



European Maritime Safety Agency

Horizontal Assessment Report -
Port Reception Facilities (Directive
2000/59/EC)

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LIST OF ABBREVIATIONS

ADM	Administrative Waste Fee System
CR	Cargo Residues
GT	Gross Tonnage
HELCOM	Helsinki Commission
IMO	International Maritime Organisation
LPOC	Last Port of Call
MARPOL 73/78	International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978, as modified
NIR	(PMOU) New Inspection Regime
NSF	No Special Fee System
PMOU	Paris Memorandum of Understanding on PortState Control
PRF	Port Reception Facility
PSC	PortState Control
PSCO	PortState Control Officer
SGW	Ship-Generated Waste
SSN	SafeSeaNet
THETIS	The Hybrid European Targeting and Inspection System
WRH	Waste reception and handling

EXECUTIVE SUMMARY

This assessment is based upon the reports of visits to 22 EU Member States made by EMSA in the period 2007 – 2010 to gauge the implementation of Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues.

In general, the assessment shows that, while there is still room for improvement in achieving full implementation of Directive 2000/59/EC, there are positive signs that the legislation is beginning to meet its objectives.

On the basis of the Member States and ports visited by EMSA inspectors, there is a positive picture regarding the implementation of some key provisions in the Directive. There were very few findings in relation to either the availability of port reception facilities (Article 4) or to the delivery of ship-generated waste (Article 7.1). This indicates that, in general, there are port reception facilities available and that they are being used. In addition, most of the bigger commercial ports visited now seem to have waste reception and handling (WRH) plans in place.

There are also first indications that the Directive is contributing to a positive trend in the mandatory delivery of more and more ship-generated waste, with consequent reductions in illegal discharges into the sea. However, because there is no mandatory obligation to report waste volumes, the lack of firm data makes it difficult to give definitive figures. It is therefore strongly recommended that the reporting of types and volumes of waste delivered be made mandatory in the Directive.

The assessment also shows that there are still areas where a majority of Member States have had difficulties in implementing the Directive and which could benefit from further clarification. Targeted revision of specific elements of the Directive text, the provision of practical guidance and examples of good practice among Member States could help to reach the final aim of this Directive.

These areas of difficulty were grouped into three main themes, which were then the subject of an in-depth analysis:

Theme I - Waste reception and handling plans (Article 5 and Annex I);

Theme II - Cost recovery and fee systems (Article 8);

Theme III – Enforcement (Articles 6, 7 and 11).

It is difficult to rank these themes in any order of importance as they are interlinked. The result of the analysis can be summarised as follows:

Theme I – Waste reception and handling plans: In general, there is still not full implementation of these provisions. The problems relate mostly to smaller ports, fishing harbours and marinas. There appear to be problems with the processes employed by Member States to evaluate the plans prior to approval and to monitor their implementation.

In addition, throughout the Directive, recreational craft and fishing vessels, and the ports handling them, have obligations differing from other ships and ports. This situation has created confusion and has contributed to the lower level of implementation for these ports and types of vessels. The horizontal analysis identifies the need for a different approach to be taken to this issue, involving simplified procedures and the possible introduction of a de minimisthreshold for the smallest

ports where waste reception facilities are already covered by landside waste legislation.

Theme II – Cost recovery and fee systems: There is still quite a difference in implementation and application between (and sometimes within) Member States. The wording of Article 8 has enabled Member States to create a wide variety of approaches and systems for the recovery of costs and the collection of fees. As a result, little harmonisation has been achieved in this area.

The analysis indicates that only a few of the systems observed in the Member States' ports visited meet all the established principles and requirements in the Directive. Some of the No Special Fee systems and one version of the Administrative Fee system seem to meet most of the principles in Article 8. The analysis has shown that in practice these systems are becoming more closely aligned in the way that they operate, as a consequence of the flexibility in the Directive provisions. The main difference between these two systems appears to be that the fee for all ships using No Special Fee ports includes a delivery right for ship-generated waste (up to a maximum volume), whereas the Administrative Fee system does not include any delivery right.

Given the diverse cost recovery and fee systems in place, it may be necessary to revise the principles set out in Article 8.2 in order to improve their user-friendliness and increase the incentives for using these systems. Key questions are:

- Should further guidance be given on the “cost elements” to be included and the relationship between “fees” and “cost”?
- Could the incentive element be improved by including in the fee the right to deliver a certain volume of ship-generated waste?
- How can the concept of a “significant contribution from all ships irrespective of use of PRF” be clarified?
- Should the “significant contribution” concept relate to all types of ship-generated waste as defined in the Directive, or could it be limited to only one/few type(s) of ship-generated waste?

Theme III – Enforcement: The enforcement theme is linked to both the previous themes. There appear to be problems with the lack of information exchange, monitoring and examination of the ship notification information being used to target ships for inspection in accordance with the Directive. There is also a lack of transparency and availability of information on port reception facilities and fees.

It is likely that the problems identified could, to a large degree, be reduced by the introduction of a comprehensive information and monitoring system. Such a system would help improve the situation for the whole issue of enforcement (notification, delivery and inspection requirements). It could also improve the availability of data on waste volumes and flows. The analysis suggests that the use of the SafeSeaNet platform could be explored in this context. This might also help with the implementation of the new Directive on reporting formalities for ships arriving in and/or departing from ports of the Member States (Directive 2010/65/EU), which now also includes PRF waste delivery notifications.

Such a system might be developed so as to provide information on:

- types and volumes of waste delivered;

- better and more precise ship targeting for inspection, and inspection report sharing;
- enhanced enforcement (e.g. 'tagging' in the monitoring system if a vessel leaves port without delivering);
- availability of PRF services (types of services, fees etc.).

There is in any case a need to look at the whole concept of PRF enforcement, because the port State control regime has changed with the introduction of Directive 2008/16/EU and the Paris MoU New Inspection Regime, which use a different targeting mechanism.

In terms of effectiveness, the analysis of data gathered from a sample of ports visited across the EU for the period 2005 – 2008 identifies a positive trend in ship-generated waste deliveries in that period (see chapter 3.5). While there are ports that may need to do more work in implementing fully compliant fee systems, both the two main categories – the no special fee systems and the administrative waste fee systems – show a cautiously positive picture. However, more data and analysis would be needed before any firm conclusions can be drawn.

1. Horizontal Analysis of Port Reception Facilities (Directive 2000/59/EC)

1.1. Introduction and Background

In 2005, EMSA was assigned the task of conducting inspection visits in Member States in order to monitor the functioning and operational effectiveness of the port reception facility (PRF) systems. The programme of visits began in January 2007 and was completed in 2010.

1.2. Horizontal Analysis

This report draws from the main findings¹ of EMSA inspection visits to 22 Member States and provides an analysis of the practical implementation and the effectiveness of Directive 2000/59/EC on port reception facilities for ship-generated waste (SGW) and cargo residues (CR).

This horizontal analysis process aims to provide information to the European Commission² on the level of implementation of EU legislation by the Member States and other entities. It also identifies, where possible, practices or actions that can help Member States implement the legislation and remedy identified problems. It also provides a strong basis for evaluating the functioning and effectiveness of the legislation and can provide an indication of the need for amendments.

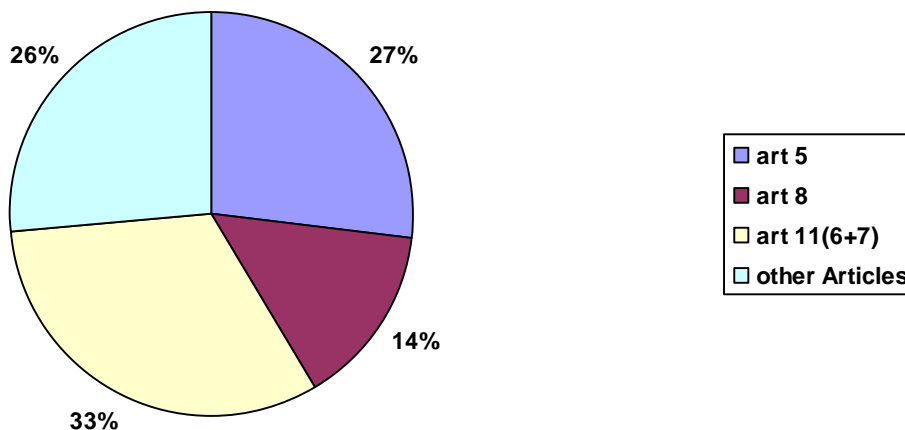
1.3. Overview of Findings

The visits resulted in findings for all 22 Member States. The total number of findings range from 5 to 19 per Member State and the average number of findings is 10.

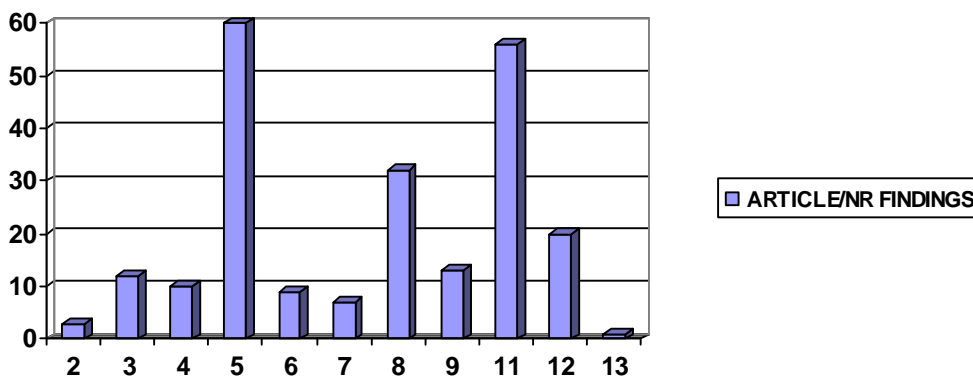
¹ It should be recalled that the information and findings provide a sample and snapshot of the situation at the time of the visit. Possible improvements that may have taken place since an inspection visits have not been reported to EMSA and could therefore not be considered in the analysis.

² It is the role of the Commission to carry out an assessment of the implementation of EU legislation, and that for certain Directives in the Maritime sector, the Commission may use the findings of EMSA audit and inspection reports to help them assess the level of compliance by any particular audited party (text from EMSA 5 year strategy).

Although the findings are spread over all the main Articles, the issues that presented most problems in implementation relate to Article 5 on the waste reception and handling (WRH) plans (Theme I), Article 8 regarding the cost recovery and fee system (Theme II) and, Article 11 on enforcement (Theme III). Together they represent almost 75% of all findings as shown in the chart below. These three areas have been grouped as themes in the report.



As shown in the graph below, all in all there were 60 findings in relation to Theme I, 32 findings in relation to Theme II, and 74 findings in relation to Theme III. The other Articles had 57 findings altogether.



1.4. Focus Areas for Horizontal Analysis

On the basis of an assessment of the findings and discussions with the relevant EMSA inspection teams, the focus areas on which to concentrate were identified.

2. Theme I - Waste Reception and Handling Plans

Theme I analyses in detail all elements relating to Waste Reception and Handling (WRH) plans, against the background of findings in relation to Article 5 and Annex I.

2.1. Main Findings

There were 60 findings relating to Article 5.1, Annex I (WRH plans) and 5.3 (evaluation and approval) spread across 21 (95%) of the visited Member States. There were no findings in relation to Article 5.2 (regional context).

In general, it is possible to distinguish between the main ports of a Member State and their smaller ports. In the bigger ports, the investment in ships' waste management systems is reflected in the WRH plans and the implementation of these plans has led to more tangible improvements in operations. For the smaller ports, in particular fishing and recreational ports, it seems the same efforts and resources have not yet been invested, resulting in some having no WRH plans and others being poorly monitored.

