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►B ►M2 DIRECTIVE 2005/35/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 7 September 2005

on the enforcement of international standards on pollution from ships and on the introduction of administrative penalties for pollution offences ◀

►C2 (Text with EEA relevance) ◀

(OJ L 255, 30.9.2005, p. 11)

Amended by:

		Official Journal		
		No	page	date
►M1	Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009	L 280	52	27.10.2009
►M2	Directive (EU) 2024/3101 of the European Parliament and of the Council of 27 November 2024	L 3101	1	16.12.2024

Corrected by:

- C1 Corrigendum, OJ L 33, 4.2.2006, p. 87 (2005/35/EC)
- C2 Corrigendum, OJ L 105, 13.4.2006, p. 65 (2005/35/EC)

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**DIRECTIVE 2005/35/EC OF THE EUROPEAN PARLIAMENT
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Article 1

Purpose

1. The purpose of this Directive is to incorporate into Union law international standards on pollution from ships and to ensure that any company or other legal or natural person liable for illegal discharges of polluting substances is subject to effective, proportionate and dissuasive administrative penalties in order to improve maritime safety and to enhance protection of the marine environment from pollution from ships.

2. This Directive does not prevent Member States from taking more stringent measures in conformity with Union and international law, by providing for administrative or criminal penalties in accordance with their national law.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) 'Marpol 73/78' means the International Convention for the Prevention of Pollution from Ships, 1973, including its 1978 and 1997 Protocols, in its up-to-date version;
- (2) 'polluting substances' means substances subject to regulation by Annex I (oil), Annex II (noxious liquid substances in bulk), Annex III (harmful substances carried by sea in packaged form), Annex IV (sewage from ships) and Annex V (garbage from ships) to Marpol 73/78 and Exhaust Gas Cleaning System residue;
- (3) 'Exhaust as Cleaning System residue' means any material removed from the washwater or the bleed-off water by a treatment system, discharge water that does not meet the discharge criterion, or other residue material removed from the exhaust gas cleaning systems (EGCS) as a result of the operation of a compliance method for emissions reductions defined in Regulation 4 of Annex VI to Marpol 73/78, used as an alternative, in terms of emissions reductions, to the standards set out in Regulation 14 of Annex VI to Marpol 73/78, taking into account the guidelines developed by the International Maritime Organization (IMO);
- (4) 'discharge' means any release howsoever caused from a ship, as referred to in Article 2 of Marpol 73/78;

▼M2

- (5) 'ship' means a seagoing vessel, irrespective of its flag, of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft;
- (6) 'legal person' means any legal entity in possession of such status under applicable national law, other than States themselves, public bodies in the exercise of State authority, or public international organisations;
- (7) 'company' means the shipowner or any other organisation or person, such as the manager or the bareboat charterer, which has assumed the responsibility for the operation of the ship from the shipowner.

▼B*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.

▼M2*Article 4***Infringements and exceptions**

1. Member States shall ensure that discharges of polluting substances into any of the areas set out in Article 3(1) are regarded as infringements, unless:

- (a) for polluting substances subject to regulation by Annex I to Marpol 73/78, those discharges satisfy the conditions set out in Annex I Regulations 15, 34, 4.1, 4.2 or 4.3 to Marpol 73/78 and section 1.1.1 of part II-A of the International Code for Ships Operating in Polar Waters ('Polar Code');

▼M2

- (b) for polluting substances subject to regulation by Annex II to Marpol 73/78, those discharges satisfy the conditions set out in Annex II Regulations 13, 3.1.1, 3.1.2 or 3.1.3 to Marpol 73/78 and section 2.1 of part II-A of the Polar Code;
- (c) for polluting substances subject to regulation by Annex III to Marpol 73/78, those discharges satisfy the conditions set out in Annex III Regulation 8.1 to Marpol 73/78;
- (d) for polluting substances subject to regulation by Annex IV to Marpol 73/78, those discharges satisfy the conditions set out in Annex IV Regulations 3, 11.1 and 11.3 to Marpol 73/78 and section 4.2 of part II-A of the Polar Code;
- (e) for polluting substances subject to regulation by Annex V to Marpol 73/78, those discharges satisfy the conditions set out in Annex V Regulations 4.1, 4.2, 5, 6.1, 6.2 and 7 to Marpol 73/78 and section 5.2 of part II-A of the Polar Code; and
- (f) for Exhaust Gas Cleaning System residue, those discharges satisfy the conditions set out in Annex VI Regulations 4, 14.1, 14.4, 14.6, 3.1.1 and 3.1.2 to Marpol 73/78, taking into account the Guidelines developed by the IMO, including Resolution MEPC.340(77) in its up-to-date version.

