

**Axel Luttenberger**

University of Rijeka, Faculty of Maritime Studies, Rijeka, Croatia

## **HARMONIZING THE EU STANDARDS CONCERNING SHIP WASTE RECEPTION FACILITIES IN THE REPUBLIC OF CROATIA**

*Key words: harmonization of law, port reception facilities, ship-generated waste, cargo residues*

### **ABSTRACT**

*With over 600 EU ports handling around 90% of EU external trade, appropriate methods need to be put in place to manage the waste while the ships must be encouraged to use these facilities rather than to discharge waste into the sea. As the Community is concerned about the implementation of the International Convention for the prevention of Pollution from Ships, 1973, as modified by the Protocol 1979, the paper elaborates the Directive 2000/59/EC on port reception facilities with the aim of substantially reducing discharges of ship generated waste and cargo residues into the sea. The analysis is focused on Croatian sources of law and the requirements to build the proper legal framework bearing in mind the present situation and the cost factor.*

### **1. INTRODUCTION**

Public awareness on environmental issues does exist, as well as the image of building a “clean” port. The paper presents legal challenges of environment regulation, the institutional setting and management of ports with regard to ship waste reception facilities. It is focused on implementation of the Directive 2000/59/EC of the European Parliament and the Council at the national level in the Republic of Croatia.

### **2. LEGAL FRAMEWORK CONCERNING SHIP WASTE RECEPTION FACILITIES**

The European Union environmental policy is targeted at high level of protection based on precautionary principle, polluter pays principle, as well as taking preventive action. Pollution of the seas by its very nature has transboundary implications. In view of the subsidiary principle, action at the Community level is the most effective way of ensuring common environmental standards for ships and ports throughout the Community.

An important field of Community action in maritime transport concern the reduction of the pollution of the sea through compliance with international conventions, codes and resolutions while maintaining the freedom of navigation as provided by the United Nations Convention on the Law of the Sea, 1982 and the freedom of providing services as provided by Community law.

The Community is concerned about the implementation of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol 1978 (relating thereto as Marpol 73/78) which regulates what wastes can be discharged from ships into the marine environment and requires State Parties to ensure the provision of adequate reception facilities in port.

The protection of marine environment can be enhanced by reducing discharges into the sea of ship-generated waste and cargo residues, as well as by improving the availability and use of reception facilities and by improving the enforcement regime.

### **2.1. Green Paper of 10 December 1997 on seaports and maritime infrastructure**

The Green paper stresses the importance of financing and charging for port and maritime infrastructure. The financing of ports and maritime infrastructure and policies on charging their users vary from one country to another, reflecting considerable differences in the approach taken towards their ownership and organisation. Ports may be owned by the state, regional and local governments or by private enterprises. In the past, ports tended to be seen mainly as suppliers of services of general economic interest provided by the public sector and financed by taxpayers, whereas now the trend has moved towards considering ports as commercial entities that ought to recover their cost from port users who benefit from them directly.

### **2.2. Directive 2000/59/EC of the European Parliament and the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues**

This Directive shall apply to all ships, including fishing vessels and recreational craft, irrespective of their flag, calling at, or operation within, a port of a Member State, with the exception of any warship, naval auxiliary or other government non-commercial service and all ports of Member States normally visited by ships falling under the mentioned scope.

Port reception facilities shall mean any facility, which is fixed, floating or mobile and capable of receiving ship-generated waste and cargo residues. Member States shall ensure the availability of port reception facilities adequate to meet the needs of the ships normally using the port without causing undue delay of ships.

To achieve adequacy, the reception facilities shall be capable of receiving the types and quantities of ship-generated waste and cargo residues from ships normally using the port, taking into account the operational needs of users of the port, the size and the geographical location of the port, the type of ships calling at the port and the exemptions of ships engaged in scheduled traffic with frequent and regular port calls

and when there is a sufficient evidence of an arrangement to ensure delivery of ship-generated waste and payment of fees along the ship's route.

Member States shall establish procedure, in accordance with those agreed by the International Maritime Organization (IMO), for reporting alleged inadequacies of port reception facilities to the port State..

An appropriate waste reduction and handling plan shall be developed and implemented for each port following consultations with the relevant parties. Plans shall cover all types of ship-generated waste and cargo residues originating from ships normally visiting the port and shall be developed according the size of a port and types of ships calling at the port.

