



European Maritime Safety Agency

PRESENTATION**Coastal States'
obligations under main
international maritime
conventions****SAFEMED III Seminar on IMO Audit Scheme**

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Scope of audit for coastal State activities

Resolution A.1070(28) adopted on 4 December 2013
IMO instruments implementation Code (III CODE)

Part 3, paragraphs 45 –51:

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- Implementation
- Enforcement
- Evaluation and review

Scope of the audit

Compliance as Coastal State with requirements of the following regulations

- SOLAS 1974
- SOLAS PROTOCOL 1988
- MARPOL 73/78
- MARPOL PROTOCOL 1997
- STCW 1978
- LOAD LINES 1966 (LL66)
- LL 66 PROT 1988
- TONNAGE 1969
- COLREG 1972

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Coastal State, scope of the audit

- **Safety of navigation**
 - establishment and operation of aids to navigation, ships' routing, VTS
 - dissemination of safety information
 - on wrecks
 - other dangers to navigation
 - weather and sea conditions
- **Safety of life at sea**
 - Establishment and maintenance of SAR service
- Establishment and functioning of hydrographic services
- Establishment of meteorological services (shore-based facilities) and warnings
- **Protection of the marine environment**
 - Pollution detection
 - Prosecution for violation
 - Adequate sanctions

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Scope of the audit

Compliance as Coastal State with requirements of

- **SOLAS**
 - **Chapter IV Radio communications**
 - ✓ coast stations - radio communications
 - **Chapter V Safety of navigation**
 - ✓ navigational warnings,
 - ✓ meteorological services and warnings,
 - ✓ search and rescue services,
 - ✓ life-saving signals,
 - ✓ hydrographic services,
 - ✓ ships' routing,
 - ✓ VTS,
 - ✓ establishment and operation of aids to navigation... (2nd question of the pre-audit questionnaire)

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SOLAS Chapter V

Reg. 13 - Establishment and operation of aids to navigation

Question n°2 Appendix 2 - PRE-AUDIT QUESTIONNAIRE:

Establishment and maintenance of any navigational aids within waters for which it has responsibility and how information relating to these is promulgated?

- 1) The actors in charge of establishment and operation of aids to navigation?
- 2) Is there any regulation providing delimitation of duties between these authorities ? (procedures)
- 3) How many aids to navigation, what kind (lit aids, racons, DGPS, tide gauges, AIS, REEFVTS radars and fixed and floating aids), their location?
- 4) Who and how provide the maintenance to the AtoN ?
- 5) What is the content of the maintenance contract ? is there preventive maintenance foreseen ? Corrective maintenance, breakdown maintenance and fault restoration? Upgrades of AtoN?
- 6) Procedures for monitoring of the activities of the private entity ?
- 7) Management of the maintenance contract does include regular meetings, regular (monthly, quarterly or annual) reports of the contractor's activities and performance ?
- 8) Are there audits of the part of the network on an annual basis ?

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SOLAS Chapter V

Regulations 10 and 12 Ships' routing and VTS

• Question n°8 Appendix 2 - PRE-AUDIT QUESTIONNAIRE:

Any maritime traffic routing schemes or restricted areas enforced within waters for which your State has responsibility and which have not been adopted by IMO, and any ship reporting systems

VTS, Reg.12:

- 1) CS undertake to arrange for the establishment of VTS where, in their opinion, the volume of traffic or the degree of risk justifies such services.
- 2) CS planning and implementing VTS shall, wherever possible, follow the guidelines developed by OMI.
- 3) The use of VTS may only be made mandatory within the TW

