Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC (Text with EEA relevance)

DIRECTIVE (EU) 2019/883 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 April 2019

on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) The Union's maritime policy aims to ensure a high level of safety and environmental protection. This can be achieved through compliance with international conventions, codes and resolutions while maintaining the freedom of navigation as provided for by the United Nations Convention on the Law of the Sea ('UNCLOS').

(2) The United Nations Sustainable Development Goal 14 calls attention to the threats of marine and nutrient pollution, resource depletion and climate change, all of which are caused primarily by human actions. Those threats place further pressure on environmental systems, like biodiversity and natural infrastructure, while creating global socioeconomic problems, including health, safety and financial risks. The Union must work to protect marine species and to support the people who depend on oceans, whether it be for employment, resources or leisure.

(3) The International Convention for the Prevention of Pollution from Ships ('MARPOL Convention') provides for general prohibitions on discharges from ships at sea, but also regulates the conditions under which certain types of waste can be discharged into the marine environment. The MARPOL Convention requires contracting Parties to ensure the provision of adequate reception facilities in ports.

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

(4) The Union has pursued the implementation of parts of the MARPOL Convention through Directive 2000/59/EC of the European Parliament and the Council[4], by following a port-based approach. Directive 2000/59/EC aims to reconcile the interests of smooth operation of maritime transport with the protection of the marine environment.

(5) In the last two decades, the MARPOL Convention and its Annexes have been the object of important amendments, which have put in place stricter norms and prohibitions for the discharges of waste from ships at sea.

(6) Annex VI to the MARPOL Convention introduced discharge norms for new waste categories, in particular the residues from exhaust gas cleaning systems, consisting of both sludge and bleed-off water. Those waste categories should be included in the scope of this Directive.

(7) Member States should continue to work at International Maritime Organization ('IMO') level for a comprehensive consideration of the environmental impacts of wastewater discharges from open loop scrubbers, including for measures to counter possible impacts.

(8) Member States should be encouraged to take appropriate measures in accordance with Directive 2000/60/EC of the European Parliament and of the Council[5], including discharge bans for wastewater from open loop scrubbers and certain cargo residues in their territorial waters.

(9) On 1 March 2018, the IMO adopted the revised Consolidated Guidance for port reception facility providers and users (MEPC.1/Circ. 834/Rev.1) ('the IMO Consolidated Guidance'), which includes standard formats for waste notification, for the waste delivery receipt and for reporting alleged inadequacies of port reception facilities, as well as waste reception facility reporting requirements.

(10) Despite those regulatory developments, discharges of waste at sea still occur at substantial environmental, social and economic costs. This is due to a combination of factors, namely adequate port reception facilities not always being available in ports, enforcement often being insufficient and there being a lack of incentives to deliver the waste onshore.

(11) Directive 2000/59/EC has contributed to increasing the volumes of waste being delivered to port reception facilities, inter alia, by ensuring that ships contribute to the costs of those facilities, irrespective of their actual use of those facilities, and as such has been instrumental in reducing waste discharges at sea, as was revealed in the evaluation of that Directive carried out in the framework of the Regulatory Fitness and Performance programme ('REFIT Evaluation').

(12) The REFIT Evaluation has also demonstrated that Directive 2000/59/EC has not been fully effective due to inconsistencies with the MARPOL Convention framework. In addition, Member States have developed different interpretations of the key concepts in that Directive, such as adequacy of the facilities, advance waste notification, the mandatory delivery of waste to port reception facilities and exemptions for

ships in scheduled traffic. The REFIT Evaluation called for more harmonisation of those concepts and full alignment with the MARPOL Convention in order to avoid unnecessary administrative burden on both ports and port users.

(13) In order to align Directive 2005/35/EC of the European Parliament and of the Council[(6)] to the relevant MARPOL Convention provisions on discharge norms, the Commission should assess the desirability of a review of that Directive, in particular through an extension of its scope.

(14) Union maritime policy should aim at a high level of protection of the marine environment taking into account the diversity of the maritime areas of the Union. It should be based on the principles that preventive action should be taken and that damage to the marine environment should, as a priority, be rectified at source and that the polluter should pay.

(15) This Directive should be instrumental for the application of the main environmental legislation and principles in the context of ports and the management of waste from ships. In particular, Directives 2008/56/EC[(7)] and 2008/98/EC[(8)] of the European Parliament and the Council are relevant instruments in this regard.

(16) Directive 2008/98/EC lays down the main waste management principles, including the 'polluter pays' principle and the waste hierarchy, which calls for the reuse and recycling of waste over other forms of waste recovery and disposal and requires the establishment of systems for the separate collection of waste. In addition, the extended producer responsibility concept is a guiding principle of Union waste law, on the basis of which producers are responsible for the environmental impacts of their products throughout the life-cycle of those products. Those obligations also apply to the management of waste from ships.

(17) Separate collection of waste from ships, including derelict fishing gear, is necessary to ensure its further recovery to enable it to be prepared for reuse or recycling in the downstream waste management chain and to prevent it from causing damage to marine wildlife and environments. Waste is often segregated on-board ships in accordance with international norms and standards, and Union law should ensure that these efforts of on-board waste segregation are not undermined by a lack of arrangements for separate collection on shore.

(18) Every year a substantial amount of plastic enters the seas and oceans in the Union. Although, in most sea areas, the majority of marine litter originates from land-based activities, the shipping industry, including the fishing and recreational sectors, is also an important contributor, with discharges of waste, including plastic and derelict fishing gear, going directly into the sea.