The majority of findings in 12 Member States related to the development, approval and implementation of the WRH plans. Seven Member States had not identified a 'significant change in the operation of the port' as requiring the re-approval of the plan. Eight Member States did not monitor either whether all the ports had valid plans, or, where they did exist, whether they were implemented correctly.

2.2. Development of the Waste Reception Handling Plan (Article 5.1)

Article 5.1 "An appropriate waste reception and handling plan has to be developed and implemented for each port following consultations with the relevant parties, in particular with port users or their representatives, [...]. Detailed requirements for the development of such plans are set out in Annex I of the Directive."

2.2.1. Description

The normal procedure in most Member States was for the port (whether a port authority, port management body or some other entity) to be made responsible for the development of its WRH plan. In addition, in some Member States, independently managed areas of the ports - such as oil terminals and chemical plants - were responsible for drafting their own individual plans and for administering the waste management services as part of their operations.

Most of the elements listed in Annex I of the Directive were usually transposed verbatim into Member States' national legislation. However, elements that were missing in a few plans include: the 'assessment of the need for PRF', the 'description of the type and capacity of port reception facilities' and the 'type and quantities of waste received and handled'.

55% of the Member States had findings against Article 5.1 in relation to 'plans [that] were not developed and implemented by all ports'. The majority of these findings related to fishing and recreational ports, although there were also findings in relation to other commercial ports, e.g. secondary ports, local community ports and smaller ports without any port management body.

The findings relating to recreational and fishing ports arose mainly because the designated authorities had either failed to require and/or verify that these ports

drafted a WRH plan or (initially) had exempted smaller recreational ports from developing a plan or had not approved the plan.

Example 1: WRH Plans

In one MemberState, the Environmental Protection Agency could exempt a port from the obligation to develop a WRH plan in certain cases, for a period of up to three years. A recreational port that was open only during summer months and had berthing places for 12-14 craft had been exempted.

In another MemberState, the fishing ports, and harbours/landings for tourist vessels of all types which did not have a port management body, had not developed plans. According to the national legislation, such smaller ports were supposed to be covered by the WRH plan of the nearest port management body, but this had not been consistently implemented in practice.

The visits also revealed that in some Member States there were no WRH plans in place for the smaller commercial ports. In some cases, there was no central list of those ports that were required to develop a WRH plan, nor any record of the number of ports that had had their plans approved by the responsible authority.

2.2.2. Analysis

Most commercial ports visited have a WRH plan, indicating the good level of implementation of this key provision in the Directive. This may be because most commercial primary ports have the resources to deal with wastes and have developed PRF systems. However, the requirement to develop a plan remains vague in some Member States and the approving authority did not always have a clear appreciation of the applicability of Article 5. This could partly explain why fishing ports, marinas and smaller commercial ports may have received less attention, although they are clearly within the scope of the Directive. It was also established that in some Member States different authorities were responsible for oversight of PRF in commercial ports than in marinas and fishing harbours.

In this context, it is worth noting that, throughout the Directive, ports handling fishing vessels and recreational craft have different obligations from other ports. This can result in confusion and may contribute to the apparent lower levels of implementation for these types of ports and ships. It may also be that some Member States appear at least initially to have concentrated on their commercial primary ports, before turning to other ports. Furthermore, the smallest private piers and public landings may already have been covered by 'landside' waste legislation. However, the lack of implementation identified for smaller ports needs to be put in perspective, as waste volumes delivered overall are much less in comparison to the larger commercial ports.

Example 2: Practice - appropriate plan Example from a Member State that developed a 'Guide to Good Practice':

The legislation requires ports, harbours and some terminals to draw up waste management plans for approval by the relevant authority. The 'Guide to Good Practice' provides certain criteria for defining a harbour that is required to develop a plan:

(extract from the Guide:)

Generally a plan will not be called for if a facility is only used by vessels in the following categories and on a limited scale:

- Pleasure vessels not usually left on site overnight;
- Day recreational craft which are unlikely to generate waste on board;
- Small scale yacht moorings provided by hotels.
- Small scale yacht moorings provided by sailing clubs outside of harbour authority areas used by vessels designed or authorised to carry 12 passengers or less.
- Facilities used only by day fishing vessels; and,
- Fish farms where the majority of waste is generated by onshore facilities.

In all of these cases it is recommended that the controlling authority should consider the provision of waste reception facilities and production of an equivalent waste management plan as good environmental practice.

2.3. Consultations with relevant Parties(Article 5.1)

2.3.1. Description

The Directive includes a specific requirement to consult with relevant port users on PRF matters. The visits found that in most Member States the WRH plans were developed in cooperation with the port users and other relevant parties. The usual method of consultation was in the form of meetings, or through an official consultation procedure where the draft plan had been made public and every interested party could submit their comments.

Example 3: Practice – consultations (from PRF report)

Prior to submitting the waste management plan for approval..., the port shall consult the port users and other parties on the waste management plan or its revision; this concerns also the revised plans.

After this consultation, the draft waste management plan shall be made available to the public at the offices of the port operator for no less than 14 days during the operational hours of the port. Its availability shall be notified to the port users and other parties in writing or by another suitable and appropriate means of communication.

WRH plans for smaller ports (marinas and fishing ports) were different because waste handling was a function of the public offices of the municipality. All such documents had to be approved by the city council and relevant committees and as part of that process were routinely available to the public.

However, in a third of Member states some ports visited could not provide documentary evidence of any dedicated consultation, although this in itself does not mean that such consultation has not taken place. It appeared that in most of these cases, discussion of the proposed WRH plan had formed part of the port's normal daily contacts with ships' agents and waste operators, with no records being routinely kept.

Provisions or procedures allowing on-going consultation on WRH plans were lacking in several Member States, even in two of those who had otherwise transposed the other elements of Annex I of the Directive verbatim.

As a final consideration, the WRH plan is an important issue especially in relation to cost recovery systems and covers descriptions of waste delivery procedures, charging systems and fees, which should also form part of the publicly available information and be subject to on-going consultation.

2.3.2. Analysis

Member States' procedures for evaluating WRH plans vary in comprehensiveness, allowing issues such as the lack of, or insufficiently documented consultations to go undetected in some cases.

A requirement to hold a public consultation on proposed WRH plans would ensure that all actual and potential port users are provided with the information and have the opportunity to comment.

A distinction can be drawn between consultations on the development of a new WRH plan and the requirement in Annex I of the Directive to hold 'on-going' consultations. The intention of the Directive is that Member States should ensure consultations with port users both during the initial drafting and afterwards, but the wording of Article 5.1 is not as clear as that in Annex I on this point.

2.4. Evaluation, Approval and Monitoring (Article 5.3)

Article 5.3 – "Member States shall evaluate and approve the waste reception and handling plan, monitor its implementation and ensure its re-approval at least every three years and after significant changes in the operation of the port."

2.4.1. Description

In most Member States the authority approving and monitoring the WRH plan was either the maritime authority or the environmental authority, at either national or regional level. In some both of these authorities had a role. In other Member States there were different designated authorities depending on type and size of ports.

Findings show that half of the Member States had not ensured that all ports (mostly relating to fishing harbours, marinas and secondary ports and terminals) had an approved WRH plan. This could be because the WRH plan had not been developed, the approval process had not been completed or the approved plan had expired.

Example 4 - Plan approval (from PRF report)

In one Member State a number of secondary ports had not developed a WRH plan for approval. The Port Authority in these secondary ports was the Coast Guard (Maritime Authority) which was responsible for developing a plan for approval in agreement with the competent Region, to be adopted in the form of a local Ordinance (Coast Guard decision). Because the Region responsible for approving the plans had no authority over the port Captain/Harbour Master, i.e. the Coast Guard Commander of the individual port, a number of secondary ports plans had not been officially approved, by the Region.

Although it is an important element in ensuring implementation, monitoring is not described in detail in the Directive. However, it is understood that its purpose is to verify and ensure the functioning of the system in practice in accordance with the approved WRH plan. The inspections showed that eight Member States (36%) had not met the requirement to monitor the implementation of their WRH plans. Some Member States that had a monitoring system used both announced and unannounced

inspections as an assessment tool. Although Article 5.3 does not specifically mention any self-monitoring by ports, some ports diddo this.

Example 5: Practice - Monitoring, including on the spot port inspection (from PRF report)

Monitoring of the Implementation of the WRH Plan involving inspection visits to ports

Effective implementation of the plans was subject to inspections conducted by the Environmental Inspectorate's (EI) regional offices and to the Maritime Administration's (MA) Port Supervision Department. An inspection checklist was being used by the EI for determination – among other things - of waste reception and handling plans' compliance. The standard inspection reports were drawn to reflect the situation and results. Warnings or fines were given to ports in several cases though mainly for not having a valid waste reception and handling plan. Independently from the EI's action, the MA's Port Supervision Department inspected ports every year to monitor the authorization to operate a port; i.e. the port certificate. The elements checked included waste reception and handling plan as well as the PRF. The list of ports granted with a port certificate contained 64 individual ports. The total number of ports included a lot that were fishing and/or pleasure craft harbours and 6 offered services to inland navigation only. 51 ports had been inspected by the EI in 2006. Inspections could have been previously announced or not. The EI had adopted a list of requirements that should be checked during the inspections in order to ensure consistency. A special waste reception and handling plan checklist had been adopted for this, which specified 15 issues or groups of issues that had to be checked.

Many Member States considered that it was for the port to ensure that the plan remained valid and to take the initiative when a significant change in the operation had taken place or when the approval expired. In some Member States the authorities reminded ports of the WRH plan expiry date and of the need to submit the plan for approval.

2.4.2. Analysis

In general, Member States have put considerable effort into ensuring that bigger commercial ports have approved WRH plans and established PRF systems.

Depending on the type and size of ports, evaluation and approval were usually done in separate stages and with different institutions involved in the process. In addition to the approval by the relevant authority, and in order to be ready for implementation, the plan usually has also to be adopted by the body governing or managing the port concerned.

There were a variety of reasons why not all ports had an approved plan. For example, as a consequence of the Member State's administrative structure and the way in which each authority cooperates and exchanges information, lack of clarity over responsibilities for different stages of the approval process might result in no formal approval being given.

Approval procedures could also be drawn out over a number of years if, for example, the WRH plan was part of a much larger process, such as the application for a port's environmental permit³.

³In some cases it was noted that the approval process had been quite long taking even up to 18-24 months. In one Member State the WRH Plan was presented as part of the commercial port's application for an environmental permit (based on IPPC Directive, codified 2008/1/EC). Because the Plan approval was linked to the environmental permit the process was long. In one Member State, the approval process was long-lasting due to different authorities involved in the approval process. The port management body submitted the draft for consultation to General Secretary for Ports and Ports Policy under the Ministry which gave its opinion in a reasonable time. After a favorable opinion, the plan was forwarded to the Region in which the port was situated. Each Region cooperated with the prefectural government in order to approve the plan.

The lack of an explicitly approved WRH plan does not automatically mean that the plan had not been implemented in the port in question. Normally, PRF services were available in those ports, and the PRF activities followed the yet to be approved or the expired plan. However, the approval status should normally have been identified as part of the monitoring process (see further below) and the findings indicate a lack of monitoring of the plans and the approval process.

However, for smaller ports in particular, the lack of resources, both human and financial (e.g. the cost⁴ of developing a WRH plan) were often reasons why a port did not have a valid WRH plan. Article 5.2 may provide a possible solution for these "smaller" ports without an individual plan, by allowing for the possible development of WRH plans in a regional context.

