

Manual of European Environmental Policy

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This section is the text of the Manual as published in 2012. It is therefore important to note the following:

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Ship-generated waste

2000/59/EC (OJ L332 28.12.2000)	Directive on port reception facilities for ship-generated waste and cargo residues
Proposed 17.7.98 – COM(1998)452	
Legal base	Article 100 TFEU (originally Article 80(2) TEC)
Amended by	
2002/84/EC (OJ L324 29.11.2002)	Directive amending the Directives on maritime safety and the prevention of pollution from ships
Legal base	Article 294 TFEU (originally Article 251 TEC)
2007/71/EC [2007/71/EC] (OJ L329 14.12.2007)	Directive amending Annex II
Regulation (EC) No 1137/2008 (OJ L311 21.11.2008)	Regulation of the European Parliament and of the Council adapting a number of instruments with regard to the regulatory procedure with scrutiny
Legal base	Article 294 TFEU (originally Article 251 TEC)
Binding dates	
2000/59/EC	
Formal compliance (except sewage)	28 December 2002
Compliance relating to sewage	Twelve months after entry into force of Annex IV to Marpol 73/78
Commission to report on costs and fees of recovery systems	28 December 2005
Member States to submit an implementation report to the Commission	Every three years
Commission to submit report evaluating implementation, based on Member State reports	Every three years, following reception of Member State reports
2002/84/EC	
Entry into force	29 November 2002
Implementation	23 November 2003

2007/71/EC	
Entry into force	15 December 2007
Implementation	15 June 2009
1137/2008	
Entry into force	17 January 2009

Purpose of the Directive

The Directive aims to reduce the amount of pollution in seas and coastlines of Member States caused by waste and cargo residues discharged into the sea by shipping. This is to be done by improving the availability of reception facilities at community ports in order to meet the needs of ships without causing undue delay.

Summary of the Directive

Scope and broad requirements

The Directive applies to all ships (defined as a ‘seagoing vessel of any type whatsoever’) including fishing vessels and recreational craft, calling at or operating within a port of a Member State, but excluding warships, and ships belonging to, or operated by, a State for non-commercial governmental purposes.

Member States are required to ensure that ports have adequate facilities for receiving waste and cargo residues from ships without causing undue delay to those ships. Procedures for reporting inadequacies in these facilities must be established by the Member State in accordance with those agreed by the International Maritime Organization (IMO).

Waste reception and handling plans

Waste reception and handling plans must be drawn up for each port and must address the issues set out in Annex I, including an assessment of the need for facilities having regard to the ships normally visiting the port. The Member State must approve these plans and monitor their implementation

Notification

The Master of all ships bound for a Community port, other than small fishing and recreational craft, must provide information in the form set out in Annex II including information as to the type and quantity of waste to be delivered. This information must be delivered to the body designated for this purpose by the Member State and also kept on board for inspection.

Delivery

All ship-generated waste must be delivered to port reception facilities unless the Master can certify that sufficient storage capacity exists on board to cope with waste that will be accumulated during the intended voyage of the ship to its next port of call. If the port authorities feel that there is a risk that the waste will be discharged at sea because facilities at the next port are inadequate or that port is unknown, then they should take steps to require the vessel to deliver its waste before departure.

The Master of a ship is obliged to deliver cargo residues in accordance with the relevant provisions of Marpol 73/78.

Fees for ship-generated waste.

Member States are to ensure that the costs of port reception facilities for ship-generated waste are recovered through fees charged to ships. The Directive stresses that these fees should provide no incentive to discharge their waste at sea. To this end, it provides that all ships calling at a port should contribute 'significantly' to these costs regardless of whether they use the facilities or not, but that the part of the costs, if any, not so recovered, shall be charged on the basis of the type and quantity of waste actually delivered. Fees may be reduced in the case of ships designed to produce less waste. Fees for delivery of cargo residues are to be paid by the user of the facility.

Within three years of the implementation date (28 December 2002 for all types of waste except sewage), the Commission is to report on the various fee arrangements adopted by Member States and if necessary will propose to amend the Directive to specify that not less than one-third of costs should be recovered through fees charged to all ships using the port.