Information to be made available to all port users:

- brief reference to fundamental importance of proper delivery of ship-generated waste and cargo residues,
- location of a port reception facilities applicable to each berth with diagram/map,
- list of ship-generated waste and cargo residues normally dealt with,
- list of contact points, the operators and the services offered,
- description of procedure for delivery,
- description of charging system and
- procedure for reporting alleged inadequacies of port reception facilities.

The master of the ship, other than a fishing vessel or recreational craft authorised to carry no more than 12 passengers shall complete truly and accurately the notification in advance pointing out among others the ship identification, estimated time of arrival, previous and next port, and the information whether or not the ship is delivering waste into port reception facilities

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. Notwithstanding, if there is sufficient dedicated storage capacity that has been accumulated a ship may proceed to the next port without delivering the ship-generated waste.

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

The cost recovery system for using port reception facilities shall provide no incentive for ships to discharge their waste into the sea. Therefore, all ships calling at a port of Member State shall contribute significantly to the cost, irrespective of actual use of the facilities. Arrangements to this effect may include incorporation of the fee in port dues or a separate standard of waste. Other costs may be covered on the basis of types and quantities of ship-generated waste actually delivered by the ship and fees may be reduced if the ship's environmental management, design, equipment and operation are such that the master can demonstrate reduced quantities.

Cargo residues shall mean the remnants of any cargo material on board in cargo holds or tanks that remain after unloading procedures and cleaning operations are completed and shall include loading and unloading excesses and spillage. The master of the 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. The user of the reception facility shall pay any fee for delivery of cargo residues.

**2.3. Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC**

The purpose is to establish in the Community a vessel traffic monitoring and information system, with the view to enhancing the safety and efficiency of maritime traffic, improving the response of authorities to incidents, accidents or potentially dangerous situations at the sea, including search and rescue operations, and contributing to a better prevention and detection of pollution.

Member state shall monitor and take necessary and appropriate measures to ensure that masters, operators or agents of ships, as well as shippers or owners of dangerous or polluting goods carried on board such ships comply under this Directive.

The Directive applies to the ships of 300 gross tonnage and upwards, a shall not apply to warships, naval auxiliaries and other ships owned or operated by state and used for non- commercial public service, as well as to fishing vessels, traditional ships and recreational crafts with the length of less than 45 metres and bunkers below 5000 tons, ships' stores and equipment for use on board ships.

**3. CROATIAN REGULATION CONCERNING THE CONDITIONS TO BE FULFILLED BY PORTS**

The Regulation concerning conditions to be fulfilled by ports has been enacted on the basis of Croatian Maritime Demesne and Maritime Ports Act. The said Regulation distinguishes basic conditions applicable to all ports as ports open to international traffic and domestic traffic, with special provisions for open ports as opposed to special purpose ports.

The regulation comprises the following three annexes: Plan for reception and handling of the waste from vessels and of cargo residues from the vessels, conditions to be fulfilled by the port for the sake of loading and/or unloading of bulk cargo and information concerning the ports and terminals where transshipment of bulk cargo is effected.

A point is made in basic provisions applicable to all ports that the port must notify on the notice-board the plan of locations of reception facilities with descriptions of kinds of waste and cargo residues from ships which can be received, together with the instruction as to the method of using reception facilities, the list of available operators and services, the description of unloading procedure and the notification procedure.

The following elements shall be addressed in the plans:

- an assessments of the need for port reception facilities, in light of the need of the ships normally visiting the port,
- a description of the type and capacity of port reception facilities,
- a detailed description of the procedures for the reception and collection of ship-generated waste and cargo residues,
- description of the charging system,
- procedures for reporting alleged inadequacies of port reception facilities,
- procedure for ongoing consultations with port users, waste contractors, terminal operators and other interested parties and
- types and quantities of ship-generated waste and cargo residues received and handled.

In addition, the plans include:

- a summary of relevant legislation and formalities for delivery,
- identification of a person or persons to be responsible for implementation of the plan,
- a description of the pre-treatment equipment and processes in port,
- a description of methods of recording actual use of port reception facilities,
- a description of methods of recording amounts of ship-generated waste and cargo residues and
- a description of how the ship-generated waste and cargo residues are disposed of.

