exceed 15 parts per million; and

(iv) the ship has in operation [monitoring, control and filtering equipment] as required by regulation 16 of this Annex.

(2) In the case of a ship of less than 400 tons gross tonnage other than an oil tanker whilst outside the special area, the [flag State] Administration shall ensure that it is equipped as far as practicable and reasonable with installations to ensure the storage of oil residues on board and their discharge to reception facilities or into the sea in compliance with the requirements of paragraph (1)(b) of this regulation.

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(4) The provisions of paragraph (1) of this regulation shall not apply to the discharge of clean or segregated ballast or unprocessed oily mixtures which without dilution have an oil content not exceeding 15 parts per million and which do not originate from cargo pump-room bilges and are not mixed with oil cargo residues.

(5) No discharge into the sea shall contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in this regulation.

(6) The oil residues which cannot be discharged into the sea in compliance with paragraphs (1), (2) and (4) of this regulation shall be retained on board or discharged to reception facilities.

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Regulation 10: Methods for the prevention of oil pollution from ships while operating in special areas

(1) For the purpose of this Annex, the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, the ``Gulfs area'', the Gulf of Aden area, the Antarctic area and the North- West European waters, [as further defined and specified]

(2) Subject to the provisions of regulation 11 of this Annex:

(a) Any discharge into the sea of oil or oily mixture from any oil tanker and any ship of 400 tons gross tonnage and above other than an oil tanker shall be prohibited while in a special area. […]

(b) […] Any discharge into the sea of oil or oily mixture from a ship of less than 400 tons gross tonnage, other than an oil tanker, shall be prohibited while in a special area, except when the oil content of the effluent without dilution does not exceed 15 parts per million.

(3)(a) The provisions of paragraph (2) of this regulation shall not apply to the discharge of clean or segregated ballast.

(b) The provisions of subparagraph (2)(a) of this regulation shall not apply to the discharge of processed bilge water from machinery spaces, provided that all of the following conditions are satisfied:

(i) the bilge water does not originate from cargo pump-room bilges;

(ii) the bilge water is not mixed with oil cargo residues;

(iii) the ship is proceeding en route;

(iv) the oil content of the effluent without dilution does not exceed 15 parts per million;

(v) the ship has in operation oil filtering equipment complying with regulation 16(5) of this Annex; and

(vi) the filtering system is equipped with a stopping device which will ensure that the discharge is automatically stopped when the oil content of the effluent exceeds 15 parts per million.

(4)(a) No discharge into the sea shall contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in this regulation.

(b) The oil residues which cannot be discharged into the sea in compliance with paragraph (2) or (3) of this regulation shall be retained on board or discharged to reception facilities.

(5) Nothing in this regulation shall prohibit a ship on a voyage only part of which is in a special area from discharging outside the special area in accordance with regulation 9 of this Annex.

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Regulation 11: Exceptions

Regulations 9 and 10 of this Annex shall not apply to:

(a) the discharge into the sea of oil or oily mixture necessary for the purpose of securing the safety of a ship or saving life at sea; or

(b) [not applicable][20]

(c) the discharge into the sea of substances containing oil, approved by the [flag State] Administration, when being used for the purpose of combating specific pollution incidents in order to minimize the damage from pollution. Any such discharge shall be subject to the approval of any Government in whose jurisdiction it is contemplated the discharge will occur.

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[20] As provided in article 2.3, the exception provided for in paragraph 11(b) of Marpol 73/78, Annex I, does not apply in the context of the present Directive. The said paragraph reads:

"(b) the discharge into the sea of oil or oily mixture resulting from damage to a ship or its equipment:

(i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge; and

(ii) except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or"

Part II: Noxious liquid substances (Marpol 73/78 Annex II)

Excerpts of the relevant provisions of Marpol 73/78 Annex II:

Regulation 3: Categorization and listing of noxious liquid substances

(1) For the purpose of the regulations of this Annex, noxious liquid substances shall be divided into four categories as follows:

(a) Category A: Noxious liquid substances which if discharged into the sea from tank cleaning or deballasting operations would present a major hazard to either marine resources or human health or cause serious harm to amenities or other legitimate uses of the sea and therefore justify the application of stringent anti-pollution measures.

