



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 17 February 2005

**Interinstitutional File:
2003/0037 (COD)**

**6408/1/05
REV 1**

**MAR 21
ENV 73
DROIPEN 11
CODEC 93**

NOTE

from: General Secretariat of the Council
to: Committee of Permanent Representatives

No. CION prop.: 7312/03 MAR 35 ENV 155 CODEC 303 DROIPEN 19
No. prev. doc.: 5777/1/05 REV 1 MAR 11 ENV 35 DROIPEN 5 CODEC 48

Subject: **Draft Directive of the European Parliament and of the Council on
ship-source pollution and on the introduction of sanctions for infringements
- Outcome of informal contacts with European Parliament**

1. In the aftermath of the accident of the Prestige tanker, the Commission, on 7 March 2003, transmitted to the Council the above proposal, with a view to ensuring that any person who is involved in a pollution incident, acting with intent, recklessly or by serious negligence, should be subject to appropriate sanctions.
2. The Council adopted its common position on the text of the proposal on 7 October 2004.

3. Following the adoption by the European Parliament's Committee on Transport and Tourism (TRAN) of a number of draft amendments on 19 January 2005, three informal triologue meetings were held under the Luxembourg Presidency.

On the basis of those discussions a general consensus was reached on the submission by the rapporteur, Ms Corien WORTMANN-KOOL, of several amendments forming a package aimed at a second reading agreement. The text thus amended (presented in the Annex to the Annex) should be acceptable as an overall package with a view to achieving a second-reading agreement.

4. In the light of this situation, the European Parliament is now seeking reassurances on the Council's position prior to its vote in plenary on 22 February 2005, as well as on the concomitant adoption of this Directive and the Framework Decision supplementing it.
5. The Presidency will consequently send a letter to the Chair of the TRAN Committee, as presented in the Annex.

**COUNCIL OF
THE EUROPEAN
UNION**

Brussels,

RUE DE LA LOI, 175
B - 1048 Brussels

Mr. Paolo Costa

Chairman, European Parliament Committee on Transport and Tourism
STRASBOURG.

Subject: Draft Directive of the European Parliament and of the Council on ship-source pollution and on the introduction of sanctions for infringements

Dear **Mr Costa**,

Following the informal meetings between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives Committee.

I am therefore now in a position to confirm that, should the European Parliament vote in the exact form as set out in the compromise package in the Annex to this letter, the Council would, in accordance with Article 251, paragraph 3 of the Treaty, adopt the proposed Directive in the form of the text thus amended.

Furthermore, I hereby inform you that the Presidency intends to include for adoption on the agenda of the same Council meeting the two parallel texts concerning respectively the Directive of the European Parliament and of the Council on ship-source pollution and on the introduction of sanctions for infringements, and the Council Framework Decision to strengthen the criminal law framework for the enforcement of the law against ship-source pollution. Please note that from the Council's point of view, the link between the two acts lies in Article 2 of the Framework Decision and in recital 8 and Article 4 and 5 of the Directive.

A statement will be written in the minutes of that same Council meeting, stating:

"The Council agrees that fines should not be insurable and that the issue should be raised in the relevant international forum."

On behalf of the Council I would also wish to thank you for the close cooperation which should enable us to reach agreement on this dossier in second reading.

Yours sincerely,

(nom)

Chairman of the Permanent Representatives
Committee (Part 1)

copy to: Commissioner Barrot
 EP Rapporteur Wortmann-Kool

Draft

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on ship-source pollution and on the introduction of sanctions for infringements
(Text with EEA relevance)

Draft compromise text

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80 (2) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

¹ OJ C....., p.....
² OJ C....., p.....
³ OJ C....., p.....
⁴ OJ C....., p.....

WHEREAS:

- (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 sanctions 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 sanctions; in order to achieve effective protection of the environment, there is therefore a need for effective, dissuasive and proportionate sanctions.
- (5) To that end it is essential to approximate, by way of the proper legal instruments, existing legal provisions, in particular the precise definition of the infringement in question and the cases of exemption and minimum rules for penalties, liability and jurisdiction.