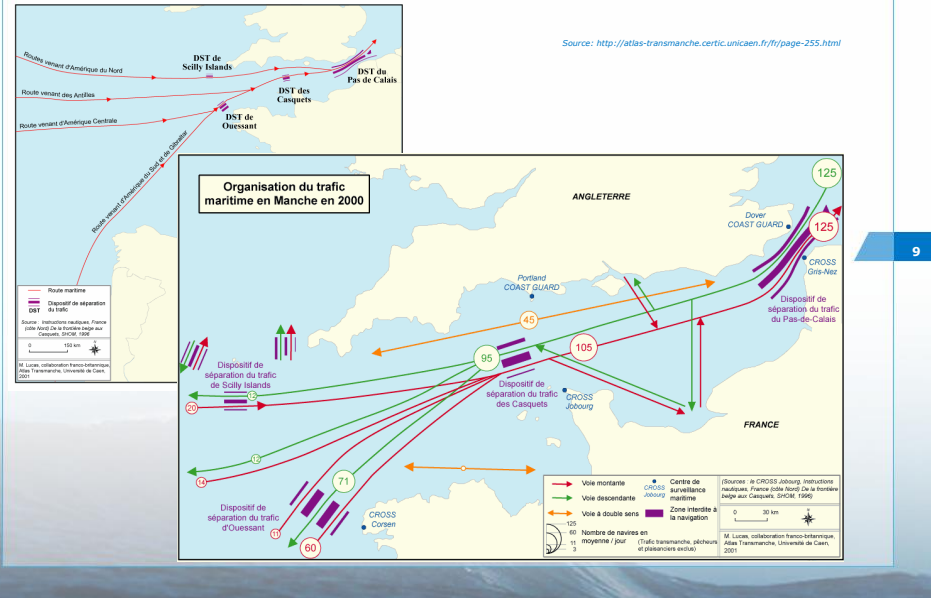
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UNCLOS:

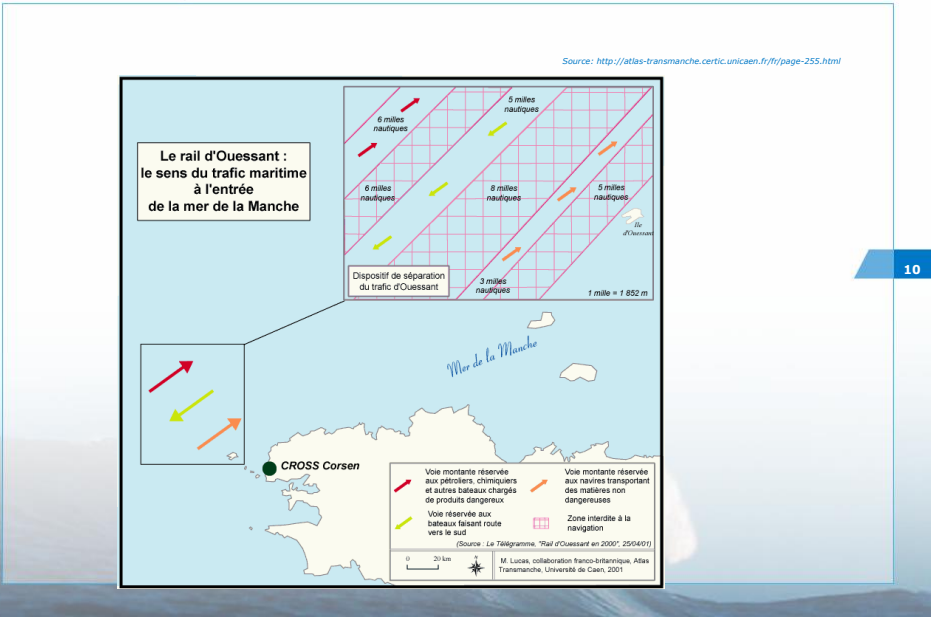
CS may require the foreign ships to use specific sea lanes and traffic separation schemes, or may prescribe for the regulation of the passage of the ships (especially, tankers, nuclear-powered ships, carrying dangerous or noxious substances) (applies even to ships exercising innocent passage and not entering into internal waters, art.22 UNCLOS)

-Indication on charts and due publicity

WHAT ABOUT EEZ?