(b) Category B: Noxious liquid substances which if discharged into the sea from tank cleaning or deballasting operations would present a hazard to either marine resources or human health or cause harm to amenities or other legitimate uses of the sea and therefore justify the application of special anti-pollution measures.

(c) Category C: Noxious liquid substances which if discharged into the sea from tank cleaning or deballasting operations would present a minor hazard to either marine resources or human health or cause minor harm to amenities or other legitimate uses of the sea and therefore require special operational conditions.

(d) Category D: Noxious liquid substances which if discharged into the sea from tank cleaning or deballasting operations would present a recognizable hazard to either marine resources or human health or cause minimal harm to amenities or other legitimate uses of the sea and therefore require some attention in operational conditions.

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[Further guidelines on the categorization of substances, including a list of categorized substances are given in regulations 3(2)-(4) and 4 and the appendices of Marpol 73/78 Annex II]

Regulation 5: Discharge of noxious liquid substances

Category A, B and C substances outside special areas and Category D substances in all areas

Subject to the provisions of […] regulation 6 of this Annex,

(1) The discharge into the sea of substances in Category A as defined in regulation 3(1)(a) of this Annex or of those provisionally assessed as such or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited. If tanks containing such substances or mixtures are to be washed, the resulting residues shall be discharged to a reception facility until the concentration of the substance in the effluent to such facility is at or below 0.1% by weight and until the tank is empty, with the exception of phosphorus, yellow or white, for which the residual concentration shall be 0.01% by weight. Any water subsequently added to the tank may be discharged into the sea when all the following conditions are satisfied:

(a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;

(b) the discharge is made below the waterline, taking into account the location of the seawater intakes; and

(c) the discharge is made at a distance of not less than 12 nautical miles from the nearest land in a depth of water of not less than 25 m.

(2) The discharge into the sea of substances in Category B as defined in regulation 3(1)(b) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:

(a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;

(b) the procedures and arrangements for discharge are approved by the [flag State] Administration. Such procedures and arrangements shall be based upon standards developed by the [IMO] and shall ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 1 part per million;

(c) the maximum quantity of cargo discharged from each tank and its associated piping system does not exceed the maximum quantity approved in accordance with the procedures referred to in subparagraph (b) of this paragraph, which shall in no case exceed the greater of 1 m^3 or 1/3,000 of the tank capacity in m^3;

(d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and

(e) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.

(3) The discharge into the sea of substances in Category C as defined in regulation 3(1)(c) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:

(a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;

(b) the procedures and arrangements for discharge are approved by the [flag State] Administration. Such procedures and arrangements shall be based upon standards developed by the [IMO] and shall ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 10 parts per million;

(c) the maximum quantity of cargo discharged from each tank and its associated piping system does not exceed the maximum quantity approved in accordance with the procedures referred to in subparagraph (b) of this paragraph, which shall in no case exceed the greater of 3 m^3 or 1/1,000 of the tank capacity in m^3;

(d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and

(e) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.

(4) The discharge into the sea of substances in Category D as defined in regulation 3(1)(d) of this Annex, or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:

(a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;

(b) such mixtures are of a concentration not greater than one part of the substance in ten parts of water; and

(c) the discharge is made at a distance of not less than 12 nautical miles from the nearest land.

(5) Ventilation procedures approved by the [flag State] Administration may be used to remove cargo residues from a tank. Such procedures shall be based upon standards developed by the [IMO]. Any water subsequently introduced into the tank shall be regarded as clean and shall not be subject to paragraph (1), (2), (3) or (4) of this regulation.

(6) The discharge into the sea of substances which have not been categorized, provisionally assessed, or evaluated as referred to in regulation 4(1) of this Annex, or of ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited.

