COMMON POSITION (EC) No 1/2000
adopted by the Council on 8 November 1999


(2000/C 10/02)

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 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 of 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;

(3) OJ C 198, 14.7.1999, p. 27.
(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 service 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 may be handled by the port reception facilities without prior notification;

(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 of delivering 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 ship 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) 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;

(16) 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;

(17) 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;

(18) 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;

(19) 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;
(20) It is necessary that a committee consisting of representa- 
tives 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 
down the procedures for the exercise of implementing 
powers conferred on the Commission, such measures 
should be adopted in accordance with the regulatory 
procedure provided for in Article 5 of that Decision;

(21) Certain provisions of this Directive may, without broad- 
ening 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 to Marpol 73/78 and 
cargo-associated waste as defined in the Guidelines for 
the implementation of Annex V to 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;

(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 

Article 3

Scope

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).

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 Organisation (IMO), for reporting to the port State alleged inadequacies of port reception facilities.

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, 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.

**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, Article 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:

(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 be undertaken within the framework of Directive 95/21/EC, when applicable;

(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 Article 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 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 cooperation 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);


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) No 2913/92 of 12 October 1992 establishing the Community Customs Code (3). 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 cooperate to establish an appropriate information system to facilitate the identification of ships which have not delivered their ship-generated waste and cargo residues in accordance with this Directive.

**Article 13**

**Penalties**

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

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**Article 14**

**Regulatory Committee**

1. The Commission shall be assisted by the Committee set up pursuant to Article 12(1) of Directive 93/75/EEC (4).

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 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, in so far 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, in so far 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 ... (5) 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 to Marpol 73/78.

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(5) 24 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 ...

*For the European Parliament*  
*For the Council*

*The President*  
*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;
— a 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 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 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(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.
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?

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.

<table>
<thead>
<tr>
<th>Type</th>
<th>Waste to be delivered m³</th>
<th>Maximum dedicated storage capacity m³</th>
<th>Amount of waste retained on board m³</th>
<th>Port at which remaining waste will be delivered</th>
<th>Estimated amount of waste to be generated between notification and next port of call m³</th>
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<tbody>
<tr>
<td>1. Waste oils</td>
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<td>Sludge</td>
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<td>Bilge water</td>
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<td>Others (specify)</td>
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(*) Tick appropriate box.
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<tr>
<th>Type</th>
<th>Waste to be delivered ( m^3 )</th>
<th>Maximum dedicated storage capacity ( m^3 )</th>
<th>Amount of waste retained on board ( m^3 )</th>
<th>Port at which remaining waste will be delivered</th>
<th>Estimated amount of waste to be generated between notification and next port of call ( m^3 )</th>
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<td>2. Garbage</td>
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<td>Food waste</td>
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<td>Plastic</td>
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<td>Other</td>
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<td>3. Cargo-associated waste (*)</td>
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<td>(specify)</td>
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<td>4. Cargo residues (*)</td>
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<td>(specify)</td>
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(*) 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 ...
STATEMENT OF THE COUNCIL’S REASONS

I. INTRODUCTION


The European Parliament delivered its opinion in the first reading on 11 February 1999 (3) and confirmed it in the framework of the codecision procedure on 16 September 1999.

The Economic and Social Committee issued its opinion on 24 March 1999 (4).

The Committee of the Regions issued its opinion on 11 March 1999 (5).

On 8 November 1999, the Council adopted its common position in accordance with Article 251(2) of the Treaty (former Article 189b).

II. OBJECTIVES

The objective of the Directive under consideration is to enhance the protection of the marine environment by reducing the discharges of ship-generated waste and cargo residues into the sea through the improvement of the availability and use of port reception facilities.

The draft Directive also aims at ensuring a harmonised implementation of the Marpol 73/78 Convention (6), which, inter alia, obliges ports to ensure the provision of oil, noxious liquid substances and garbage reception facilities adequate to meet the needs of ships using them, without causing undue delays to ships.

III. SUMMARY OF THE COMMON POSITION

The common position contains the following key elements:

(a) each Community port shall ensure the availability of adequate waste reception facilities for ships normally calling at that port. A description of the needs and the details of the facilities shall be laid down in a waste reception and handling plan, which could take into account the regional context;

(b) all ships calling at a Community port must deliver their ship-generated waste at that port unless they have enough dedicated storage capacity for the waste to be delivered at a subsequent port;

(c) the cost of the port reception facilities shall be covered through the collection of fees from ships. The cost-recovery system shall not encourage the discharge of waste into the sea. It shall consist of a fixed non-special fee component and, on an optional basis, a variable fee relating to the amount and type of waste actually delivered;

(d) the Member States shall implement the Directive 24 months after its publication in the Official Journal. They shall provide a proper administrative framework for its enforcement and its monitoring.