The lack of a central list of ports covered by the Directive in a number of Member States posed a significant challenge to effective implementation. For monitoring and enforcement purposes, such a list would be very helpful.

One further complication is that monitoring of ports may also be related to monitoring and enforcement under other (e.g. landside waste) legislation and it is important that the two systems are considered as a whole.

The findings in this area also point to differences between Member States in how re-approval is monitored and enforced and how 'significant change' is defined. Seven Member States had failed to carry out the requirement to re-approve the WRH plan at all.

This process has proven to be time consuming (plan: Opinion June 2006 – approval July 2007, plan: opinion January 2003 – approval November 2005).

⁴In one Member State, the consultants were said to ask a sum of around 5000 EUR for composing the WRH Plan of a cooperative fishing-pleasure craft port.

3. Theme II – Cost Recovery and Fee Systems

Theme II covers all elements relating to cost recovery and fee systems, against the background of findings in relation to Article 8 of the Directive. The section also considers the limited data available in relation to waste flows and tries to provide an indication⁵ of trends.

3.1. Main Findings

There were 32 findings spread across 19 (86%) of the Member States visited, relating to all sub-paragraphs of Article 8. Seven related to Article 8.1 (cost coverage); Eleven to Article 8.2 (cost recovery) and 14 related to Article 8.3 (transparency).

Article 8 requires Member States to ensure that all costs of PRF, including the treatment and disposal of the SGW, are covered through the collection of fees from ships via cost recovery systems. Member States have considerable freedom in designing such systems, but must ensure that they provide no incentive for any ship to discharge waste into the sea.

The analysis shows that implementation of this Article differs from Member State to Member State, and in some cases within a Member State. Hence there is almost no uniformity. This has made it one of the more difficult Articles to analyse, also because there is a lack of information both on the functioning of systems and on related waste flows.

The findings highlight two problematic areas relating to the principles that; (1) all ships shall make a significant contribution, and (2) the relationship of the fees to costs (the basis of the fees and their use linked to the transparency provision) in providing no incentive for ships to discharge their SGW into the sea.

3.2. Cost Coverage (Article 8.1)

Article 8.1: "Member States shall ensure that the costs of port reception facilities for ship-generated waste, including the treatment and disposal of the waste, shall be covered through the collection of a fee from ships."

Article 8.1 deals with the fees for SGW⁶ only -CRare outside its scope. It applies to fishing vessels and recreational craft authorised to carry no more than 12 passengers, even though Article 8.2 (cost recovery systems) does not apply to those categories of vessels.

3.2.1. Description

There were 7 findings for Article 8.1, relating to the fact that the fee collected from vessels did not cover the costs of PRF in the port visited. These largely relate to fishing vessels (and recreational craft), which have either been excluded from the charging regime, or have been given an exemption, with the result that they did not contribute towards any costs as required. Another linked problem was transparency of the fee systems, as it was not possible to verify the cost structure in the ports visited in 14 Member States.

⁵The analysis attempted in this chapter does not set out to replace the evaluation provided for in Article 8.4, but may provide an indication of the areas that may need more attention in any such discussions and evaluations.

⁶ When the word 'waste' is used in this chapter it refers to ship-generated waste unless otherwise specified.

3.2.2. Analysis

The aim of Article 8.1 is to ensure that the 'polluter pays' principle is followed. It indicates that the pricing of the PRF services should be cost-based, but leaves open what elements should be included in calculating such costs apart from specifying that these costs should include the treatment and disposal of waste.

The elements making up the total cost need to be defined by the Member State, as that influences the individual costs that may be included in the cost recovery system, especially in relation to the principle of significant contribution in Article 8.2. This is linked to the transparency provisions in Article 8.3, as it should be clear to ports and port users what elements are included in the costs and how they are reflected in the cost recovery system and the fee to be paid. Key questions are: do the fee levels correspond to the costs of PRF services; and is the income generated actually allocated to cover those costs?

In practice, the findings established that the relationship between fees and costs often remains unclear in Member States, and there is a lack of transparency in relation to the underlying calculation leading to the price for different PRF services. In the ports visited in 14 Member States no such transparency could be established, making it difficult to verify the cost structure. The reason for this are further explained in the analysis of Article 8.3.

3.3. Cost Recovery Systems (Article 8.2)

The Directive's cost recovery system provisions in Article 8.2, relate to two major criteria; incentive and significant contribution:

Article 8.2: "The cost recovery systems for using port reception facilities shall provide no incentive for ships to discharge their waste into the sea. To this end the following principles shall apply to ships other than fishing vessels and recreational craft authorised to carry no more than 12 passengers:

(a) all ships calling at a port of a Member State shall contribute significantly to the costs referred to in paragraph 1, irrespective of actual use of the facilities. Arrangements to this effect may include incorporation of the fee in the port dues or a separate standard waste fee. The fees may be differentiated with respect to, inter alia, the category, type and size of the ship;

(b) the part of the costs which is not covered by the fee referred to in subparagraph (a), if any, shall be covered on the basis of the types and quantities of ship-generated waste actually delivered by the ship."

3.3.1. Description

The wording of Article 8.2 includes some flexibility regarding how to implement the requirements as long as it is ensured that incentives are provided and that all ships contribute significantly – irrespective of the use – to the costs of PRF. The visits show that Member States have used this flexibility to introduce widely varying systems. These variations range from almost full to partial coverage of the principles and from indirect to direct fees. However, there are basically two⁷ main approaches used to implement the cost recovery system in the ports visited in Member States:

⁷ The two main approaches and their variations used here have been identified from assessing all inspection reports but categorised for the purpose of this horizontal assessment and report.

1. One approach is based on the so called no special fee (NSF) concept, where the ship is (always) charged irrespective of the use of PRF and is (normally) allowed to deliver at least a reasonable amount of SGW within that fee.
2. The other is based on the administrative fee (ADM) supplemented with direct waste charges based on the types and the amounts actually delivered.

In addition to the above, one more variant model was observed which can be called the 'direct fee system'; representing a simple system without any reimbursement or apparent incentive and which seems to originate from before the introduction of the Directive. This was however found to have been applied only in very few Member States ports.

For the purposes of this horizontal analysis the two main approaches have been used, but with described variations where considered necessary.

(1) The 'no special fee' system (NSF): The majority of ports (in 16 Member States) have implemented the cost recovery system in which the waste fee paid by all ships is normally included in the port dues or is charged in the form of a separate standard waste fee. The fee is payable irrespective of delivery and the system includes a right to deliver a certain volume of SGW (normally garbage and oily waste, seldom sewage) to the PRF. Most ports have defined the 'reasonable amount' of waste that is included in the fee, which may vary e.g. based on the region of the last port of call or duration of the journey. Any additional volumes (and sometimes types e.g. sewage, or hazardous waste) are charged directly on top of the waste fee either by the port or the waste operator.

The following three variations of the NSF were found in the ports visited:

(a) NSF – 100% -the principle here is that all waste (100%) is included in the fee. However, ports with 100% NSF have tended to define 'excessive amounts' in order to avoid the abuse of the system.

(b) NSF – The delivery of reasonable amounts of waste – but not all – is included in the fee. Volumes included have been defined and limits set at the outset clearly indicating volumes included in the fee and at what fees additional volumes (above the set limit) will be directly charged.

(c) NSF - for garbage only. Includes only Marpol Annex V (garbage). Volume limitations may also be applied in this group.

One port had implemented both of the main types of the fee systems (NSF and ADM) at the same time (without an overlap regarding ships). In one port, the indirect fee covered the final disposal of the discharged waste, but not its reception from ship and transport. In another, the NSF system did not cover passenger ships.

(2) Administrative waste fee/contribution system (ADM):

Seven Member States had introduced systems, in which an administrative waste fee is charged by the port and a separate direct charging system, usually operated by the waste contractor, applies to actual delivery. This system does not provide a right to deliver any volume of SGW. If waste is delivered, the shipowner still has to pay for any volumes delivered directly to the waste contractor.

Three main versions of this system were found in the ports visited:

(a) Indirect administrative waste fee with partial refund in case of delivery, plus direct charges for actual delivery.

This variation includes an indirect contribution paid by all ships irrespective of delivery. Ships that deliver also have to pay direct charges to the waste contractor, but can partially reclaim the indirect administrative fee by providing evidence of waste delivery either in that port, or (in the case of garbage and/or oily waste) in the previous EU (or HELCOM) ports during the past 30 days.

In addition the port may have to redirect part of the administrative fee funds to the waste contractors, reducing the price per m3 of waste delivered to the contractor. The rest of the fees fund the administration of the PRF system.

Example 6: Practice - ADM system (from PRF reports)

The port authority keeps a share of the financial contribution arising from this administrative fee and redirects part of the administrative fee to the (selected) waste contractors (1 MS 5-20%, 1 MS •15-30 per m3).

(b) Indirect administrative waste fee with full refund, or no fee, in case of delivery, plus direct charges for actual delivery.

This variation is based on the same principles as (a), but with the difference that the administrative fee can be reclaimed back fully in case of a delivery, or the fee is not charged for ships that are delivering. Again the actual waste discharge is invoiced separately based on the volume and types of waste delivered. In both cases evidence of a waste delivery in that port is needed.

(c) Administrative waste fee only from ships not delivering, plus direct charges for actual delivery.

This variation is based on a system that charges an administrative waste fee only to vessels which do not deliver waste at all (called a "penalty fee"). In case of delivery, only direct fees are charged by the waste contractors based on the amount and type of waste.

Example 7: Practice – calculation of fee, exemption of waste delivering vessel(from PRF report)

The national legislation incorporated an indirect fee sufficient to cover 30% of the costs of the available PRFs. This 30% was considered as the significant contribution to which the Directive refers in its Article 8.2 (a). One port incorporated this indirect fee as a port due based on a coefficient to be multiplied by the ship's volume (volume declared to the tax regime, which was also the basis for different taxes charged to ships calling at the ports of that MemberState).

Ships calling at this port and showing an agreement with one of the licensed waste collectors operating at this port for delivering ship-generated waste and/or cargo residues were exempted from the above fee.

There is a fourth variant model of the above, which can be called 'direct fee system'

(d) 'Direct fee system'- Administrative waste fee included in port dues.

In this case, an administrative waste fee is included in the port dues for all vessels, but the model includes no refunds or any right to deliver ship-generated waste. In the event of SGW delivery, separate direct charges apply.

3.3.2. Analysis Article 8.2 - No incentive for ships to discharge their waste into the sea

A cost recovery system compliant with art 8.2 of the Directive “shall provide no incentive for ships to discharge their waste into the sea”. Although this phrasing is not quite the same as creating an incentive to deliver waste in the port, the fee system should in practice include an incentive-creating fee for all ships (other than fishing vessels and recreational craft authorised to carry no more than 12 passengers). Vessels also have to “contribute significantly” – irrespective of the use – to the costs of PRF services, including the treatment and disposal of the SGW.

Findings from the visits show that Article 8.2 has not been uniformly understood to mean that the fee charged should include a right to deliver a certain quantity of (if not all) ship-generated waste, in order to meet the aim of an incentive for ships not discharging into the sea. Some Member States/ports have taken a more market oriented approach and while the fee systems do not include a right to deliver a certain volume of SGW, they might still create an economic incentive to deliver, by aiming to reduce the price (direct fee charged) for using the PRF services.

(1) No special fee systems (NSF) and variations

In relation to variation (a) NSF 100% and (b) NSF reasonable amounts, all ships pay a fee covering some or all of the costs of the facilities irrespective of use, and the system includes an incentive that promotes delivery of SGW to the PRF, as the payment is already included in the fee.