- (6) This Directive is supplemented by detailed rules on criminal offences and sanctions as well as other provisions set out in the Council Framework Decision 2005/.../JHA of... to strengthen the criminal law framework for the enforcement of the law against ship-source pollution.
- (7) Neither the international regime for the civil liability and compensation of oil pollution nor that relating to pollution by other hazardous or noxious substances provide sufficient dissuasive effects to discourage the parties involved in the transport of hazardous cargoes by sea from engaging in substandard practices; the required dissuasive effects can only be achieved through the introduction of sanctions applying to any person who causes or contributes to marine pollution; sanctions should be applicable not only to the shipowner or the master of the ship, but also the owner of the cargo, the classification society or any other person involved.
- (8) Ship-source discharges of polluting substances should be regarded as infringements if committed with intent, recklessly or by serious negligence. These infringements are regarded as criminal offences by, and in the circumstances provided for in, Council Framework Decision 2005/.../JHA supplementing the Directive.
- (9) Sanctions for discharges of polluting substances from ships are not related to the civil liability of the parties concerned and are thus not subject to any rules relating to the limitation or channelling of civil liabilities, nor do they limit the efficient compensation of victims of pollution incidents.
- (10) There is a need for further effective cooperation among Member States to ensure that discharges of polluting substances from ships are detected in time and that the offenders are identified. For this reason, the European Maritime Safety Agency has a key role to play in working with the Member States in developing technical solutions and providing technical assistance relating to the implementation of this Directive and in assisting the Commission in the performance of any task assigned to the Commission for the effective implementation of this Directive.

- (10a) In order better to prevent and combat marine pollution, synergies should be created between enforcement authorities such as national coastguard services. In this context, the Commission should undertake a feasibility study on a European coastguard dedicated to pollution prevention and response, making clear the costs and benefits. This study should, if appropriate, be followed by a proposal on a European coastguard.
- (11) 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 consistent with Article 220 of the 1982 United Nations Convention on the Law of the Sea.
- (11a) The enforcement of Directive 2000/59/EC⁵ is, together with this Directive, a key instrument in the set of measures to prevent ship source pollution.
- (12) This Directive is in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty. The incorporation of the international ship-source pollution standards into Community law and the establishment of sanctions, which may include criminal or administrative sanctions, for violations of them is a necessary measure to achieve a high level of safety and environmental protection in maritime transport. This can be effectively achieved by the Community only by means of harmonised rules. The Directive confines itself to the minimum required in order to achieve this objective and does not go beyond what is necessary for that purpose. It does not prevent Member States from taking more stringent measures against ship-source pollution in conformity with international law.
- (13) This Directive fully respects the Charter of fundamental rights of the European Union; any person suspected of having committed an infringement must be guaranteed a fair and impartial hearing and the sanctions must be proportional,

⁵ Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ L 332 , 28.12.2000, p. 81).

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

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 are subject to adequate sanctions as referred to in Article 8, 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.

Article 2

Definitions

For the purpose of this Directive:

1. "Marpol 73/78" shall mean the International Convention for the Prevention of Pollution from Ships, 1973 and its 1978 Protocol, as amended from time to time.
2. "Polluting substances" shall mean substances covered by Annexes I (oil) and II (noxious liquid substances in bulk) to Marpol 73/78.
3. "Discharge" shall mean any release howsoever caused from a ship, as referred to in Article 2 of Marpol 73/78.
4. "Ship" shall mean a seagoing vessel, irrespective of its flag, of any type whatsoever operating in the marine environment and shall include hydrofoil boats, air-cushion vehicles, submersibles and floating craft.

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, insofar 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 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.

Article 4
Infringements

Member States shall ensure that ship-source discharges of polluting substances into any of the areas referred to in Article 3(1), are regarded as infringements if committed with intent, recklessly or by serious negligence. These infringements are regarded as criminal offences by, and in the circumstances provided for in, Council Framework Decision 2005/.../JHA supplementing the Directive.

Article 5
Exceptions

1. A discharge of polluting substances into any of the areas referred to in Article 3(1) shall not be regarded as an infringement if it satisfies the conditions set out in Annex I, Regulations 9, 10, 11(a) or 11(c) or in Annex II, Regulations 5, 6(a) or 6(c) of Marpol 73/78.

2. A discharge of polluting substances into the areas referred to in Article 3(1)(c), (d) and (e) shall not be regarded as an infringement for the owner, the master or the crew when acting under the master's responsibility if it satisfies the conditions set out in Annex I, Regulation 11(b) or in Annex II, Regulation 6(b) of Marpol 73/78.