Exemptions

Ships with frequent port calls may be exempted from the requirement to notify and deliver their waste if there is sufficient evidence of an arrangement to deliver waste at a port along their route.

Enforcement

Member States must ensure that sufficient inspections are carried out to check compliance with the requirements of the Directive as to delivery of waste and cargo residues. A ship which has put to sea without delivering its waste may be detained at its next port of call.

The Directive also requires Member States to take certain steps to ensure maximum compliance with the duty to deliver. These include:

- Ensuring that those concerned are informed of the requirements of the Directive;

- Designating appropriate authorities for carrying out the functions contained in the Directive;
- Ensuring that formalities relating to the use of reception facilities are sufficiently simple to avoid undue delay; and
- Ensuring that the treatment of waste is carried out in accordance with the relevant Community waste legislation.

Penalties are to be set for the breach of the provisions set out in the Directive. When ships have been unduly delayed by inadequate waste management facilities at a port and through no fault of their own, they must receive compensation.

Reporting

Member States should submit a report to the Commission every three years describing the status of the implementation of the Directive. Based on these reports, the Commission must submit a report evaluating the operation of the system to the European Parliament and to the Council.

Development of the Directive

The International Convention for the Prevention of Pollution from Ships 1973 and the 1978 Protocol (known as Marpol 73/78) sets out strict conditions for the discharge of ships' waste at sea. It also obliges ports to provide reception facilities for waste without causing undue delay to the ships wishing to use these facilities. Despite the fact that all Member States were contracting parties, it was noted by the Commission in 1973 ([COM\(93\)66](#)) that compliance with Marpol, as well as other relevant rules of the IMO, could be improved. The Council included improving the availability and use of reception facilities in its Resolution on a Common Policy for Safe Seas in the same year.

The proposal for a Directive was published in July 1998. The Commission noted that certain regional efforts had been made to deal with the problem of discharges at sea. In particular, stringent requirements had been introduced in March 1998 for ships visiting Baltic ports.

At the first reading in February 1999, the Parliament approved the proposal with various amendments. The issue which was to prove most controversial was the question of the fee structure. In the proposal, although the Commission had stated (Article 8) that 'all ships calling at a port of a Member State shall contribute substantially in the costs [of providing facilities], irrespective of actual use of the facilities', it had gone on to state that 'additional fees may be imposed with respect to quantities and types of waste actually delivered'. The Parliament felt that 'substantial contribution' should be defined as at least 90 per cent. A further amendment provided that additional fees should be imposed only in special cases such as extremely large quantities of waste or toxic waste. In other words, it favoured a 'no special fee' system whereby almost all costs were covered by all ships irrespective of use, since this was felt to offer the best chance of achieving the stated aim of the Directive, namely that the cost recovery system should

provide 'no incentive for ships to discharge waste into the sea'. Another notable amendment was the requirement that inspections to verify compliance with the duties in the Directive should be carried out on at least 25 per cent of ships calling at the port each year, whereas the proposed Directive had contained no such specification. Both these amendments were rejected by the Commission in its amended proposal published in May 1999.

Provisional agreement was reached on the Directive by transport ministers from the Member States in June 1999. A Common Position on the same draft was formally adopted in November of the same year. As regards the fee structure, the Common Position not only rejected the views of the Parliament, but went even less far than the original Commission proposal. Thus, Article 8 provided simply that 'all ships calling at a port of a Member State shall contribute to the costs of [improving facilities]'. The United Kingdom, Ireland and Mediterranean countries had opposed a no special fee arrangement, while Germany had argued strongly for its adoption.

In its opinion of April 2000 ([COM\(2000\)236](#)), the Commission accepted most of the amendments approved by Parliament at its second reading on 14 March. However, there was still considerable disagreement on the issue of fees. Parliament had stuck to its insistence on an arrangement with no special fees. The Commission stuck to its view that more flexibility was needed, pointing out that the system would cover a wide range of situations in very different ports all over Europe, and that the 'no special fee' system would impact disproportionately on ships with frequent port calls and that the system 'has the disadvantage of not encouraging ship owners to introduce cleaner techniques such as 'clean engine rooms, producing less waste'. The last point is an odd one in view of the fact that all drafts of the Directive on both sides of the debate contained a clause providing that fees may be reduced if the ships design, etc., was such that the Master could demonstrate that it produces reduced quantities of ship-generated waste.

