

Proposal for a Council Directive on port reception facilities for ship-generated waste and cargo residues

(98/C 271/03)

(Text with EEA relevance)

COM(98) 452 final — 98/0249(SYN)

(submitted by the Commission on 17 July 1998)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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

Having regard to the opinion of the Committee of Regions,

(1) Whereas Community policy on the environment aims at a high level of protection; whereas it is based on the precautionary principle and the principles that the polluter should pay and that preventative action should be taken;

(2) Whereas Community action in the sector of maritime transport should aim for the reduction of pollution of the oceans; whereas this can be achieved through compliance with international conventions, codes and resolutions while maintaining the freedoms of navigation and the provision of services;

(3) Whereas the Community is seriously concerned about pollution from ships of the seas and coastlines of the Member States, and consequently about the implementation of International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (Marpol 73/78); whereas all Member States have ratified and implemented the Marpol 73/78 Convention;

(4) Whereas Marpol 73/78 regulates what wastes can be discharged from ships into the marine environment; whereas Marpol 73/78 also requires States Parties to ensure the provision of adequate reception facilities in ports;

(5) Whereas action at Community level is the most effective way of establishing a common minimum level of environmental standards for ships and ports throughout the Community;

(6) Whereas, in view of the subsidiarity principle, a Council Directive is the appropriate legal instrument as it provides a framework for the Member States' uniform and compulsory application on environmental standards, while leaving each Member State the right to decide which implementation tools best fit its internal system;

(7) Whereas the Community has a major interest in the establishment of harmonised reception facilities for ship-generated waste and cargo residues;

(8) Whereas the main pillar of Community action is to improve maritime safety and prevention of pollution of the sea through the elimination of substandard operators, vessels and crews from Community waters, irrespective of the flag of the ships;

(9) Whereas, in its Resolution of 8 June 1993 on a common policy on safe seas ⁽¹⁾, the Council included the improvement of availability and use of reception facilities within the Community among its priority actions;

(10) Whereas the Council adopted Directive 95/21/EC on 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) ⁽²⁾ by

⁽¹⁾ OJ C 271, 7.10.1993, p. 1.

⁽²⁾ OJ L 157, 7.7.1995, p. 1.

which ships posing an unreasonable threat of harm to the marine environment may not proceed to sea;

- (11) Whereas pollution of the seas by its very nature has transboundary implications; whereas the development for preventative action as regards the seas is best done at Community level, since Member States cannot take adequate and effective action in isolation;
- (12) Whereas the protection of the marine environment can be enhanced by reducing discharges into the sea of ship-generated waste and cargo residues; whereas this can be implemented by improving the availability and use of reception facilities; whereas it can also be implemented by improving enforcement against deliberate polluters;
- (13) Whereas in the interest of improving pollution prevention and avoiding distortion of competition the environmental requirements should apply to all ships, irrespective of the flag they fly; whereas adequate reception facilities shall be made available in all ports of the Community; whereas adequate reception facilities will not cause undue delay to ships using them;
- (14) Whereas port reception facilities should meet the needs of users, from the largest merchant ship to the smallest pleasure craft, and of the environment; whereas adequate facilities can only be determined if there is a full and constructive dialogue between the port authority, the provider of reception facilities and all the users of the port; whereas planned waste management provides a mechanism for this dialogue to operate effectively to improve the provision and use of port reception facilities; whereas it shall be ensured that plans should be relevant and up to date;
- (15) Whereas effectiveness in providing port reception facilities can be improved by requiring vessels to notify authorities of the Member States of their need to use reception facilities; whereas this information will also provide information for effectively planned waste management; whereas this notification shall be in a standard format for all the Community; whereas this information can be included in the normal notification from ships to port; whereas this notification should only be made by vessels other than fishing vessels and recreational craft;
- (16) Whereas ships should not discharge ship-generated waste at sea; whereas this should be achieved by requiring all ships to deliver their waste to port reception facilities; whereas exceptions to this rule may be made if it can be demonstrated that there is sufficient storage capacity for all ship-generated waste that will be accumulated during the next stage of the voyage of the ship;
- (17) Whereas high fees charged for using port reception facilities can provide a disincentive to use these facilities; whereas Member States should ensure that the fee for using reception facilities encourages the delivery of waste to ports; whereas all ships should contribute substantially in the costs for the reception and handling of ship-generated waste; whereas additional fees may be imposed with respect to quantities and types of waste actually delivered by a ship; whereas charges for using these facilities should be fair, non-discriminatory and transparent;
- (18) Whereas vessels engaged in regular or scheduled port visits may be exempted from notifying and contributing to port reception facilities; whereas an exemption should only be given where there is clear evidence that the ship is fully complying with the requirements of this Directive;
- (19) Whereas cargo residues should be delivered to port reception facilities in accordance with Marpol 73/78; whereas any fee for such delivery shall be borne by the user of the reception facility;
- (20) Whereas inspections shall be undertaken in order to verify compliance with this Directive; whereas the number of such inspections shall be sufficient to deter non-compliance with the Directive; whereas ships which have not complied with the notification obligation should comprise a particular target group for inspection; whereas ships shall not be permitted to leave the port until compliance with the delivery requirements is established; whereas if there is evidence that a ship has not complied with those requirements it shall be subject to sanctions in accordance with the Directive and also subject to a more detailed inspection in the next port of call; whereas control

