

COMMON POSITION (EC) No 3/2005**adopted by the Council on 7 October 2004****with a view to the adoption of Directive 2005/.../EC of the European Parliament and of the Council of... on ship-source pollution and on the introduction of sanctions for infringements****(Text with EEA relevance)**

(2005/C 25E/03)

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,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

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 in all Member States for discharges of polluting substances from ships are based upon the Marpol 73/78 Convention; however these rules are being ignored on a daily basis by a very large number of 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 practices of Member States relating to the imposition of sanctions for discharges of polluting substances from ships differ significantly.
- (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 each 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.

(5) To that end it is essential to approximate existing legal provisions, in particular, on the one hand, the precise definition of the infringement in question and the cases of exemption, which are the subject of this Directive and, on the other hand, minimum rules for penalties, liability and jurisdiction, which are the subject of Council Framework Decision 2005/.../JHA of... to strengthen the criminal law framework for the enforcement of the law against ship-source pollution.

(6) The purpose of this Directive is, among other things, to provide a definition of discharges and consequently to render more effective the implementation of Framework Decision 2005/.../JHA in order to prevent such infringements.

(7) Neither the international regime for the civil liability and compensation of oil pollution nor that relating to pollution by other hazardous or noxious substances provides 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 applying to any person who causes or contributes to marine pollution; sanctions should be applicable not only to the shipowner or the master of the ship, but also the owner of the cargo, the classification society or any other person involved.

(8) Ship-source discharges of polluting substances should be regarded as infringements if committed with intent, recklessly or by serious negligence.

(9) Sanctions for discharges of polluting substances from ships 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.

(10) There is a need for further effective cooperation among Member States to ensure that discharges of polluting substances from ships are detected in time and that the offenders are identified.

⁽¹⁾ OJ C 220, 16.9.2003, p. 72.

⁽²⁾ Opinion of the European Parliament of 13 January 2004 (OJ C 92E, 21.4.2004, p. 77).

- (11) Where there is clear, objective evidence of a discharge causing major damage or a threat of major damage, Member States should submit the matter to their competent authorities with a view to instituting proceedings consistent with Article 220 of the 1982 United Nations Convention on the Law of the Sea.
- (12) This 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, which may include criminal or administrative 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 by the Community only 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. It does not prevent Member States from taking more stringent measures against ship-source pollution in conformity with international law.
- (13) This Directive fully respects the Charter of fundamental rights of the European Union,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

1. The purpose of this Directive is to ensure that persons responsible for ship-source pollution are subject to appropriate sanctions, in order to improve maritime safety and to enhance protection of the marine environment from pollution by ships.
2. This Directive does not prevent Member States from taking more stringent measures against ship-source pollution in conformity with international law.

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 of 1973 and its 1978 Protocol, as amended from time to time.

2. 'Polluting substances' shall mean substances covered by Annexes I (oil) and II (noxious liquid substances in bulk) to Marpol 73/78.
3. 'Discharge' shall mean any release howsoever caused from a ship, as referred to in Article 2 of Marpol 73/78.
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.

Article 3

Scope

1. This Directive shall apply, in accordance with international law, to discharges of polluting substances in:
 - (a) the internal waters, including ports, of a Member State, insofar as the Marpol regime is applicable;
 - (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 or equivalent zone of a Member State, established in accordance with international law; and
 - (e) the high seas.
2. This Directive shall apply to discharges of polluting substances from 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.

Article 4

Infringements

Member States shall ensure that ship-source discharges of polluting substances into any of the areas referred to in Article 3(1) are regarded as infringements if committed with intent, recklessly or by serious negligence.

*Article 5***Exceptions**

1. A discharge of polluting substances into any of the areas referred to in Article 3(1) shall not be regarded as an infringement if it satisfies the conditions set out in Annex I, Regulations 11(a) or 11(c) or in Annex II, Regulations 6(a) or 6(c) of Marpol 73/78.

