



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

11 July 2018*

(Reference for a preliminary ruling — Montego Bay Convention — Article 220(6) — Enforcement by the coastal State — Jurisdiction of the Court to interpret provisions of international law — Directive 2005/35/EC — Ship-source pollution — Article 7(2) — Marpol Convention 73/78 — Oil spill in the exclusive economic zone from a foreign vessel in transit — Circumstances in which a coastal State may instigate proceedings against a foreign vessel — Freedom of navigation — Protection of the marine environment — Major damage or threat of major damage to the coastline, related interests or any resources in the territorial sea or exclusive economic zone — Clear objective evidence)

In Case C-15/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein oikeus (Supreme Court, Finland), made by decision of 12 December 2016, received at the Court on 13 January 2017, in the proceedings

Bosphorus Queen Shipping Ltd Corp.

v

Rajavartiolaitos,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský (Rapporteur), M. Safjan, D. Šváby and M. Vilaras, Judges,

Advocate General: N. Wahl,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 December 2017,

after considering the observations submitted on behalf of:

- Bosphorus Queen Shipping Ltd Corp., by P. Karhu, asianajaja,
- the Finnish Government, by J. Heliskoski, acting as Agent,
- the Belgian Government, by J. Van Holm, C. Van Lul and L. Van den Broeck, acting as Agents,
- the Greek Government, by G. Karipsiadis, K. Georgiadis, M. Stellakatos, E. Tsaousi and E. Skalieri, acting as Agents,

* Language of the case: Finnish.

- the French Government, by B. Fodda and D. Colas, acting as Agents,
 - the Netherlands Government, by C.S. Schillemans and M. Bulterman, acting as Agents,
 - the European Commission, by L. Nicolae, A. Bouquet, E. Paasivirta and P. Aalto, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 28 February 2018,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 220(6) of the United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982 (*United Nations Treaty Series*, Vol. 1833, 1834 and 1835, p. 3, ‘the Montego Bay Convention’). and Article 7(2) of Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences (OJ 2005 L 255, p. 11), as amended by Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 (OJ 2009 L 280, p. 52) (‘Directive 2005/35’).
- 2 The request has been made in proceedings between Bosphorous Queen Shipping Ltd Corp. (‘Bosphorous’) the company which owns the dry cargo vessel *Bosphorous Queen*, registered in Panama, and the Rajavartiolaitos (Finnish Border Protection Agency) concerning a fine imposed by the latter on that company on account of an oil spill by that vessel in the Finnish exclusive economic zone (EEZ).

Legal context

International law

Convention Relating to Intervention on the High Seas 1969

- 3 The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties was concluded at Brussels on 29 November 1969 (*United Nations Treaty Series*, Vol. 970, p. 211, ‘Convention Relating to Intervention on the High Seas 1969’). The European Union and a number of its Member States are not parties to that convention. However, the Republic of Finland and Panama are parties to that convention.
- 4 In accordance with Article I(1) of that convention, parties to that convention ‘may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences’.
- 5 Article II(4) of the Convention relating to Intervention on the High Seas 1969 provides;
‘For the purposes of the present Convention:

...

4. “related interests” means the interests of a coastal State directly affected or threatened by the maritime casualty, such as:

- (a) maritime coastal, port or estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
- (b) tourist attractions of the area concerned;
- (c) the health of the coastal population and the well-being of the area concerned, including conservation of living marine resources and of wildlife.’

The Marpol Convention

- 6 The International Convention for the Prevention of Pollution from Ships, signed in London on 2 November 1973, as supplemented by the Protocol of 17 February 1978 (‘the Marpol Convention 73/78’), establishes rules to combat pollution of the marine environment.
- 7 The European Union is not a party to the convention. However, like all the other Member States of the EU, the Republic of Finland is a party to that convention.
- 8 The regulations for the prevention of pollution by oil are set out in Annex I to the Marpol Convention 73/78.
- 9 Regulation 1(11) of Annex I to that convention defines special area as ‘a sea area where for recognised technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic the adoption of special mandatory methods for the prevention of sea pollution by oil is required’. For the purposes of that annex, the special areas include the Baltic Sea area which consists of the Baltic Sea proper with the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at 57°44.8’N.
- 10 Regulation 15 in Part C of Annex I to that convention, which concerns the ‘control of operational discharge of oil’, provides:
 - ‘1. Subject to the provisions of regulation 4 of this annex and paragraphs 2, 3, and 6 of this regulation, any discharge into the sea of oil or oily mixtures from ships shall be prohibited.
 - ...
 - B. Discharges in special areas
 - 3 Any discharge into the sea of oil or oily mixtures from ships of 400 gross tonnage and above shall be prohibited except when all of the following conditions are satisfied:
 - 1. the ship is proceeding en route;
 - 2. the oily mixture is processed through an oil filtering equipment meeting the requirements of regulation 14.7 of this Annex;
 - 3. the oil content of the effluent without dilution does not exceed 15 parts per million;
 - 4. the oily mixture does not originate from cargo pump-room bilges on oil tankers; and
 - 5. the oily mixture, in case of oil tankers, is not mixed with oil cargo residues.’

The Montego Bay Convention

11 The Montego Bay Convention entered into force on 16 November 1994. Its conclusion was approved on behalf of the European Union by Council Decision 98/392/EC of 23 March 1998 (OJ 1998 L 179, p. 1).

12 According to Article 1 of that convention:

‘(1) “Area” means the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;

...

(4) “pollution of the marine environment” means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

...’

13 Article 56 of that convention, entitled ‘Rights, jurisdiction and duties of the coastal State in the [EEZ]’, provides:

‘In the [EEZ], the coastal State has:

- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment;
- (c) other rights and duties provided for in this Convention.’

14 Article 58 of the Montego Bay Convention, relating to ‘Rights’ and duties of other States in the [EEZ]’, provides:

‘1. In the [EEZ], all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in Article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

2. Articles 88 to 115 and other pertinent rules of international law apply to the [EEZ] in so far as they are not incompatible with this Part.