Not surprisingly, the Council of Ministers was unable to accept all the amendments approved by the Parliament at the second reading. The Directive therefore became subject to the conciliation process. A compromise was reached. This provided that whereas Member States initially have considerable discretion as to how to charge ships calling at their ports, the Commission will evaluate the impact of these arrangements within five years of entry into force of the Directive, and if necessary, propose an amendment whereby at least 30 per cent of costs should be borne by all ships.

In November 2002 the Directive was amended by Directive 2002/84/EC, which changed the regulatory committee which is to assist the Commission with the implementation of the Directive 2000/59/EC to be the Committee on Safe Seas and Prevention of Pollution from Ships (COSS), which had been established that same month by the Regulation (EC) No 2099/2002 of the European Parliament and of the Council.

In December 2007, Directive 2007/71/EC amended Annex II of the Directive on ship-generated waste, updating the information to be notified before the entry into port.

In October 2008, Regulation (EC) No 1137/2008 amended the Directive on ship-generated waste to give the Commission more power to adapt the Annexes to the Directive, to keep up with Community or IMO measures and ensure harmonized implementation.

Implementation of the Directive

A list of measures transposing the Directive in the Member States can be found in their national [execution measures](#).

In April 2008, the European Sea Ports Organization (ESPO), the European Community Shipowners' Associations (ECSA) and Euroshore hosted a workshop on the implementation of the ship-generated waste Directive. A Commission representative from the Maritime Transport Policy Unit gave a presentation¹ outlining the current state of play and the way forward.

While there have been few complaints of inadequate facilities made to the Commission or the IMO, there have been difficulties in obtaining confirmation that waste reception and handling plans are available in all ports. Additionally, there have been several court cases against Member States for failure to properly meet the requirements of the Directive, as listed in the *Enforcement and Court Cases* section below. It is then perhaps no surprise that Member States have expressed a desire for further guidelines on implementing the Directive.

The Commission concluded that the advance notification form needs to be better used and processed to increase the flow of information between authorities, and the exchange of information between ports also needs to improve to ensure that sufficient dedicated storage capacity is available. The provisions on cargo residues need to be reinforced. There is also work to be done on means of identifying ships which have not discharged relevant waste and residues. Following from this, enforcement provisions need to be strengthened and relations between the port authorities and the inspection authorities need to be improved.

Enforcement and court cases

The following cases specifically concerning the Directive on ship-generated waste have been decided by the ECJ:

- [C-523/06](#) 04.10.2007. This was a judgement against Finland for failing to develop and implement waste reception and handling plans for all Finnish ports.
- [C-106/07](#) 06.12.2007. This was a judgement against France for failure to develop and implement, within the prescribed period, waste reception and handling plans for all French ports.
- [C-81/07](#) 13.03.2008. This was a judgement against Greece for failing to develop, implement and approve waste reception and handling plans for ship-generated

- waste and cargo residues.
- [C-368/07](#) 25.09.2008. This was a judgement against Italy for failure to prepare and adopt waste reception and handling plans for every Italian port.
 - [C-480/07](#) 11.12.2008. This was a judgement against Spain for failure to develop, implement and approve waste reception and handling plans for all Spanish ports.

Related legislation

The Directive helps to contribute to the wider protection of coastal and marine waters. Therefore, it has links to the following Directives:

- Water Framework Directive [2000/60/EC](#).
- Marine Strategy Framework Directive [2008/56/EC](#).

Reference

1. CEC (2008) *Directive 2000/59/EC on Port Reception Facilities – The Way Forward*, Unit Maritime Transport Policy: Regulatory questions, maritime safety and seafarers, Presentation given on 17.4.2008 in Antwerp at the ESPO-ECSA-Euroshore workshop on port reception facilities, <http://www.espo.be/downloads/archive/7d08ef89-e8b2-43ff-a3fb-49fe5bc697c2.pdf>