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, taking into account the relevant guidelines adopted by the International Maritime Organisation (IMO) is undertaken in accordance with its national law.
2. Insofar as the inspection referred to in paragraph 1 reveals facts that could indicate an infringement within the meaning of Article 4, the competent authorities of that Member State and of the flag State shall be informed.

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 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, 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 case, the authorities of the flag State shall be informed.

Article 8

Sanctions

1. Member States shall take the necessary measures to ensure that the infringements referred to in Article 4 are subject to effective, proportionate and dissuasive sanctions, which may include criminal or administrative sanctions.
2. Each Member State shall take the measures necessary to ensure that the sanctions referred to in paragraph 1 apply to any person who is found responsible for an infringement as referred to in Article 4.

Article 9

Compliance with international law

Member States shall apply the provisions of this Directive without any discrimination in form or in fact among 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.

Article 10

Accompanying measures

1. For the purposes of this Directive, Member States and the Commission shall cooperate, where appropriate, in close collaboration with the European Maritime Safety Agency and taking account of the action programme to respond to accidental or deliberate marine pollution as set up by Decision No 2850/2000/EC and, if appropriate, of the implementation of Directive 2000/59/EC in order to:
 - (a) develop the necessary information systems required for the effective implementation of this Directive;
 - (b) establish common practices and guidelines on the basis of those existing at international level for, in particular:
 - the monitoring and early identification of ships discharging polluting substances in violation of this Directive, including, where appropriate, on-board monitoring equipment;
 - reliable methods of tracing polluting substances in the sea to a particular ship; and
 - the effective enforcement of this Directive.

1a. In accordance with its tasks defined in Regulation (EC) N° 1406/2002⁶ the European Maritime Safety Agency shall:

- work with the Member States in developing technical solutions and providing technical assistance in relation to the implementation of this Directive, in actions such as tracing discharges by satellite monitoring and surveillance;
- assist the Commission in the implementation of this Directive, including, if appropriate, by means of visits to the Member States, in accordance with Article 3 of Regulation (EC) N° 1406/2002.

Article 10a

Feasibility study

In order to better prevent and combat marine pollution, synergies should be established between enforcement authorities such as national coastguard services. In this context, the European Commission shall, before the end of 2006, submit to the European Parliament and the Council a feasibility study on a European coastguard dedicated to pollution prevention and response, making clear the costs and benefits.

⁶ Regulation (EC) n° 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 05.08.2002, p. 1).

Article 11

Reporting

Every three years, Member States shall transmit a report to the Commission on the application of this Directive by the competent authorities. On the basis of these reports, the Commission shall submit a Community report to the European Parliament and the Council. In this report, the Commission shall assess, inter alia, the desirability of revising or extending the scope of this Directive.

It shall also describe the evolution of relevant case-law in the Member States and shall consider the possibility of creating a public database containing such relevant case-law.

Article 12

Committee

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), created by Article 3 of 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).⁷
2. The Commission shall regularly inform the Committee set up by Decision No 2850/2000/EC of any proposed measures or other relevant activities concerning the response to marine pollution.

Article 13

Amendment procedure

Amendments to Marpol 73/78 as referred to in Article 2, point 1 may be excluded from the scope of this Directive, pursuant to Article 5 of Regulation (EC) No 2099/2002.

⁷ OJ L 324, 29.11.2002, p. 1. Regulation amended by Commission Regulation (EC) No 415/2004 (OJ L 68 of 6.3.2004, p. 10).

Article 14

Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than [...] ⁸ and forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 15

Entry into force

This Directive shall enter into force on the day following that of its publication in the Official Journal of the European Union.

Article 16

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

⁸ 18 months following the date of its entry into force.

Summary, for reference purposes, of the Marpol 73/78 discharge regulations
relating to discharges of oil and noxious liquid substances,
as referred to in Article 2.2

Part I: Oil (Marpol 73/78, Annex I)

For the purposes of Marpol 73/78 Annex I, "oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals which are subject to the provisions of Marpol 73/78 Annex II) and "oily mixture" means a mixture with any oil content.

