



**MEDITERRANEAN ACTION PLAN (MAP)
REGIONAL MARINE POLLUTION EMERGENCY RESPONSE CENTRE FOR THE
MEDITERRANEAN SEA (REMPEC)**

Fourth Meeting of the Mediterranean Network of
Law Enforcement Officials relating to MARPOL
within the framework of the Barcelona Convention (MENELAS)

REMPEC/WG.48/4
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Agenda Item 4

**DRAFT DECISION TO APPLY CRITERIA FOR A COMMON MINIMUM LEVEL OF FINES FOR
EACH OFFENSE PROVIDED FOR UNDER THE ANNEXES TO MARPOL**

Note by the Secretariat

SUMMARY

Executive Summary: This document provides information on the preparation of a draft decision to apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL, as prepared by the Secretariat.

Actions to be taken: Paragraph 12

Related documents: REMPEC/WG.38/INF.4, REMPEC/WG.48/INF.3, REMPEC/WG.48/INF.6

Background

1 The Third Meeting of the Mediterranean Network of Law Enforcement Officials relating to the International Convention for the Prevention of Pollution from Ships (MARPOL) within the framework of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean ("the Barcelona Convention") (MENELAS), which was convened in Valletta, Malta, from 15 to 16 October 2019, agreed in principle on the need to harmonise pecuniary sanctions for illicit ship pollution discharges in the Mediterranean.

2 The said meeting also agreed to further examine the harmonisation of pecuniary sanctions for illicit ship pollution discharges in the Mediterranean, and more specifically to include the preparation of a draft decision to apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL in the MENELAS Programme of Activities for the period 2020-2021, amongst others (REMPEC/WG.48/INF.6).

Elements of a draft decision to apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL

3 On 26 March 1998, the Baltic Marine Environment Protection Commission (Helsinki Commission or HELCOM), which is the governing body of the Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992 (Helsinki Convention)¹, adopted HELCOM Recommendation 19/14 on a harmonized system of fines in case a ship violates anti-pollution regulations, as detailed in the Annex to document REMPEC/WG.38/INF.4², hereinafter referred to as the HELCOM Recommendation 19/14, which provides a harmonised level of administrative penalties in a non-criminal context.

¹ One (1) Contracting Party to the Barcelona Convention, namely the EU, is also a Contracting Party to the Helsinki Convention.

² Available at: <https://www.rempec.org/en/knowledge-centre/online-catalogue/e-menelas-2015-wg-38-inf-4-helcom-recommendation-19-14.pdf>.

4 Through HELCOM Recommendation 19/14, the Helsinki Commission recommends that the Governments of the Contracting Parties to the Helsinki Convention apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL.

5 According to HELCOM Recommendation 19/14, the following acts are violations of MARPOL and/or the Helsinki Convention

- .1 Discharges against MARPOL Annex I (Regulations for the prevention of pollution by oil);
- .2 Discharges against MARPOL Annex II (Regulations for the control of pollution by noxious liquid substances in bulk);
- .3 Discharges against MARPOL Annex V (Regulations for the prevention of pollution by garbage from ships);
- .4 Discharges against Regulation 7 (Sewage) of Annex IV of the Helsinki Convention;
- .5 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);
- .6 Violations of an obligation to keep the Oil Record Book and the Cargo Record Book properly filled-in; and
- .7 Lack of signature in Oil and/or Cargo Record Books.

6 The Secretariat considers that a draft decision to apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL within the framework of the Barcelona Convention should also cover other offenses under MARPOL, as proposed by HELCOM when considering updating HELCOM Recommendation 19/14, namely:

- .1 Discharges against MARPOL Annex IV (Regulations for the prevention of pollution by sewage from ships);
- .2 Air emission or shipboard incineration against MARPOL Annex VI (Regulations for the Prevention of Air Pollution from Ships);
- .3 Violations of MARPOL regarding the obligations to keep the Garbage Record Book properly filled-in; and
- .4 Violation of MARPOL regarding missing or wrong entries and/or lack of signature in the Garbage Record Book.