Category A, B and C substances within special areas [as defined in Marpol 73/78 Annex II, Regulation 1, including the Baltic Sea]

Subject to the provisions of paragraph (14) of this regulation and regulation 6 of this Annex,

(7) The discharge into the sea of substances in Category A as defined in regulation 3(1)(a) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited. If tanks containing such substances or mixtures are to be washed, the resulting residues shall be discharged to a reception facility which the States bordering the special area shall provide in accordance with regulation 7 of this Annex, until the concentration of the substance in the effluent to such facility is at or below 0.05% by weight and until the tank is empty, with the exception of phosphorus, yellow or white, for which the residual concentration shall be 0.005% by weight. Any water subsequently added to the tank may be discharged into the sea when all the following conditions are satisfied:

(a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;

(b) the discharge is made below the waterline, taking into account the location of the seawater intakes; and

(c) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.

(8) The discharge into the sea of substances in Category B as defined in regulation (3)(1)(b) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:

(a) the tank has been prewashed in accordance with the procedure approved by the [flag State] Administration and based on standards developed by the [IMO] and the resulting tank washings have been discharged to a reception facility;

(b) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;

(c) the procedures and arrangements for discharge and washings are approved by the [flag State] Administration. Such procedures and arrangements shall be based upon standards developed by the [IMO] and shall ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 1 part per million;

(d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and

(e) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.

(9) The discharge into the sea of substances in Category C as defined in regulation 3(1)(c) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:

(a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;

(b) the procedures and arrangements for discharge are approved by the [flag State] Administration. Such procedures and arrangements shall be based upon standards developed by the [IMO] and shall ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 1 part per million;

(c) the maximum quantity of cargo discharged from each tank and its associated piping system does not exceed the maximum quantity approved in accordance with the procedures referred to in subparagraph (b) of this paragraph which shall in no case exceed the greater of 1 m^3 or 1/3,000 of the tank capacity in m^3;

(d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and

(e) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.

(10) Ventilation procedures approved by the [flag State] Administration may be used to remove cargo residues from a tank. Such procedures shall be based upon standards developed by the [IMO]. Any water subsequently introduced into the tank shall be regarded as clean and shall not be subject to paragraph (7), (8) or (9) of this regulation.

(11) The discharge into the sea of substances which have not been categorized, provisionally assessed or evaluated as referred to in regulation 4(1) of this Annex, or of ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited.

(12) Nothing in this regulation shall prohibit a ship from retaining on board the residues from a Category B or C cargo and discharging such residues into the sea outside a special area in accordance with paragraph (2) or (3) of this regulation, respectively.

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Regulation 6: Exceptions

Regulation 5 of this Annex shall not apply to:

(a) the discharge into the sea of noxious liquid substances or mixtures containing such substances necessary for the purpose of securing the safety of a ship or saving life at sea; or

(b) [not applicable][21]

(c) the discharge into the sea of noxious liquid substances or mixtures containing such substances, approved by the [flag State] Administration, when being used for the purpose of combating specific pollution incidents in order to minimize the damage from pollution. Any such discharge shall be subject to the approval of any Government in whose jurisdiction it is contemplated the discharge will occur.

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[21] As provided in article 2.3, the exception provided for in paragraph 6(b) of Marpol 73/78, Annex II, does not apply in the context of the present Directive. The said paragraph reads:

"(b) the discharge into the sea of noxious liquid substances or mixtures containing such substances resulting from damage to a ship or its equipment:

(i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge; and

(ii) except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or".

ANNEX II

Non-exhaustive list of irregularities or information, as referred to in article 4.1

(1) Any irregularities with respect to the oil and other relevant record books, or otherwise related to potential pollution offences, discovered in port State control inspections carried out under Directive 95/21/EC;

(2) Any irregularities with respect to the delivery of ship-generated waste or cargo residues, or the notification thereof, as required under Directive 2000/59/EC;

(3) Any information obtained from another Member State relating to potential pollution offences of the ship, obtained through the procedures foreseen in Directive 2002/59/EC or otherwise; or

(4) Any other information by persons involved in the operation of the ship, including pilots, which suggests irregularities relating to the respect of the obligations under this Directive.

FINANCIAL STATEMENT

The financial impact of this instrument is limited to shipowners and other players in the maritime world that act in violation, intentionally or by means of gross negligence, of rules which are applicable since many years. As no financial impact at Community level is foreseen, a more detailed financial statement is therefore deemed redundant.