3. In exercising their rights and performing their duties under this Convention in the [EEZ], States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.’

15 Article 61(1) to (4) of that convention, relating to ‘Conservation of the living resources’, provides:

- ‘1. The coastal State shall determine the allowable catch of the living resources in its [EEZ].
2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organisations, whether subregional, regional or global, shall cooperate to this end.
3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.
4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent on harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.’

16 Article 194(5) of the Convention states:

‘The measures taken in accordance with this part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.’

17 Article 211(1) and (7) of that convention, entitled ‘Pollution from vessels’, states:

‘1. States, acting through the competent international organisation or general diplomatic conference, shall establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimise the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage to the related interests of coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary.

...

7. The international rules and standards referred to in this Article should include, inter alia, those relating to prompt notification to coastal States, whose coastline or related interests may be affected by incidents, including maritime casualties, which involve discharges or probability of discharges.’

18 Article 220(3) to (6) of the Montego Bay Convention, entitled ‘Enforcement by coastal States’, lays down the rules of jurisdiction pursuant to which a coastal State may take measures against a vessel which commits a violation of the international rules and standards relating to pollution by vessels in its EEZ. Those paragraphs read:

‘3. Where there are clear grounds for believing that a vessel navigating in the [EEZ] or the territorial sea of a State has, in the [EEZ], committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that

State conforming and giving effect to such rules and standards, that State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.

4. States shall adopt laws and regulations and take other measures so that vessels flying their flag comply with requests for information pursuant to paragraph 3.

5. Where there are clear grounds for believing that a vessel navigating in the [EEZ] or the territorial sea of a State has, in the [EEZ], committed a violation referred to in paragraph 3 resulting in a substantial discharge causing or threatening significant pollution of the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.

6. Where there is clear objective evidence that a vessel navigating in the [EEZ] or the territorial sea of a State has, in the [EEZ], committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or [EEZ], that State may, subject to section 7, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws.'

19 Article 221 of that convention, entitled 'Measures to avoid pollution arising from maritime casualties', provides:

'1. Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.

2. For the purposes of this article, "maritime casualty" means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo.'

20 Article 237 of that convention, relating to obligations deriving from other conventions on the protection and preservation of the marine environment, provides:

'1. The provisions of this Part are without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously which relate to the protection and preservation of the marine environment and to agreements which may be concluded in furtherance of the general principles set forth in this Convention.

2. Specific obligations assumed by States under special conventions, with respect to the protection and preservation of the marine environment, should be carried out in a manner consistent with the general principles and objectives of this Convention.'

The Vienna Convention

21 The Vienna Convention on the Law of Treaties was concluded in Vienna on 23 May 1969 (*United Nations Treaty Series*, Vol. 1155, p. 331; 'the Vienna Convention').

22 Under Article 31 of the Vienna Convention, entitled ‘General rule of interpretation’:

‘1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

...

3. There shall be taken into account, together with the context:

...

(c) any relevant rules of international law applicable in the relations between the parties.

...’

23 Article 32 of that convention, entitled ‘Supplementary Means of Interpretation’, is worded as follows:

‘Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31:

(a) Leaves the meaning ambiguous or obscure; or

(b) Leads to a result which is manifestly absurd or unreasonable.’

European Union law

24 Recitals 1 to 4 and 12 of Directive 2005/35 state as follows:

‘(1) The Community’s maritime safety policy is aimed at a high level of safety and environmental protection and is based on the understanding that all parties involved in the transport of goods by sea have a responsibility for ensuring that ships used in Community waters comply with applicable rules and standards.

(2) The material standards in all Member States for discharges of polluting substances from ships are based upon the Marpol 73/78 Convention; however these rules are being ignored on a daily basis by a very large number of ships sailing in Community waters, without corrective action being taken.

(3) The implementation of Marpol 73/78 shows discrepancies among Member States and there is thus a need to harmonise its implementation at Community level; in particular the practices of Member States relating to the imposition of penalties for discharges of polluting substances from ships differ significantly.

(4) Measures of a dissuasive nature form an integral part of the Community’s maritime safety policy, as they ensure a link between the responsibility of each of the parties involved in the transport of polluting goods by sea and their exposure to penalties; in order to achieve effective protection of the environment there is therefore a need for effective, dissuasive and proportionate penalties.

...

(12) Where there is clear, objective evidence of a discharge causing major damage or a threat of major damage, Member States should submit the matter to their competent authorities with a view to instituting proceedings in accordance with Article 220 of the [Montego Bay Convention].’

25 Article 1 of that directive provides:

‘1. The purpose of this Directive is to incorporate international standards for ship-source pollution into Community law and to ensure that persons responsible for discharges of polluting substances are subject to adequate penalties, including criminal penalties, in order to improve maritime safety and to enhance protection of the marine environment from pollution by ships.

2. This Directive does not prevent Member States from taking more stringent measures against ship-source pollution in conformity with international law.’

26 Article 3(1)(b) and (d) of that directive states:

‘1. This Directive shall apply, in accordance with international law, to discharges of polluting substances in:

...

(b) the territorial sea of a Member State;

...

(d) the [EEZ] or equivalent zone of a Member State, established in accordance with international law
...’

27 Article 7 of that directive, entitled ‘Enforcement measures by coastal States with respect to ships in transit’, provides in paragraph 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 Montego Bay Convention] 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.’

Finnish law

28 Directive 2005/35 was transposed into Finnish law by the merenkulun ympäristönsuojelulaki (No 1672/2009) (Law relating to the protection of the environment in relation to maritime transport (No 1672/2009)).