7 In this context, the Secretariat prepared elements of a draft decision to apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL, based on these considerations, as set out in the **Appendix** to the present document.

8 The minimum fine for each offense provided for under the Annexes to MARPOL was intentionally left empty³, but should be defined at a later stage, taking into account the review of existing applicable sanctions at national level with regard to illicit ship pollution discharges over the periods 2011-2015 and 2016-2019 prepared by the Secretariat., as set out in document REMPEC/WG.48/INF.3.

Next steps

9 The Secretariat proposes to take the elements referred to in paragraph 7 as a basis for the further development of a draft decision to apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL within the framework of the Barcelona Convention.

³ A placeholder was inserted, as follows: **Minimum fine: [XX] SDR.**

10 In doing so, the Secretariat also proposes to liaise with the HELCOM Secretariat to obtain further information on how HELCOM Recommendation 19/14 was established, implemented and possible updates considered, and to explore the possibility to adjust the elements referred to in paragraph 7 to the specific circumstances of the Mediterranean Sea area, *inter alia*:

- .1 the fact that, in Annex I (Prevention of pollution by oil) and Annex V (Prevention of pollution by garbage from ships), MARPOL defines the Mediterranean Sea as a “special area” in which, for technical reasons relating to its oceanographical and ecological condition and to its sea traffic, the adoption of special mandatory methods for the prevention of sea pollution is required; and
- .2 COP 21⁴ adopted Decision IG.24/8 on the Road Map for a Proposal for the Possible Designation of the Mediterranean Sea, as a whole, as an Emission Control Area for Sulphur Oxides Pursuant to MARPOL Annex VI, within the Framework of the Barcelona Convention⁵ (UNEP/MED IG.24/22). Such a designation, if so adopted, would establish more stringent controls on sulphur emissions in the Mediterranean.

11 In this context, the Secretariat considers that the further development of a draft decision to apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL within the framework of the Barcelona Convention should be included in the MENELAS Programme of Activities for the period 2022-2023.

Actions requested by the Meeting

12 **The Meeting is invited to:**

- .1 **take note** of the information provided in the present document; and
- .2 **comment** as deemed appropriate.

⁴ Twenty-first Ordinary Meeting of the Contracting Parties to the Barcelona Convention and its Protocols (Naples, Italy, 2-5 December 2019).

⁵ Available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/31706/19ig24_22_2408_eng.pdf.

APPENDIX

Elements of a draft decision to apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL

Decision [XX]

Criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL

The Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols at their [XX] Meeting,

[placeholder for preambular paragraphs]

1. *Adopt* the attached criteria for a common minimum level of fines for each offense provided for under the Annexes to the International Convention for the Prevention of Pollution from Ships (MARPOL); and
2. *Request* the Contracting Parties to take the necessary measures to apply the attached criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL.

Criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL

I INTRODUCTION

- 1) The following acts are violations of MARPOL:
 - a) Discharges against MARPOL Annex I
 - b) Discharges against MARPOL Annex II
 - c) Discharges against MARPOL Annex IV
 - d) Discharges against MARPOL Annex V
 - e) Air emission or shipboard incineration against MARPOL Annex VI
 - f) Violations of MARPOL regarding the obligations to keep the Oil Record Book, the Cargo Record Book, and the Garbage Record Book properly filled-in
 - g) Violation of MARPOL regarding missing or wrong entries and/or lack of signature in the Oil Record Book, the Cargo Record Book, and the Garbage Record Book.
- 2) Only those offences against the regulations of MARPOL which are subject to administrative fines are addressed in the harmonised 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) Repeat offenders should be imposed a higher fine compared to the previous cases.
- 6) "Special drawing right" (SDR) means the unit of account as defined by the International Monetary Fund (IMF).
- 7) Violations of the duty to keep the Oil Record Book, the Cargo Record Book, and the Garbage Record Book 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 Record Book, the Cargo Record Book, and the Garbage Record Book on the basis of notes and documents kept on board).
- 8) 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 regulations of MARPOL (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).
- 9) A general criterion with respect to the violations listed in paragraph I 1) is whether they were committed intentionally or negligently. A higher fine should be imposed on intentional violations than on negligent violations. If discharge regulations were violated by night, this fact may be interpreted as pointing to an intentional violation.
- 10) With respect to all violations of MARPOL, 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 may be subject to administrative fines, the fines to be imposed should be based on the following criteria:

