

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)

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.

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 \(Text with EEA relevance\)](#).

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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;
- 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.

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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.

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 \(Text with EEA relevance\)](#).

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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:

- 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.]

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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 \(Text with EEA relevance\)](#).

[^{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 \(Text with EEA relevance\)](#).

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 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⁽¹⁾ 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;

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- 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 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⁽²⁾.

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.

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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

[^{X1}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

- X1** 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 \(Official Journal of the European Union L 255 of 30 September 2005\)](#).

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.

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- (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 as 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).