

HELCOM RECOMMENDATION 19/14

Adopted 26 March 1998 having regard to
Article 13, Paragraph b) of the Helsinki Convention

A HARMONIZED SYSTEM OF FINES IN CASE A SHIP VIOLATES ANTI-POLLUTION REGULATIONS

THE COMMISSION,

RECALLING Article 4 of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978 relating thereto (MARPOL 73/78) concerning prohibition of violations of the requirements of that Convention and sanctions to be established therefor,

RECALLING ALSO that one of the goals of the Baltic Strategy for Port Reception Facilities for Ship-generated Wastes and Associated Issues is to substantially decrease operational discharges and to eliminate illegal disposal of ship-generated wastes at sea by ships, irrespective of their nationality, and to prevent violations of anti-pollution regulations of MARPOL 73/78 and the Helsinki Convention,

RECALLING FURTHER HELCOM Recommendation 17/11 concerning reception facilities as one of the means to achieve this goal,

BEING AWARE that the implementation of the Strategy is one of the prerequisites for substantial decrease in the number of operational and illegal discharges and thus for the prevention of the marine environment of the Baltic Sea Area against pollution by ships,

BEARING IN MIND HELCOM Recommendation 19/16 concerning co-operation in investigating violations or suspected violations of discharge and related regulations for ships, dumping and incineration regulations and HELCOM Recommendation 11/9 concerning national regulations of the discharge of sewage in national waters,

NOTING the considerable differences between the legal systems and fine levels in the Baltic Sea States with respect to prosecution of offenders of anti-pollution regulations,

CONSCIOUS of the importance of applying an effective harmonized penal system in cases of conviction of violations of anti-pollution regulations having a deterrent effect on the illegal operational discharges thereby encouraging the use of reception facilities,

RECOGNIZING the need of establishing a system, harmonized to the widest possible extent, for determining the severity of sanctions to imposed on, including calculating the level of fines to be charged when ships violate the Convention's regulations in respect of operational requirements as stipulated in HELCOM Recommendation 17/11,

RECOMMENDS that the Governments of the Contracting Parties to the Helsinki Convention apply the attached criteria for a common minimum level of fines in case a ship violates anti-pollution regulations,

REQUESTS the Governments of the Contracting Parties to report on the implementation of this Recommendation in accordance with the reporting format of the Baltic Strategy for Port Reception Facilities for Ship-generated Wastes and Associated Issues.

***Criteria for a Common Minimum Level of Fines
in Case a Ship Violates Anti-pollution Regulations***

I INTRODUCTION

- 1) The following acts are violations of MARPOL 73/78 and/or the Helsinki Convention:
 - a) Discharges against Annex I of MARPOL 73/78
 - b) Discharges against Annex II of MARPOL 73/78
 - c) Discharges against Annex V of MARPOL 73/78
 - d) Discharges against Regulation 7 (Sewage) of Annex IV of the Helsinki Convention
 - e) Incineration against Regulation 9 (Incineration of Ship-generated Wastes on Board Ships) of Annex IV of the Helsinki Convention (only in internal waters and territorial seas of the Contracting Parties)
 - f) Violations of an obligation to keep the Oil Record Book and the Cargo Record Book properly filled-in
 - g) Lack of signature in Oil and/or Cargo Record Books.
- 2) Only those offences against the anti-pollution regulations of MARPOL 73/78 and the Helsinki Convention which are subject to administrative fines are addressed in the harmonized system of fines.
- 3) The Contracting Parties should - as far as possible within the framework of their legal systems - aim at adopting legislation which allows fines to be imposed on a legal person (shipowner/operator of a ship). Fines imposed on a legal person should be substantially higher than those imposed on a natural person.
- 4) There should be no difference in the level of fines imposed on nationals of the Contracting Parties and foreigners.
- 5) "Special drawing right" (SDR) referred to in this Recommendation means the unit of account as defined by International Monetary Fund (IMF).
- 6) Violations of the duty to keep the Oil and Cargo Record Books properly are regarded as continuing offences. The offence begins when no proper entry is made on the high sea and it ends in the territorial waters of the Contracting Parties (since persons held liable are capable of recording operations subsequently in the Oil and/or Cargo Record Books on the basis of notes and documents kept on board).
- 7) Having regard to the established Exclusive Economic Zones of the Contracting Parties and the national jurisdiction related thereto, the criteria are applicable to all ships violating anti-pollution regulations (except for sewage discharge provisions which in relation to foreign ships can be applied only in internal waters and territorial seas of the Contracting Parties).
- 8) A general criterion with respect to the violations listed in paragraph I 1) is whether they have been committed intentionally or negligently. A higher fine should be imposed on intentional violations than on negligent violations. If discharge regulations have been violated by night, this fact may be interpreted as pointing to an intentional violation.