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Establishing VTS EEZ

Article 211 §6, a)

- reasonable grounds (recognised technical reasons, protection of its resources, particular character of its traffic)
- clearly identified area
- appropriate consultation with concerned States
- communication to the IMO
- approval by IMO – adoption of laws for this area, appropriate publicity

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SOLAS Ch. V Reg. 9 – Hydrographic services Coastal States' obligations

1. collection and compilation of hydrographic data;
2. publication, dissemination and keeping up to date of all nautical information necessary for safe navigation;
3. co-operation in carrying out the following nautical and hydrographic services:
 - hydrographic surveying
 - issue nautical charts, sailing directions, lists of lights, tide tables and other nautical publications
 - promulgate notices to mariners
4. ensuring the greatest possible uniformity in charts and nautical publications and to take into account, whenever possible, relevant international resolutions and recommendations
5. co-ordinating activities to the greatest possible degree

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Hydrographic services Coastal States' obligations

Non-conformities example

- The State has not undertaken to arrange for the collection and compilation of hydrographical data and the publication, dissemination and updating of all nautical information necessary for safe navigation.
- Arrangements are not in place to ensure the uniformity of charts and nautical publications with relevant international recommendations and there is a lack of coordination of the activities of the State to ensure that hydrographical and nautical information is made available in a timely, reliable and unambiguous way.

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Root cause

- The obligation to provide hydrographic services was not clearly identified in national legislation.

Corrective action

- The surveyor general will coordinate the development of hydrographic services in the State to ensure that hydrographical and nautical information is made available in a timely, reliable and unambiguous way. The deadline for the implementation of this corrective action is the end of 2016.

Coastal State, Marpol

Protection of the marine environment:

Detection of Violations and Enforcement of the Convention (Oil, Sewage, Garbage, Harmful substances..)

- **Pollution detection** (operational discharges non-conform to MARPOL (in or outside special areas): *knowledge of relevant regulations (staff trained accordingly), coastal organization, means available?*
- **Enforcement, Prosecution for violation** : *collection and securing of evidence, institution of proceedings, what are the penalties, relevant legislation in place?*
- **Reception facilities** (Port State) : *number, location, correspondance to requirements of different Marpol Annexes...*

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Examples: Annex V (update) and Annex I (examples of enforcement)

Pollution detection – Knowledge of relevant regulations, adopting relevant national legislation

*Background and scope of MARPOL
Annex V amendments*

- Latest amendments of the MARPOL Annex V came into force on 1 January 2013. Revised MARPOL Annex V sets new regulatory requirements regarding the disposal of garbage from ships.
- Under previous versions of Annex V, disposal of garbage at sea was generally permitted (with certain exceptions), provided it was disposed at certain distance from the nearest land.
- The new regime sets out a **general prohibition on discharge of all garbage into the sea**, unless specifically permitted (discharge of some garbage is permitted by Reg. 4,5,6 and 7).

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It therefore **reverses the historical presumption that garbage may be discharged into the sea** based on the nature of the garbage and defined distances from shore; and joins the general philosophy of other Annexes.

Knowledge of relevant regulations Re-definition of garbage under amended MARPOL Annex V

- The garbage definition considerably extends the scope of what comes under the requirements in Annex V.
- Old definition of garbage refers only to virtual, domestic and operational waste.
- **New definition of garbage** includes all kinds of food, domestic and operational wastes, all plastics, cargo residues, cooking oil (plant or animal origin), fishing gear, and animal carcasses generated during the normal operation of the ship and liable to be disposed of continuously or periodically except those substances which are defined or listed in other Annexes (Reg.1).

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Annex V totally prohibits the disposal of plastics (synthetic fishing nets, plastic garbage bags, incinerator ashes from plastic products, etc.) and cooking oil **anywhere into the sea** (Reg. 3 (except safety of the ship and the crew and accidental loss (Reg.7))), **and severely restricts discharges of other garbage from ships into coastal waters, Special Areas and from fixed or floating platforms.**

