

Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences (Text with EEA relevance)

[^{F1}DIRECTIVE 2005/35/EC OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 7 September 2005

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

[^{X1}(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,

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

After consulting 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 penalties 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 penalties; in order to achieve effective protection of the environment there is therefore a need for effective, dissuasive and proportionate penalties.

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- (5) To that end it is essential to approximate, by way of the proper legal instruments, existing legal provisions, in particular on the precise definition of the infringement in question, the cases of exemption and minimum rules for penalties, and on liability and jurisdiction.
- (6) This Directive is supplemented by detailed rules on criminal offences and penalties as well as other provisions set out in Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal law framework for the enforcement of the law against ship-source pollution⁽³⁾.
- (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 penalties applying to any person who causes or contributes to marine pollution; penalties 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. These infringements are regarded as criminal offences by, and in the circumstances provided for in, Framework Decision 2005/667/JHA supplementing this Directive.
- (9) Penalties 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. For this reason, the European Maritime Safety Agency set up by Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002⁽⁴⁾ has a key role to play in working with the Member States in developing technical solutions and providing technical assistance relating to the implementation of this Directive and in assisting the Commission in the performance of any task assigned to it for the effective implementation of this Directive.
- (11) In order better to prevent and combat marine pollution, synergies should be created between enforcement authorities such as national coastguard services. In this context, the Commission should undertake a feasibility study on a European coastguard dedicated to pollution prevention and response, making clear the costs and benefits. This study should, if appropriate, be followed by a proposal on a European coastguard.
- (12) 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 in accordance with Article 220 of the 1982 United Nations Convention on the Law of the Sea.

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- (13) The enforcement of Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues⁽⁵⁾ is, together with this Directive, a key instrument in the set of measures to prevent ship-source pollution.
- (14) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁶⁾.
- (15) Since the objectives of this Directive, namely the incorporation of the international ship-source pollution standards into Community law and the establishment of penalties — criminal or administrative — for violation of them in order to ensure a high level of safety and environmental protection in maritime transport, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (16) This Directive fully respects the Charter of fundamental rights of the European Union; any person suspected of having committed an infringement must be guaranteed a fair and impartial hearing and the penalties must be proportional,

HAVE ADOPTED THIS DIRECTIVE:

Editorial Information

- X1** Inserted by [Corrigendum to Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements \(Official Journal of the European Union L 255 of 30 September 2005\)](#).

Textual Amendments

- F1** Substituted by [Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements \(Text with EEA relevance\)](#).

Article 1

Purpose

[^{F1} The purpose of this Directive is to incorporate international standards for ship-source pollution into Community law and to ensure that persons responsible for discharges of polluting substances are subject to adequate penalties, including criminal penalties, 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.

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Textual Amendments

- F1** Substituted by [Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements \(Text with EEA relevance\)](#).

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, in its up-to-date version;
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^{[F1];}
5. ^[F2]'Legal person' shall mean any legal entity in possession of such status under applicable national law, other than States themselves or public bodies in the exercise of State authority or public international organisations.]

Textual Amendments

- F1** Substituted by [Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements \(Text with EEA relevance\)](#).
- F2** Inserted by [Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements \(Text with EEA relevance\)](#).

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, in so far 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 that a Member State exercises jurisdiction over such straits;

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- 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.

[^{F1} Article 4

Infringements

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

2 Each Member State shall take the necessary measures to ensure that any natural or legal person having committed an infringement within the meaning of paragraph 1 can be held liable therefor.

Textual Amendments

- F1** Substituted by [Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements \(Text with EEA relevance\)](#).

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 15, 34, 4,1 or 4,3 or in Annex II, Regulations 13, 3.1.1 or 3.1.3 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, if it satisfies the conditions set out in Annex I, Regulation 4,2 or in Annex II, Regulation 3.1.2 of Marpol 73/78.]

Textual Amendments

- F1** Substituted by [Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements \(Text with EEA relevance\)](#).

[^{F2} Article 5a

Criminal offences

1 Member States shall ensure that infringements within the meaning of Articles 4 and 5 are regarded as criminal offences.

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2 Paragraph 1 shall not apply to minor cases, where the act committed does not cause deterioration in the quality of water.

3 Repeated minor cases that do not individually but in conjunction result in deterioration in the quality of water shall be regarded as a criminal offence, if committed with intent, recklessly or with serious negligence.

Textual Amendments

F2 Inserted by [Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements \(Text with EEA relevance\)](#).

Article 5b

Inciting, aiding and abetting

Member States shall ensure that any act of inciting, or aiding and abetting an offence committed with intent and referred to in Article 5a(1) and (3), is punishable as a criminal offence.]

Textual Amendments

F2 Inserted by [Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements \(Text with EEA relevance\)](#).

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 In so far 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:

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- a If the next port of call of the ship is in 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 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 and 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 event, the authorities of the flag State shall be informed.

[^{F1} Article 8

Penalties

Each Member State shall take the necessary measures to ensure that infringements within the meaning of Articles 4 and 5 are punishable by effective, proportionate and dissuasive penalties.]

Textual Amendments

- F1** Substituted by [Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements \(Text with EEA relevance\)](#).

