



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.04.2000
COM(2000) 236 final

1998/0249 (COD)

OPINION OF THE COMMISSION

**pursuant to Article 251(2) (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on port reception facilities for ship-generated waste and cargo residues**

AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty

EXPLANATORY MEMORANDUM

Article 251(2)(c) of the EC Treaty lays down that the Commission shall deliver an opinion on the amendments proposed by the European Parliament at second reading.

The Commission sets out its opinion below on the amendments proposed by Parliament. It also includes, under the terms of Article 250(2) of the EC Treaty, an amended proposal incorporating the amendments by Parliament which the Commission accepted wholly or in part.

1. BACKGROUND

- a) On 20 July 1998, the Commission forwarded to the Council and to the European Parliament its proposal for a Directive (COM(1998) 452 final - COD 1998/0249 of 17 July 1998).
- b) The Economic and Social Committee delivered a favourable opinion on 24 March 1999.
- c) The Committee of the Regions delivered a favourable opinion on 11 March 1999.
- d) On 11 February 1999, the Parliament adopted at first reading its opinion including 18 amendments to the Commission proposal. This first reading was confirmed by the newly elected Parliament on 16 September 1999.
- e) On 19 April 1999 the Commission adopted, pursuant to Article 250(2) of the Treaty, an amended proposal for a decision incorporating wholly or in part 8 of the 18 amendments proposed by Parliament (COM(1999) 149 final).
- f) The Council adopted its common position on 8 November 1999.
- g) On 14 March 2000, the European Parliament adopted at second reading a favourable resolution including 15 amendments to the common position.

2. PURPOSE OF THE PROPOSAL

The proposal aims to ensure a major reduction in marine pollution by the provision of adequate waste reception facilities in all EU ports including recreational ports and marinas. It also provides instruments to ensure that all ships, including fishing vessels and recreational craft, visiting these ports make use of the facilities provided.

More specifically, the proposal:

- requires all ports, including fishing ports and marinas, to provide adequate reception facilities for ship-generated waste and cargo residues;
- requires a waste reception and handling plan to be developed for each port which shall be regularly monitored and approved by Member State authorities;
- requires ships to notify their intention to use facilities and quantities of waste on board before arriving in port;

- ensures that visiting vessels deliver all wastes and residues to the reception facilities, unless there is sufficient waste storage capacity for the forthcoming voyage;
- ensures that fee systems adopted by ports will encourage vessels to use the facilities rather than discharge their wastes at sea;
- requires Member States to monitor compliance with the Directive and to apply adequate sanctions in cases of non-compliance.
- requires authorities to forward information on non-compliance to other EU ports which such ships may intend to visit.

3. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT

3.1. Amendments retained by the Commission

Most of the amendments by the European Parliament can be accepted, either as such or subject to redrafting. 13 out of the 15 amendments may therefore be incorporated in the re-examined proposal of the Commission.

The following amendments can be accepted as such:

- Amendments 1 and 4 seek to limit the exclusion of fishing vessels and recreational craft from the prior notification obligation. In general, the Commission believes that an extension of the notification obligation to fishing vessels and recreational craft should be treated with caution, as such a measure easily could lead to considerable bureaucracy in comparison with limited environmental benefits. Waste produced by fishing vessels and recreational craft is normally predictable for the port authorities and waste receivers even without prior notification. However, the criterion proposed by the Parliament is certification for 12 passengers or less. This corresponds to the definition of a passenger ship according to the International Convention for Safety of Life at Sea (SOLAS) and can therefore be accepted by the Commission.
- Amendment 2 relates to a new recital on more favourable treatment of ships which produce less waste, as regards the fee system. This reflects the ideas laid down in Articles 8.3 and 12.4 and is thus in line with the main thrust of the Directive.
- In Amendments 8 and 10 limitation of the exclusion of fishing vessels and recreational craft is again at issue, here in respect to the enforcement regime of the Directive. In this respect too, a certain caution is needed, as both categories of ships are outside the scope of port State control. However, the criterion proposed by the Parliament is certification for 12 passengers or less, which corresponds to the definition of a passenger ship according to the International Convention for Safety of Life at Sea (SOLAS). The amendment can therefore be accepted.
- Amendment 9 addresses the vagueness of the ‘sufficient number’ approach in the enforcement article, by introducing a fixed inspection requirement of 25% of all ships covered by Article 11.2 calling at an EU port. Since Article 11.2, as laid down in the Common Position, only deals with merchant ships, the Commission can accept a closer link with the port State control regime and the taking over of its quantitative inspection requirement.

