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**THE CROATIAN LEGAL FRAMEWORK FOR THE
PREVENTION OF POLLUTION FROM SHIPS -
IMPLEMENTING EU AND INTERNATIONAL
REGULATIONS**

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THE CROATIAN LEGAL FRAMEWORK FOR THE PREVENTION OF POLLUTION FROM SHIPS

Implementing EU and International Regulations

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The paper gives a brief presentation of Croatian law with regard to marine pollution from ships.

1. Introduction

Vessel-source pollution is responsible for some 10% of the total marine pollution and is subjected to rigorous body of rules of international law.

The legal framework for preventing vessel-source pollution is described in Part XII on the *(Protection and Preservation of Marine Environment)* of *United Nations Convention on the Law of the Sea* (UNCLOS).¹

Besides the UNCLOS vessel- source pollution is governed by conventions concluded under the auspices of the International Maritime Organization (IMO).

After serious tanker disasters such as *Erika* (1999) and *Prestige* (2002) vessel-source pollution is particularly addressed by the European Union, which adopted a series of directives and regulations to better protect the marine environment of European waters.²

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¹ UNCLOS for Croatia came into force on November 16, 1994. See *Official Gazette of the Republic of Croatia (International Agreements)* No. 9/2000.

² See Wene, J., *European and International Regulatory Initiatives Due to the Erika and Prestige Incidents*, Australian and New Zealand Maritime law Journal (MLAANZ), Vol.19, 2003, pp. 55-73.

EU regulation regarding marine protection does not represent a real departure from the traditional global approach and the IMO is still considered as the competent body for the adoption of shipping – related standards.

Republic of Croatia and other countries on the Adriatic coast have a duty and an obligation to protect their marine environment.³

This paper gives a brief overview of the most basic laws of the Republic of the Croatia regarding vessel-source pollution.

The Croatian vessel-source pollution law is the result of acceptance of all IMO and European Union standards concerning the prevention of sea pollution from ships. Some measures are the result of cooperation and agreements with other countries of the Adriatic Sea.

All relevant rules and provisions are applied taking into account the coastal, port and flag state jurisdiction on vessel source pollution under UNCLOS.

2. Prevention Pollution from Shipping

The present framework of international agreement to control marine pollution is provided by the *International Convention for the Prevention of Pollution from Ships 1973, as amended by the Protocol, 1978* (MARPOL).

The 1973 Convention as amended by the 1978 Protocol entered into force internationally, in October 1983, and are treated as a single instrument which is generally referred to as - MARPOL 73/78. MARPOL is the most comprehensive initiative to regulate and minimize pollution from ships.

The aim of the measures introduced by MARPOL is to achieve the complete elimination of intentional pollution of the marine environment by oil and other harmful substances as well as the minimization of accidental discharges of such substances.

The main provisions of MARPOL take the form of regulations set out in six annexes, each covering a different category of substance which could cause pollution of the sea.

Republic of Croatia has ratified MARPOL including all the Annexes and has substantially incorporated the Convention into its legislation.⁴

³ See Article 192 of UNCLOS.

After *Erika* and *Prestige* accidents EU adopted Regulation 1726/2003 strengthening the standards for the transport of oil in the single hull tankers.⁵

This regulation requires that only vessels equipped with the double hull are entitled to carry heavy grades of oil (HGOs)⁶ within or from the EU.

In Croatia *The phasing-out single tankers Act* bans the transport of heavy grade oil in single-hull tankers.⁷

It should be noted that Croatia has adopted a series of additional measures aimed at preventing pollution from ships.⁸

2.1. Criminal sanctions for violation of MARPOL provisions

With the aim to harmonize MARPOL implementation at Community level, after *Prestige* accident (2002), the EU adopted a Directive on criminal sanctions for violation of MARPOL provisions.⁹

⁴ MARPOL 73/78 for Croatia came into force on October 8, 1991. See *Official Gazette of the Republic of Croatia (International Agreements)* No.1/1991. Protocol of 1997 to amend the MARPOL for Croatia came into force on August, 4, 2005. See also *Official Gazette of the republic of Croatia (International Agreements)* No. 4/2005.

⁵ Regulation (EC) 1726/2003 amending Regulation (EC) 417/2002 accelerated phasing-in of double-hull or equivalent design requirements for single-hull tankers, *Official Journal of the European Union*, L 249, 2009, p. 1.