Excerpts of the relevant provisions of Marpol 73/78 Annex I:

Regulation 9: Control of discharge of oil

- (1) Subject to the provisions of regulations 10 and 11 of this Annex and paragraph (2) of this regulation, any discharge into the sea of oil or oily mixtures from ships to which this Annex applies shall be prohibited except when all the following conditions are satisfied:
 - (a) for an oil tanker, except as provided for in subparagraph (b) of this paragraph:
 - (i) the tanker is not within a special area;
 - (ii) the tanker is more than 50 nautical miles from the nearest land;

- (iii) the tanker is proceeding en route;
 - (iv) the instantaneous rate of discharge of oil content does not exceed 30 litres per nautical mile;
 - (v) the total quantity of oil discharged into the sea does not exceed for existing tankers 1/15 000 of the total quantity of the particular cargo of which the residue formed a part, and for new tankers 1/30 000 of the total quantity of the particular cargo of which the residue formed a part; and
 - (vi) the tanker has in operation an oil discharge monitoring and control system and a slop tank arrangement as required by regulation 15 of this Annex.
- (b) from a ship of 400 tons gross tonnage and above other than an oil tanker and from machinery space bilges excluding cargo pump-room bilges of an oil tanker unless mixed with oil cargo residue:
- (i) the ship is not within a special area;
 - (ii) the ship is proceeding en route;
 - (iii) the oil content of the effluent without dilution does not exceed 15 parts per million; and
 - (iv) the ship has in operation [monitoring, control and filtering equipment] as required by regulation 16 of this Annex.

- (2) In the case of a ship of less than 400 tons gross tonnage other than an oil tanker whilst outside the special area, the [flag State] Administration shall ensure that it is equipped as far as practicable and reasonable with installations to ensure the storage of oil residues on board and their discharge to reception facilities or into the sea in compliance with the requirements of paragraph (1)(b) of this regulation.
- [...]
- (3) The provisions of paragraph (1) of this regulation shall not apply to the discharge of clean or segregated ballast or unprocessed oily mixtures which without dilution have an oil content not exceeding 15 parts per million and which do not originate from cargo pump-room bilges and are not mixed with oil cargo residues.
- (4) No discharge into the sea shall contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in this regulation.
- (5) The oil residues which cannot be discharged into the sea in compliance with paragraphs (1), (2) and (4) of this regulation shall be retained on board or discharged to reception facilities.
- [...]

Regulation 10: Methods for the prevention of oil pollution from ships while operating in special areas

- (1) For the purpose of this Annex, the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, the "Gulfs area", the Gulf of Aden area, the Antarctic area and the North-West European waters, [as further defined and specified]
- (2) Subject to the provisions of regulation 11 of this Annex:
 - (a) Any discharge into the sea of oil or oily mixture from any oil tanker and any ship of 400 tons gross tonnage and above other than an oil tanker shall be prohibited while in a special area. [...]
 - (b) [...] Any discharge into the sea of oil or oily mixture from a ship of less than 400 tons gross tonnage, other than an oil tanker, shall be prohibited while in a special area, except when the oil content of the effluent without dilution does not exceed 15 parts per million.
- (3)
 - (a) The provisions of paragraph (2) of this regulation shall not apply to the discharge of clean or segregated ballast.
 - (b) The provisions of subparagraph (2)(a) of this regulation shall not apply to the discharge of processed bilge water from machinery spaces, provided that all of the following conditions are satisfied:
 - (i) the bilge water does not originate from cargo pump-room bilges;

- (ii) the bilge water is not mixed with oil cargo residues;
 - (iii) the ship is proceeding en route;
 - (iv) the oil content of the effluent without dilution does not exceed 15 parts per million;
 - (v) the ship has in operation oil filtering equipment complying with regulation 16(5) of this Annex; and
 - (vi) the filtering system is equipped with a stopping device which will ensure that the discharge is automatically stopped when the oil content of the effluent exceeds 15 parts per million.
- (4) (a) No discharge into the sea shall contain chemicals or other substances in quantities or concentrations which are hazardous to the marine environment or chemicals or other substances introduced for the purpose of circumventing the conditions of discharge specified in this regulation.
- (b) The oil residues which cannot be discharged into the sea in compliance with paragraph (2) or (3) of this regulation shall be retained on board or discharged to reception facilities.
- (5) Nothing in this regulation shall prohibit a ship on a voyage only part of which is in a special area from discharging outside the special area in accordance with regulation 9 of this Annex.
[...]