Mediterranean and Red Seas are special areas under MARPOL Annexes I and V

	Adoption, entry into force & date of taking effect of Special Areas			
	Special Areas	Adopted #	Date of Entry into Force	In Effect From
Emissions	Annex I: Oil			
Dumping of Wastes and Other Matter	Mediterranean Sea	2 Nov 1973	2 Oct 1983	2 Oct 1983
Port Reception Facilities	Baltic Sea	2 Nov 1973	2 Oct 1983	2 Oct 1983
Special Areas Under MARPOL	Black Sea	2 Nov 1973	2 Oct 1983	2 Oct 1983
Particularly Sensitive Sea Areas	Red Sea	2 Nov 1973	2 Oct 1983	*
Pollution Preparedness & Response	"Gulf's" area	2 Nov 1973	2 Oct 1983	1 Aug 2008
Ballast Water Management	Gulf of Aden	1 Dec 1987	1 Apr 1989	*
Anti-fouling Systems	Antarctic area	16 Nov 1990	17 Mar 1992	17 Mar 1992
Ship Recycling	North West European Waters	25 Sept 1997	1 Feb 1999	1 Aug 1999
Special Programmes and Initiatives	Oman area of the Arabian Sea	15 Oct 2004	1 Jan 2007	*
Legal Affairs	Southern South African waters	13 Oct 2006	1 Mar 2008	1 Aug 2008
Human Element	Annex II: Noxious Liquid Substances			
Facilitation	Antarctic area	30 Oct 1992	1 Jul 1994	1 Jul 1994
Technical Co-operation	Annex IV: Sewage			
Conferences	Baltic Sea	15 Jul 2011	1 Jan 2013	**
Circulars	Annex V: Garbage			
Reduction of administrative burdens	Mediterranean Sea	2 Nov 1973	31 Dec 1988	1 May 2009
	Baltic Sea	2 Nov 1973	31 Dec 1988	1 Oct 1989
	Black Sea	2 Nov 1973	31 Dec 1988	*
	Red Sea	2 Nov 1973	31 Dec 1988	*
	"Gulf's" area	2 Nov 1973	31 Dec 1988	1 Aug 2008
	North Sea	17 Oct 1989	18 Feb 1991	18 Feb 1991
	Antarctic area (south of latitude 60 degrees south)	16 Nov 1990	17 Mar 1992	17 Mar 1992
	Wider Caribbean region including the Gulf of Mexico and the Caribbean Sea	4 Jul 1991	4 Apr 1993	1 May 2011

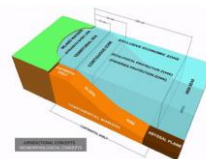
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MARPOL Annex I - Oil

- Details the discharge criteria and requirements for the prevention of pollution by oil and oily substances
- Defines operational discharge zones
- Defines general principle: all discharges of oil are prohibited unless certain criteria are satisfied

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Pollution to Marine Environment, Enforcement by Coastal State: TW



Juan Luis Salmer de Vives, Jurisdictional Waters in The Mediterranean and Black Seas, European Parliament, 2010, p. 25.

Territorial waters:

Art. 2 UNCLOS: **The sovereignty of a coastal State**

(up to a limit not exceeding 12 nautical miles measured from baselines of the coastal state).

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However, Ships of all States enjoy the right of **innocent passage through the territorial sea (limitation of rights of the coastal state)**.

Article 19 UNCLOS: **Innocent such passage : shall not be prejudicial to the peace, good order or security of the coastal state.**

During this innocent passage vessels have to comply with all laws and regulations of the coastal state with regard to safety of navigation, conservation of living resources, preservation of the environment, sanitary laws, customs, etc. (= mainly laws regarding safety, security, **environment protection and fisheries**).

Art. 19 UNCLOS: **any act of wilful and serious pollution contrary to UNCLOS – not an innocent passage**

Art. 21 UNCLOS: coastal State may adopt laws and regulations in respect of preservation of the environment of the coastal State and the prevention, reduction and control of pollution.

Pollution to Marine Environment, Enforcement by Coastal State: TW and EEZ

Article 220 UNCLOS

1. Violation occurred within TW or EEZ and the vessel is voluntary in the port, CS may institute proceedings in respect of any violation occurred within TW or EEZ
2. **Clear grounds** to believe that violation committed while the vessel navigating in the **TW**, CS **may undertake physical inspection and institute proceedings, including the detention of the vessel**
3. *Idem* §2 or in EEZ, CS may **require the vessel to provide relevant information**
4. *Idem* § 3 + substantial discharge causing or threatening **significant pollution** of the marine environment, CS **may undertake physical inspection** under some circumstances
5. *Idem* §3 + clear objective evidence + discharge causing major damage or threat of major damage to the coastline, CS **may institute proceedings, including detention of the vessel**