These systems encourage ships not to discharge waste into the sea as, unless the amount of waste is above the prescribed limit, they pay the same whether they deliver or not.

The third variation (c) encourages ships not to discharge their garbage into the sea, but not necessarily any other waste. This might create a situation where the shipowner may want to deliver garbage only and waits until another port of call to dispose of other waste, possibly increasing the risk of discharging into the sea.

(2) Administrative waste fee / contribution systems (ADM)

Ports with these systems have a more ‘market driven’ approach- they try to secure higher volumes of waste by offering attractive services and prices. In this sense there is an incentive, at least compared to delivery of waste in another port.

In variation (a), all ships pay the indirect contribution. This type of system appears to have a form of incentive not to discharge into the sea, as the claim back function reduces the costs to the ship. In addition, ports which give a direct refund to the PRF provider per volume of delivered waste provide a specific incentive to deliver SGW in their port, by reducing the direct costs for the vessel.

In variation (b), the system seems to meet the aim of not providing an incentive to discharge SGW into the sea by creating an incentive to actually deliver SGW in the port, as the fee is either fully reimbursed or not charged to delivering ships. However, the shipowner still has to pay for any volumes delivered directly to the waste contractor. So while the fee refund or waiver reduces the cost for the shipowner and thereby creates a (price) incentive to discharge in that port, this does not necessarily create an incentive for not discharging into the sea.

In variation (c), the cost recovery system creates an incentive similar to variation (b) above. Charges paid by ships not delivering reduce the costs that have to be borne by ships that do deliver waste, creating an incentive to discharge in that port, but not necessarily for not discharging into the sea.

For the variant model (d), the 'direct administrative fee', the fee is included in the port due and all waste deliveries are charged directly by the waste contractor. As there is no reimbursement for the shipowner in case of delivery, and no evidence of the collected funds being used for the PRF, the system may result in the cost being higher for the user, not providing any incentive to deliver waste (it may just generate additional income to the port without any link to PRF costs), and thereby increasing the risk of discharges into the sea.

3.3.3. Analysis Article 8.2(a) - All ships shall contribute significantly to the costs irrespective of actual use of the facilities

The principle sets out to ensure that "all ships" contribute to the costs of PRF and that such a contribution shall be "significant", "irrespective of the actual use of the facilities".

The findings from the visits relating to significant contribution fall into two categories: (a) not all ships calling at a port, irrespective of the use of PRF, did contribute to the costs of PRF and, (b) administrative waste fee systems were not transparent and in many cases it was not clear how "significant" was defined or how the funds raised from these fees were used, if at all, to cover the costs of PRF.

Some Member States seem to have been guided by the 30% indication (stated by the Commission in its declaration at the time of adoption), but the lack of transparency in most Member States as to how fees were calculated and the relation between costs and fees, makes the situation difficult to assess.

(1) No special fee systems (NSF) and variations

In variations (a) and (b), all ships calling at NSF ports can be assumed⁸ to have contributed significantly to the costs of PRF. This may not be true for the NSF c) variation as this only covers garbage.

(2) Administrative waste fee / contribution systems (ADM)

In the first variation (a), all ships pay the indirect contribution so this meets the requirement that all ships contribute, although there is a question as to what should be considered a "significant" contribution.

In the second and third variations (b) and (c), the question about the significance of the contribution to the costs of PRF again arises.

The fourth variant model (d), the direct administrative fee, charges all ships irrespective of discharging waste or not. It is however not clear how, or if, this system meets the principle of 'significant' contribution, as no information has been available on how the fee has been used to cover PRF costs.

In addition to the above approaches, visits also identified some cases where the ports in question still applied direct charging without any significant contribution paid by all ships. This simple way of handling waste reception costs seems to stem from the

⁸The assumption is that fees are used to cover the cost for the services, facilities and volumes included.

period before the introduction of the PRF Directive. These systems do not ensure any significant contribution nor do they create any incentive.

In summing up, the analysis indicates that only a few of the systems observed in the Member States' ports visited meet all the established principles and requirements in the Directive. Some of the No Special Fee systems and one version of the Administrative Fee system seem to meet most of the principles in Article 8. The analysis has shown that the application in practice of these systems is becoming more closely aligned in how they operate. The main difference between these two systems appears to be that the fee for all ships using No Special Fee ports includes a delivery right for SGW (up to a maximum volume), whereas the Administrative Fee system does not include any delivery right.

The effects of the wide variation of fee systems also creates incentives for Masters to do "PRF shopping", with vessels delivering all or part of its SGW of a certain type in one port, and the rest in another or even a third port. This 'shopping around' may reduce the overall costs for the ship and may be an unintended side effect of the Directive. This is relevant to the issue of cost recovery systems as it determines volumes that can be expected and thereby PRF facilities as such, as well as influencing fees and cost recovery. In this respect it also relates to the functioning in practice of the requirements in Article 7 regarding delivery obligations (see the discussion of this under Theme III – Enforcement).

Example 8: 'PRF shopping' (extract from PRF report)

One Marpol Annex V waste handling contractor informed that prior to the Directive coming into force they served approximately 10 vessels a day and received an average of 8-10 m³ of waste per vessel. After the implementation of the Directive the contractor had 25-60 vessels a day but only received an average of 1-2 m³ of solid waste per vessel. The majority of vessels only delivered the quantity of waste that was included in the indirect fee.

It seems that in practice "PRF shopping" happens, although there is no data on the extent of this occurrence.

3.3.4. Analysis Article 8.2(b) Costs not covered by the significant contribution?

Article 8.2 (b): "...the part of the costs which is not covered by the fee referred to in subparagraph (a) [i.e. that contributes significantly to the costs], if any, shall be covered on the basis of the types and quantities of ship-generated waste actually delivered by the ship;"

There is one variation of the NSF (c) system, covering only Annex V (garbage), which appears to be based on Article 8.2(b).

The text of the Directive does not expressly mention whether all categories of SGW have to be covered by the incentive based contribution. However, based on the definition of SGW, the purpose of the Directive is all embracing and every type of waste falling under the specified Annexes of MARPOL 73/78 is covered. This means that costs for all SGW should be the basis for calculating the 'significant' contribution.

Example 9: Cost coverage and indirect fee

As an example the indirect fee for garbage can vary between approximately 50-90 euros per ship call. When no other delivery takes place, the fee is 100% indirect due to no other charges. However, if a ship delivers also oily waste, the additional cost might rise, for example, 1000 euros with the effect that the indirect fee is reduced to less than 10%.

There is a risk that NSF(c) systems do not offer ships the same incentive to deliver all types of SGW, because such a system provides no incentive for delivering oily waste and sewage.

3.4. Transparency(Article 8.3)

Article 8.3 states that "In order to ensure that the fees are fair, transparent, non-discriminatory and reflect the costs of the facilities and services made available and, where appropriate, used, the amount of the fees and the basis on which they have been calculated should be made clear for the port users."

3.4.1. Description

There were findings in 14 Member States (64%). Most of the findings relate to the situation that, while fees as such were in general made public or available to port users, the basis on which they had been calculated were either not included in the published material or unclear. This can result in the situation where the port user may not know exactly what he is paying for.

Example 10: Lack of information/publication(from PRF reports)

As an example, none of the visited ports in one Member State could give details of the basis on which the cost calculation scheme had been established nor was information found in the WRH plans. In another MS no public information was available to the port users on how the calculation of the fees had been made. In one MS fees were available but the basis on which the fees had been calculated was not made clear for the port users.

In a few Member States the amount of fees/prices for discharging oily waste, sewage or cargo residues were not made available to all (potential) port users.

In one MS port visited, the ship's agent stated that they were not able to inform visiting ships beforehand of the amount of ship-generated waste that could be delivered within the 'No-special-fee' system and hence what the full cost of delivering the vessel's ship-generated waste would be.

3.4.2. Analysis

Some major ports apply the transparency concept fully, ensuring, inter alia, that the fees from one sector of port users do not subsidise others. This can also be self-regulating as users will ensure costs are fair across the board during the consultation process required by the Directive. There is however an important link between this requirement and that of both the definition of cost elements in Article 8.1 and, the significant contribution principle. However, as has been explained above, for some types of cost recovery/fee systems, it has not been possible to evaluate such elements or "significant contribution" as the information was either not available or unclear.

The Directive stipulates that fees and the basis on which they have been calculated should 'be made clear' for the port users. The words "be made clear" should be read in conjunction with Annex I – "description of the charging system" under the heading 'Information to be made available to all port users'. This obliges the Member States to

ensure transparency, but leaves the method for them to decide. Hence any method could be used (e.g. leaflets, published legislative acts or notices, web/homepage) to make information available to port users. Given that the WRH plan also has to include a “description of charging system” this type of information should be readily available. However, in some cases it was established that some approved WRH plans did not contain information on fees or underlying calculation.

A variety of ways to provide the information has been seen, usually via official bulletins, on port websites or through other media. For some ports in one Member States the obligation to inform was put on the agents operating in the port.

The Article also means that the price structure and underlying calculation should be presented in such a way that they are clear and understandable to the port user. The visits showed that this has not always been the case. The amount of the fees to be paid directly to the waste operators in particular was often difficult to obtain and was not published or made available unless requested directly from the various contractors. The “basis of the fees” has often been understood by ports to mean only the differentiation (e.g. by ship type and measurement unit used (e.g. GT)).

A difference can be detected between ports where part of the services relating to PRF were operated directly by the port and other services were the responsibility of contractors licensed to operate in the same port. In addition, for ports in the ADM category there was often no clarity or information available on the fee systems and their calculations. This may be because there is also no clarity in what is actually covered as there is no right to deliver any or all types of waste under those systems.

Example 11: Lack of information/publication(from PRF reports)

In the ports inspected in two Member States not all information was made clear and available to the (potential) port user.

In the ports inspected in one MS, the waste handling contractors were not required to publish their fees for handling ship-generated waste and cargo residues. It was stated that waste handling contractors operated in a free commercial market and hence, could not be required to disclose their prices to the public. The ships' agents had to request quotes for the deliveries of ship-generated waste and then chose a bidder. Price list and detailed delivery requirements were not generally disclosed to the port users.

In another MS in two ports visited, the ports provided no fee scales for the cost of delivering ship-generated waste other than on the delivery of garbage. The information was only available per request from the various contractors. Every vessel had to request a quote from an approved waste handling contractor for every such type of delivery.

Overall, findings show that the relationship of fees with costs is often not available or remains unclear in the practical implementation of this requirement. This does not necessarily mean that the indirectly collected contributions are not used to cover the costs of a PRF system, but the availability of reliable data has been difficult to obtain.

While nothing suggests that the legislative text or underlying intention is unclear, the findings point to the fact that this part of Article 8.3 has not been implemented fully or properly. From the visits it appears that in some cases no explanations could be given on how a price/fee had been established, as it was either already established before the PRF Directive came into force, or it proved challenging for many ports to relate the established fees to the costs of PRF. This also appeared to be the case for allocating the share of the ‘significant contribution’ in the total cost of ship waste handling.

3.5. Indication of Waste Flows

To provide an indication of the effects of the different cost recovery systems in terms of trends on waste flows in EU ports, detailed statistical data is needed. However, the Directive does not include any explicit requirement to keep or report such statistics other than what is referred to in Annex I in relation to the WRH plans (element to be addressed in the WRH plan: Types and quantities of ship-generated waste and cargo residues received and handled. Description of methods of recording...).