1) *MARPOL Annex I*

a) Illegal discharge of oil (Regulations 15 and 34)

Criteria:

- Quantity of illegally discharged oil
- Environmental damage caused by the discharge

Minimum fine: [XX] SDR

b) Violation of the duty to keep the Oil Record Book properly (Regulations 17, paragraphs 4-6, and Regulation 36, paragraphs 5-7)

The minimum fine indicated refers to cases in which a quantity of 1 tonne was not 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 was kept on board (level of fine should be based on the duration of time in which no Oil Record Book was kept)
- Quantity of sludge not accounted for, based on consumption calculations

Minimum fine: [XX] SDR

ii) Oil Record Book is kept on board, but entries are missing or wrong, and/or lacking signature

Criteria:

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

Minimum fine: [XX] SDR

2) *MARPOL Annex II*

a) Illegal discharge of noxious liquid substances (Regulation 13)

Criteria:

- Quantity of substance discharged illegally (the level of fine should increase at least with each tonne of illegally discharged substance)
- Category of substance (X, Y or Z)
- Environmental damage caused by the discharge

Minimum fine: [XX] SDR

b) Violation of the duty to keep the Cargo Record Book properly (Regulation 15)

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

- i) No Cargo Record Book kept on board
Criteria:
- Period of time during which no Cargo Record Book was kept on board (level of fine should be based on the duration of time in which no Cargo Record Book was kept)
 - Quantity of cargo not accounted for, based on consumption calculations
- Minimum fine: [XX] SDR**
- ii) Cargo Record Book is kept on board, but entries are missing or wrong, and/or lacking signature
Criteria:
- Duration of time during which no entries, or wrong entries, were made (the level of fine should be calculated on the basis of the length of the period in which the Cargo Record Book was not properly kept)
 - Quantity and category of substance (X, Y or Z) for which entries are missing or wrong
- Minimum fine: [XX] SDR**

3) *MARPOL Annex IV*

Illegal discharge of sewage (Regulation 11)

Criteria:

- Quantity of sewage discharged
- Duration of illegal discharge

Minimum fine: [XX] SDR

4) *MARPOL Annex V*

a) Illegal discharge of garbage (Regulation 5)

Criteria:

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

Minimum fine: [XX] SDR

b) Violation of the duty to keep the Garbage Record Book properly (Regulation 9, paragraph 3)

The minimum fine indicated refers to cases in which a quantity of 1 tonne was not recorded in the Garbage Record Book or entries are missing for a period of one week.

i) No Garbage Record Book kept on board

Criteria:

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

Minimum fine: [XX] SDR

ii) Garbage Record Book is kept on board, but entries are missing or wrong and/or lack of signature

Criteria:

- Quantity of garbage for which entries are missing or wrong (the level of fine should increase at least with each tonne of garbage for which no entries, or wrong entries, were made)
- Duration of time during which no entries, or wrong entries, were made (the level of fine should be calculated on the basis of the length of the period in which the Garbage Record Book was not properly kept)

Minimum fine: [XX] SDR

5) *MARPOL Annex VI [to be further developed]*

- a) Illegal emissions of ozone-depleting substances, nitrogen oxides (NO_x), sulphur oxides (SO_x) and particulate matter, and volatile organic compounds (VOCs) (Regulations 12, 13 and 14)

Criteria:

- Duration of emission
- Type of emitted substances

Minimum fine: [XX] SDR

- b) Illegal incineration of ship-generated wastes on board a ship (Regulation 16)

Criteria:

- Duration of incineration
- Type of incinerated substances

Minimum fine: [XX] SDR