2. A discharge of polluting substances into the areas referred to in Article 3(1)(c), (d) and (e) shall not be regarded as an infringement for the owner, the master or the crew when acting under the master's responsibility if it satisfies the conditions set out in Annex I, Regulation 11(b) or in Annex II, Regulation 6(b) of Marpol 73/78.

3. A discharge of polluting substances into any of the areas referred to in Article 3(1) shall not be regarded as an infringement if it satisfies the conditions set out in Annex I, Regulations 9 or 10 or in Annex II, Regulation 5 of Marpol 73/78.

*Article 6***Enforcement measures with respect to ships within a port of a Member State**

1. If irregularities or information give rise to a suspicion that a ship which is voluntarily within a port or at an off-shore terminal of a Member State has been engaged in or is engaging in a discharge of polluting substances into any of the areas referred to in Article 3(1), that Member State shall ensure that an appropriate inspection, taking into account the relevant guidelines adopted by the International Maritime Organisation (IMO) is undertaken in accordance with its national law.

2. Insofar as the inspection referred to in paragraph 1 reveals facts that could indicate an infringement within the meaning of Article 4, the competent authorities of that Member State and of the flag State shall be informed.

*Article 7***Enforcement measures by coastal States with respect to ships in transit**

1. If the suspected discharge of polluting substances takes place in the areas referred to in Article 3(1)(b), (c), (d) or (e) 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:

(a) If the next port of call of the ship is another Member State, the Member States concerned shall cooperate closely in the

inspection referred to in Article 6(1) and in deciding on the appropriate administrative measures in respect of any such discharge;

(b) 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.

2. Where there is clear objective evidence that a ship navigating in the areas referred to in Article 3(1)(b) or (d) has, in the area referred to in Article 3(1)(d), committed an infringement resulting in a discharge causing major damage or a threat of major damage to the coastline or related interests of the Member State concerned, or to any resources of the areas referred to in Article 3(1)(b) or (d), that State shall, subject to Part XII, Section 7 of the 1982 United Nations Convention on the Law of the Sea, provided that the evidence so warrants, submit the matter to its competent authorities with a view to instituting proceedings, including detention of the ship, in accordance with its national law.

3. In any case, the authorities of the flag State shall be informed.

*Article 8***Sanctions**

1. Member States shall take the necessary measures to ensure that the infringements referred to in Article 4 are subject to effective, proportionate and dissuasive sanctions, which may include criminal or administrative sanctions.

2. Each Member State shall take the measures necessary to ensure that the sanctions referred to in paragraph 1 apply to any person who is found responsible for an infringement as referred to in Article 4.

*Article 9***Compliance with international law**

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 10***Accompanying measures**

For the purposes of this Directive, Member States and the Commission shall cooperate, where appropriate, 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 No 2850/2000/EC ⁽¹⁾ in order to:

- (a) develop the necessary information systems required for the effective implementation of this Directive;
- (b) establish common practices and guidelines on the basis of those existing at international level for, in particular:
 - 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 enforcement of this Directive.

*Article 11***Reporting**

Every three years, Member States shall transmit a report to the Commission on the application of this Directive by the competent authorities. On the basis of these reports, the Commission shall submit a Community report to the European Parliament and the Council.

*Article 12***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 the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS). ⁽²⁾

2. The Commission shall regularly inform the Committee set up by Decision No 2850/2000/EC of any proposed measures

or other relevant activities concerning the response to marine pollution.

*Article 13***Amendment procedure**

Amendments to Marpol 73/78 as referred to in Article 2, point 1 may be excluded from the scope of this Directive, pursuant to Article 5 of Regulation (EC) No 2099/2002.

*Article 14***Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than..... ⁽³⁾ and forthwith inform the Commission thereof.

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 15***Entry into force**

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

*Article 16***Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

⁽¹⁾ 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). Decision amended by Decision No 787/2004/EC (OJ L 138, 30.4.2004, p. 12).