In the course of the inspection cycle, some data, where available, has been collected⁹ from the ports visited. It must be borne in mind that this data is based on figures provided by the (visited) ports and they do not necessarily take into consideration the waste amounts discharged by any exempted vessels. In addition, it has not been possible, within the framework of this analysis, to make any assumption regarding changes due to factors such as: increased/decreased number of port calls, change in the global economic situation, types or changes in traffic/routes, regional cooperation redistributing or balancing out waste flows etc. As has already been mentioned, there is currently no mandatory reporting requirement in the Directive and it is therefore not possible to establish any 'baseline' data with which to compare.

Despite this, an attempt has been made to use the (updated) data to the best possible extent, and to provide indications of trends in waste flows.

For the delivery of sewage waste under Marpol Annex IV there is not enough data available in the Member States to provide similar indications as for Marpol Annexes I and V. Likely reasons and details for this situation within the global context are provided in Annex 1.

It must be emphasized that the indication of an overall positive trend with regard to Marpol Annex I and Annex V wastescannot be attributed to the implementation and effect of the Directive alone. However, while there are possibly many other parameters and factors influencing this, including upturns or downturns in the global economy (having an impact on trade and thereby seaborne transport), it can at least be indicated that the Directive has contributed and played a role in increasing the amount of waste delivered.

Overall there is a positive trend, as shown in graph 1 below, in that more and more ship generated waste is being delivered, which is an indication that the EU policy of providing no incentive to discharge waste into the sea when implementing this Directive, appears to be working in the right direction. There is no available official data on discharges into the sea, however information from other sources like HELCOM and EMSA oil slick monitoring satellite system (CleanSeaNet), also indicate a positive trend.

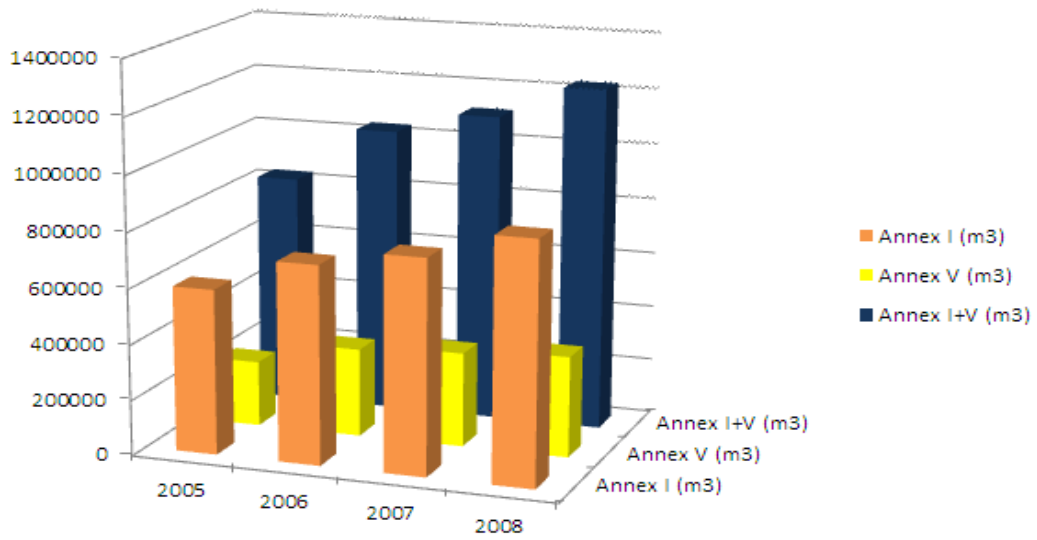
HELCOM in 2009 observed the number of deliberate or illegal discharges from ships in the Baltic Sea. Trends indicate a drop in illicit oil spills by 63% since 1999 and 25% as compared to 2007¹⁰.

CleaSeaNet figures also show that the number of pollution incidents, confirmed after verifications by Member States, in and around EU waters, was down from 232 in 2008 to 194 in 2009.

⁹ These have been updated subsequent to the full inspection cycle in order to have full year datasets, for waste volumes of Annexes I and V.

¹⁰ HELCOM Press Release dated 6 May 2010

Graph 1 below indicates the total trends for the ports visited and as per Marpol Annex I (oily waste) and V (garbage), illustrating the total volume (in m3) delivered for the time period 2005 to 2008.



4. Theme III – Enforcement

Theme III covers in detail all elements relating to notification, delivery obligations and inspection, against the background of findings on Articles 6, 7 and 11 as well as relevant parts of Article 12.

4.1. Main Findings

There were 58 findings in 20 (90%) of the Member States visited, relating to Article 11 making it one of the more problematic areas for implementation of this Directive. The inspection visits established findings in relation to most aspects of Article 11. However, in order to get the full picture, Articles 6 on notification with findings in eight Member States and Article 7 on delivery of ship-generated waste with findings in seven Member States, as well as Article 12.1 (d), examination of notifications (with findings in twelve Member States), needs to be looked at in this context. With these included there were 82 findings.

In most Member States the responsibility for monitoring whether a vessel actually delivered its waste was usually allocated to either a separate maritime enforcement authority (within the maritime administration) or to the port authority with the involvement of governmental bodies (e.g. Coast Guard). Depending on the role of the port authority – whether it had enforcement powers or not – the practices on follow-up measures varied.

In general, it appears that many Member States use the Port State Control framework, as permitted under Article 11.2(b), but in practice many use the PSC structure and system in full, creating implementation problems for the PRF-specific requirements, as those requirements are not included in PSC. Furthermore, with regard to the enforcement provisions in particular, it is important to differentiate between Port Authority and Enforcement Authority. Port “Authorities” (often referred to also as ‘ports’ in this report) may be (private or public or mixed ownership) companies run as a business and therefore not natural enforcement bodies due to the conflict of interest in policing their paying customers. Their roles in the implementation schemes of the Member States do not always sit well with their status. In many cases, ports consider that their main role is simply to ensure that services for waste reception are available and use notifications mainly for that purpose.

Four main groups of findings were identified: 1) ships were not being selected for inspection based on an examination of the notification form, 2) the principle of using a pre-existing inspection framework (e.g. PSC, FSC) without ensuring that the PRF specific requirements were included, 3) the absence of a system for providing information to the next port of call in cases where a ship has proceeded to sea without having delivered its waste and, 4) the omission, in the majority of Member States, of pleasure craft and fishing vessels from the enforcement measures.

The analysis of this theme points to the need for a comprehensive information and monitoring system, which it is suggested could build on the SSN platform. Such a system would, as described also for the other themes in this report, enhance the enforcement provisions throughout the Directive and provide possible solutions to many of the findings.

4.2. Notification (Article 6)

Article 6.1: “The master of a ship, other than a fishing vessel or recreational craft authorised to carry no more than 12 passengers, bound for a port located in the

Community shall complete truly and accurately the form in Annex II and notify that information to the authority or body designated for this purpose by the Member State in which that port is located:

- (a) at least 24 hours prior to arrival, if the port of call is known; or
- (b) as soon as the port of call is known, if this information is available less than 24 hours prior to arrival; or
- (c) at the latest upon departure from the previous port, if the duration of the voyage is less than 24 hours.

Member States may decide that the information will be notified to the operator of the port reception facility, who will forward it to the relevant authority.

Article 6.2: "The information referred to in paragraph 1 shall be kept on board at least until the next port of call and shall upon request be made available to the Member States' authorities."

Article 12.1 (d): Member States shall: "ensure that the information notified by masters in accordance with Article 6 be appropriately examined".

4.2.1. Description

On the basis of the samples checked during the visits, it was established that in eight Member States not all ships that should have notified did so, either because the ports and/or responsible authorities did not monitor and require it, or because the master simply did not notify (possibly not being aware of the requirement).

Example 12: Absence of Notification (from PRF report)

In one port, only the notifications indicating an intention to deliver waste were registered in the electronic database. (In addition, the PA did not execute due care to ensure that all ships that should have, actually did notify.)

The waste notification was normally sent to the designated authority by an agent after receiving the relevant information from the ship, often together with the ship arrival notification. The usual method to notify was by fax, e-mail or where available an IT-based system. The designated authority to receive the waste notification was in most cases the port authority, who normally forwarded it to the waste contractor unless it was responsible for providing the waste reception service. What often did not happen was for the content of the notification to be reviewed as required, and for the notification, and cases of non-notification, to be reported without delay to the designated enforcement authority¹¹ for further action if necessary, including selecting ships for inspection based on that information.

In most cases, the notifications respected the format mandated in Annex II. The port authorities kept the notifications for a varied length of time, the maximum being three years.

4.2.2. Analysis

Nothing in the analysis suggests that the requirements in Article 6 are not clear. The findings point to a lack of enforcement rather than implementation. The main issue

¹¹ It should be noted in this context that the last sub-paragraph of Article 6.1 allows Member States to designate the operator of the PRF as the recipient of the notifications.

relates to situations where the information in the notification was not appropriately examined and/or it was not forwarded to the authority responsible for inspection enabling them to select 'failing' vessels for inspection. In such cases, the enforcement link risks being broken and there is a risk of system failure as there is no control or information in relation to 'failing' vessels. There is also a difficulty to prevent vessels from leaving port with dedicated storage capacity for waste (too) full, thereby increasing the risk of discharges into the sea. The whole purpose of the notification is to allow preventive action and to order ships to deliver their waste or inspect them to ensure there is enough dedicated storage capacity for waste on board, before departure to the next port of call.

4.3. Delivery Obligation(Article 7)

Articles 7.1: "The master of a ship calling at a Community port shall, before leaving the port, deliver all ship-generated waste to a port reception facility".

Article 7.2: "Notwithstanding paragraph 1, a ship may proceed to the next port of call without delivering the ship-generated waste, if follows from the information given in accordance with Article 6 and Annex II, that there is sufficient dedicated storage capacity for all ship-generated waste that has been accumulated and will be accumulated during the intended voyage of the ship until the port of delivery.

If there are good reasons to believe that adequate facilities are not available at the intended port of delivery, or if this port is unknown, and there is a risk that the waste will be discharged at sea, the Member State shall take all necessary measures to prevent marine pollution, if necessary by requiring the ship to deliver its waste before departure from the port."

4.3.1. Description

This is one of the key Articles aimed at avoiding discharges into the sea which is the principle aim in the Directive. It contains a delivery obligation put on the master of the ship as stipulated in Article 7 to deliver all ship generated waste. Article 10 imposes an equivalent requirement for Cargo Residues.

This is linked to the notification requirement in Article 6, as Article 7.2 also allows an exception from this principal obligation in situations where it can be established from the information submitted by the master on the notification form, that there is "sufficient dedicated storage capacity for all ship generated waste that has been accumulated and will be accumulated during the intended voyage of the ship until the port of delivery". In such cases a ship may proceed to the next port of call.

On the basis of the samples checked during inspections in seven Member States, four findings related to the poor implementation of the mandatory delivery requirement, and six related to the absence of procedures to assess whether there was sufficient storage capacity for waste on board to allow ships to proceed to the next port of call without delivering all their SGW.

4.3.2. Analysis

The application of the exception in Article 7.2 differs from Member State to Member State, with varying requirements of the volume and types of ship-generated waste that the vessel can leave port with. Although Article 7.1 requires the Master to deliver "all" SGW to a port reception facility, the definition of "all" is open to interpretation. Neither is there any uniform definition or guidance of what should be

considered sufficient dedicated storage capacity. To help ensure delivery of the overall aim of avoiding discharges into the sea, there is a need to strengthen and clarify Article 7.2, in relation to the principal delivery obligation in Article 7.1.

The normal practice is that the decision to proceed to sea rests with the Master and any action, possibly (but not necessarily) following an inspection to verify the actual situation on board the ship against the information submitted in the notification form, is with the designated (enforcement) authority. This underlines the importance of the requirement in Article 12.1 (d); that it must be ensured that the information submitted is appropriately examined by the competent authority and then forwarded without delay to the enforcement authority (if not the receiving authority) or inspector.