29 Chapter 3 of that law, entitled ‘Oil discharge fine’, provides in Paragraph 1(1):

‘For a violation of the prohibition, laid down in Chapter 2, section 1, on the discharge of oil or oily mixtures in Finland’s territorial waters or Finland’s [EEZ], a monetary penalty (*oil discharge fine*) shall be imposed, unless the discharge is deemed minor in amount and impact. However, an oil discharge fee shall be imposed on foreign ships in transit for any violation of the discharge prohibition in

Finland's [EEZ], only if the discharge causes considerable damage or risk of damage to Finland's shoreline or to the interests pertaining thereto, or to the natural resources in Finland's territorial sea or within Finland's [EEZ].'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 30 According to the Border Protection Agency, on 11 July 2011, the vessel *Bosphorous Queen* discharged oil into the sea while it was in transit through Finland's EEZ.
- 31 The discharge was made at the outer edge of that EEZ approximately 25 to 30 km from the Finnish coast. The oil spread over some 37 km in a strip roughly 10 metres wide. The surface area of the spill was estimated to be approximately 0.222 km² and its volume to be between 0.898 and 9.050 m³.
- 32 The referring court states that the Finnish authorities did not therefore take countermeasures in response to the oil spill. The oil was not observed to have reached the coastline and was not found to have caused any specific damage.
- 33 However, when the vessel returning from St Petersburg (Russia) again passed through the Finnish EEZ, the Border Protection Agency, by decision of 23 July 2011, first, ordered, by way of interim measures, *Bosphorous* to provide a financial security of EUR 17 112 intended to cover the amount of any oil spill fine imposed, and, second, detained the ship. After the financial security was deposited on 25 July 2011, the ship resumed its journey.
- 34 The risks generated by the discharge of oil concerned was the subject of an opinion, issued on 26 July 2011, by the Suomen ympäristökeskus (Finnish Environment Agency) to the Border Protection Agency. The environmental impact of the oil spill was assessed on the basis of the estimated minimum quantity of oil spilled. It is clear from the opinion that:
- At least some of the oil could reach the Finnish coastal areas. In that case, their use for recreational purposes would be adversely affected.
 - Some of the oil also affected the open seas in the vicinity of the spillage site.
 - The oil spill was prejudicial to the favourable development of the state of the environment in the Baltic Sea.
 - The oil spill had adversely affected the birds that rest and feed on the open seas.
 - The oil had harmed vegetable and animal plankton. The oil compounds were being passed down the food chain.
 - The three-spined sticklebacks that inhabit the surface water of the open sea had probably been directly harmed by the oil spillage, with the result that an acute adverse effect on fish stocks could not be excluded.
 - The level of sedimentation in the area was high, and it was likely that a percentage of the oil compounds would reach the sea floor and harm the biocenoses living there.
 - Many valuable natural habitats belonging to the Natura 2000 network were located in the vicinity of the spillage site.

- The timing of the oil spill was particularly disadvantageous to the sea bird populations, inasmuch as these had large numbers of young that were unable to fly in the waters that stretch from the outer skerries of the Hanko Peninsula to the Archipelago Sea, and the young eider ducks circulated at considerable distance from the coast.
 - At the time of the oil spill, there had been thousands of eider ducks off the Hanko Peninsula. The spill had posed a major threat to the sea bird population on the Finnish coast.
- 35 By decision of 16 September 2011, the Border Protection Agency imposed a fine of EUR 17 112 on Bosphorous for the oil spill, on the ground that that oil spill had caused major damage or a threat of major damage to Finland’s coastline or related interests, or to resources of its territorial sea or EEZ.
- 36 Bosphorous and the owner of the vessel subsequently brought an action before the Helsingin käräjäoikeus (District Court, Helsinki, Finland), sitting as a maritime court, for the annulment of the decisions of 23 July and 16 September 2011 requiring the provision of a security and the imposition of an oil spill fine. In particular, they claimed that that spill did not caused major damage to the environment and that only the courts of the Flag State, that is Panama, had jurisdiction to hear the case.
- 37 By its judgment of 30 January 2012, the Helsingin käräjäoikeus (District Court, Helsinki) held that it had been proved that *Bosphorus Queen* had discharged at least 900 litres of oil into the sea. During the proceedings, at the end of which that judgment was delivered, the Helsingin käräjäoikeus (District Court, Helsinki) heard an expert witness from the Finnish Environment Institute. It went on to find, in the light of the evidence before it, that, for the purposes of Chapter 3, Paragraph 1, of Law No 1672/2009, the oil spill caused a threat of major damage. On those grounds, the Helsingin käräjäoikeus (District Court, Helsinki) dismissed the action.
- 38 Following an appeal brought by Bosphorous before the Helsingin hovioikeus (Court of Appeal, Helsinki, Finland), that court discharged that company from its obligation to pay the oil spill fine on the ground that that obligation to pay the fine was the responsibility of the owner of the vessel, whose identity was known.
- 39 The Border Protection Agency then brought an appeal before the Korkein oikeus (Supreme Court, Finland) which set aside that judgment and referred the case back to the Helsingin hovioikeus (Court of Appeal, Helsinki) in order to determine whether there was any ground, within the meaning of Chapter 3, Article 1, of the Law on environmental protection in relation to maritime transport justifying the imposition of an oil spill fine.
- 40 By judgment of 18 November 2014, the Helsingin hovioikeus (Court of Appeal, Helsinki) held that it was clear from the evidence before it that the oil spill at issue threatened to cause major damage to the Republic of Finland’s coastline or related interests, or to resources of its territorial sea or EEZ. Accordingly, it dismissed the appeal against the judgment of the Helsingin käräjäoikeus (District Court, Helsinki).
- 41 Bosphorous then brought an appeal before the Korkein oikeus (Supreme Court) seeking to have set aside the decision of the Helsingin hovioikeus (Court of Appeal, Helsinki), the judgment of the Helsingin käräjäoikeus (District Court, Helsinki), and the decisions of 23 July and 16 September 2011 and the cancellation of the oil spill fine.