(3) OJ C 150, 28.5.1999, p. 432.
(5) OJ C 198, 14.7.1999, p. 27.
IV. MOTIVATION OF THE COUNCIL

During its examination of the Commission proposal, the Council built upon the opinion of the other Community institutions, in particular the European Parliament. The Council was concerned about reaching a generally acceptable equilibrium between the protection of the marine environment, the smooth operation of maritime transport and the local conditions of each port. The following points are particularly relevant in that respect:

(a) Regarding the provision of adequate port reception facilities, the Council feels that the facilities should be able to cope with the particular local conditions they are confronted with. The text, as amended by the Council, states that the Member States’ responsibility is to ensure the availability of facilities (i.e. fixed or mobile installations), that the capacity facilities must take into account the quantities of waste normally delivered, the operational needs of the users, the geographical location of the port (lack of space for large installations may make delivery at larger neighbouring ports necessary) and the exemptions in Article 9 (as exempted ships may reduce the need for waste reception facilities).

(b) The common position gives the Member States the flexibility of establishing the waste reception and handling plans in a regional context and following consultations with the relevant parties so that resources could be allocated in a most cost-effective way.

(c) Regarding the waste delivery regime, the text tries to smooth the operation of ships and to reduce the administrative burden on ports by providing that the ship will be able to leave the port without a case by case authorisation if, subject to control under Article 11(2), the availability of sufficient storage capacity clearly appears from the form in Annex II to the Directive. At the same time, the text was made more severe from the point of view of the protection of the marine environment. Whereas the Commission proposal permitted ships not to deliver their waste if there is sufficient storage capacity during the intended voyage of the ship, Article 7 of the common position adds that the ship must have sufficient dedicated storage capacity for the waste kept on board and for the waste that will be generated until the intended port of delivery of the waste. Moreover, the common position adds that the port State has to intervene if the intended port of delivery is not known or has no adequate reception facilities so that there is a risk of discharge at sea.

(d) The fee system (Article 8) was amended in order to allow the Member States to give due consideration to their local maritime traditions while ensuring that these traditions do not conflict with the protection of the environment.

The common position strives to strike a balance between the non-special fee and the direct fee principles and enables the Member States and ports to adapt the fee structure to their particular conditions while providing no incentive for ships to discharge their waste at sea. On the one hand, the common position imposes on all ships a fixed contribution to cover the cost of the port reception facilities irrespective of the actual use of those facilities. On the other hand, it opens the possibility to adjust the relative importance of the mandatory non-special and optional direct fee components in relation to the other characteristics of the port fees, the port’s facilities or other aspects in such a way that the fees would still encourage the delivery of waste to ports instead of discharge into the sea.

This approach would however be subject to a public Council and Commission statement whereby the Commission would submit a proposal to amend the Directive if the variety of cost recovery systems would have adverse effects on the marine environment or the waste flow patterns.
V. OTHER CONSIDERATIONS

(a) The Council introduced a better consideration of international conventions:

— the common position provides that the delivery requirements of the Directive do not prejudge more stringent delivery requirements adopted in accordance with international law (Article 7(3)). This allows the Member States concerned to implement regional conventions such as the Convention on the Protection of the Marine Environment of the Baltic Sea area to which the Community is a party (1), without going as far as extending the application of those regional conventions to the Community as a whole;

— being of the opinion that sewage should be covered as soon as Annex IV to Marpol on sewage has entered into force, the Council completed Article 16 in the sense that the Directive will automatically apply to sewage 12 months after entry into force of that Annex without any further time-consuming measures being necessary.

(b) The Council aimed at avoiding any administrative burden that would be out of proportion to the aims being pursued:

— concerning Article 6(1), the common position maintains the Commission proposal’s option for Member States to choose the authority or body to whom the ship should notify its intention to deliver its waste. It adds that, if the Member State designates the operator of the facility, the latter should pass on the information to the relevant authority;

— it is specified that the information must be kept on board until the next port of call (Article 6(2);

— in Article 9(2), the common position stipulates that the Commission should only be regularly informed of the exemptions;

— the Member States and the Commission agreed to cooperate in establishing common criteria for identifying environmentally friendly ships benefiting form reduced fees.

(c) The Council took into account the specific characteristics of certain types of ships:

— The Member States agreed to make upon adoption of the Directive a public statement, the wording of which is drawn form Marpol Article 3(3), according to which they will take measures to ensure that ships which are exempted from the scope of the Directive, such as warships or other ships enjoying State immunity, will act in a manner consistent, in so far as is reasonable and practicable, with this Directive.

— The Council amended Articles 3 and 11 of the Commission proposal with a view to clarifying that the Directive and its general enforcement provision also apply to fishing vessels and recreational craft. Moreover, the Council shared the Commission’s proposal that these vessels should not be subject to the notification requirements, the priority inspections in case of absent or suspicious notification, the port State control and the detention at the next port of call as described in Article 6 and in Article 11(2): fishing vessels usually call exclusively at the same home ports, which know their schedules, are routinely prepared to receiving their waste without prior notification each time they return form the sea and have specific control instruments for fishing vessels. Moreover, Directive 95/21/EC on port State control does not apply to fishing vessels and recreational craft. As indicated in Article 11(3), other types of inspection and control need therefore to be established by the Member States.