- Amendment 13 is about co-operation in establishing criteria for ‘environmentally friendly’ ships. The text corresponds to a statement by the Council and the Commission for the Council minutes.
- Amendment 15 seeks to reduce the time for implementation of this Directive from 24 to 18 months. This is in line with the original Commission proposal and acceptable, in particular since the Member States have had the obligation under international law to provide adequate reception facilities in their ports since 1983 when the Marpol Convention entered into force.

Five other amendments can be accepted in principle, but need to be redrafted in order to clarify them or to bring them into line with other provisions of the Directive and other related Community and international instruments. More particularly, this applies to amendments Nos 7, 11, 12 and 14, which are summarised below:

- Amendment 3 seeks to ensure that even ships which are subject to sovereign immunity and therefore exempted from the scope of this Directive, deliver their waste and cargo residues, in so far as is reasonable and practicable, in accordance with the Directive. This is entirely acceptable.
- Amendment 7 establishes a revision mechanism to ensure that the fee systems implemented under Article 8 will not lead to undesired effects on the environment, competition or waste flow patterns. While the Commission agrees that it is important to monitor this matter and to prevent undesired effects, the proposed wording poses some problems. If true competitive problems did arise, the Commission would use the powers to act granted to it under the Treaty. The word ‘competition’ should therefore be avoided. An alternative text addressing the same issue is provided for in the attached modified proposal.
- In Amendment 11, the Parliament re-introduces the right of ships to receive adequate compensation if they are delayed due to inadequacy of port reception facilities. A paragraph aiming at the same goal was included in the original Commission proposal, but was taken away by the Council, because it was considered unnecessary. The principle of the Parliament’s amendment is acceptable, but the proposed text is problematic as it implies an unconditional right to compensation for shipowners, without having any regard to the reasons for the delay or other assessment of facts in the individual case. An alternative text is therefore proposed in the modified proposal.
- In Amendment 12, the EP seeks to specify the purpose of the envisaged information and monitoring system. The Commission does not accept the proposed text as such, since it considers that the concerns indicated by the new indents can either be dealt with by the original wording or be sufficiently taken care of under Article 17 of the Directive. But since it agrees with some of the ideas underlying the proposal, it proposes an alternative, shorter text in the attached modified proposal.
- Amendment 14 relates to the new Comitology procedure and the most appropriate text should be the one which has been worked out jointly by the three institutions.

3.2. Amendments not accepted by the Commission

- Amendment 5 is somewhat unclear, but seems to address a problem that is outside the scope of the Directive. The amendment seems to presume that the Directive would require traditional sailing ships to be equipped in a certain way, which is not the case. The sort of

concern which the amendment addresses should be dealt with through the Marpol Convention (Annex IV) rather than through this Directive.

- In Amendment 6, the flexibility of the fee system is challenged. While the common position represents a very delicate balance between the different views of the Member States while still making progress in encouraging the use of facilities, the Parliament in essence supports the ‘no-special-fee’ system only. The Commission considers that a more flexible approach should be accepted in this context, without, however, endangering the fundamental principles underlying the article on fee systems. The system shall cover a wide range of situations in very different ports all over Europe. It is therefore not advisable to have a very rigid fee system article. In addition, the ‘no special fee’ system has the disadvantage of not encouraging shipowners to introduce cleaner techniques, such as “clean engine rooms”, producing less waste. It also means that ships with frequent port calls – such as short sea shipping – will pay a disproportionately high share of the burden. There is no evidence of a universally ‘best’ European-wide fee system, because there is no experience of common European principles in this area. The Commission considers that the best method to ensure progress on common charging principles is to retain at this stage a more flexible approach than that proposed by the Parliament. The effects in the longer run need, however, to be monitored and the Commission will, if considered necessary, propose further measures to eliminate potential undesired effects under the revision clause (new Article 8.4).