The designated authority can require the ship to deliver its SGW based solely on the information provided in the notification form, and without any inspection of the ship in question, if there is a risk that the SGW could be discharged into the sea. This is especially the case if the verification of the notification reveals that there is not sufficient dedicated storage capacity, or if there are good reasons to believe that adequate facilities are not available at the intended port of delivery, or if this port is unknown.

This link in the enforcement is therefore very important and, as already mentioned under Theme II, the variation in charging systems creates incentives for "PRF shopping."

It seems reasonable to continue to allow the exception in Article 7.2 provided that a more uniform definition of sufficient storage capacity can be established. Such a definition could be designed in a way that the exception would be applicable only when the next port of call is a Community port, as any information and monitoring system would only cover Community ports. For departures to a non-Community port it could be considered to require full application of Article 7.1 and that all waste has to be delivered before departure irrespective of storage capacity. That would eliminate as far as possible discharges into the sea when leaving a Community port and sailing outside the Community and outside the coverage of the information and monitoring system.

4.4. Inspection– Selection of Ships (Article 11)

In order for the authorities and ports to be aware of the above situations (whether notification has taken place or information provided is correct, if delivery has taken place or if there is still enough storage capacity on board) and to take a decision, they need to monitor notifications and/or inspections of ships (foreign as well as national flagged).

According to Article 11.2(a), ships other than fishing vessels and recreational craft authorised to carry no more than 12 passengers which have: 1) not complied with the notification requirements in Article 6 and, 2) ships, for which the examination of the information provided by the master in accordance with Article 6 has revealed other grounds to believe that the ship does not comply with the Directive, have to be paid particular attention to in the process of selecting ships for inspection.

4.4.1. Description

The findings from the visits revealed that in 12 Member States ships were not selected for inspection using the information submitted on the notification form. As has been

described above (Article 6.1.) a contributing factor was that not all ships that should have notified did so. It was however also established that in some cases where a notification had been made this had not been appropriately examined. This was the case in nine Member States, meaning that ships falling into the second category “other grounds” (e.g. notifying incomplete information) were not selected for inspections.

Example 13: Examination of Notification (from PRF report)

Port Authorities had been designated as the only receivers of the waste notification according to the national regulation. During the visit, no information was received on procedures in place or practises to be followed when a ship is not fulfilling its obligation to notify waste information.

Furthermore, no information was received on the way the information notified in accordance with Article 6 is appropriately examined, as provided by Article 12.1.d., nor, related to this, on the existence of the procedures for action in dubious cases or for verification of the sufficient capacity on-board a ship, which allow her not to deliver.

In addition, no information was received on the implementation of Article 11.2 (a) of the Directive telling Member States to pay particular attention to ships which have not complied with the notification requirements as requested by Article 6, and to ships for which the examination of the information provided by the master in accordance with Article 6, had revealed other grounds to believe that the ship did not comply with this Directive.

However, there are also examples of some Member States using the practice of applying specific technical solutions for targeting, by automatic notification checks.

Example 14: Practice - Electronic information (from PRF report)

Notifications are sent electronically to the (web-based) ship's waste database of the Port Authority, where the system automatically checks if every vessel calling the port did notify in the first place, and secondly whether the information that was notified makes sense (e.g. the storage capacity for oily waste of the vessel is compared with the dedicated storage capacity according to the vessel's IOPP-certificate). If there is a non-conformity, an alarm is sent out automatically. As officers of the Shipping Inspectorate have direct access to this ship's waste database, they can easily select those vessels for further inspection.

More importantly, even when the ships did notify, Member States' systems might not bring the notification to the attention of the relevant enforcement authorities without delay. But even if this was achieved, the visits showed that in cases where the Member States relied on the PSC structure to carry out the inspection under the PRF Directive, the PSC would not use the information for targeting, because the PSC are required to use the targeting criteria as laid down in the PSC Directive.

In some cases, the national authority receiving the notifications was not the one carrying out the inspections. If the initial recipient did not review the content and informed the inspecting authority or the inspector, this could lead to problems as the ship may not be selected for inspection and, if inspected, the inspector would have no preliminary information resulting from the review of the notification and would normally see the waste notification for the first time while on board. The inspections revealed that in such situations there is a risk of miscommunication and therefore potential system failure.

Example 15: Cooperation agreement (from PRF report)

The maritime authority and the environmental authority had concluded an agreement under which the PSC of the maritime authority carried out ship inspections related to the PRF Directive on behalf of the environmental authority; a number of ships to be inspected was agreed and PSC officers used a specific

checklist for such inspections. When selecting ships for inspection the PSC officers used the PSC system for selecting ships for inspection. They did not receive any information about the submitted waste notifications from either the ports or the environmental authority. Hence the waste notifications were not used by the PSC officers when deciding which ships to inspect.

4.4.2. Analysis

The notification form is the primary tool for selecting and targeting vessels for inspection. Therefore the relevant enforcement authority and its inspectors must have access to the notifications without delay. This is strengthened under Article 12.1 (d), which places an obligation on Member States to ensure that it is appropriately examined. Obviously when there is no notification there is nothing to look at, but the Directive then in Article 11.2(a) clearly indicates that this non-notification is in itself grounds for selection/targeting.

This part of the enforcement link is trying to ensure the principle aim in the Directive of avoiding discharging into the sea. PSC is a good tool, but for these types of inspections there is a risk that PSC finds that a discharge into the sea has taken place only after it has happened, while the PRF approach is to prevent it from happening in the first place.

It is important that vessels that are not required to send a waste notification to a port, including the exempted vessels in regular traffic, are monitored and inspected. The other two categories, fishing vessels and recreational craft, are specifically addressed in Article 11.3 and Member States should have control procedures for these ships. However, the EMSA visits have identified issues related to such control procedures (see section 4.7).

4.5. Number of Inspections(Article 11.1 and 11.2(b))

Article 11.1: Member States "shall ensure that any ship may be subject to an inspection in order to verify that it complies with Articles 7 (on delivery of the ship-generated waste) and 10 (on delivery of cargo residues) and that a sufficient number of such inspections are carried out."

Article 11.2(b): "the inspections may be undertaken within the framework of Directive 95/21/EC [on PSC], when applicable; whatever the framework of the inspections, the 25% inspection requirement set out in that Directive shall apply."

4.5.1. Description

There were 17 findings in thirteen Member States in relation to Articles 11.1 and 11.2 (b). In nine Member States the required number of ship inspections had not been carried out within the context of the PRF Directive. In addition, in three Member States the inspections did not include vessels under their own flag. Five Member States had no systematic approach to verify compliance with the delivery requirements of Articles 7 or 10.

4.5.2. Analysis

The Directive provides for enforcement to be conducted under the PSC Directive framework. However, the link made to the PSC Directive, and to the 25% inspection requirement in particular, has been a contributing factor for the majority of findings in all Member States, as they seem to use not only the PSC framework but apply the

system as a whole, in most cases without any adaptation. This has resulted in a situation that might be considered helpful in terms of using resources but seems not to be equally helpful in terms of ensuring the correct application and enforcement of requirements in the PRF Directive.

According to the PRF Directive, whatever the framework of the inspections is, the 25% inspection requirement set out in the PSC Directive shall apply. Therefore the enforcement should also focus on the Member State's own flagged vessels, as well as fishing vessels and recreational craft (falling outside PSC) as far as Article 11.3 requires.

There has been an issue regarding the percentage requirement, as the PSC system is based on individual ships and not on vessel calls. One has to be careful in looking at this and it seems more relevant that the enforcement of the PRF Directive should be based on monitoring, targeting and random on the spot inspections of potentially any ship call at a port because one of the aims of the inspection¹² is an operational check of whether a vessel has delivered its waste or not. Otherwise, under the new inspection regime for PSC, a "low risk" ship can be inspected for PSC purposes once and then not again for up to 3 years, even though it might be sailing regularly to that port in the interim period. Calculations based on individual ship calls may be in line with the PSC, but it is questionable whether they are equally well suited for the PRF requirements. There may therefore be a need to look at and revise the text of Article 11 in this respect.

In any case, it has to be taken into consideration that the PSC Directive has recently been amended, and the 25 % target will be replaced with a risk based targeting mechanism from 2011. There is a need to investigate further if and how a reference to the new PSC regime (New Inspection Regime, NIR) could be maintained in the Directive.

4.5.3. Description - Scope of PRF Inspections

In most of the Member States the inspections were carried out within the Port State Control framework, but the check-lists used by the PSC inspectors normally did not contain any elements specific to the PRF Directive. Moreover, the vessels were normally targeted for inspection on the basis of the PSC criteria and not according to the criteria in the PRF Directive (e.g. information in the notification).

In some Member States separate inspections were carried out to assess compliance with the requirements on the delivery of SGW and CR. These inspections were done on the basis of specific check-lists developed according to the Directive.

EXAMPLE 16: Practice - Environmental control, cooperation, electronic ship targeting (from PRF report)

The enforcement of the Directive was conducted by the Shipping Inspectorate under the Federal Ministry. It had two divisions: Port State Control and Environmental Control. The inspection of vessels for compliance with the Directive was handled by the latter.

Notifications were submitted electronically by the ships' agents to the ports' databases. The inspectorate had remote access to the databases and vessels were selected for inspection by the Environment Control Officers based on the information available in the ports' databases.

¹² PRF inspection can take place also before delivery or even when the ship does not (intend to) deliver in a port.

Notifications were also reviewed by the Harbour Master which forwarded information to the inspectorate on those vessels that had not submitted the notification on time.

The inspectorate used an internal check list when conducting the environmental control inspections. The following issues were checked:

Information of notified amounts on waste to be discharged and/or retained on board;

Oily record book, cargo record book, if applicable, garbage record book, IOPP certificate, IAPP certificate;

Visual checking of garbage storage areas, engine room, incinerator and sounding of bilge/sludge/slop tanks.

4.5.4. Analysis

The findings from the visits revealed that the environment related inspections, in particular those carried out under PSC, often did not include specific criteria and checklists based on the PRF Directive. Where enforcement by the port States is done by PSC, it was frequently found that in reality there was not a full enforcement of the PRF Directive, since the scope of PSC does not necessarily include all items relating to waste delivery, but only Marpol items.

Similar problems were observed in relation to flag State inspections with respect to use of checklists or similar not containing items related to the PRF Directive.

4.6. 'Holding' Vessels and Information System(Articles 11.2(c) and 11.2 (d))

Article 11.2(c), "if the relevant authority is not satisfied with the results of this inspection, it shall ensure that the ship does not leave the port until it has delivered its ship-generated waste and cargo residues to a port reception facility". And,

Article 11.2(d), "when there is clear evidence that a ship has proceeded to sea without having complied with Article 7 and 10, the competent authority of the next port of call shall be informed and such ship shall, without prejudice to the application of the penalties referred to in Article 13, not be permitted to leave that port until a more detailed assessment of factors relating to the ship's compliance with this Directive, such as the accuracy of any information provided in accordance with Article 6, has taken place."

While this type of enforcement may have certain similarities to a (PSC) detention, it should be noted that it is technically a different measure. For these reasons the term 'holding' is used in the following paragraphs to describe the type of measure.

4.6.1. Description

In five Member States the visits found that there was no systematic approach to verify compliance with the delivery requirements of Articles 7 or 10. In 2 Member States no system existed to ensure that a vessel that had been ordered to deliver waste actually did so as the system in place could not prevent the ship from leaving port without complying. In 7 Member States there was no system in place to inform the next port of call.