[^{F2} Article 8a

Penalties against natural persons

Each Member State shall take the necessary measures to ensure that the offences referred to in Article 5a(1), and (3) and Article 5b are punishable by effective, proportionate and dissuasive criminal penalties.

Textual Amendments

- F2** Inserted by [Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements \(Text with EEA relevance\)](#).

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Article 8b

Liability of legal persons

1 Each Member State shall take the necessary measures to ensure that legal persons can be held liable for the criminal offences referred to in Article 5a(1) and (3) and Article 5b, committed for their benefit by any natural person acting either individually or as part of an organ of the legal person, and who has a leading position within the structure of the legal person, based on:

- a a power of representation of the legal person;
- b authority to take decisions on behalf of the legal person; or
- c authority to exercise control within the legal person.

2 Each Member State shall also ensure that a legal person can be held liable where lack of supervision or control by a natural person referred to in paragraph 1 has made the commission of a criminal offence referred to in Article 5a(1) and (3) and Article 5b possible for the benefit of that legal person by a natural person under its authority.

3 The liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons involved as perpetrators, inciters or accessories in the criminal offences referred to in Article 5a(1) and (3) and Article 5b.

Textual Amendments

- F2** Inserted by [Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements \(Text with EEA relevance\)](#).

Article 8c

Penalties against legal persons

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 8b is punishable by effective, proportionate and dissuasive penalties.]

Textual Amendments

- F2** Inserted by [Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements \(Text with EEA relevance\)](#).

Article 9

Compliance with international law

Member States shall apply the provisions of this Directive without any discrimination in form or in fact against foreign ships and in accordance with applicable international law, including Section 7 of Part XII of the 1982 United Nations Convention on the Law

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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

1 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 taking account of the action programme to respond to accidental or deliberate marine pollution set up by Decision No 2850/2000/EC⁽⁷⁾ and if appropriate, of the implementation of Directive 2000/59/EC 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, in particular for:
 - 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.

2 In accordance with its tasks as defined in Regulation (EC) No 1406/2002, the European Maritime Safety Agency shall:

- a work with the Member States in developing technical solutions and providing technical assistance in relation to the implementation of this Directive, in actions such as tracing discharges by satellite monitoring and surveillance;
- b assist the Commission in the implementation of this Directive, including, if appropriate, by means of visits to the Member States, in accordance with Article 3 of Regulation (EC) No 1406/2002.

Article 11

Feasibility Study

The Commission shall, before the end of 2006, submit to the European Parliament and the Council a feasibility study on a European coastguard dedicated to pollution prevention and response, making clear the costs and benefits.

Article 12

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. In this report, the Commission shall assess, *inter alia*, the desirability of revising or extending the scope of this Directive. It shall also describe the evolution of

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relevant case-law in the Member States and shall consider the possibility of creating a public database containing such relevant case-law.

Article 13

Committee procedure

1 The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), established by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council, of 5 November 2002⁽⁸⁾.

2 Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC 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 one month.

Article 14

Provision of information

The Commission shall regularly inform the Committee set up by Article 4 of Decision No 2850/2000/EC of any proposed measures or other relevant activities concerning the response to marine pollution.

Article 15

Amendment procedure

In accordance with Article 5 of Regulation (EC) No 2099/2002 and following the procedure referred to in Article 13 of this Directive, the COSS may exclude amendments to Marpol 73/78 from the scope of this Directive.

Article 16

Implementation

[^{X2}Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 April 2007 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.

Editorial Information

- X2** Substituted by [Corrigendum to Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements \(Official Journal of the European Union L 255 of 30 September 2005\)](#).

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Article 17

Entry into force

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

Article 18

Addressees

This Directive is addressed to the Member States.

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 1/15000 of the total quantity of the particular cargo of which the residue formed a part, and for new tankers 1/30000 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.

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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. [...].
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.
7. [...].

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;

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- (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.
6. [...].
7. [...].
8. [...].

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.

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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.
2. [...].
3. [...].
4. [...].

(Further guidelines on the categorisation of substances, including a list of categorised substances are given in Regulation 3(2) to (4) and Regulation 4 and the Appendices to 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

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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 1/3000 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

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- 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 1/1000 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 [...] 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

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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;

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- (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 1/3000 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 paragraphs 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.

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- (1) [OJ C 220, 16.9.2003, p. 72.](#)
- (2) Opinion of the European Parliament of 13 January 2004 ([OJ C 92 E, 16.4.2004, p. 77](#)), Council Common Position of 7 October 2004 ([OJ C 25 E, 1.2.2005, p. 29](#)), Position of the European Parliament of 23 February 2005 (not yet published in the Official Journal) and Council Decision of 12 July 2005.
- (3) See page 164 of this Official Journal.
- (4) [OJ L 208, 5.8.2002, p. 1.](#) Regulation as last amended by Regulation (EC) No 724/2004 ([OJ L 129, 29.4.2004, p. 1](#)).
- (5) [OJ L 332, 28.12.2000, p. 81.](#) Directive as amended by Directive 2002/84/EC ([OJ L 324, 29.11.2002, p. 53](#)).
- (6) [OJ L 184, 17.7.1999, p. 23.](#)
- (7) 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 as amended by Decision No 787/2004/EC ([OJ L 138, 30.4.2004, p. 12](#)).
- (8) [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](#)).