⁽²⁾ OJ L 324, 29.11.2002, p. 1. Regulation as amended by Commission Regulation (EC) No 415/2004 (OJ L 68, 6.3.2004, p. 10).

⁽³⁾ 18 months following the date of its entry into force.

ANNEX

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.

[...]
3. 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.
4. 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.
5. 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.

[...]

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 northwest 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 paragraphs 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.

[...]

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) 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 minimising 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
- (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 minimise 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.

PART II: NOXIOUS LIQUID SUBSTANCES (MARPOL 73/78 ANNEX II)

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

Regulation 3: Categorisation 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 recognisable 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.

[...]

[Further guidelines on the categorisation of substances, including a list of categorised 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 m³ or 1/3 000 of the tank capacity in m³;
 - (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 m³ or 1/1 000 of the tank capacity in m³;
 - (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 paragraphs 1, 2, 3 or 4 of this regulation.
6. The discharge into the sea of substances which have not been categorised, 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 m³ or 1/3 000 of the tank capacity in m³;
 - (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 categorised, 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 paragraphs 2 or 3 of this regulation, respectively.

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) 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 minimising 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
 - (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 minimise 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.
-

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

In the framework of the codecision procedure (Article 251/TEC), the Council reached, on 11 June 2004, a political agreement on the draft Directive of the European Parliament and of the Council on ship-source pollution and on the introduction of sanctions for infringements⁽¹⁾. Following legal/linguistic revision, the Council adopted its common position on 7 October 2004.

In taking its position, the Council took account of the opinion of the European Parliament in its first reading on 13 January 2004⁽²⁾ and of the opinion of the Economic and Social Committee⁽³⁾ ⁽⁴⁾.

The Directive aims at transposing into Community law the international rules on ship-source pollution of the Marpol Convention, by providing that violations of the discharge rules are infringements, and establishing harmonised rules for their enforcement. It also aims at extending the rules, on the one hand, to cover discharges of oil resulting from damages when committed intentionally, recklessly or by serious negligence and, on the other hand, to ensure the widest possible enforcement under the United Nations Convention on the Law of the Sea (Unclos).

II. ANALYSIS OF THE COMMON POSITION

In the aftermath of the accident of the oil tanker Prestige, the Council emphasised not only the importance of the maritime safety policy but the necessity to ensure that any person who has caused or contributed to a pollution incident through grossly negligent behaviour should be subject to appropriate sanctions. The approach adopted by the Council to this Commission proposal, submitted in March 2003 and backed by a European Council conclusion that same month highlighting the choice of the appropriate legal basis, is founded on the principle of making full use of the Community's rights under Unclos, whilst complying with Member States' obligations under the International Convention for the Prevention of Pollution from Ships (Marpol).

The Council considers that the transposition of the Marpol regime regarding ship-source pollution into Community law will ensure a stricter and more harmonised application and enforcement in the Member States. It shares the view that it is necessary to establish that all discharges of polluting substances are considered infringements if they are committed with intent, recklessly or by serious negligence.

Following the principle of respecting the Marpol provisions, exceptions are provided in the case when a discharge is made in order to save lives or the ship itself. The exception under the Marpol Convention concerning the owner and the master in cases of discharges resulting from accidents applies in international sea areas and the exclusive economic or equivalent zone of Member States. In these cases, as a logical consequence of the Marpol provisions, the crew is protected when acting under the master's responsibility. In Member States' internal waters and territorial sea, on the other hand, the Council deems it appropriate to exercise the Community's rights under Article 211(4) of Unclos, in order to enhance the protection of the coastline, and to lift the exception provided for discharges resulting from accidents.