42 In those circumstances the Korkein oikeus (Supreme Court) decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

- (1) Is the expression “coastline or related interests” in Article 220(6) of [the Montego Bay Convention] and the expression “coastline or related interests” in Article 7(2) of Directive [2005/35] to be interpreted by reference to the definition of the expression “coastline or related interests” contained in Article II(4) of the [Convention Relating to Intervention on the High Seas 1969]?
- (2) In accordance with the definition contained in Article II(4)(c) of the [Convention Relating to Intervention on the High Seas 1969] referred to in Question 1, “related interests” means, *inter alia*, the well-being of the area concerned, including conservation of living marine resources and of wildlife. Does that provision also apply to the conservation of living resources and wildlife in the [EEZ], or is that provision of the convention concerned only with conservation of the interests of the coastal area?
- (3) If Question 1 is answered in the negative, what meaning is to be ascribed to the expression “coastline or related interests” in Article 220(6) of [the Montego Bay Convention] and the expression “coastline or related interests” in Article 7(2) of Directive [2005/35]?
- (4) What meaning is to be ascribed to the expression “resources of its territorial sea or [EEZ]” as it is used in Article 220(6) of [the Montego Bay Convention] and Article 7(2) of Directive [2005/35]? Are living resources to be taken to mean only exploitable species or does that term also include species associated with or dependent upon exploitable species within the meaning of Article 61(4) of the [the Montego Bay Convention], such as, for example, species of flora and fauna which are used by exploitable species as food?
- (5) What definition is to be adopted of the expression “causing [a] threat” in Article 220(6) of [the Montego Bay Convention] and Article 7(2) of Directive [2005/35]? Is the threat of damage being caused to be determined by reference to the concept of abstract or specific risk or in some other way?
- (6) In the assessment of the conditions governing the exercise of power by the coastal State, laid down in Article 220(6) of [the Montego Bay Convention] and Article 7(2) of Directive [2005/35], must it be assumed that major damage or the threat of major damage is a more serious consequence than significant pollution of the marine environment or the threat of such pollution within the meaning of Article 220(5) of [the Montego Bay Convention]? What definition is to be adopted of “significant pollution of the marine environment” and how is account to be taken of such pollution in the assessment of major damage or the threat of major damage?
- (7) What factors are to be taken into account in the assessment of whether damage or the threat of damage is major? Is account to be taken, for example, of the duration and geographical extent of the adverse effects that manifest themselves as damage? If so, how are the duration and the extent of the damage to be assessed?
- (8) Directive [2005/35] is a directive laying down minimum standards and does not prevent Member States from taking more stringent measures against ship-source pollution in conformity with international law (Article [1(2)]). Does the possibility of applying more stringent rules apply to Article 7(2) of that directive, which governs the power of the coastal State to take action against a vessel in transit?

- (9) May any account be taken of the specific geographical and ecological characteristics and sensitivity of the Baltic Sea area in the assessment of the conditions governing the exercise of power by the coastal State which are laid down in Article 220(6) of [the Montego Bay Convention] and Article 7(2) of Directive 2005/35?
- (10) Does “clear objective evidence” within the meaning of Article 220(6) of [the Montego Bay Convention] and Article 7(2) of Directive [2005/35] include not only evidence that a vessel has committed the infringements to which the aforementioned provisions refer but also evidence of the consequences of the spill? What form of evidence is to be required to show that there is a threat of major damage to the coastline or related interests or to any resources of its territorial sea or of the [EEZ], such as the bird and fish stocks and the marine environment in the area? Does the requirement of clear objective evidence mean, for example, that the assessment of the adverse effects of the oil spillage on the marine environment must always be based on specific surveys and studies relating to the impact of the oil spill that has occurred?

Consideration of the questions referred

Preliminary observations

- 43 In order to answer the questions from the referring court in the present case, the Court must examine the Montego Bay Convention, the Marpol Convention 73/78 and the Convention Relating to Intervention on the High Seas 1969. Therefore, the status of those conventions with regard to EU law should be set out.
- 44 First, with regard to the Montego Bay Convention, which was signed and approved by the EU, its provisions are an integral part of the European Union legal order and is binding on it. Therefore, the Court has jurisdiction to interpret those provisions. Furthermore, that convention has primacy over secondary EU legislation (see, to that effect, judgment of 3 June 2008, *Intertanko and Others*, C-308/06, EU:C:2008:312, paragraphs 42 and 53) which must be interpreted as far as possible in accordance with those agreements.
- 45 Second, as far as concerns the Marpol Convention 73/78, to which the European Union is not a party, but which binds all its Member States, that convention is liable to have consequences for the interpretation of the Montego Bay Convention and, second, the provisions of secondary law which fall within the field of application of the Marpol Convention 73/78, such as those of Directive 2005/35. In view of the customary principle of good faith, which forms part of general international law, and of Article 4(3) TEU, the Court is to interpret the provisions by taking account of the Marpol Convention 73/78 (see, to that effect, judgment of 3 June 2008, *Intertanko and Others*, C-308/06, EU:C:2008:312, paragraphs 47 and 52).
- 46 Third, concerning the Convention Relating to Intervention on the High Seas 1969, it must be observed, first, that the European Union has not acceded to that convention and, second, that the European Union cannot be regarded as having taken the place of the Member State, if only because not all of them are parties to that convention. It follows that that convention is not binding on the European Union and the court does not have jurisdiction to interpret it as such in a reference for a preliminary ruling (see, by analogy, judgment of 24 June 2008, *Commune de Mesquer*, C-188/07, EU:C:2008:359, paragraph 85).
- 47 However, in the present case, since the Court is requested to interpret the Montego Bay Convention, the Convention Relating to Intervention on the High Seas 1969 must be taken into account since the latter convention is part of the relevant rules for the interpretation of the Montego Bay Convention.