OPINION OF THE COMMISSION

**pursuant to Article 251(2) (c) of the EC Treaty,
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to the Council's common position regarding the
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**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on port reception facilities for ship-generated waste and cargo residues**

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,¹

Having regard to the Opinion of the Economic and Social Committee,²

Having regard to the Opinion of the Committee of the Regions,³

Acting in accordance with the procedure referred to in Article 251 of the Treaty,⁴

Whereas:

- (1) Community policy on the environment aims at a high level of protection; it is based on the precautionary principle and the principles that the polluter should pay and that preventive action should be taken.
- (2) One important field of Community action in maritime transport concerns the reduction of the pollution of the seas; this can be achieved through compliance with international conventions, codes and resolutions while maintaining the freedom of navigation as provided for by the United Nations Convention on the Law of the Sea and the freedom of providing services as provided for in Community law.
- (3) The Community is seriously concerned about the pollution of the seas and coastlines of the Member States caused by discharges of waste and cargo residues from ships, and in particular about the implementation of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (Marpol 73/78) which regulates what wastes can be discharged from ships into the marine

¹ OJ C 271, 31.8.1998, p. 79.

² OJ C 138, 18.5.1999, p. 12.

³ OJ C 198, 14.7.1999, p. 27.

⁴ Opinion of the European Parliament of 11 February 1999 (OJ C 150, 28.5.1999, p. 432), Council Common Position of (not yet published in the Official Journal) and Decision of the European Parliament of (not yet published in the Official Journal).

environment and requires States Parties to ensure the provision of adequate reception facilities in ports; all Member States have ratified Marpol 73/78.

- (4) The protection of the marine environment can be enhanced by reducing discharges into the sea of ship-generated waste and cargo residues; this can be achieved by improving the availability and use of reception facilities and by improving the enforcement regime; in its Resolution of 8 June 1993 on a common policy on safe seas,⁵ the Council included among its priority actions the development of availability and use of reception facilities within the Community.
- (5) 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)⁶ provides that ships posing an unreasonable threat of harm to the marine environment may not proceed to sea.
- (6) Pollution of the seas by its very nature has transboundary implications; in view of the subsidiarity principle, action at Community level is the most effective way of ensuring common environmental standards for ships and ports throughout the Community.
- (7) In view of the proportionality principle, a Directive is the appropriate legal instrument, as it provides a framework for the Member States' uniform and compulsory application of environmental standards, while leaving each Member State the right to decide which implementation tools best fit its internal system.
- (8) Consistency with existing regional agreements, such as the 1974/1992 Convention on the Protection of the Marine Environment in the Baltic Sea Area, should be ensured.
- (9) 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, and adequate reception facilities should be made available in all ports of the Community.
- (10) Adequate port reception facilities should meet the needs of users, from the largest merchant ship to the smallest recreational craft, and of the environment, without causing undue delay to the ships using them; the obligation to ensure the availability of adequate port reception facilities leaves the Member States with a high degree of freedom to arrange the reception of waste in the most suitable manner and permits them, inter alia, to provide fixed reception installations or to appoint service providers bringing to the ports mobile units for the reception of waste when needed; this obligation also implies the obligation to provide all services and/or other accompanying arrangements necessary for the proper and adequate use of these facilities.
- (11) Adequacy of facilities can be improved by up to date waste reception and handling plans established in consultation with the relevant parties.
- (12) The effectiveness of port reception facilities can be improved by requiring ships to notify their need to use reception facilities; such notification would also provide information for effectively planned waste management; waste from fishing vessels and recreational craft **certified to carry 12 passengers or less** may be handled by the port reception facilities without prior notification.