In order to allow a ship the exception provided for under Article 7.2, there is a need to establish whether the ship has sufficient storage capacity until the next intended port of delivery. From Article 7.2 this decision can be based on examining the information

notified under Art 6, or following from an inspection under Article 11 to verify that the information provided in the notification corresponds to the actual situation on board.

In cases where the relevant authority is not satisfied as a result of the inspection or based on the information provided in the notification, the Member States must have a system to ensure that the vessel does not leave the port, being “held” until it has delivered its SGW and/or CR.

EMSA visits to Member States confirmed that situations like this have arisen in some ports and the vessels were forced to deliver their waste as a condition of departure. Nevertheless, such cases were not very common which could either be an indication of high levels of compliance, or perhaps more probably, an indication that there were no effective powers to ensure that the ship does not leave the port or to force it to deliver.

While a few Member States had systems to “hold” vessels, most did not. There appeared to be no system in place to fulfil this requirement other than to order/pressure the ship’s master to deliver.

Example 17: Practice - ‘hold’ and enforce ship waste delivery (from PRF report)

In one Member State upon arrival all vessels calling at port had to hand over the vessels’ certificates to the Harbour Master (as part of the Coast Guard) to be returned only after review, including the forwarded notification and any receipts of delivery of ship-generated waste during the stay in port.

The PRF Directive requirements need to be distinguished from a “detention” under the PSC Directive. Different authorities may be involved and PSC may not have clear grounds for detention based on the PRF Directive (although ships can be detained on the basis of Marpol detainable deficiencies under the PSC Directive).

There were systems in a number of Member States visited where only detentions under PSC and by the PSC officers could be used in such situations, as the relevant environment inspectors did not have powers to detain. They could only summon their PSC counterparts to take action. In cases when the PSCO was also doing the PRF inspection, the process was made easier but the PRF Directive alone does not create a legal basis for detention. Preventing a ship from leaving port seems only possible if enforced under the PSC system, when clear grounds for detention have to be set out.

4.6.2. Analysis

The requirement in Article 11.2 (c) that “the relevant authority... shall ensure that the ship does not leave the port until it has delivered” is difficult to implement on the basis of the PRF Directive alone. This requirement should however be seen together with the requirement to inform the next port of call in Article 11.2(d). In this respect, there are effectively two requirements that should be implemented - a reporting system¹³ to the competent authority of the next port of call and an inspection system in the next port of call, coupled with a ‘holding’ like system.

If a vessel leaves port without having delivered, after having been ‘held’ and ordered to deliver, the Member State must inform the competent authority of the next port of call thereof, and “...such ship shall, [...], not be permitted to leave that port until a more detailed assessment of factors relating to the ship’s compliance with this [PRF] Directive, [...], has taken place.”

¹³It is noted that such a system is also the subject of article 12.3 first indent.

This means that the competent authority of the next port of call must 'hold' the ship and carry out a more "detailed assessment" respecting the requirement in Article 12.1(h) to avoid undue delay, or pay compensation for damage caused by undue delay). Findings point to a lack of a system as a whole to send or receive such information, or to 'hold' vessels in such a situation.

The underlying factors for this situation are most probably that there is no Community wide reporting system established yet. It appears that for many Member States it is unclear how to ensure that a ship does not leave the port unless it is detained under PSC. Many ports did not have easy dedicated access to the relevant information or did not know where to find it. This being said, the requirement is not for ports but for the competent authority of the port which may not be the same depending on the country. Hence, this would require cross-border cooperation between the authorities rather than the ports concerned.

In addition, there was generally uncertainty as to ports situated outside the Community and how they could enforce the relevant part of Article 11.2 (d). It seems that the provision is applicable to Community ports only, but this is not made explicit as 'next port of call' can also be a non-Community port.

Very few Member States' enforcement authorities had been asked to 'hold' a vessel and do an Article 11.2 (d) detailed assessment. This could be either because there were very few such cases or, more likely, because there is no system in place to send such information.

The current level of implementation is weak in respect of:

- a system to inform and/or to find information such as contact details of the competent authority of next port of call;
- a system to 'hold' a vessel (legal base);
- any monitoring system; and
- a system to ensure the fulfilment of the requirement in Article 11.2 (d) (hold and assess in detail the situation) in a port.

Despite the fact that the Directive requires a monitoring and information structure to be built, thereby recognising the need for some sort of uniformity (Article 12.3), little progress seems to have been made in this respect. If information is sent, it happens ad hoc and not in a systematic way. This falls short of the requirements of the Directive. It has to be recognised that the Directive also asks for a system to be set up for the enforcement of the Directive, but opens the door for using the PSC framework.

The more general question is if there should be a separate system to the PSC system to enforce this and other EU maritime environment related Directives falling outside the scope of the PMOU. Whilst this may ensure a better enforcement in terms of meeting specific Directive and other environmental requirements, it would also require a 'new' structure with resource and other implications. Alternatively, if the possibility of using the PSC framework were to continue, which seems to be the way forward, then it needs to be further clarified, guided and explained so that it is not just a piggybacking of the PRF on to the PSC system, but a real PRF system, using the PSC framework, also covering national flagged vessels as well as recreational craft and fishing vessels.

In that spirit, it could possibly be envisaged to come back to an earlier idea to use and build on the SafeSeaNet (SSN) platform and/or the new PSC regime (THETIS) to improve the situation as regards an inspection, monitoring and information system, at least for ports in the Community. Recent developments and the introduction of the new Directive¹⁴ on reporting formalities for ships arriving in or departing from ports of the EU Member States establishes SafeSeaNet as the system to be used and has introduced a clear reference in its list of reporting formalities to the notification requirements in the PRF Directive. Provided that the inspectors receive the waste notification information, this may allow for a better targeting of inspections and notification report sharing. In addition an alert mechanism could be introduced, as is the case in a few Member States, when there is non-notification or false notification.

Overall this may be a good first step in developing a monitoring and information system for PRF. Further development could be investigated, including whether SSN could be used for monitoring purposes when a ship has proceeded to sea without delivering SGW and gets a message tagged to it in THETIS. This could then show in SSN allowing the next EU port of call to monitor and prepare to take appropriate action. In addition, it could be explored whether THETIS would allow ship messages to be introduced and, if so, could give them 'overriding priority' status and function as an alert system for the next port of call. However, issues to overcome include how a system could cover 'national' flagged vessels and pleasure and fishing vessels, since PSC does not cover these and THETIS is based on the IMO number, which they do not have.

4.7. Control Procedures for Fishing Vessels and Recreational Craft (Article 11.3)

Article 11.3: "Member States shall establish control procedures, to the extent required, for fishing vessels and recreational craft authorised to carry no more than 12 passengers to ensure compliance with the applicable requirements of this Directive."

4.7.1. Description

The inspection visits resulted in findings for 18 Member States (81%) for not having established control procedures for fishing vessels and/or recreational craft authorised to carry no more than 12 passengers. This indicates an almost complete lack of implementation. Only three Member States had actually carried out some sort of inspections/controls of fishing vessels and/or recreational crafts, through a responsible authority applying control procedures.

As already stated in the section above, Member States cannot use PSC to inspect fishing vessels or recreational craft, as they are not included.

Instead, Article 11.3 stipulates that for fishing vessels and recreational craft "control procedures, to the extent required" should be established, to ensure compliance with the applicable requirements of the PRF Directive.

There were a few examples of approaches identified in the inspections trying to implement Article 11.3 within the context of other inspection schemes or procedures:

¹⁴Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC

Example 18: Practice – inspection of fishing vessels / recreational crafts (from PRF report)

In one Member States there are procedures for vessel certification inspections related to sea pollution providing that fishing vessels and recreational crafts certified to carry not more than twelve passengers were subject to occasional random inspections to verify compliance with the obligation to deliver ship-generated waste to PRF prior to departure from port.

Example 19: Practice – flag state inspections(from PRF reports)

In two Member States there is a practice to inspect fishing vessels as part of flag state inspections.

4.7.2. Analysis

It appears that efficient control procedures for fishing vessels and recreational craft under Article 11.3 have simply not been put in place in almost all Member States. Those that have only took action to a very limited degree. The Article allows a large degree of discretion and it seems that some Member States have taken the view that the specification of the “extent required” is broad enough to legitimise doing nothing. This seems not to be fulfilling the overall aim of the Directive or of Article 11.1. The fact that PSC does not cover fishing vessels and recreational craft could be another explanation for why very little had been done in Member States.

Fishing vessels over 24 metres are brought under a control regime by Directive 97/70/EC¹⁵ setting up a harmonised safety regime for fishing vessels of 24 metres and over. However, such larger fishing vessels can be comparable to smaller commercial vessels when it comes to the production of ship-generated waste and therefore it could be argued that fishing vessels over 24 metres should be brought under the Directive in the same way as other commercial vessels. For fishing vessels less than 24 metres and recreational craft there is no control regime at EU level and they must be controlled under national Member States’ regimes alone.

Given the limited size and activities of the majority of fishing vessels and recreational craft, their activities are rather localised and the number of ports called at by each vessel is small - usually each has a permanent berth in a marina or fishing shelter or port.

Example 20: Practice – inspections/monitoring in marinas and fishing shelters (from PRF report)

In one Member State, a practice was described in which passenger vessels stationed at marinas and in fishing shelters were inspected for safety purposes including sea pollution matters with regard to the PRF Directive. At the same time such marinas and fishing shelters were visited and their general arrangements and facilities were inspected in a way that appears similar to the implementation monitoring of the waste reception and handling plans under Article 5.3.

¹⁵Council Directive 97/70/EC of 11 December 1997 setting up a harmonized safety regime for fishing vessels of 24 meters and over, as amended, which enacts parts of the Torremolinos Convention and Protocol for the EU Member States.

5. Other Articles (not included as focus areas)

25% of the inspection visit findings related to the other Articles in the Directive not included as focus areas. In this report they have been categorized under two headings: other findings and no or very few findings.

5.1. Other Findings

5.2. Definitions and Scope(Articles 2and 3)

5.2.1. Description

There were findings in 15 Member States (68%) in relation to both these Articles.

In relation to Article 2, setting out definitions, two Member States had not defined 'port' in the transposing legal acts.

According to Article 3, setting out the scope, the Directive applies to all ships, including fishing vessels and recreational craft, irrespective of their flag, calling at, or operating within, a port of a MemberState. An exception is provided for any warship, naval auxiliary or other ship owned or operated by a State and used only on government non-commercial service. However, Member States have to take measures to ensure that ships which are excluded from the scope "deliver their ship-generated waste and cargo residues in a manner consistent, in so far as is reasonable and practicable, with this Directive".Just over half the Member States visited had either failed to ensure this or to present relevant evidence.

5.3. Exemptions (Article 9)

5.3.1. Description

Article 9 empowers Member States to exempt ships engaged in scheduled traffic from the Directive's notification, delivery of waste and fee obligations. There were findings in 13 Member States, relating to the various requirements for granting exemptions and reporting them.2 Member States had not defined 'scheduled traffic with frequent and regular port calls'.

The legal transposition of the Directive in one MemberState in respect of the exemptions was unclear due to the involvement of authorities at two levels. The higher level authority had been given a right to exempt vessels from notification and waste delivery obligations, but in practice applications for exemption were received by the lower level, who issued the exemptions, based partly on their own regulations.

In another country exemptions were issued by the Port Authority for autonomous ports and by the port operator for other ports. There was no nationwide harmonised system to issue exemptions. The number of exemptions was unknown at the national level and no list of issued exemptions had been sent to the Commission, as required by Article 9.2. 3 other Member States had also failed to provide the Commission with details of exemptions granted.

