



European Maritime Safety Agency

Workshop Report

Workshop on the exchange of best practice in dealing with illegal discharges and the gathering of evidence

Lisbon, 8-9 October 2007

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Background

Discussing the issue of illegal discharges and the approaches of Member States, the Administrative Board of EMSA requested the Executive Director to organise a workshop in order to exchange experiences relating to the legislative solutions and procedures applied implementing Directive 2005/35/EC on sanctions for ship source pollution, especially in relation to the collection of evidence for illegal discharges.

This workshop was the second workshop in the area of illegal discharges. The previous one was organised by EMSA in March 2007, on the request of the European Commission, on the technical solutions for the effective implementation of this Directive.

Workshop Objectives

The workshop had the following objectives:

- Exchange experiences relating to the combating of illegal discharges;
- Compare technological and legislative solutions and procedures for proving an infringement and imposing a sanction;
- Exchange experiences on collection of evidence in order to establish a link between a pollution and a vessel concerned;
- Underline the importance of international cooperation in this area;
- Enhance the learning experience of the workshop participants by getting acquainted with the practices from non-EU countries.

Workshop Programme

After the welcome address by the Executive Director of the Agency, Mr Willem de Ruiter, the introduction to the workshop was done by Mrs Malgorzata Nesterowicz, the legal officer, in the form of a presentation of Directive 2005/35 since this Directive constitutes, from the 1st of March 2007, an EU basis for implementing the international law standards of combating and penalising illegal pollution by the Member States.

The first material part of the workshop consisted of presentations of some national systems. First, Mr Eugen Olteanu from the Romanian Naval Authority spoke about cooperation in the framework of the Commission on the Protection of the Black Sea against Pollution, to which Romania is also a Party. Then, Mr Rolf Ostrowski from the German Federal Maritime and Hydrographic Agency presented the relevant German legal provisions concerning penal and administrative sanctions for illegal pollution, the procedure for collecting evidence and relevant statistics. An attorney from Poland, dr Roman Olszewski, presented the procedure for imposing sanctions for pollution in Poland and acceptance of means of proof. Mr Xavier Tarabeux, a prosecutor from the specialised maritime court in Brest talked about prosecutions of illegal discharges in France. Last but not least, referring to the subject of means of proof, the Director of EMSA presented the CleanSeaNet satellite service.

The second part of the workshop consisted of practical case studies. The introductory lecture was made by dr Iliana Christodoulou-Varotsi from Athens who presented the background to implementation of the Directive 2005/35 and general principles for imposition of penal and administrative sanctions which she also complemented by presenting relevant Greek and Cypriot legislation. Then, Mr Marc Bonnafous from the Direction des Affaires Maritimes in France presented the policy for surveillance of marine pollution in France and a case that involved a discharge of oil into French waters and cooperation with Spain in tracking the polluter. Further, Mrs Kristina Falk Strand from the Swedish Coastguard presented another, very recent case, being the first one treated under the new law which implements Directive 2005/35 into the Swedish legal system as of January 2007.

The third and last part consisted of presentations from non-EU countries that are known to have well developed policies in the area of combating and penalising illegal discharges: US, Canada and Australia. Mrs Elizabeth Megginson, Chief Counsel in the Maritime Administration of US Department of Transportation talked about how the US deals with illegal discharges. In particular she presented the provisions of the Act to Prevent Pollution from Ships, The National Invasive Species Act, The Oil Pollution Act and other relevant laws. Mr James Martin, a public prosecutor from the Public Prosecution Service of Canada gave the participants an overview of the Canadian approach: the enforcement of Canada Shipping Act, the evidence employed for prosecution and other issues. Ms Mary Dean, a solicitor with the Australian Maritime Safety Authority talked about prosecuting MARPOL violations in Australia and compared the principles of the relevant Australian laws with Directive 2005/35.

Each part was followed by discussion. During the discussion various points were made:

In relation to the means of evidence, it was pointed out that even though different levels of evidence are required by courts in each country, the easiest and minimum way of providing proof is usually through photographs and statements from authorised officers. In France for example written reports from agents with legal authority are considered “true” (the opposite must be proved). Therefore a written statement is the only evidence needed. In Germany, evidence from aerial surveillance alone is not sufficient: it must be supplemented with technical inspection on board and oil samples. Special importance is also given to the Oil Record Book, due to the fact that according to German law a failure to keep it updated constitutes an administrative offence.

Secondly, the cost effectiveness of the satellite images was also stressed as a means of proof and as a tool for employing other resources (e.g. aerial surveillance planning) although satellite imagery is accepted in the courts of most countries only if supported by other technical evidence. On the other hand, the Bonn Agreement “Colour Code” used to identify oil at sea and calculate the approximate volume is internationally accepted in courts.

For the purpose of prosecuting, directing a vessel to a port of the relevant Coastal State is considered an effective measure by countries already engaged in this practice (e.g. France).

Moreover, some countries have specialised courts for maritime cases (e.g. France, Poland for some issues) but in all circumstances a clear delimitation of maritime boundaries is paramount for the choice of the right jurisdiction.

Workshop Conclusions

1. The workshop resulted in an interesting exchange of experiences on technical and legislative solutions in combating and penalising illegal discharges in relation especially to the tools used and the evidence collected. Even if such exchange of experiences cannot result in adoption of common guidelines due to the different resources available in the Member States and differences in procedural laws, it was deemed very useful for individual Member States.
2. The exchange of experiences was enhanced by the fact that the speakers represented a wide spectrum of professions (legal advisors of administrations, prosecutors, practicing lawyers, academics, etc.), as well as the variety of countries, including non-EU countries.
3. In relation to the variety of available resources in Member States, the cost effective solution of the CleanSeaNet service provided by EMSA was referred to.

4. The importance of improving international cooperation, especially within the framework of regional agreements was underlined, especially in relation to inspections, collection of evidence and information exchange concerning the vessel (e.g. ship's route tracking).

Attachments:

- (1) Agenda of the workshop
- (2) List of participants

Presentations from the workshop are available at:
<http://www.emsa.europa.eu/end187d010.html>