⁵ OJ C 271, 7.10.1993, p. 1.

⁶ OJ L 157, 7.7.1995, p. 1. Directive as last amended by Directive 98/42/EC (OJ L 184, 27.6.1998, p. 40).

- (13) Discharges of ship-generated waste at sea can be reduced by requiring all ships to deliver their waste to port reception facilities before leaving the port; in order to reconcile the interest of the smooth operation of maritime transport with the protection of the environment, exceptions to this requirement should be possible taking into account the sufficiency of the dedicated storage capacity on board, the possibility to deliver at another port without risk of discharge at sea and specific delivery requirements adopted in accordance with international law.
- (14) In view of the "polluter pays" principle, the costs of port reception facilities, including the treatment and disposal of ship-generated waste, should be covered by ships; in the interest of protecting the environment, the fee system should encourage the delivery of ship-generated waste to ports instead of discharge into the sea; this can be facilitated by providing that all ships contribute to the costs for the reception and handling of ship-generated waste so as to reduce the economic incentives to discharge into the sea; in view of the subsidiarity principle, the Member States should, in accordance with their national laws and current practices, retain the powers to establish whether and in what proportion the fees related to quantities actually delivered by the ships will be included in the cost recovery systems for using port reception facilities; charges for using these facilities should be fair, non-discriminatory and transparent.
- (15) Ships producing reduced quantities of ship-generated waste should be treated more favourably in the cost recovery systems; common criteria would facilitate the identification of such ships.
- (16) In order to avoid undue burden for the parties concerned, ships engaged in scheduled traffic with frequent and regular port calls may be exempted from certain obligations deriving from this Directive where there is sufficient evidence that there are arrangements to ensure the delivery of the waste and the payment of fees.
- (17) Cargo residues should be delivered to port reception facilities in accordance with Marpol 73/78; Marpol 73/78 requires cargo residues to be delivered to port reception facilities to the extent necessary to comply with the tank cleaning requirements; any fee for such delivery should be paid by the user of the reception facility, the user being normally specified in the contractual arrangements between the parties involved or in other local arrangements.
- (18) It is necessary to undertake targeted inspections in order to verify compliance with this Directive; the number of such inspections, as well as the penalties imposed, should be sufficient to deter non-compliance with this Directive; for reasons of efficiency and cost-effectiveness, such inspections may be undertaken within the framework of Directive 95/21/EC, when applicable.
- (19) Member States should ensure a proper administrative framework for the adequate functioning of the port reception facilities; under Marpol 73/78, allegations of inadequate port reception facilities should be transmitted to the International Maritime Organisation (IMO); the same information could be simultaneously transmitted to the Commission for information purposes.
- (20) An information system for the identification of polluting or potentially polluting ships would facilitate the enforcement of this Directive and would be helpful in evaluating the implementation thereof; the SIRENAC information system established under the Paris Memorandum of Understanding on Port State Control provides a large amount of the additional information needed for that purpose.

- (21) It is necessary that a Committee consisting of representatives of the Member States assist the Commission in the effective application of this Directive; since the measures necessary for implementing this Directive are measures of a general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission,⁷ such measures should be adopted in accordance with the regulatory procedure provided for in Article 5 of that Decision.
- (22) Certain provisions of this Directive may, without broadening its scope, be amended in accordance with that procedure in order to take into account Community or IMO measures which enter into force in the future so as to ensure their harmonised implementation,

HAVE 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 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:

- (a) "ship" shall mean a seagoing vessel of any type whatsoever operating in the marine environment and shall include hydrofoil boats, air-cushion vehicles, submersibles and floating craft;
- (b) "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;
- (c) "ship-generated waste" shall mean all waste, including sewage, and residues other than cargo residues, which are generated during the service of a ship and fall under the scope of Annexes I, IV 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;
- (d) "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 spillage;
- (e) "port reception facilities" shall mean any facility, which is fixed, floating or mobile and capable of receiving ship-generated waste or cargo residues;
- (f) "fishing vessel" shall mean any ship equipped or used commercially for catching fish or other living resources of the sea;

⁷ OJ L 184, 17.7.1999, p. 23.