Regulation 11: Exceptions

Regulations 9 and 10 of this Annex shall not apply to:

- (a) the discharge into the sea of oil or oily mixture necessary for the purpose of securing the safety of a ship or saving life at sea; or
- (b) the discharge into the sea of oil or oily mixture resulting from damage to a ship or its equipment:
 - (i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimising the discharge; and
 - (ii) except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or
- (c) the discharge into the sea of substances containing oil, approved by the [flag State] Administration, when being used for the purpose of combating specific pollution incidents in order to minimise the damage from pollution. Any such discharge shall be subject to the approval of any Government in whose jurisdiction it is contemplated the discharge will occur.

Part II: Noxious liquid substances (Marpol 73/78 Annex II)

Excerpts of the relevant provisions of Marpol 73/78 Annex II:

Regulation 3: Categorisation and listing of noxious liquid substances

- (1) For the purpose of the regulations of this Annex, noxious liquid substances shall be divided into four categories as follows:
 - (a) Category A: Noxious liquid substances which if discharged into the sea from tank cleaning or deballasting operations would present a major hazard to either marine resources or human health or cause serious harm to amenities or other legitimate uses of the sea and therefore justify the application of stringent anti-pollution measures.
 - (b) Category B: Noxious liquid substances which if discharged into the sea from tank cleaning or deballasting operations would present a hazard to either marine resources or human health or cause harm to amenities or other legitimate uses of the sea and therefore justify the application of special anti-pollution measures.
 - (c) Category C: Noxious liquid substances which if discharged into the sea from tank cleaning or deballasting operations would present a minor hazard to either marine resources or human health or cause minor harm to amenities or other legitimate uses of the sea and therefore require special operational conditions.
 - (d) Category D: Noxious liquid substances which if discharged into the sea from tank cleaning or deballasting operations would present a recognisable hazard to either marine resources or human health or cause minimal harm to amenities or other legitimate uses of the sea and therefore require some attention in operational conditions.

[...]

[Further guidelines on the categorisation of substances, including a list of categorised substances are given in regulations 3(2)(4) and 4 and the appendices of Marpol 73/78 Annex II]

[...]

Regulation 5: Discharge of noxious liquid substances

Category A, B and C substances outside special areas and Category D substances in all areas

Subject to the provisions of [...] regulation 6 of this Annex,

- (1) The discharge into the sea of substances in Category A as defined in regulation 3(1)(a) of this Annex or of those provisionally assessed as such or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited. If tanks containing such substances or mixtures are to be washed, the resulting residues shall be discharged to a reception facility until the concentration of the substance in the effluent to such facility is at or below 0.1% by weight and until the tank is empty, with the exception of phosphorus, yellow or white, for which the residual concentration shall be 0.01% by weight. Any water subsequently added to the tank may be discharged into the sea when all the following conditions are satisfied:
 - (a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;
 - (b) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
 - (c) the discharge is made at a distance of not less than 12 nautical miles from the nearest land in a depth of water of not less than 25 m.

- (2) The discharge into the sea of substances in Category B as defined in regulation 3(1)(b) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:
- (a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;
 - (b) the procedures and arrangements for discharge are approved by the [flag State] Administration. Such procedures and arrangements shall be based upon standards developed by the [IMO] and shall ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 1 part per million;
 - (c) the maximum quantity of cargo discharged from each tank and its associated piping system does not exceed the maximum quantity approved in accordance with the procedures referred to in subparagraph (b) of this paragraph, which shall in no case exceed the greater of 1 m³ or 1/3 000 of the tank capacity in m³;
 - (d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
 - (e) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.

- (3) The discharge into the sea of substances in Category C as defined in regulation 3(1)(c) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:
- (a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;
 - (b) the procedures and arrangements for discharge are approved by the [flag State] Administration. Such procedures and arrangements shall be based upon standards developed by the [IMO] and shall ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 10 parts per million;
 - (c) the maximum quantity of cargo discharged from each tank and its associated piping system does not exceed the maximum quantity approved in accordance with the procedures referred to in subparagraph (b) of this paragraph, which shall in no case exceed the greater of 3 m³ or 1/1 000 of the tank capacity in m³;
 - (d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
 - (e) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.