In 2 Member States exemptions had been issued to vessels not sailing in any regular service. In one MemberStateexemptions had been issued to cruise ships which were not complying with the regular port calls requirement. In another MemberState the

port authority had granted exemption to a large number of vessels that had rarely or never called at the port.

5.4. Very few or no findings

The following Articles had very few or no findings. However attention is drawn to Article 10 regarding cargo residues in chapter 5.6 below.

5.5. Availability and Adequacy of Port Reception Facilities (Article 4)

5.5.1. Description

Article 4 requires Member States to ensure that the PRF is available and adequate to meet the needs of ships normally using the port. The low number of findings under Article 4 indicates that almost all Member States have PRF that are adequate and available, especially when it comes to handling SGW. The list of available PRF was in most cases documented in the WRH plan for many ports visited, and/or on the port's website.

Responsibility for ensuring the availability and adequacy of PRF had usually been delegated to port authorities/operators irrespective of the port type. The assessment was usually based on the amount of SGW delivered in previous years. In most cases the port operator/authority had concluded an agreement with the waste handling contractors following a tendering procedure. The port itself often administered the garbage facilities while contracting out the services for oily waste, sewage and CR. The waste operators normally had to be licensed by the environmental authority as well as authorised by the port to be able to operate within the port area.

Only five Member States had findings under Article 4.1.

Example 21: Absence of PRF facilities (from PRF reports)

It was noted in one MS that the Terminal visited did not provide PRF. The terminal consisted of an offshore loading buoy connected to shore with a pipeline only. The terminal received crude oil for the inland refinery. No PRF services were available and no WRH plan had been developed and approved. Vessels were recommended not to have used more than 25% of the storage capacity for ship-generated waste and cargo residues before arriving at the terminal. This recommendation was not enforced.

Regarding the PRF for cargo residues, in one MS the visited port did not provide facilities for the reception of liquid cargo residues from vessels normally using the port. In another MS, although sewage was not included in the definition of ship-generated waste in the national legislation, the PRF for sewage were available in the visited ports on request.

Only five Member States had findings under Article 4.3, which relates to reporting of alleged inadequacies in PRF provision, mostly related to the administrative procedures for such reporting.

When a ship encounters problems in discharging waste the shipowner normally submits a report of any alleged inadequacy of the PRF to the port authority using the established form. However the inspections found that very few cases had been reported by any port users in EC ports. The same seems to be the case at the international level to IMO.

Example 22: lack of addressing report (from PRF report)

The case in one MS illustrates the lack of procedures in handling any such reports. Based on the information in the IMO GISIS database, there had been one case of an alleged inadequacy outstanding in the port in 2005. This was due to different level authorities involved and there was no clear designation of duties in cases of alleged inadequacies.

5.6. Delivery of Cargo Residues (Article 10)

Article 10: "The master of a ship calling at a Community port shall ensure that cargo residues are delivered to a port reception facility in accordance with the provisions of Marpol 73/78. Any fee for delivery of cargo residues shall be paid by the user of the reception facility."

The issue of cargo residues is very different from those surrounding ship-generated waste. Cargo residues fall outside the scope of Articles 7 (mandatory delivery) and 8 (Fees) and are instead regulated under Article 10. This clear separation was based on careful legal and technical considerations which are still valid today.

In contrast to SGW, cargo residues can vary widely. They may also still have a commercial value and therefore usually remain the property of the cargo owner. At the same time, depending on the type of residue, they may require specialist handling, equipment or treatment. As a result, cargo residues are normally a matter for the terminals and shippers to handle, rather than being under the direct competence of the Port Authorities. The costs are normally covered by the cargo owners (although the ship and or its agent may also be involved).

This distinction was also observed during the visits by the EMSA inspection teams, where the port administrations typically indicated that they were not involved in cargo residues delivery and that any questions should be addressed to the individual terminals. The only exception to this was one industrial refinery port where the port authority had full responsibility for providing reception facilities for cargo residues.

Overall, the visits provide relatively little information about the delivery of cargo residues, and there were no findings in relation to Article 10. There is therefore nothing to suggest an immediate need for a change in the distinction between SGW and cargo residues made in the Directive, although developments at the international level may necessitate future consideration of cargo residues.

5.7. Accompanying measures (Article 12)

There were some findings in a few Member States relating to different sub-paragraphs of Article 12. They were normally linked to findings in relation to another Article (e.g. Article 6 on notification). Where appropriate these findings have been included in the assessment and analysis of findings for other Articles.

5.8. Designated Authorities and 12.1(C) – Provision of Cooperation (Article 12.1(B))

According to Article 12.1 (b), Member States are obliged to designate appropriate authorities or bodies for performing functions under this Directive. Furthermore, according to (c) of the same Article, Member States have to make a provision for cooperation between their relevant authorities and commercial organisations to ensure the effective implementation of the Directive.

In general, with only very few exceptions (4), all Member States had designated authorities to carry out all the different functions under the Directive.

It could be noted that in one MemberState, the authority to inspect fishing vessels and recreational craft had not been nominated. In another MemberState the authority responsible for the inspections of recreational craft had not been referred to in the national law.

The implementation schemes in Member States involved from two to eight¹⁶ different governmental institutions performing the key functions. Although numerous ministries were at least somehow involved in many cases, most often the Ministry responsible for (maritime) transport and/or the Ministry for Environment with executive agencies in their domain (e.g. the maritime and environment authorities) were engaged. The involved authorities often had regional and local layers. Some of the designated bodies represented private-public partnerships. The port authorities had often been allocated an important role in the implementation and formed the main cooperation and partnership for the authorities.

The inspections noticed that there was seldom any cross border cooperation, especially for situations where a vessel had sailed without delivering its waste and there is the obligation to inform the next port of call. As established under Article 7 such information sharing almost never happen as there was no cross-border cooperation or system for this type of issues in place.

Example 23: Practice – cooperation (from PRF reports)

In one MemberState, no formal cooperation between the different authorities and the authorities and the ports could be identified. In another MemberState, no evidence of cooperation between the central and regional level environmental authorities could be detected.

It is worth noting positively that in some cases, in order to carry out the functions allocated to them and to exercise due control, the port management companies had created dedicated bodies to deal with the reception of SGW/CR from ships. Thus, a joint venture had been established and a dedicated service unit involving employees from both the port management body and the waste contractors had been created.

5.9. Compensation for Undue Delay (Article 12.1(h))

Findings in six Member States pointed to the lack of procedures¹⁷ for claiming compensation for undue delay, and undue delay had rarely been defined. However in general Member States' national legislation empowered port users to claim compensation for undue delay, although no claims had been made in any of the Member States visited.

5.10. Penalties (Article 13)

Article 13 requires Member States to lay down a system of effective, proportionate and dissuasive penalties for the breach of national provisions that implement the Directive. There was only one finding in one MemberState regarding this requirement and in another it was noted that one port appeared not to have applied it. It is interesting to look at examples of how several Member States have adopted penalties for the failure to comply (properly) with the main obligations, e.g. requirements to notify or to deliver SGW and CR.

¹⁶ In the case of federal structures.

¹⁷ There is no analysis to be usefully conducted for these situations as they relate to 6 individual judicial systems.

Example 24: Practice – Imposition of penalties (from PRF reports)

In one MemberState, the national legal act comprises a comprehensive list of specific offences under this Directive, where fines could be issued. The same MemberState had implemented also a Letter of Warning (used e.g. in case of the first non-notification by a ship).

In another MemberState the penalty can be imposed by the Harbour Master (governmental official) depending on his judgement and in yet another by the Coast Guard.

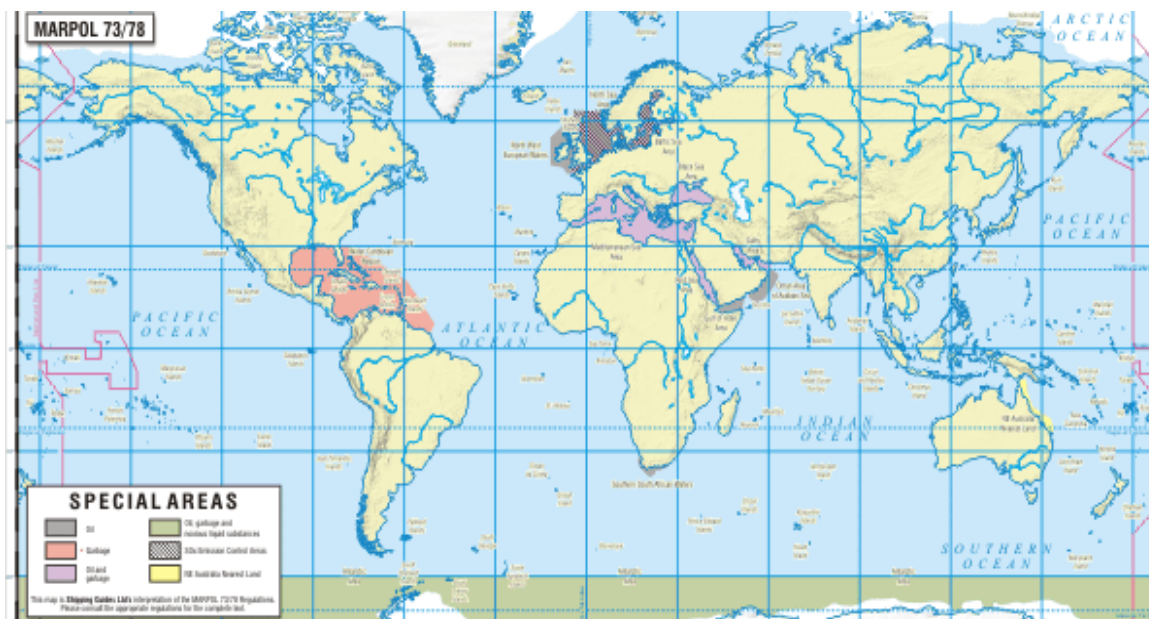
However, in most Member States visited these penalties are not of administrative character and would have to be imposed by a court on an application from a competent authority. Hence, there generally appears to be limited practice of imposing penalties in relation to Article 13.

Annex 1 - Marpol Issues

Data has been made available and collected for Marpol Annex I and V. However, there is not enough data available in the Member States on delivery of sewage to provide similar indications for Annex IV. A likely reason for this is that Marpol Annex IV as yet still permits (Annex IV, Reg. 11.1.1) the discharge of untreated sewage¹⁸ at a distance of more than 12 nautical miles from the nearest land worldwide, and does not provide for any “special areas” with limitations and special treatment requirements. Whereas Annex I and V provide for “special areas” in Europe, defined as the “North West European Waters” and the Mediterranean Sea, Baltic Sea, and Black Sea in Annex I, Reg. 1.11) and the Mediterranean, Baltic, Black and North Seas in Annex V Regs. 1.3 and 5.1).

Europe is presently the region covered the most densely by special areas.

Figure 1 below is an example of a visualisation of the situation under Marpol 73/78, linking special area definitions with general/special area discharge rules (Annex I, Reg.15.2/3; Annex V, Reg. 3.3-5 3).



¹⁸ Sewage means: 1. drainage and other wastes from any form of toilets and urinals; 2. drainage from medical premises (dispensary, sick bay, etc.) via wash basins, wash tubs and scuppers located in such premises; 3. drainage from spaces containing living animals; or 4. other waste waters when mixed with drainages defined above.

Europe's dense coverage in the global context is well reflected. However, the coasts of the Northern, Biscay and Iberian Atlantic coasts are not covered by any special area.



Figure 2 - Marpol map extract over Europe (Shipping Guides Ltd)