48 It is clear, in particular, from Article 237 of the Montego Bay Convention, which governs the relationship between that convention and special conventions relating to the protection and preservation of the marine environment, among which is the Convention Relating to Intervention on the High Seas 1969, that the Montego Bay Convention does not affect the specific obligations assumed by States under those special conventions.

49 Fourth, having regard to the finding in paragraph 44 of the present judgment, Article 7(2) of Directive 2005/35, which incorporates into EU law the provisions of Article 220(6) of the Montego Bay Convention, and whose wording is almost identical to it, must be interpreted in accordance with the latter. Therefore, the interpretation of Article 220(6) of the Montego Bay Convention must, in principle, be regarded as being applicable to Article 7(2) of Directive 2005/35.

The first sentence of Question 10

50 By the first sentence of Question 10, which it is appropriate to examine first, the referring court asks essentially whether Article 220(6) of the Montego Bay Convention and Article 7(2) of Directive 2005/35 must be interpreted as meaning that the expression ‘clear objective evidence’ within the meaning of those provisions covers not only the commission of the violation, but also evidence of the consequences of that violation.

51 Article 220(6) of the Montego Bay Convention provides that where there is clear objective evidence that a vessel navigating in the EEZ or the territorial sea of a State has, in the EEZ, committed a violation referred to in Article 220(3) resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or EEZ, that State may, subject to section 7, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws.

52 It must be held that the wording of Article 220(6) of the Montego Bay Convention does not give any indication as to whether the existence of ‘clear objective evidence’, within the meaning of that provision, must be related solely to the commission of the violation or also to its consequences.

53 In those circumstances, it is necessary to regard the context of which the expression ‘clear objective evidence’, within the meaning of that provision, is part and the objectives pursued by Article 220 of the Montego Bay Convention.

54 In that connection, it must be observed that Article 220(3), (5) and (6) of the Montego Bay Convention are a set of graduated measures that a coastal State may take against a vessel which is suspected or which has been proved to have committed a violation in the EEZ of that State.

55 First of all, Article 220(3) of that convention refers to a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that State conforming and giving effect to such international rules and standards, it being understood that it is, in particular, the Marpol Convention 73/78 which defines such violations.

56 Thus, that provision states that where there are clear grounds for believing that such a violation has been committed, the coastal State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.

57 Next, Article 220(5) of the Montego Bay Convention authorises the coastal State to undertake physical inspection of the vessel. For that purpose, that provision requires not only that there are clear grounds for believing that a vessel has committed a violation defined in Article 220(3), but also that that violation is resulting in a substantial discharge causing or threatening significant pollution of the

marine environment ('a violation with serious consequences'). That violation must have led to substantial discharges into the marine environment which have caused or threaten to cause significant pollution.

- 58 Therefore, it appears that by reason of the existence of a violation with serious consequences, referred to in Article 220(5) of the Montego Bay Convention that the authors of that convention authorised the coastal State to adopt a more interventionist measure than that laid down in Article 220(3).
- 59 Finally, Article 220(6) of the Montego Bay Convention is comparable to Article 220(5) thereof, in so far as it refers to a violation with serious consequences. The violation within the meaning of that provision must have resulted in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or EEZ ('the resources and related interests of the coastal State').
- 60 However, those two provisions differ in so far as Article 220(6) of the Montego Bay Convention makes the power to take action by the coastal State subject to the existence of 'clear objective evidence' that a violation having serious consequences has actually been committed, not only the existence of clear grounds for believing that such a violation has been committed. Furthermore, where the conditions of applicability of Article 220(6) are satisfied, the coastal State may take particularly drastic action, since it may order the detention of the vessel in accordance with the laws of that State.
- 61 Thus, it appears that the authors of the Montego Bay Convention intended to confer on coastal States the right to take such a particularly drastic measure where the violation committed by a vessel causes or threatens to cause substantial damage to that State and it has been established that the vessel is responsible for such a violation.
- 62 Since those two conditions, which are of equal importance, are cumulative, Article 220(6) of the Montego Bay Convention must therefore be interpreted as providing that the power to take action by the coastal State is subject to the existence of clear objective evidence of the commission by that vessel of a violation within the meaning of Article 220(3) thereof and of the major damage or risk of major damage for the coastal State concerned caused by that violation.
- 63 Such an interpretation of that provision is supported by the objective of the Montego Bay Convention, which is to strike a fair balance, for all those marine areas, between the interests of States as coastal States and the interests of States as flag States, which may conflict (judgment of 3 June 2008, *Intertanko and Others*, C-308/06, EU:C:2008:312, paragraph 58).
- 64 The exercise of the power to take action by the coastal State in its EEZ, in particular to order the detention of a vessel flying the flag of another State, thereby temporarily preventing that vessel from exercising its freedom to navigate, which is guaranteed by international maritime law in that area, requires, in order to strike a fair balance between the interests of the coastal State and the flag State, that the coastal State has sufficient evidence and not just a clear grounds for believing that that violation has been committed by the vessel which has resulted in or threatens to cause substantial damage.
- 65 Therefore, the answer to the first sentence of Question 10 is that Article 220(6) of the Montego Bay Convention and Article 7(2) of Directive 2005/35 must be interpreted as meaning that the expression 'clear objective evidence' within the meaning of those provisions covers not only the commission of a violation, but also evidence of the consequences of that violation.