- (4) The discharge into the sea of substances in Category D as defined in regulation 3(1)(d) of this Annex, or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:
- (a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;
 - (b) such mixtures are of a concentration not greater than one part of the substance in ten parts of water; and
 - (c) the discharge is made at a distance of not less than 12 nautical miles from the nearest land.
- (5) Ventilation procedures approved by the [flag State] Administration may be used to remove cargo residues from a tank. Such procedures shall be based upon standards developed by the [IMO]. Any water subsequently introduced into the tank shall be regarded as clean and shall not be subject to paragraph (1), (2), (3) or (4) of this regulation.
- (6) The discharge into the sea of substances which have not been categorised, provisionally assessed, or evaluated as referred to in regulation 4(1) of this Annex, or of ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited.

Category A, B and C substances within special areas [as defined in Marpol 73/78 Annex II, Regulation 1, including the Baltic Sea]

Subject to the provisions of paragraph (14) of this regulation and regulation 6 of this Annex,

- (7) The discharge into the sea of substances in Category A as defined in regulation 3(1)(a) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited. If tanks containing such substances or mixtures are to be washed, the resulting residues shall be discharged to a reception facility which the States bordering the special area shall provide in accordance with regulation 7 of this Annex, until the concentration of the substance in the effluent to such facility is at or below 0,05% by weight and until the tank is empty, with the exception of phosphorus, yellow or white, for which the residual concentration shall be 0,005% by weight. Any water subsequently added to the tank may be discharged into the sea when all the following conditions are satisfied:
- (a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;
 - (b) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
 - (c) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.

- (8) The discharge into the sea of substances in Category B as defined in regulation (3)(1)(b) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:
- (a) the tank has been prewashed in accordance with the procedure approved by the [flag State] Administration and based on standards developed by the [IMO] and the resulting tank washings have been discharged to a reception facility;
 - (b) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;
 - (c) the procedures and arrangements for discharge and washings are approved by the [flag State] Administration. Such procedures and arrangements shall be based upon standards developed by the [IMO] and shall ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 1 part per million;
 - (d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
 - (e) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.

- (9) The discharge into the sea of substances in Category C as defined in regulation 3(1)(c) of this Annex or of those provisionally assessed as such, or ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited except when all the following conditions are satisfied:
- (a) the ship is proceeding en route at a speed of at least 7 knots in the case of self-propelled ships or at least 4 knots in the case of ships which are not self-propelled;
 - (b) the procedures and arrangements for discharge are approved by the [flag State] Administration. Such procedures and arrangements shall be based upon standards developed by the [IMO] and shall ensure that the concentration and rate of discharge of the effluent is such that the concentration of the substance in the wake astern of the ship does not exceed 1 part per million;
 - (c) the maximum quantity of cargo discharged from each tank and its associated piping system does not exceed the maximum quantity approved in accordance with the procedures referred to in subparagraph (b) of this paragraph which shall in no case exceed the greater of 1 m³ or 1/3 000 of the tank capacity in m³;
 - (d) the discharge is made below the waterline, taking into account the location of the seawater intakes; and
 - (e) the discharge is made at a distance of not less than 12 nautical miles from the nearest land and in a depth of water of not less than 25 m.

- (10) Ventilation procedures approved by the [flag State] Administration may be used to remove cargo residues from a tank. Such procedures shall be based upon standards developed by the [IMO]. Any water subsequently introduced into the tank shall be regarded as clean and shall not be subject to paragraph (7), (8) or (9) of this regulation.
- (11) The discharge into the sea of substances which have not been categorised, provisionally assessed or evaluated as referred to in regulation 4(1) of this Annex, or of ballast water, tank washings, or other residues or mixtures containing such substances shall be prohibited.
- (12) Nothing in this regulation shall prohibit a ship from retaining on board the residues from a Category B or C cargo and discharging such residues into the sea outside a special area in accordance with paragraph (2) or (3) of this regulation, respectively.

Regulation 6: Exceptions

Regulation 5 of this Annex shall not apply to:

- (a) the discharge into the sea of noxious liquid substances or mixtures containing such substances necessary for the purpose of securing the safety of a ship or saving life at sea; or
- (b) the discharge into the sea of noxious liquid substances or mixtures containing such substances resulting from damage to a ship or its equipment:
 - (i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimising the discharge; and
 - (ii) except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or

- (c) the discharge into the sea of noxious liquid substances or mixtures containing such substances, approved by the [flag State] Administration, when being used for the purpose of combating specific pollution incidents in order to minimise the damage from pollution. Any such discharge shall be subject to the approval of any Government in whose jurisdiction it is contemplated the discharge will occur.
-