- (g) "recreational craft" shall mean a ship of any type, regardless of the means of propulsion, intended for sports or leisure purposes;
- (h) "port" shall mean a place or a geographical area made up of such improvement works and equipment as to permit, principally, the reception of ships, including fishing vessels and recreational craft.

Without prejudice to the definitions in points (c) and (d), "ship-generated waste" and "cargo residues" shall be considered to be waste within the meaning of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste⁸.

Article 3

Scope

1. This Directive shall apply to:
 - (a) all ships, including fishing vessels and recreational craft, 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
 - (b) all ports of the Member States normally visited by ships falling under the scope of point (a).
2. **Notwithstanding point (a) of the preceding paragraph, Member States shall take measures to ensure that warships, naval auxiliaries or other ships owned or operated by a State and used, for the time being, only on government non-commercial service deliver their ship-generated waste and cargo residues in a manner consistent, in so far as is reasonable and practicable, with this Directive.**

Article 4

Port reception facilities

1. Member States shall ensure the availability of port reception facilities adequate to meet the needs of the ships normally using the port without causing undue delay to ships.
2. To achieve adequacy, the reception facilities shall be capable of receiving the types and quantities of ship-generated waste and cargo residues from ships normally using that port, taking into account the operational needs of the users of the port, the size and the geographical location of the port, the type of ships calling at that port and the exemptions provided for under Article 9.
3. Member States shall establish procedures, in accordance with those agreed by the International Maritime Organization (IMO), for reporting to the port State alleged inadequacies of port reception facilities.

⁸ OJ L 194, 25.7.1975, p. 39. Directive as last amended by Commission Decision 96/350/EC (OJ L 135, 6.6.1996, p. 32).

Article 5

Waste reception and handling plans

1. An appropriate waste reception and handling plan shall be developed and implemented for each port following consultations with the relevant parties, in particular with port users or their representatives, 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. The waste reception and handling plans referred to in paragraph 1 may, where required for reasons of efficiency, be developed in a regional context with the appropriate involvement of each port, provided that the need for, and availability of, reception facilities are specified for each individual port.
3. Member States shall evaluate and approve the waste reception and handling plan, monitor its implementation and ensure its re-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 **certified to carry 12 passengers or less**, bound for a port located in the Community shall complete truly and accurately the form in Annex II and notify 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 latest upon departure from the previous port, if the duration of the voyage is less than 24 hours.

Member States may decide that the information will be notified to the operator of the port reception facility, who will forward it to the relevant authority.

2. The information referred to in paragraph 1 shall be kept on board at least until the next port of call and shall upon request be made available to the Member States' authorities.

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. Notwithstanding paragraph 1, a ship may proceed to the next port of call without delivering the ship-generated waste, if it follows from the information given in accordance with Article 6 and Annex II, that there is sufficient dedicated storage capacity for all ship-generated waste that has been accumulated and will be accumulated during the intended voyage of the ship until the port of delivery.

If there are good reasons to believe that adequate facilities are not available at the intended port of delivery, or if this port is unknown, and that there is therefore a risk that the waste will be discharged at sea, the Member State shall take all necessary measures to prevent marine pollution, if necessary by requiring the ship to deliver its waste before departure from the port.

3. Paragraph 2 shall apply without prejudice to more stringent delivery requirements for ships adopted in accordance with international law.