2. Each Member State shall take all necessary measures to ensure that any company, or other legal or natural person having committed an infringement within the meaning of paragraph 1 is held liable.

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 or other appropriate action, taking into account the relevant guidelines adopted by the IMO, is undertaken in accordance with its national law.

2. In so far as the inspection referred to in paragraph 1 of this Article reveals facts that could indicate an infringement within the meaning of Article 4, the Member State concerned shall apply the provisions of this Directive. The competent authorities of that Member State and of the flag State shall be informed.

3. An indicative list of irregularities or information to be taken into account in the application of paragraph 1 of this Article is provided in Annex I to this Directive.

▼B*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.

▼M2*Article 8***Administrative penalties**

1. Without prejudice to the obligations of Member States under Directive (EU)2024/1203 of the European Parliament and of the Council⁽¹⁾, Member States shall lay down a system of administrative penalties within the meaning of their national legal system for the breach of national provisions implementing Article 4 of this Directive and shall ensure that they are applied. The administrative penalties provided for shall be effective, proportionate and dissuasive.

2. Member States shall ensure that administrative penalties introduced in transposition of this Directive include fines which are imposed on the company held liable for the infringement.

⁽¹⁾ Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC (OJ L, 2024/1203, 30.4.2024, ELI: <http://data.europa.eu/eli/dir/2024/1203/oj>).

▼M2

3. Where the legal system of the Member State does not provide for administrative penalties, this Article may be applied in such a manner that the penalties, including the fines referred to in paragraph 2, are initiated by the competent authority and imposed by competent national courts, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative fines imposed by competent authorities. In any event, the penalties imposed in accordance with this paragraph shall be effective, proportionate and dissuasive and applied in accordance with the provisions of this Directive. The Member States concerned shall notify to the Commission by 6 July 2027 the provisions of their laws which they adopt pursuant to this paragraph and, without delay, any subsequent amendment to, or amendment affecting, those laws.

*Article 8d***Effective application of penalties**

1. In order to ensure that penalties are effective, proportionate and dissuasive, Member States shall ensure that, when determining and applying the type and level of administrative penalty for a company or other legal or natural person found by competent authorities to be liable, in accordance with Article 8, for an infringement within the meaning of Article 4, the competent authorities take into account all relevant circumstances of the infringement, in particular:

- (a) the nature, gravity and the duration of the discharge;
- (b) the degree of culpability or fault of the responsible person, within the meaning of the legal system of the Member State concerned;
- (c) the damage caused by the discharge to the environment or human health, including, where relevant, its impact on fishing, tourism and coastal communities;
- (d) the financial capacity of the company or other legal or natural person liable;
- (e) the economic benefits generated or expected to be generated for the company or other legal or natural person liable from the infringement, where applicable;
- (f) measures taken by the company or other legal or natural person liable in order to prevent the discharge or mitigate its impact;
- (g) the level of cooperation of the company or other legal or natural person liable for the infringement with the competent authority, including any action aiming to circumvent or obstruct an appropriate inspection or other investigation by a competent authority; and
- (h) any previous ship-source pollution infringement by the company or other legal or natural person liable.

▼M2

2. Member States shall not set or apply administrative penalties for infringements under this Directive at a level that is too low to ensure the effectiveness, proportionality and dissuasive nature of those penalties.

▼B*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.

▼M2*Article 10***Exchange of information and experience**

1. For the purposes of this Directive, the Member States and the Commission, with the assistance of the European Maritime Safety Agency (EMSA), shall cooperate in the exchange of information, building on the Union Maritime Information and Exchange System set out in Article 22a(3) of and Annex III to Directive 2002/59/EC of the European Parliament and of the Council⁽¹⁾ (SafeSeaNet), in order to:

- (a) enhance the information required for the effective implementation of this Directive, in particular as provided by the European satellite-based pollution detection service set up by this Directive (CleanSeaNet) and by other relevant reporting mechanisms, with a view to developing reliable methods of tracing polluting substances in the sea;
- (b) develop and implement an appropriate control and monitoring system, integrating the information provided in accordance with paragraph (a) with the information made available by the Commission to the Member States in SafeSeaNet, THETIS-EU and other Union information databases and tools in order to facilitate the early identification and monitoring of ships discharging polluting substances, with a view to optimising enforcement actions undertaken by national authorities;
- (c) make optimum use of the information provided in accordance with points (a) and (b) of this paragraph, as well as the information reported by Member States pursuant to Article 10a, with a view to facilitating the access to and the exchange of such information between competent authorities and with authorities of other Member States and the Commission; and

⁽¹⁾ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p. 10).