Questions 1 and 3

- 66 By Questions 1 and 3, which it is appropriate to examine together and in second place, the referring court asks essentially about the interpretation of the expression ‘coastline or related interests’ in Article 220(6) of the Montego Bay Convention and Article 7(2) of Directive 2005/35, in the light of the provisions of the Convention relating to Intervention on the High Seas 1969.
- 67 In order to interpret the provisions of the Montego Bay Convention it is necessary to refer to the rules of customary international law reflected by Article 31 of the Vienna Convention, which are binding on the EU institutions and are part of the EU legal order (see, to that effect, judgment of 27 February 2018, *Western Sahara Campaign UK*, C-266/16, EU:C:2018:118, paragraph 58 and the case-law cited), and from which it is clear that a treaty must be interpreted in good faith, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
- 68 First of all, it must be held that the expression ‘coastline or related interests’ in Article 220(6) of the Montego Bay Convention are not defined by that convention.
- 69 As regards the Convention Relating to Intervention on the High Seas 1969, it uses the expression ‘coastline or related interests of a coastal State’ and sets out the meaning to be given to the concept of ‘related interests’.
- 70 More specifically, under Article I(1) of the Convention Relating to Intervention on the High Seas 1969, the contracting parties ‘may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences’.
- 71 Furthermore, Article II(4) of the convention defines ‘related interests’ as the ‘interests of a coastal State directly affected or threatened by the maritime casualty, such as: (a) maritime coastal, port or estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned; (b) tourist attractions of the area concerned; (c) the health of the coastal population and the well-being of the area concerned, including conservation of living marine resources and of wildlife’.
- 72 It must be observed that the expression ‘coastline or related interests of a coastal State’, within the meaning of the Convention Relating to Intervention on the High Seas 1969 is the same as the expression ‘coastline or related interests of a coastal State’ used in Article 220(6) of the Montego Bay Convention.
- 73 It is true that the French version of Article 220(6) of the Montego Bay Convention refers to ‘littoral’, whereas Article I(1) of the Convention Relating to Intervention on the High Seas 1969 uses the term ‘côtes’. However, those two words designate, in accordance with their ordinary meaning in everyday language, the area where the sea meets the land. Furthermore, those two provisions have been drafted in the same way in the English-language version, the same word ‘coastline’ being used to designate that area.
- 74 The French version of Article 220(6) also refers to the ‘État côtier’, whereas Article II(4) of the Convention Relating to Intervention on the High Seas 1969 uses the expression ‘État riverain’. However, those two expressions designate, in accordance with their ordinary meaning in everyday language, the State whose land territory is situated adjacent to a marine area.
- 75 Furthermore, as the Advocate General stated in point 70 of his Opinion, it is clear from the legislative history of Article 220(6) of the Montego Bay Convention that the contracting parties drew inspiration from the Convention Relating to Intervention on the High Seas 1969 when establishing that coastal

States should also have jurisdiction to take measures against foreign vessels having committed an infringement in the EEZ within the jurisdiction of such a State. Therefore, it must be held that the meaning to be given to ‘coastline or related interests’ in Article 220(6) of the Montego Bay Convention must, in principle, be the same as that which results from Article I(1) and Article II(4) of the Convention Relating to Intervention on the High Seas 1969.

- 76 That being the case, it must also be recalled that, at the date on which the Convention Relating to Intervention on the High Seas 1969 was adopted, the EEZ system was not yet part of international law.
- 77 The Montego Bay Convention gave recognition to the EEZ and henceforth governs its legal regime. In that context, it is clear from the wording of Article 220(6) of that convention that it also extends to ‘any resources in the EEZ’, living or non-living, subject, as provided by Article 56(1)(a) and (b) thereof, to the jurisdiction of the coastal State.
- 78 Furthermore, it must be understood that the expression ‘any resources’ of the territorial sea of the coastal State, referred to in Article 220(6) of the Montego Bay Convention, means that they include the non-living resources of the territorial sea.
- 79 It follows from all of the foregoing considerations that the answer to Questions 1 to 3 is that the expression ‘coastline or related interests’ in Article 220(6) of the Montego Bay Convention and Article 7(2) of Directive 2005/35, must be interpreted as meaning that, in principle, it has the same meaning as the expression ‘coastline or related interests’ in Article I(1) and Article II(4) of the Convention Relating to Intervention on the High Seas 1969, it being understood that Article 220(6) of the Montego Bay Convention also applies to non-living resources of the territorial sea of the coastal State and to any resources in its EEZ.

Question 4

- 80 By Question 4, which it is appropriate to examine third, the referring court asks essentially whether Article 220(6) of the Montego Bay Convention and Article 7(2) of Directive 2005/35 must be interpreted as meaning that resources of the territorial sea or the EEZ of the coastal State, within the meaning of those provisions, cover only harvested species or whether they also include living species associated with harvested species or which depend on them, such as animal and plant species which feed on harvested species.
- 81 It must be observed that Article 220(6) of the Montego Bay Convention refers to damage caused or the threat of damage to ‘any’ resources of the territorial sea or the EEZ of the coastal State. Therefore, that provision must be interpreted broadly in that regard, which is clear from its wording, and must not be understood as excluding certain resources from the scope of that provision.
- 82 Thus, the resources of the territorial sea or the EEZ of a coastal State, within the meaning of Article 220(6) of the Montego Bay Convention, must be understood as referring to harvested species and also living species associated with the harvested species or which depend on them.
- 83 The interdependence of different species is also expressly taken into consideration by the Montego Bay Convention. By way of the conservation of living resources, provided for in Article 61 thereof, the coastal State, as part of measures it takes by virtue of paragraph 3 thereof, which are designed to maintain or restore populations of harvested species, must also specifically take account, in accordance with paragraph 4 of that article, of species associated with or dependent on harvested species

84 Therefore, the answer to Question 4 is that Article 220(6) of the Montego Bay Convention and Article 7(2) of Directive 2005/35 must be interpreted as meaning that the resources of the territorial sea and the EEZ of a coastal State, within the meaning of those provisions, cover both harvested species and also species associated with them and which are dependent on them, such as animal and plant species which feed on the harvested species.

Question 6

85 By Question 6, which it is appropriate to examine fourth, the referring court asks whether and, where appropriate, how to take into consideration the concept of ‘significant pollution’, referred to in Article 220(5) of the Montego Bay Convention, in the application of Article 220(6) of that convention and Article 7(2) of Directive 2005/35 and, in particular, when assessing the consequences of a violation, as defined in those provisions.