Mandatory content of the Plan for reception and handling of the waste and cargo residues from vessels includes:

- the assessment of the need for port reception facilities with regard to requirements of the ships which usually visit the ports,
- description of the type and capacity of port reception facilities,
- instruction for the use of reception facilities,
- notification procedure concerning the inadequacy of reception facilities,
- consultation procedure with port users, contracting parties in waste operation, operators at terminal and other interested persons,
- the type and quantity of received and processed waste and cargo residues from vessels,
- summary of relevant legislation and delivery formalities,
- the list of persons responsible for implementation of the plan,
- description of equipment for preliminary testing (if any),
- description of the method for storing the data concerning actual usage of reception facilities in port and
- description of the method of disposal for waste and cargo residues from vessels.

#### **4. ORGANISATIONAL, ENVIRONMENTAL AND COST RECOVERY ISSUES**

Waste management is a serious business in the European Union and ships must be encouraged to use ship waste reception facilities. The European Union set in place EC Directive 2000/59 on port facilities with the aim of substantially reducing discharges of ship-generated waste and cargo residues into the sea. The Directive is aimed at reducing illegal discharges from ships using Community ports, by improving the availability and use of a port reception facility, thereby enhancing the protection of the marine environment.

Future activities should be focused on assessing fee systems applied in Member States, proposing common criteria for more harmonised EU fee collection within an overall incentive based waste management system, as well as proposing reduced fee structure for vessels with minimised waste production.

The European Maritime Safety Agency (EMSA) assistance is required to establish appropriate information and monitoring system to enable improved identification of ships, and to evaluate whether the goals of the Directive have been met. EMSA will pay particular attention to the identification and dissemination of the EU best practice.

The Republic of Croatia endeavours to harmonise its legislation with that of the European Union. With regard to arrangements of maritime law we must point out that those have for the most part been adopted as an implementation of a series of international sources regulating such a transport activity characterised by a pronounced international element.

Acquis communautaire in the Republic of Croatia in the sector of maritime transport is covered by the provisions related to traffic safety, freedom of services and international relations. Major part of the activities is based on the acts of International Maritime Organisation (IMO), but legal sources influenced by the European Maritime Safety Agency (EMSA) are becoming all the more significant.

In author's opinion, the Regulation concerning conditions to be fulfilled by ports has been aligned to relevant EU sources. However, crucial share of problems is related to implementation of provisions in the Directive or Regulation. Namely, the arrangements call for significant organisational and financial obligations to upon competent ministries and Croatian ports in general do not have adequate reception facilities, so that appropriate measures must be undertaken to that end.

In the Republic of Croatia there is presently a significant disparity between the data contained in plans and other sources and the reality, while substantial imbalances in terms quality and quantity may be noted. The organisational structure itself is formally balanced at the highest level, but the plans have in principle not been updated from the date of their enactment. Furthermore, the funds that such plans count on as available are very often insufficient, inapplicable or use for other purposes, while the same is valid for human resource whose effectiveness often does not suffice.

## **5. CONCLUSIONS**

According to the United Nations Convention on the Law of the Sea States which establishes particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessel into their ports or internal waters or for a call at their off-shore terminals shall have due publicity to such requirements and shall communicate them to a competent international organizations.

The main purpose of the Directive 2000/59/EC is to reduce discharges of ship-generated wastes and cargo residues into the sea. Each EU Member State is allowed to introduce its own system. Among the obligations imposed on ports and shipowner one has to stress the availability of a proper port reception facility, mandatory waste notification on board of vessels, mandatory waste delivery by vessels, as well as waste recovery system as a combination of direct and indirect fees.

The Republic of Croatia has to update the expected quantities of waste and the types thereof, assess most urgently the type of port reception facilities, and identify the most appropriate party to manage the facility. It also has to assess the investment cost and prepare a cost recovery plan, including tariff structure.

Therefore, the very adoption of Regulations concerning the conditions to be fulfilled by ports is only a basis for creating the appropriate structure for implementation of the Directive 2002/29/EC and other EU legislation while it requires the change of behaviour in terms of serious approach to implementation of law, starting with national level down to executive bodies in the field. For all those reasons, besides the existing regulations based on legal sources of the European Union, it is necessary to draw up a systematic and comprehensive program for protection of the sea in the Republic of Croatia and clearly distinguish the interaction of national strategy with the ship waste reception facilities in each Croatian port.

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