It is also to be noted that so-called fish factory vessels which are not engaged in catching fish are not to be considered fishing vessels under the draft Directive and will therefore be subject to all prior notification and enforcement requirements of Articles 6 and 11.

(d) The Council sought an adequate enforcement of the Directive:

— For ships that infringed against the Directive, the common position maintains, in Article 11, the proposed penalties of Article 13 and the assessment of the ships' record of compliance, while adding that the ship will not be permitted to leave port pending that assessment. The common position also deletes the prohibition to load or unload a ship as this would unduly affect the cargo owners, as well as the 'more detailed inspections' under the port State control Directive as these are solely related to safety.

— The common position deletes Article 12(1)(g) on compensation for unduly delayed ships as it could interfere with the extensive legislation on contractual and civil liability existing in all Member States.

(e) The Council took great care to improve the technical quality and legal clarity of the provisions:

— the recitals were updated and streamlined; repetitions of the articles were avoided;

— the drafting of the definitions of ship, port reception facility and port was improved (see Article 2);

— Article 14 was adapted to take into account the provisions of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1);

— the presentation of the form in Annex II was improved.

VI. AMENDMENTS BY THE EUROPEAN PARLIAMENT

1. The Council followed, in substance, 11 of 18 amendments by the European Parliament, very often in the form suggested in the Commission’s amended proposal:

— Amendment 1 on recital 5 (new recital 8) relating to Helcom was adopted in the form of the Commission's amended proposal.

— Amendments 3 and 16 concerning environmentally friendly ships were accepted through the statement referred to under V(b), fourth indent. The Council could not however agree to setting up an intricate administrative system for classifying individual ships.

— Amendment 4 on evaluation of the Directive was inserted in recital 19 of the common position.

— Amendment 5 on exempted ships was accepted through the statement referred to under V(c) first indent above.

— Amendment 6 on the approval of the waste reception plans was inserted into Article 5(2).

— Amendment 9 on fees was accepted as a statement by the Council and the Commission (see IV(d)).

— Amendment 12 on inspections was accepted in Article 11(2)(d) (see V(d), first indent).

— Amendment 14 (Helsinki Convention) was accepted through the modification of Article 7(3) mentioned under V(a), first indent.

— Amendment 17 was accepted through the postponed application of the Directive to sewage (Article 16(1)) and through a more detailed drafting of Article 4 concerning waste reception facilities (see V(a), second indent).

— Amendment 18 was accepted in the technically improved form proposed by the Commission.

2. The Council did not adopt the following amendments:

   (a) Amendment 2 to recital 15 (recital 12 of the common position). Amendment 7 (first part) to Article 6(1). Amendment 13 to Article 11(4) (new Article 11(3))

      The Council feels that the characteristics of fishing vessels are such that they should escape the notification duties and special enforcement requirements set out in Articles 6 and 11(2) (see V(c), second indent).

   (b) Amendment 7, second part (Article 6(1)): Spreading of notifications

      The Council prefers, with a view to reducing the administrative burden, to maintain the option of informing either the port authorities or another relevant body, while providing for an exchange of information between them (see V(b), first indent).

   (c) Amendment 8 to Article 8: The fees for ship-generated waste

      In considering this Article, the Council had to reconcile different concerns. As explained under IV(d), Member States are requested to fix the fixed-fee element of the waste-reception fees at such a level that it would still, taking into account other characteristics of the port, encourage the delivery of waste in the port.

   (d) Amendment 10 for a new Article 9(2a): Waste disposal arrangements with third countries

      The Council considers that inserting in the Directive a commitment to establish a common policy for waste-disposal arrangements with third countries, although desirable, would require further and careful study of the application of the Directive in practice. The Council nevertheless inserted in Article 7(2) a provision that Member States have to intervene (e.g. by requiring delivery of all waste remaining on board) if there are good reasons to believe that ships intend to deliver their waste in ports having no adequate reception facilities. Since Community ports will in principle be endowed with adequate facilities, such provision mainly concerns third country ports.

   (e) Amendment 11: The percentage of ships to be inspected (Article 11(1))

      The Council feels that adding the requirement of 25 % inspections would place too great a burden upon the authorities of the port State. In addition, the Council considers that the Commission's proposal already contains adequate safeguards by providing for a sufficient number of inspections, for specific inspections in case of suspicion and for inspections under Directive 95/21/EC which already provides that 25 % of the ships entering a port should be inspected.
(f) Amendment 15: The details of the information system (Article 12(3))

The Council is of the opinion that the details of the information system should not be specified in the Directive as they can be best worked out at expert level in the framework of the cooperation between the Member States and the Commission in implementing the Directive.

VII. CONCLUSION

In its common position, the Council attempted to reach a generally acceptable equilibrium between the protection of the marine environment, the smooth operation of maritime transport and the local conditions of each port. In doing so, the Council took carefully into account the opinions of the different Community institutions.