86 In that connection, although Article 220(5) of the Montego Bay Convention does not define the notion of ‘pollution’, it is clear from Article 1(4) thereof, that “pollution of the marine environment” means ‘the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities’.

87 Article 220(6) of the Montego Bay Convention refers, in particular, to the concept of ‘related interests’ of the coastal State which, as is clear from paragraph 75 of the present judgment, must, in principle, have the same meaning as that set out in Article II(4) of the Convention Relating to Intervention on the High Seas 1969.

88 Although the protection of the ‘related interests’ of the coastal State are normally relevant where pollution has been caused, Article II(4) of the Convention Relating to Intervention on the High Seas 1969 specifically covers the harmful economic, social and health-related consequences of such pollution on the coastal State, that is, more specifically, the fact that significant damage has been caused or there is a threat of such damage, first, to the various professional activities related to the use of the sea by its coastal population constituting an essential means of livelihood for that population, then on tourism in its coastal areas and, lastly, on the health and well-being of that population.

89 It is clear from that comparison that there are fundamental differences between Article 220(5) and Article 220(6) of the Montego Bay Convention.

90 First, Article 220(5), read in the light of Article 1(4) of the Montego Bay Convention, does not seek to specifically protect the resources and related interests of the coastal State and, second, that State need not establish the existence of ‘major damage’ to those interests.

91 Therefore, since the subject matter of those provisions is different, for the purposes of the application of Article 220(6) of the Montego Bay Convention, in principle, there is no need to take in account the concept of ‘significant pollution’ referred to in Article 220(5) thereof.

92 Therefore, the answer to Question 6 is that it is unnecessary, in principle, to take account of the concept of ‘significant pollution’ referred to in Article 220(5) of the Montego Bay Convention when applying Article 220(6) of that convention and Article 7(2) of Directive 2005/35 and, in particular, when assessing the consequences of a violation, such as those defined in those provisions.

Question 5, 7 and the last two sentences of Question 10

- 93 By Question 5, 7 and the last two sentences of Question 10, that it is appropriate to examine together, fifth, the referring court asks essentially how to assess the consequences of a violation as defined by Article 220(6) of the Montego Bay Convention and Article 7(2) of Directive 2005/35.
- 94 As is clear from paragraph 65 of the present judgment, Article 220(6) of the Montego Bay Convention must be interpreted as meaning that it covers not only clear objective evidence of the commission of a violation, but also of the consequences of that violation.
- 95 That provision also states that, for the purposes of its application, the violation committed by a vessel must have resulted in a discharge causing major damage or threat of major damage, as set out in paragraph 59 of the present judgment, to certain resources of the coastal State.
- 96 That means, in a given situation, all the evidence establishing that damage or the threat of damage to those resources and interests was caused must be taken into consideration and the extent of the damage caused or threatened must be assessed without giving precedence, *prima facie*, to a particular type of evidence.
- 97 In that connection, it must be observed that the resources or related interests of the coastal State, protected by Article 220(6) of the Montego Bay Convention, include a wide variety of elements.
- 98 It follows that the resources and related interests must be identified and the seriousness of the damage caused to one or more of those components or all of them must be assessed.
- 99 The specific nature of the resources or related interests concerned by the damage must also be taken into account. The sensitivity of the coastal State in relation to the harmful effects of discharges differs according to the nature of the resources or related interests concerned. Thus, in particular, a danger to the health of the coastal population has, in principle, more impact than purely economic damage.
- 100 Furthermore, the consequences of the discharge at issue on the resources and related interests of the coastal State must be established.
- 101 In that connection, given, on one hand, the urgency with which protective measures must be adopted and, on the other hand, the relevance, as appears from the wording of Article 220(6) of the Montego Bay Convention, of a mere threat of damage, it is sufficient, in order to authorise a coastal State to take such measures, to establish, by taking account of the available scientific data, the nature and extent of the damage likely to be caused by that discharge on the various resources and related interests of the coastal State. To that end, *inter alia*, account should be taken as far as possible of the nature of the harmful substances contained in the discharges at issue and the amount, direction, speed and period of time over which the discharge spreads.
- 102 It follows from all of the foregoing considerations that the answer to Questions 5, 7 and the last two sentences of Question 10 is that in order to assess the consequences of a violation, as defined in Article 220(6) of the Montego Bay Convention and Article 7(2) of Directive 2005/35, all the evidence to establish that damage has been caused or that there is a threat of damage to the resources and related interests of the coastal State and to evaluate the extent of the damage caused or threatened to those resources or related interests, taking account *inter alia* of
- the cumulative nature of the damage on several or all of those resources and related interests and the difference in sensitivity of the coastal State with regard to damage to its various resources and related interests;

- the foreseeable harmful consequences of discharge on those resources and related interests, not only on the basis of the available scientific data, but also with regard to the nature of the harmful substance(s) contained in the discharge concerned and the volume, direction, speed and the period of time over which the oil spill spreads.

Question 9

- 103 By Question 9, which it is appropriate to examine sixth, the referring court asks essentially whether and, if necessary, how the specific geographical and ecological characteristics and sensitivity of the Baltic Sea area affect the conditions of applicability of Article 220(6) of the Montego Bay Convention and Article 7(2) of the Directive 2005/35.
- 104 In that connection, as the Advocate General observed in point 105 of his Opinion, the Baltic Sea is internationally recognised as being a special area characterised by geographical particularities and a particularly sensitive ecosystem in need of special protection.
- 105 Such special features have a direct impact on the definition and classification of the violation within the meaning of Article 220(3) of the Montego Bay Convention and accordingly, on the application of Article 220(6) of that convention. Regulation 15 B of Part C of Chapter 3 of Annex I to the Marpol Convention 73/78 determines the violation committed in a special area more strictly than where a discharge occurs outside special areas.
- 106 That being the case, it must be recalled that the specific objective of Article 220(6) of the Montego Bay Convention is not to ensure enhanced protection of special areas, but to protect certain resources and interests of the coastal State, regardless of whether or not the sea adjacent to that State is a special area.
- 107 Thus, even if the particularities of the Baltic Sea may be taken into account in assessing the extent of the damage caused to the coastal State, those particularities cannot automatically influence that assessment.
- 108 It is clear from those considerations that the answer to Question 9 is that the specific geographical and ecological characteristics and sensitivity of the Baltic Sea area have an effect on the conditions of applicability of Article 220(6) of the Montego Bay Convention and Article 7(2) of the Directive 2005/35 as regards the definition and classification of the violation and, although not automatically, on the assessment of the extent of the damage that that violation has caused to the resources and related interests of the coastal State.