(19) Directive 2008/98/EC calls on Member States to halt the generation of marine litter as a contribution towards the United Nations Sustainable Development Goal to prevent and significantly reduce marine pollution of all kinds.

(20) The Commission Communication of 2 December 2015 entitled 'Closing the loop – An EU action plan for the Circular Economy' acknowledged the specific role Directive 2000/59/EC had to play in this respect, by ensuring the availability of adequate facilities

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

for the reception of waste, and providing for both the right level of incentives and the enforcement of the delivery of waste to the on-shore facilities.

(21) Offshore installations are one of the sea-based sources of marine litter. For that reason, Member States should adopt measures as appropriate on waste delivery from offshore installations flying their flag or operating in their waters, or both, and ensure compliance with the stringent discharge norms applicable to offshore installations laid down in the MARPOL Convention.

(22) Waste, in particular plastic waste, from rivers is one of the main contributors to marine litter, which includes discharges from inland waterway vessels. Those vessels should therefore be subject to stringent discharge and delivery norms. Nowadays, those rules are laid down by the relevant River Commission. However, inland ports are covered by Union waste law. To continue the efforts of harmonising the legislative framework for Union inland waterways, the Commission is invited to evaluate a Union regime for discharge and delivery norms of inland waterway vessels, taking into account the Convention on the collection, deposit and reception of waste produced during navigation on the Rhine and inland waterways of 9 September 1996 (CDNI).

(23) Council Regulation (EC) No 1224/2009[(9)] requires Union fishing vessels to have the equipment on board to retrieve lost gear. In cases where gear is lost, the master of the vessel is to attempt to retrieve it as soon as possible. If the lost gear cannot be retrieved, the master of the fishing vessel is to inform the authorities of its flag Member State within 24 hours. The flag Member State has then to inform the competent authority of the coastal Member State. The information includes the external identification number and the name of the fishing vessel, the type and the position of lost gear as well as the measures that were undertaken to retrieve it. Fishing vessels below 12 metres can be exempted. Under the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1224/2009, the reporting by the fishing vessel is to be done in an electronic logbook, and Member States are required to collect and record the information concerning lost gear and provide it to the Commission upon request. The information collected and available in the waste delivery receipts on passively fished waste in line with this Directive could also be reported in this way.

(24) In accordance with the International Convention for the Control and Management of Ships' Ballast Water and Sediments, which was adopted on 13 February 2004 by IMO and which entered into force on 8 September 2017, all ships are obliged to carry out ballast water management procedures according to IMO standards, and ports and terminals designated for the cleaning and repair of ballast water tanks are required to provide adequate facilities for the reception of sediments.

(25) A port reception facility is considered to be adequate if it is able to meet the needs of the ships normally using the port without causing undue delay, as also specified in the IMO Consolidated Guidance and the IMO Guidelines for ensuring the adequacy of port waste reception facilities (Resolution MEPC.83(44)). Adequacy relates both to the operational conditions of the facility in view of the user needs, as well as to the environmental management of the facilities in accordance with Union waste law. It

might, in some cases, be difficult to assess whether a port reception facility located outside the Union meets such standard.

(26) Regulation (EC) No 1069/2009 of the European Parliament and of the Council[(10)] requires international catering waste to be incinerated or disposed of by burial in an authorised landfill, including waste from ships calling at Union ports which has potentially been in contact with animal by-products on board. In order for this requirement not to limit the preparation for reuse and recycling of waste from ships, efforts should be made in accordance with the IMO Consolidated Guidance in order to better segregate the waste so that potential contamination of waste, such as packaging waste, can be avoided.

(27) As established in Regulation (EC) No 1069/2009, in conjunction with Commission Regulation (EU) No 142/2011[(11)], intra-Union voyages are not considered transport operating internationally and the catering waste from those voyages does not need to be incinerated. However, such intra-Union voyages are considered international voyages under international maritime legislation (the MARPOL Convention and the International Convention for the Safety of Life at Sea (SOLAS)). In order to ensure the coherence of Union law, the definitions from Regulation (EC) No 1069/2009 should be followed when defining the scope and treatment of international catering waste under this Directive, in conjunction with Regulation (EU) No 142/2011.

(28) To ensure the adequacy of port reception facilities, the development, implementation and re-assessment of the waste reception and handling plan is essential, based on the consultation of all relevant parties. For practical and organisational reasons, neighbouring ports in the same geographical region might want to develop a joint plan, covering the availability of port reception facilities in each of the ports covered by that plan while providing a common administrative framework.

(29) It can be challenging to adopt and monitor waste reception and handling plans for small non-commercial ports, such as mooring areas and marinas, which receive low traffic, consisting of recreational craft only, or which are only in use during part of the year. The waste from those small ports is normally handled by the municipal waste management system in accordance with the principles set out in Directive 2008/98/EC. In order not to overburden the local authorities and facilitate the waste management in such small ports, it should be sufficient that waste from such ports is included in the municipal waste stream and managed accordingly, that the port makes information regarding waste reception available to port users, and that the exempted ports are reported in an electronic system to allow for a minimum level of monitoring.

(30) To address the problem of marine litter effectively, it is fundamental to provide the right level of incentives for the delivery of waste to port reception facilities, in particular waste as defined in Annex V to the MARPOL Convention (‘MARPOL Annex V waste’). This can be achieved through a cost recovery system which requires the application of an indirect fee. That indirect fee should be due irrespective of the delivery of waste and should give the right of delivery of the waste without any additional direct charges. The fishing and recreational sector, given their contribution to the occurrence of marine litter, should also be subject to the indirect fee. However, where a ship delivers