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UNCLOS article 56 1. b III: jurisdiction of the CS in the EEZ with respect to the protection and preservation of the marine environment

French example of the enforcement



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Example of enforcement by Coastal State (France)

Navires	Pavillon	Types	Date infraction	Nature de l'infraction	Date déroulement	Agent verbalisateur	Montant caution demandée en euros
MSC RHONE N° IMO 7900699	Panama	Porte conteneurs	21/09/04	Pollution de sillage de 31km X 300 mètres en ZEE	21/09/04 à Brest où il arrive le 22/09 à 13h30	Marine nationale	450 000,00
ZUARA N° IMO 8602386	Malte	Cargo	01/10/04	Pollution de sillage de 55,7km X 40 mètres en ZEE	01/10/04 à Brest	Douanes françaises	500 000,00

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Source: <http://www.cedre.fr/>



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Example of enforcement by Coastal State (France)

Navires	Pavillon	Types	Date infraction	Nature de l'infraction	Date déroulement	Agent verbalisateur	Montant caution demandée en euros	Condamnation 1ère instance
VOLTAIRE N° IMO 810960	Libéria	Porte-conteneurs	22/05/03	Pollution de sillage : 2 km X 50m en ZEE	Navire non dérouteré. Capitaine entendu lors de son escale au Havre	Marine nationale	200 000,00	100 000,00
DOBRODUA N° IMO 8513247	Bulgarie	Cargo	30/07/03	Pollution de sillage : 4,5 km X 700m en ZEE	30/07/03 à Brest	Marine nationale	300 000,00	200 000,00
PANTOKRATORAS N° IMO 610060	Chypre	Cargo	19/12/03	Pollution de sillage : 37 km X 100 m en ZEE	27/01/04 à Brest	Douanes françaises	500 000,00	350 000,00
NICOLAS M. N° IMO 7433452	St Vincent et Grenadine	Minéralier	21/12/03	Pollution de sillage : 2,5 km X 50m en ZEE	22/12/03 à Brest	Douanes françaises	250 000,00	150 000,00

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Source: <http://www.cedre.fr/>

Accidental pollution, Erika case



ERIKA case: Competent jurisdiction in case of accidental pollution in the EEZ?

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TGI de Paris « Délit réprimé par l'article 8, la loi du 5 juillet 1983, se réfère expressément à la pollution résultant d'un accident de mer, lui-même défini par **la convention de Bruxelles du 29 novembre 1969 sur l'intervention en haute mer**, pollution distincte de celle liée à un rejet et prévue, dans un autre cadre conventionnel, par le troisièmement de l'article 2 de la convention MARPOL ».

« la loi du 5 juillet 1983 précitée établit une distinction entre l'infraction de rejet illicite et celle de pollution consécutive à un accident de mer, lui-même provoqué par une faute d'imprudence ou de négligence.

Dès lors, l'article 8 de la loi du 5 juillet 1983 prévoyant une incrimination différente de celles édictées en application de la convention MARPOL, il ne peut être fait grief à la loi nationale d'être contraire à cette convention internationale, celle-ci et celle-là délimitant des champs distincts par la détermination qui leur est propre des comportements répréhensibles, des personnes punissables ou d'éventuels faits justificatifs ».

Accidental pollution, Erika case

ERIKA case: Competent jurisdiction in case of accidental pollution in the EEZ?

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UNCLOS article 56 1. b III: jurisdiction of the CS in the EEZ with respect to the protection and preservation of the marine environment

TGI de Paris « la loi pénale française est applicable aux infractions commises au-delà de la mer territoriale ».