⁶ The definition of HGO under article 1(3)(b) of EC Regulation 1726/2003 includes heavy fuel, tar, bitumen and heavy crude oil.

⁷ The Phasing-Out Single Tankers Act, see *Official Gazette of the Republic of Croatia, No.48/2004*.

⁸ An example is the Order that prohibits navigation in internal waters and the territorial sea of the Republic of Croatia to ships older than 25 years when carrying oil, dangerous substances and liquefied gas in bulk, see *Official Gazette of the Republic of Croatia, No 105/97*. See also the requirement for compulsory coastal pilotage for all ships carrying dangerous or noxious substances, see *Official Gazette of the Republic of Croatia No, 116/2010*.

⁹ Directive 2005/35/EC on ship – source pollution and on the introduction of penalties for infringements, *Official Journal of the European Union*, L.255, 2005, p.164. and Directive 2009/123/EC amending Directive 2005/35/EC on ship – source pollution and on the introduction of penalties for infringements, *Official Journal of the European Union*, L.280, 2009, p. 52.

Under this Directive, discharge of polluting substances (oil or other noxious substances –Annex I and II of MARPOL) is a criminal offence if committed with intent, recklessly or as a result of negligent behavior.

The Directive has caused highly intensified reactions in shipping industry. The critics think that provisions of the Directive are contrary to the MARPOL and UNCLOS.¹⁰

In proceedings commenced by the request to examine legal validity of the Directive the European Court of Justice uphold the validity of Directive.¹¹

In Croatia Maritime Act and Criminal Act provide sanctions for violation of MARPOL provisions.

Administrative sanctions may be delivered for maritime offences, including marine pollution offences. They are regulated by part eleven of the Croatian Maritime Act (CMA).¹²

The main criminal offences against environment, including marine environment, as well as the types and the range of criminal sanctions are regulated by Criminal Act of the Republic of Croatia.¹³

Subject to article 250 (1) of Criminal Act, whoever, contrary to regulations, pollutes the sea, shall be punished by imprisonment for three months to five years.

Who commits the said criminal offence by negligence shall be punished by fine or by imprisonment not exceeding one year.

2.2. Anti Fouling Systems

Anti Fouling Systems (AFS) that use organotin compounds such as tributyltin-oxide (TBT) has negative consequences on the wider marine habitat.

Legislation to ban TBT in ships' antifouling paints was agreed by the adoption of *International Convention on the Control of Harmful Anti-Fouling Systems on Ships at IMO in 2001* (the AFS Convention). The AFS Convention entered into force on 17 September 2008.

The total phase- out of organotin antifouling paints have been completed by 1 January 2008.

¹⁰ See Khee-Jin Tan, A., *The EU Ship-Source Pollution Directive and Coastal Jurisdiction over Ships*, Lloyd's Maritime and Commercial Law Quarterly, Vol. 2010, Part 3, August 2010, p.469.

¹¹ Judgment of the Court of Justice of 3 June 2008, *Official Journal of the European Union*, C.183, of 19 July 2008.

¹² See *Official Gazette of the Republic of Croatia*, No.181/2004., 76/2007., 146/2008, 61/2011.

¹³ See *Official Gazette of the Republic of Croatia*, No. 110/97., 27/98., 50/00., 129/00., 51/01., 111/03., 190/03., 105/04., 110/07.

The AFS Convention has been transposed into EU legislation through Regulation (EC) 782/2003 on the prohibition of organotin compounds on ships.¹⁴

Republic of Croatia has ratified AFS Convention and incorporated into national legislation.¹⁵

According AFS provisions croatian ships and other ships visiting Croatian ports are obliged not to bear anti-fouling systems containing harmful compounds or to bear a coating that forms a barrier to such compounds

2.3. Ballast Water

The transfer of harmful aquatic species in ships' ballast water tanks has become the most significant way of unintentional introductions of invasive alien species into marine ecosystems.

This issue is being addressed by the IMO through the *Convention on the Management of Ships' Ballast Water and Sediments* - BWM Convention, 2004. Convention calls for the exchange of ballast water in the open ocean to reduce the risk of transfer of harmful species. BWM Convention is not yet in force.

The Commission has „strongly recommended“ the ratification of BWM Convention.