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 provide no incentive for ships to discharge their 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 to 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, type and size of the ship;
 - (b) the part of the costs which is not covered by the fee referred to in subparagraph (a), if any, shall be covered on the basis of the types and quantities of ship-generated waste actually delivered by the ship;
 - (c) fees may be reduced if the ship's environmental management, design, equipment and operation are 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 fees are fair, transparent, non-discriminatory and reflect the costs of the facilities and services made available and, where appropriate, used, the amount of the fees and the basis on which they have been calculated should be made clear for the port users.
4. **If the variety of the recovery systems provided for in paragraph 2 would appear to hinder the attainment of the goals set in Article 1 of this Directive, the Commission shall submit a proposal to amend this Directive in such a way that the differences between the cost recovery systems will be reduced sufficiently so as to avoid the aforementioned negative effects.**

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 ports involved may exempt these ships from the obligations in Article 6, 7(1) and Article 8.

2. Member States shall inform the Commission of exemptions granted in accordance with paragraph 1 on a regular basis, at least once a year.

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 is carried out.
2. For inspections concerning ships other than fishing vessels and recreational craft **certified to carry 12 passengers or less**:
 - (a) 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 other grounds to believe that the ship does not comply with this Directive;
 - (b) such inspection ~~may~~**shall** be undertaken within the framework of Directive 95/21/EC, when applicable, **and the 25% inspection requirement set out in that Directive shall apply**;
 - (c) if the relevant authority 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 ship-generated waste and cargo residues to a port reception facility in accordance with Articles 7 and 10.
 - (d) when there is clear evidence that a ship has proceeded to sea without having complied with Articles 7 or 10, the competent authority of 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, not be permitted to leave that port until a more detailed 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, has taken place.
3. Member States shall establish control procedures, to the extent, required, for fishing vessels and recreational craft **certified to carry 12 passengers or less** to ensure compliance with the applicable requirements of this Directive.

Article 12
Accompanying measures

1. Member States shall:
 - (a) take all necessary measures to ensure that masters, providers of port reception facilities and other persons concerned are adequately informed of the requirements addressed to them under this Directive and that they comply with them;
 - (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 notified by masters in accordance with Article 6 be 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 port reception facilities referred to in Article 4(3);
 - (g) 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 and other relevant Community waste legislation, in particular Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils⁹ and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste¹⁰;
 - (h) establish and maintain appropriate procedures in accordance with their national legislation for the appropriate compensation of ships which are unduly delayed due to inadequacy of port reception facilities and waste management planning.**
2. Delivery of ship-generated waste and cargo residues shall be considered as release for free circulation within the meaning of Article 79 of Council Regulation (EEC) 2913/92 of 12 October 1992 establishing the Community Customs Code¹¹. The customs authorities shall not require the lodging of a summary declaration in accordance with Article 45 of the Community Customs Code.
3. Member States and the Commission shall co-operate to establish an appropriate information **and monitoring** system, **covering at least the whole of the Community**, to **facilitate**:
 - **improve** the identification of ships which have not delivered their ship-generated waste and cargo residues in accordance with this Directive,

⁹ OJ L 194, 25.7.1975, p. 23. Directive as last amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

¹⁰ OJ L 377, 31.12.1991, p. 20. Directive as last amended by Directive 94/31/EEC (OJ L 168, 2.7.1994, p. 28).

¹¹ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation 955/99/EEC (OJ L 119, 7.5.1999, p. 1).

- ascertain whether the goals set in Article 1 of the Directive have been met

4. Member States and the Commission shall cooperate in establishing common criteria for identifying ships referred to in Article 8(2)(c).

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

1. The Commission shall be assisted by the Committee set up pursuant to Article 12(1) of Directive 93/75/EEC¹².
2. Where reference is made to this paragraph, the regulatory procedure provided for in Article 5 of Decision 1999/468/EC shall apply, in compliance with the provisions of **Article 7(3) and** Article 8 thereof.
3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be ~~fixed as~~ three months.

Article 15

Amendment procedure

The Annexes to this Directive, the definition in Article 2(b), references to Community instruments and references to IMO instruments may be amended in accordance with the procedure laid down in Article 14(2) in order to bring them into line with Community or IMO measures which have entered into force, insofar as such amendments do not broaden the scope of this Directive.