procedures should also ensure that fishing vessels and recreational craft also comply with this Directive;

- (21) Whereas Member States shall ensure that masters, providers of reception facilities and other concerned persons are informed of, and observe, the requirements addressed to them under this Directive; whereas Member States shall designate appropriate authorities or bodies for performing functions under this Directive and shall make provision for co-operation between them; whereas the notification information shall be appropriately examined; whereas the formalities for the use of port reception facilities shall be simple and expeditious; whereas ships which have complied with the notification requirements but nevertheless are unduly delayed due to inadequacy of port reception facilities shall be appropriately compensated; whereas the treatment of waste shall be in accordance with relevant Community legislation;
- (22) Whereas enforcement of this directive can be enhanced by the establishment of an appropriate information system for the identification of polluting, or potentially polluting ships;
- (23) Whereas it is necessary for a Committee consisting of representatives of the Member States to assist the Commission in the effective application of this Directive;
- (24) Whereas certain provisions of the Directive may be amended by that Committee to take into account future amendments of Marpol 73/78 which enter into force and to ensure a harmonised implementation of amendments to IMO Resolutions in relation to the protection of the marine environment,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to reduce the discharges of ship-generated waste and cargo residues into the sea, especially illegal discharges, from ships using ports in the

European Community, by improving the availability and use of port reception facilities for ship-generated waste and cargo residues, thereby enhancing the protection of the marine environment.

Article 2

Definitions

For the purpose of this Directive including its Annexes:

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

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

⁽¹⁾ OJ L 194, 25.7.1975, p. 39.

*Article 3***Scope**

This Directive shall apply to:

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

*Article 4***Port reception facilities**

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

*Article 5***Waste reception and handling plans**

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

*Article 6***Notification**

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

*Article 7***Delivery of ship-generated waste**

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

*Article 8***Fees for ship-generated waste**

1. Member States shall ensure that the costs of port reception facilities for ship-generated waste, including the treatment and disposal of the waste, shall be covered through the collection of a fee from ships.
2. The cost recovery systems for using port reception facilities shall encourage the delivery of ship-generated waste to shore and provide no incentive for ships to

discharge that waste into the sea. To this end the following principles shall apply:

- (a) All ships calling at a port of a Member State shall contribute substantially in the costs referred to in paragraph 1, irrespective of actual use of the facilities. Arrangements to this effect may include incorporation of the fee in the port dues or a separate standard waste fee. The fees may be differentiated with respect to, *inter alia*, the category and size of the ship.
- (b) Additional fees may be imposed with respect to quantities and types of waste actually delivered by the ship.
- (c) Fees may be reduced if the ship's environmental management, design, equipment and operation is such that the master of the ship can demonstrate that it produces reduced quantities of ship-generated waste.

3. In order to ensure that the charged fees are fair, transparent, non-discriminatory and reflect the costs of the facilities and services made available and, where appropriate, used, the amount and the basis on which the fees have been calculated should be made clear for the port users.

Article 9

Exemptions

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

2. The Commission shall be kept informed by the Member States of exemptions granted in accordance with paragraph 1.

Article 10

Delivery of cargo residues

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

Article 11

Enforcement

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

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

- ships which have not complied with the notification requirements in Article 6,
- ships for which the examination of the information provided by the master in accordance with Article 6 has revealed inaccuracies.

2. If a Member State is not satisfied with the results of this inspection, it shall ensure that the ship does not leave the port until it has delivered its waste to a reception facility to the extent that it complies with Articles 7 and 10.

3. When there is evidence that a ship has proceeded to sea without having complied with Articles 7 or 10, the next port of call shall be informed thereof and such a ship shall, without prejudice to the application of the penalties referred to in Article 13, neither be permitted to load or unload its cargo nor to embark passengers until a more detailed inspection as defined in Articles 2 (7) and 6 (3) of Directive 95/21/EC has taken place. Such an inspection shall include an assessment of factors relating to the ship's compliance with this Directive, such as the accuracy of any information provided in accordance with Article 6.

4. Member States shall establish control procedures, to the extent required, for fishing vessels and recreational craft to ensure compliance with the applicable requirements of this Directive.