Question 8

- 109 By Question 8, which is appropriate to examine last, the referring court asks essentially whether Article 1(2) of Directive 2005/35 must be interpreted as meaning that it authorises the Member States to impose more stringent measures, in accordance with international law, than those set out in Article 7(2) of that directive where it is applicable.
- 110 In that connection, as is clear from the wording of Article 1(2) of Directive 2005/35, the latter does not prevent Member States from taking more stringent measures against ship-source pollution in conformity with international law.
- 111 It must also be observed that no provision of that directive indicates that the option given to Member States by Article 1(2) must be limited to certain provisions thereof.

- 112 Therefore, such an option must also apply, in principle, to Article 7(2) of Directive 2005/35, which governs the jurisdiction of the coastal State to institute proceedings against a vessel in transit.
- 113 However, Article 1(2) of Directive 2005/35 states that stricter measures must comply with international law.
- 114 In that connection, it must be observed, as it follows from paragraph 49 of the present judgment, that Article 7(2) of Directive 2005/35 must be interpreted in accordance with Article 220(6) of the Montego Bay Convention.
- 115 According to paragraph 63 of the present judgment, Article 220(6) of the Montego Bay Convention reflects the intention of that convention to strike a fair balance between the interests of the States in their capacity as coastal States and the interests of the States in their capacity as flag States, for all maritime areas.
- 116 Therefore, Article 7(2) of Directive 2005/35 cannot be regarded as authorising a coastal State to take measures which are more stringent than those laid down in that article which risk disturbing the fair balance between the interests of the coastal State and that of the flag State sought by Article 220(6) of the Montego Bay Convention.
- 117 That being the case, such an interpretation cannot prevent the coastal State from taking measures of equivalent scope to those laid down in Article 220(6), since that article does not lay down an exhaustive list of authorised measures, as is clear from the use of the expression ‘inter alia’.
- 118 It is clear from the foregoing considerations that the answer to Question 8 is that Article 1(2) of Directive 2005/35 must be interpreted as meaning that it does not allow the Member States to impose more stringent measures in accordance with international law than those laid down in Article 7(2) thereof, where international law is applicable, given that the coastal States are authorised to take other measures equivalent in scope to those in Article 220(6).

Costs

- 119 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

- 1. Article 220(6) of the United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982, and Article 7(2) of Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences, as amended by Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009, must be interpreted as meaning that the expression ‘clear objective evidence’ within the meaning of those provisions covers not only the commission of a violation, but also evidence of the consequences of that violation.**
- 2. The expression ‘coastline or related interests’ in Article 220(6) of the United Nations Convention on the Law of the Sea and Article 7(2) of Directive 2005/35, as amended by Directive 2009/123, must be interpreted as meaning that, in principle, it has the same meaning as the expression ‘coastline or related interests’ in Article I(1) and Article II(4) of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, concluded at Brussels on 29 November 1969, it being understood that**

Article 220(6) of the United Nations Convention on the Law of the Sea also applied to non-living resources of the territorial sea of the coastal State and to any resources in its exclusive economic zone.

3. Article 220(6) of the United Nations Convention on the Law of the Sea and Article 7(2) of Directive 2005/35, as amended by Directive 2009/123, must be interpreted as meaning that the resources of the territorial sea and the exclusive economic zone of a coastal State, within the meaning of those provisions, cover both harvested species and also species associated with them and which are dependent on them, such as animal and plant species which feed on the harvested species.
4. It is unnecessary, in principle, to take account of the concept of ‘significant pollution’ referred to in Article 220(5) of the United Nations Convention on the Law of the Sea when applying Article 220(6) of that convention and Article 7(2) of Directive 2005/35, as amended by Directive 2009/123, and, in particular, when assessing the consequences of a violation, such as those defined in those provisions.
5. In order to assess the consequences of a violation, as defined in Article 220(6) of the United Nations Convention on the Law of the Sea and Article 7(2) of Directive 2005/35, as amended by Directive 2009/123, all the evidence to establish that damage has been caused or that there is a threat of damage to the resources and related interests of the coastal State and to evaluate the extent of the damage caused or threatened to those resources or related interests, taking account *inter alia* of
 - the cumulative nature of the damage on several or all of those resources and related interests and the difference in sensitivity of the coastal State with regard to damage to its various resources and related interests;
 - the foreseeable harmful consequences of discharge on those resources and related interests, not only on the basis of the available scientific data, but also with regard to the nature of the harmful substance(s) contained in the discharge concerned and the volume, direction, speed and the period of time over which the oil spill spreads
6. The specific geographical and ecological characteristics and sensitivity of the Baltic Sea area have an effect on the conditions of applicability of Article 220(6) of the United Nations Convention on the Law of the Sea and Article 7(2) of the Directive 2005/35, as amended by Directive 2009/123, as regards the definition and classification of the violation and, although not automatically, on the assessment of the extent of the damage that that violation has caused to the resources and related interests of the coastal State.
7. Article 1(2) of Directive 2005/35, as amended by Directive 2009/123, must be interpreted as meaning that it does not allow the Member States to impose more stringent measures in accordance with international law than those laid down in Article 7(2) thereof, where international law is applicable, given that the coastal States are authorised to take other measures equivalent in scope to those laid down in Article 220(6).

[Signatures]