Furthermore, the Annexes to this Directive may be amended in accordance with that procedure when necessary to improve the regime established by this Directive, insofar as such amendments do not broaden the scope of this Directive.

Article 16

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before [.....]* and forthwith inform the Commission thereof.

However, as far as sewage as referred to in Article 2(c) is concerned, the implementation of this Directive shall be suspended until 12 months after the entry into force of Annex IV of Marpol 73/78.

¹² OJ L 247, 5.10.1993, p. 19. Directive as last amended by Directive 98/74/EC (OJ L 276, 13.10.1998, p. 7).

* ~~twenty-four~~ 18 months following the date of entry into force of this Directive

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.

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.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX I

REQUIREMENTS FOR WASTE RECEPTION AND HANDLING PLANS IN PORTS

(as referred to in Article 5)

Plans shall cover all types 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 types of ships calling at that port.

The following elements shall be addressed in the plans:

- an assessment of the need for port reception facilities, in light of the need of the ships normally visiting the port;
- a description of the type and capacity of port reception 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 port 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 plans should include:

- a summary of relevant legislation and formalities for delivery;
- identification of a person or persons to be responsible for the implementation of the plan;
- a description of the pre-treatment equipment and processes in the port, if any;
- a description of methods of recording actual use of the port reception facilities;
- a description of methods of recording amounts of ship-generated waste and cargo residues received; and
- a 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 Council Regulation (EEC) No 1836/93 of 29 June 1993 allowing voluntary participation by companies in the industrial sector in a Community eco-management and audit scheme.¹³

¹³ OJ L 168, 10.7.1993, p. 1.

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 port reception facilities applicable to each berth with diagram/map;
 - list of ship-generated waste and cargo residues normally dealt with;
 - list of contact points, the operators and the services offered;
 - description of procedures for delivery;
 - description of charging system; and
 - procedures for reporting alleged inadequacies of port reception facilities.
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ANNEX II

INFORMATION TO BE NOTIFIED

BEFORE ENTRY INTO THE PORT OF

(Port of destination as referred to in Article 6 of Directive 2000/.../EC)

1. Name, call sign and, where appropriate, IMO identification number of the ship:
2. Flag State:
3. Estimated time of arrival (ETA):
4. Estimated time of departure (ETD):
5. Previous port of call:
6. Next port of call:
7. Last port and date when ship-generated waste was delivered:
8. Are you delivering

all some none *

of your waste into port reception facilities?

* Tick appropriate box.

9. Type and amount of waste and residues to be delivered and/or remaining on board, and percentage of maximum storage capacity:

If delivering all waste, complete second column as appropriate.

If delivering some or no waste, complete all columns.

TYPE	WASTE TO BE DELIVERED <i>m³</i>	MAXIMUM DEDICATED STORAGE CAPACITY <i>m³</i>	AMOUNT OF WASTE RETAINED ON BOARD <i>m³</i>	PORT AT WHICH REMAINING WASTE WILL BE DELIVERED	ESTIMATED AMOUNT OF WASTE TO BE GENERATED BETWEEN NOTIFICATION AND NEXT PORT OF CALL <i>m³</i>
1. Waste Oils					
<i>Sludge</i>					
<i>Bilge water</i>					
<i>Others</i> <i>(specify)</i>					
2. Garbage					
<i>Food waste</i>					
<i>Plastic</i>					
<i>Other</i>					
3. Cargo-associated waste* <i>(specify)</i>					
4. Cargo Residues* <i>(specify)</i>					

* May be estimates.

Notes:

1. This information may be used for port State control and other inspection purposes.
2. Member States will determine which bodies will receive copies of this notification.
3. This form is to be completed unless the ship is covered by an exemption in accordance with Article 9 of Directive 2000/.../EC.

I confirm that

the above details are accurate and correct and

there is sufficient dedicated onboard capacity to store all waste generated between notification and the next port at which waste will be delivered

Date.....

Time.....

Signature.....