- 9) With respect to all violations of MARPOL 73/78 and the Helsinki Convention, lower fines than those indicated in Section II may be imposed in individual cases, particularly for less severe violations.

II CRITERIA AND MINIMUM LEVEL OF FINES

In those cases where, under national legislation, offences against MARPOL 73/78 and the Helsinki Convention may be subject to administrative fines, the fines to be imposed should be based on the following criteria:

1) *Annex I of MARPOL 73/78*

- a) Illegal discharge of oil (Regulations 9 and 10)

Criteria:

- Quantity of illegally discharged oily residues
- Environmental damage caused by the discharge

Minimum fine: 1,500 SDR

- b) Violation of the duty to keep the Oil Record Book properly (Regulation 20, paragraphs 4 and 5)

The minimum fine indicated refers to cases in which a quantity of 1 ton has not been recorded in the Oil Record Book, or entries are missing for a period of one week

- i) No Oil Record Book kept on board

Criteria:

- Period of time during which no Oil Record Book has been kept on board (level of fine should be based on the duration of time in which no Oil Record Book has been kept)
- Quantity of sludge not accounted for, based on consumption calculations

Minimum fine: 500 SDR

- ii) Oil Record Book is kept on board but entries are missing or wrong, lack of signature

Criteria:

- Quantity of sludge for which entries are missing or wrong (the level of fine should increase at least with each ton of sludge for which no entries, or wrong entries, have been made)
- In case of bilge water, duration of time during which no entries, or wrong entries, have been made (amount of fine should be based on the length of the period during which the Oil Record Book has not been kept properly).

Minimum fine: 500 SDR

2) *Annex II of MARPOL 73/78*

a) Illegal discharge of noxious liquid substances (Regulation 5)

Criteria:

- Quantity of substance discharged illegally (the level of fine should increase at least with each ton of illegally discharged substance)
- Category of substance (A, B, C, D)
- Environmental damage caused by the discharge

Minimum fine: 1,500 SDR

b) Violation of the duty to keep the Cargo Record Book properly, lack of signature (Regulation 9)

The minimum fine indicated refers to cases in which a quantity of 1 ton has not been recorded in the Cargo Record Book, or entries are missing for a period of one week

Criteria:

- Time during which no Cargo Record Book has been kept or during which entries are found to be missing or wrong (the fine should be calculated on the basis of the length of the period in which the Cargo Record Book has not been properly kept)
- Category of substance (A, B, C, D) for which entries are missing or wrong

Minimum fine: 150 SDR

3) *Annex V of MARPOL 73/78*

Illegal discharge of garbage (Regulation 5)

Criteria:

- Quantity of substance discharged (the level of fine should increase at least with each ton of illegally discharged substance)
- Type of substance (plastics, wood, food wastes, etc.)

Minimum fine: 150 SDR

4) *Annex IV of the Helsinki Convention*

Illegal discharge of sewage (Regulation 7 of the 1974 Helsinki Convention and Regulation 5 of the 1992 Helsinki Convention)

Criteria:

- Duration of illegal discharge
- Quantity of sewage discharged

Minimum fine: 100 SDR

5) *Annex IV of the Helsinki Convention*

Illegal incineration of ship-generated wastes on board a ship (Regulation 9 of the 1974 Helsinki Convention)

Criteria:

- Duration of incineration
- Type of incinerated substances

Minimum fine: 50 SDR