▼M2

(d) by 6 July 2030, ensure that competent authorities digitally analyse all high-confidence alerts and indicate whether or not they verify those high-confidence alerts sent by CleanSeaNet every year, striving to verify at least 25 % of those high-confidence alerts, where ‘verify’ means any follow-up actions by competent authorities of an alert sent by CleanSeaNet to determine whether the alert in question corresponds to an illegal discharge. If a Member State does not verify an alert, it should indicate the reasons for not doing so.

2. Member States shall ensure that information on major ship-source pollution incidents is disseminated to the fishing and coastal communities concerned in a timely manner.

3. The Commission shall provide for the organisation of exchange of experiences between Member States’ national authorities and experts, including those from the private sector, civil society and trade unions, on the application of this Directive across the Union, with a view to establishing common practices and guidelines on the enforcement of this Directive.

4. The Commission shall provide for the organisation of exchange of experiences and best practices between Member States’ national competent authorities on how to ensure an effective determination and application of penalties. On the basis of that exchange of information, the Commission may propose guidelines, including on types of polluting substances and sensitive areas of concern.

*Article 10a***Reporting**

1. The Commission shall establish an electronic reporting tool, for the purposes of collection and exchange of information between Member States and the Commission on the implementation of the enforcement system provided for by this Directive.

2. Member States shall ensure that the following information relating to the actions undertaken by their competent authorities is reported through the electronic reporting tool referred to in paragraph 1:

(a) information relating to the follow-up by competent authorities of an alert sent by CleanSeaNet or the reasons for not following up such an alert, as soon as possible after the follow-up activities are completed or the decision not to follow-up is taken;

(b) information relating to the inspections or other appropriate actions undertaken in accordance with Article 6, as soon as possible after the inspections or other appropriate actions are completed;

▼M2

- (c) information relating to the actions undertaken in accordance with Article 7, as soon as possible after such actions are completed; and
- (d) information relating to penalties imposed in accordance with this Directive, once the administrative and, where applicable, legal proceedings are concluded, without undue delay and in any case by 30 June each year for penalties imposed during the previous calendar year. To the extent that information relating to penalties includes personal data, such information shall be anonymised.

3. In order to ensure the uniform application of this Article, the Commission may, by means of implementing acts, lay down detailed rules on the procedure for reporting the information referred to in paragraph 2, including specifying the type of information to be reported. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13.

4. Member States shall notify the Commission of the authorities that have access to the electronic reporting tool referred to in paragraph 1.

*Article 10b***Training**

The Commission shall, with the assistance of EMSA and in cooperation with Member States, facilitate the development of Member States' capabilities by providing, as appropriate, training to the authorities responsible for the detection and verification of infringements under the scope of this Directive and the enforcement of penalties or any other measures arising from such infringements.

*Article 10c***Publication of information**

1. Based on information reported by Member States in accordance with Article 10a, the Commission shall make publicly available a regularly updated Union-wide overview on the implementation and enforcement of this Directive, upon the conclusion of the administrative and legal proceedings, when applicable. To the extent that information relating to penalties includes personal data or commercially sensitive information, such information shall be anonymised. That overview shall include the information listed in Annex II to this Directive.

2. Without prejudice to Directive 2003/4/EC of the European Parliament and of the Council ⁽¹⁾, the Commission shall take appropriate measures to protect the confidentiality of information obtained in the implementation of this Directive.

⁽¹⁾ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).

▼M2*Article 10d***Protection of persons who report potential infringements and protection of their personal data**

1. The Commission shall develop, make accessible and maintain a confidential online external reporting channel for receiving reports, within the meaning of Directive (EU) 2019/1937 of the European Parliament and of the Council (¹), on potential infringements of this Directive and shall relay such reports to the Member States concerned.

2. Member States shall ensure that national competent authorities receiving reports of violations of this Directive, submitted through the channel referred to in paragraph 1, investigate, act upon where appropriate, provide feedback in a timely manner, and follow-up on those reports in accordance with Directive (EU) 2019/1937.

3. The Commission may, pursuant to Article 25(1), points (c) and (h), of Regulation (EU) 2018/1725 of the European Parliament and of the Council (²) and in line with Article 25(2) thereof, restrict the application of Articles 4, 14 to 22, 35 and 36 of that Regulation for the data subjects who are the object of or mentioned in the report submitted through the channel referred to in paragraph 1 of this Article and who are not the data subjects submitting that report. That restriction may apply only for the duration necessary for the investigation of the report referred to in paragraph 2 of this Article by the competent Member State authorities.