Erika: chronologie du naufrage et dégâts

Nuit du 12.12. au 13.12.1999:

- La partie avant du navire sombre près du lieu de la cassure

13.12.1999:

- 14h15 partie arrière du navire coule
- Les deux parties de l'épave se trouvent à environ 10km l'un de l'autre à environ 120 m de profondeur

Les dégâts à terre:

- 23.12.1999: premières nappes sur les côtes du Finistère sud
- 25.12.1999: îles du Morbihan (Groix et Belle-Île)
- 27.12.1999: Vendée (au nord de Noirmoutier)
- 03.01.2000: Île de Ré



Conséquences sur la faune et la flore

Selon la Ligue de protection des oiseaux (LPO):

- 150 000 à 300 000 oiseaux tués
- 260 000 oiseaux mazoutés
- 77 000 échoués et recueillis morts ou vivants
- Plusieurs espèces protégées disparaissent de la zone souillée

150 ha de parcs à huîtres touchés



Erika: procédure

- Jugement du Tribunal de grande instance de Paris (TGI), 11 chambre du tribunal correctionnel
(audiences du janvier au juin 2007 dans la salle des Cirées avec retransmissions vidéo simultanées)
- Arrêt de la Cour d'appel de Paris, chambre 4-11, du 30 mars 2010
- Arrêt de la Chambre criminelle de la Cour de cassation, 25 septembre 2012 (319 pages) – cassation partielle sans renvoi

Plus de 12 ans de procédure...

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Défense des prévenus

-compétence du tribunal français (naufage dans la ZEE)

Société de classification RINA

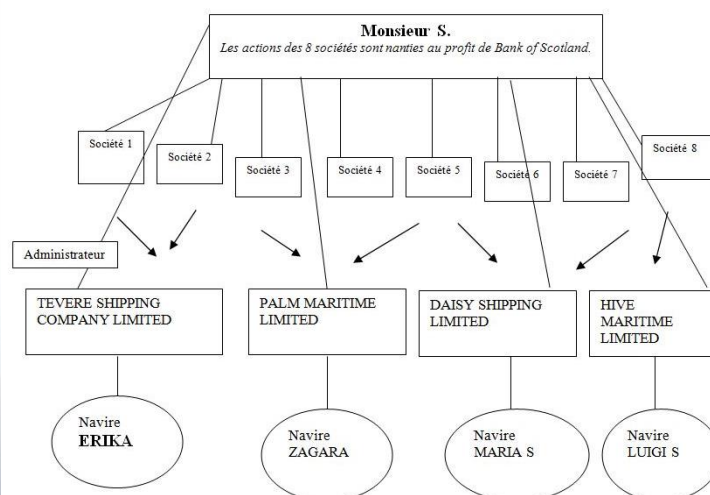
-Une fin de non recevoir pour cause d'immunité du RINA en tant qu'agent de l'Etat de Malte (l'Etat de Malte s'est vu reconnaître l'immunité de juridiction).

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TOTAL (affréteur au voyage et activité de vetting):

- pas de gestion nautique, ni commerciale du navire
- l'état du navire ne lui pouvait pas être connu
- Convention CLC : liste limitative des personnes responsables
- Vetting – pratique interne volontaire, non pas une obligation

LE MONTAGE SOCIETAIRE DANS L'AFFAIRE ERIKA



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TGI de Paris

- **Sur le plan pénal:**

Condamnation aux amendes maximales de:

RINA (375.000 euros)

Total (375.000 euros)

Armateur (75.000 euros)

Gestionnaire technique (75.000 euros)

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TGI de Paris

- **Sur le plan civil:**

Montant total des dédommagements pour les victimes 171,5 millions d'euros.

Débiteurs solidaires des dommages et intérêts:

- armateur (M.S.),
- gestionnaire technique,
- société de classification
- société ayant exercé le Vetting

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Coastal States' obligations Pollution detection and response

- *Coastal organization?*
- *Means available (vessels, aircrafts, equipment for cleaning and containing the pollutants, means of detection of the pollution) ?*
- *National legislation in place*
- *Enforcement – measures taken, dissuasive penalties ?*

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In the framework of SAFEMED III project:

➤ **Provision of CleanSeaNet service**

(European satellite-based oil spill and vessel detection service) + identification of the polluter

➤ **Workshop on VTMS, 8 and 9 April 2014**

➤ **EMSA's network of stand-by oil recovery vessels – additional tool to respond pollution**

➤ **Oil spill exercises**

➤ **Assistance with drafting appropriate legislation if necessary**



E u r o p e a n M a r i t i m e S a f e t y A g e n c y

Thank you for your attention!

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