⁽¹⁾ Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control), OJ L 157, 7.7.1995, p. 1.

*Article 12***Accompanying measures**

1. Member States shall:

- (a) take all necessary measures to ensure that masters, providers of port reception facilities and other concerned persons are adequately informed of the requirements addressed to them under this Directive and that they observe those requirements;
- (b) designate appropriate authorities or bodies for performing functions under this Directive;
- (c) make provision for co-operation between their relevant authorities and commercial organisations to ensure the effective implementation of this Directive;
- (d) ensure that the information provided by masters in accordance with Article 6 is appropriately examined;
- (e) ensure that the formalities relating to the use of port reception facilities are simple and expeditious in order to create an incentive for the master to use port reception facilities and to avoid undue delays to ships;
- (f) ensure that the Commission is provided with a copy of the allegations of inadequate reception facilities referred to in Article 4 (2);
- (g) establish and maintain appropriate procedures in accordance with their national legislation for the appropriate compensation of ships which have complied with Article 6 but are unduly delayed due to inadequacy of port reception facilities; and
- (h) ensure that the treatment, recovery or disposal of ship-generated waste and cargo residues shall be carried out in accordance with Directive 75/442/EEC on waste ⁽¹⁾ and other relevant Community waste legislation, in particular Directive 75/439/EEC on the disposal of waste oils ⁽²⁾ and Directive 91/689/EEC on hazardous waste ⁽³⁾.

2. Delivery of ship-generated waste and cargo residues shall be considered as release for free circulation within the meaning of Article 79 of Regulation 2913/92/EEC establishing the Community Customs Code ⁽⁴⁾. The customs authorities shall not require the lodging of a summary declaration in accordance with Article 45 of the Community Customs Code.

⁽¹⁾ OJ L 194, 25.7.1975, p. 39.

⁽²⁾ OJ L 194, 25.7.1975, p. 23.

⁽³⁾ OJ L 377, 31.12.1991, p. 20.

⁽⁴⁾ OJ L 302, 19.10.1992.

3. Member States and the Commission shall co-operate to establish an appropriate information system to enhance the identification of ships which have not delivered their ship-generated waste and cargo residues in accordance with this Directive.

*Article 13***Penalties**

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

*Article 14***Regulatory Committee**

The Commission shall be assisted by the Committee set up pursuant to Article 12, paragraph 1, of Directive 93/75/EEC ⁽⁵⁾. The Committee shall operate in accordance with the procedure laid down in paragraphs 2 and 3 of that Article.

*Article 15***Amendment procedure**

1. The annexes, definitions, references to Community instruments and references to IMO Resolutions may be amended in accordance with the procedure laid down in Article 14 in order to bring them in line with Community or IMO measures which have entered into force, in so far as such amendments do not broaden the scope of this Directive.

2. The Annexes may also be amended in accordance with that procedure when necessary to improve the regime established by this Directive, but without broadening the scope of the Directive.

⁽⁵⁾ Council Directive concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods, OJ L 247, 5.10.1993, p. 19.

*Article 16***Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 18 months following the date of its entry into force and forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.

3. The Member States shall immediately notify to the Commission all provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

*Article 17***Evaluation**

1. Member States shall submit to the Commission a status report concerning the implementation of this Directive every three years.

2. The Commission shall submit an evaluation report on the operation of the system as provided for in this Directive to the European Parliament and the Council, on the basis of the reports of the Member States as provided for in paragraph 1 together with proposals as necessary, concerning the implementation of this Directive.

*Article 18***Entry into force**

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

*Article 19***Addressees**

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

ANNEX I

REQUIREMENTS FOR WASTE RECEPTION AND HANDLING PLANS IN PORTS

(as referred to in Article 5)

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

The following elements shall be addressed in the plan:

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

In addition, the plan should include:

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

The procedures for reception, collection, storage, treatment and disposal should conform in all respects to an environmental management scheme suitable for the progressive reduction of the environmental impact of these activities. Such conformity is presumed if the procedures are in compliance with the International Standard ISO 14001:1996 and the European Standard EN 14001:96, establishing specification for environment management system as recognised in the Commission Decision 97/265/EC of 16 April 1997.

Information to be made available to all port users:

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

INFORMATION TO BE NOTIFIED

(as referred to in Article 6)

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

Type	Maximum storage capacity (m ³)	Amount on board (m ³)	% of maximum capacity	To be delivered? Yes/No	Separated? Yes/No
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Waste Oils

Sludge					
Bilge water					
Others (specify)					

Garbage

Food waste					
Plastic					
Other					
Cargo-associated waste (*) (specify)					
Cargo Residues (*) (specify)					

(*) May be estimates.

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