*Article 12a***Evaluation and review**

1. By 6 July 2032, the Commission shall carry out an evaluation of this Directive. That evaluation shall be based on at least the following:

- (a) the experience gathered from the implementation of this Directive;
- (b) the information reported by Member States pursuant to Article 10a and the Union-wide overview provided in accordance with Article 10c;
- (c) the interaction of this Directive with other relevant international and Union law on marine environment protection and maritime safety; and
- (d) the latest data and scientific findings.

(¹) Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

(²) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

▼M2

2. As part of the review, the Commission shall assess the possibility of modifying the scope of this Directive, if appropriate, in view of new or updated international standards for the prevention of pollution from ships subject to present and future provisions in Marpol 73/78, such as marine plastic litter, container loss and loss of plastic pellets.

*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 ⁽¹⁾. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽²⁾.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 and Article 5 of Regulation (EC) No 2099/2002 shall apply.

*Article 16***Transposition**

1. 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.

2. Member States without direct access to the sea or without seaports shall not be obliged to transpose and implement Article 6 and Article 7(2) of this Directive.

▼B*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.

⁽¹⁾ Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships (OJ L 324, 29.11.2002, p. 1).

⁽²⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

▼M2*ANNEX I***Non-exhaustive list of irregularities or information referred to in Article 6**

1. Any irregularities with respect to the oil and other relevant record books or with respect to other deficiencies related to potential discharges, discovered during inspections carried out under Directive 2009/16/EC of the European Parliament and of the Council⁽¹⁾ by the Member State concerned, by another Member State or by a State signatory to the Paris Memorandum of Understanding on Port State Control at the previous ports of call of the ship;
2. Any irregularities with respect to the delivery of ship-generated waste, or the notification thereof, as required under Directive (EU) 2019/883 of the European Parliament and of the Council⁽²⁾ which took place either in the Member State concerned or in the Member State of the previous ports of call of the ship;
3. Any irregularities with respect to non-compliance with the criteria for the use of EGCS operated as emissions abatement methods set out in Annex II to Directive (EU) 2016/802 of the European Parliament and of the Council⁽³⁾, which refers to the 2009 Guidelines for EGCS set out in Resolution MEPC.184(59) as replaced by the 2021 Guidelines for EGCS set out in resolution MEPC.340(77).
4. Any information obtained from another Member State relating to a potential illegal discharge of the ship obtained through the procedures foreseen in Directive 2002/59/EC of the European Parliament and of the Council⁽⁴⁾, including any proof of or presumptive evidence on deliberate discharges of oil or other infringements of Marpol 73/78 communicated by coastal stations of a Member State to the coastal stations in the Member State concerned in accordance with Article 16 of that Directive or incidents or accidents reported by the master of the ship to the coastal station of the Member State concerned in accordance with Article 17 of that Directive.
5. Any other information from persons involved in the operation of the ship, including pilots, which suggests irregularities relating to a potential violation of the obligations under this Directive.

⁽¹⁾ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

⁽²⁾ Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC (OJ L 151, 7.6.2019, p. 116).

⁽³⁾ Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (OJ L 132, 21.5.2016, p. 58).

⁽⁴⁾ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p. 10).

▼M2*ANNEX II***Information to be included in the Union-wide overview published by the Commission, referred to in Article 10c**

1. For each pollution incident verified and confirmed by a Member State, information in the Union-wide overview published by the Commission in accordance with Article 10c shall include:
 - (a) date of the incident;
 - (b) identification of the ship involved in the incident;
 - (c) position (latitude and longitude) of the pollution incident;
 - (d) extent of the pollution incident (area and length), if applicable;
 - (e) type of pollutant;
 - (f) Member State(s) involved;
 - (g) description of the verification activities of the pollution incident;
 - (h) date and time of the verification activities and the assets used for verification activities;
 - (i) details of the administrative penalty imposed.
2. For each Member State, aggregated information contained in the Union-wide overview published by the Commission in accordance with Article 10c shall include:
 - (a) number of CleanSeaNet possible pollution incidents detected;
 - (b) number of CleanSeaNet possible pollution incidents verified on-site by the Member State;
 - (c) number of CleanSeaNet possible pollution incidents verified by other means by the Member State;
 - (d) number of confirmed pollution incidents after verification (detailed per area: territorial waters, EEZ, high seas);
 - (e) number of identified offenders;
 - (f) number of cases where a penalty was imposed.
3. A summary, solely for reference purposes, of relevant parts of Marpol 73/78, which shall be updated whenever there are changes to Marpol 73/78 relevant to this Directive.