The Council considers that sanctions against infringements of ship-source pollution have to be effective, proportionate and dissuasive and may include criminal or administrative sanctions. It also agrees that these sanctions have to apply to any person found responsible for marine pollution, i.e. shall cover the whole chain of responsibility. Whilst the infringements are defined in the Directive, the Council is of the view that the minimum binding rules for criminal penalties, liability and jurisdiction should be established in the parallel Framework Decision proposed by the Commission and examined by the Council in its 'Justice and Home Affairs' formation.

⁽¹⁾ The Commission presented its proposal on 7 March 2003 (OJ C 76, 25.3.2004, p. 5) under the title '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'.

⁽²⁾ Doc. 5181/04 CODEC 24 MAR 2 ENV 8 DROIPE 1 (not yet published in the Official Journal).

⁽³⁾ OJ C 220, 16. 9.2003, p. 72.

⁽⁴⁾ The Committee of the Regions decided not to deliver an opinion.

The Council welcomes the streamlining of strict enforcement measures against ships calling at any port of a Member State in line with the relevant international guidelines. It endorses the enhanced information sharing on suspected discharges between Member States and third countries, either as port or as flag States, in order to facilitate the enforcement of the appropriate measures.

Finally, the Council is of the view that all possibilities under the Unclos Convention to protect the coastline and the resources of this area shall be used, including enforcement measures by coastal States with respect to ships in transit navigating in the territorial sea or exclusive economic or equivalent zone in accordance with Article 220(6) of Unclos, when there is clear objective evidence of a discharge causing major damage or threat of major damage to the coastline or any resources of the territorial sea or the exclusive economic or equivalent zone. In this case, the Member State concerned shall submit the matter to its competent authorities with a view to instituting proceedings, including detention of the ship, in accordance with its national law.

III. AMENDMENTS

Considering the fact that the Council follows a considerably different approach to this draft Directive compared to the originally proposed text, as pointed out above, it was not possible to reflect the major part of the amendments proposed by the European Parliament in first reading in the common position.

- The concept of setting up a European coastguard (amendments 6 and 22) was not part of the original Commission proposal. Whilst the Council considers it important to address means enhancing the protection of the European coastline, it does not want to prejudge any Commission initiative to that effect, possibly leading to a separate legislative act, which the Council will consider with interest.
- Although the Council shares the EP's concerns with regard to the implementation of Community legislation on maritime safety (amendments 3, 19, 20 and 31), it feels that the enforcement of existing legislative acts, like Directive 2000/59/EC on port reception facilities, falls into the competence of the Member States and its monitoring is one of the tasks of the Commission under the Treaty.
- As the objective of this Directive is to clearly define discharges of polluting substances from ships as infringements under Community law, the Council is of the opinion that other technical provisions like onboard monitoring equipment or oil registers (amendments 30 and 32) go beyond the scope of this proposal.
- According to the basic principle of the Council's approach laid out above, the Marpol provisions for discharges, including the exception concerning the owner and the master in cases of discharges resulting from accidents (amendment 10), apply in international sea areas and the exclusive economic or equivalent zone of Member States. In these cases, the crew is also explicitly excluded when acting under the master's responsibility. In the internal waters and territorial sea of the Member States, on the contrary, this exception is not granted in accordance with the possibilities under Article 211(4) of Unclos.
- Concerning the scope of the Directive, the Council considers it appropriate to treat all ships, regardless of their flag, in a certain sea area on an equal footing with a view to avoiding a disadvantageous position for ships sailing under the flag of a Member State (amendment 11 and 13).
- While the common position does not include any detailed provision on the nature of penalties (see deletion of paragraphs 4 to 6 of Article 8/amendments 17 and 18) given that the minimum rules towards a harmonisation of criminal penalties are subject of the parallel Framework Decision, Article 7 paragraph 2 refers to enforcement measures by coastal States in accordance with Unclos 220(6), including the detention of the ship, in the specific cases referred to in this Article.

The common position includes some other smaller modifications and clarifications to the Commission proposal. On a few points, amendments proposed by the European Parliament were partially or totally integrated with a view to ensuring a consistent legislative text.