In 2010 Croatia has ratified BWM Convention and introduced “ballast water exchange standard for ships entering Croatian coastal sea” by adoption of special Ordinance on Ballast Water Management and Inspection.¹⁶

With the purpose to improve environmental protection, this Ordinance regulates the principles and procedures of ballast water management and inspection on floating facilities and ships while staying and navigating in internal waters, territorial sea and protected ecological and fishing zone of the Republic of Croatia.

3. Safety of navigation

¹⁴ Regulation (EC) 782/2003 on the prohibition of organotin compounds on ships, L 115, 2003, pg.1.

¹⁵ See *Official Gazette of the Republic of Croatia (International Agreements) No.10/2006*. For Croatia Convention came into force on September, 17, 2008.

¹⁶ See *Official Gazette of the Republic of Croatia, No.55/2007*.

I would like to emphasize some measures relating to safety of navigation. Greater degree of safety of navigation contributes to protection of marine environment.

Traffic Separation Schemes (TSS) and other ship's routing systems have now been established in most of the major shipping areas of the world.

In the Adriatic Sea TSS have been already established in the Northern Adriatic (Eastern and Western Part) with implementation as of 1 December 2004.¹⁷

The Maritime Safety Committee of the IMO, at its 76th session (December 2002) adopted the mandatory ship reporting system in the Adriatic Sea- ADRIREP, with the entry into force on 1 July 2003.¹⁸

Ships of the following categories are required to participate in the system:

- all oil tanker ships of 150 GT and above,
- all ships of 300 GT and above, carrying on board, as cargo, dangerous or polluting goods, in bulk or in package.

The primary objective of the system is to support safe navigation and the protection of the marine environment through the exchange of information between the ship and shore.

By latest amendments of Maritime Act Croatia has established *Vessel Traffic Service – VTS*.¹⁹

The VTS is established according to the EU Directive 2002/59/ EC establishing a Community vessel traffic monitoring and information system (VTMIS Directive).²⁰

The system should help to enhancing the safety and efficiency of maritime traffic and prevention of pollution from ships.

The establishment of Croatian VTS is based on the said VTMIS Directive and Chapter V of the SOLAS Convention. The Croatian VTS provides:

- information service,
- navigational assistance,
- traffic organization service.

¹⁷ New Traffic Separation Schemes in the Adriatic Sea – IMO.COLREG2/Circ.54, Annex 3.

¹⁸ Participating country in ADRIREP: Italy, Slovenia, Croatia, Montenegro and Albania.

¹⁹ Articles 75(a)- 75(c) of the Maritime Act (Amendments 2008).

²⁰ Directive 2009/17 amending Directive 2002/59 establishing a Community vessel traffic monitoring and information system, *Official Journal of the European Union*, L 208, p. 11.

Relating to prevention of pollution it is worth mentioning that Republic of Croatia adopted also a special Ordinance on Place of Refuge.²¹ Regulation contains plan and procedures for accommodation of ships in distress.

4. Civil liability for pollution from ships

The Republic of Croatia has accepted the specific international regime of oil pollution liability and compensation, covering damages resulting from oil spills from tankers – 1992 CLC/Fund regime.²²

The Convention basis its liability regime on the principle that the shipowner is strictly liable up to limited ceiling.

The 1992 Fund pays compensation to those suffering oil pollution damage in a State Party who do not obtain full compensation under 1992 Civil Liability Convention.

Republic of Croatia has also accepted Supplementary Fund Protocol 2003.

The Supplementary Fund provides additional compensation over and above that available under 1992 Fund Convention.

As a result, the total amount available for compensation for each incident for pollution damage under CLC/Fund regime is 750 million SDR, including amounts payable under the 1992 CLC Convention and Fund Convention.

In addition, Republic of Croatia has become a party of Bunker Convention covering damage resulting from oil spills from ships other than tankers.²³

The Bunker Convention is based on the existing regime for compensation for oil pollution from tankers set up under CLC/Fund regime.

Under Conventions pollution damage occurring in the territory, including territorial sea, and exclusive economic zone of a contracting state is covered regardless of where the initial spill is occurred.

²¹ See *Official Gazette of the Republic of Croatia*, No 3/2008.

²² See *Official Gazette of the Republic of Croatia (International Agreements)* No. 2/97. For Croatia came into force on January 12, 1999. Supplementary Fund Protocol, 2003, see *Official Gazette of the Republic of Croatia (International Agreements)* No. 12/05. For Croatia came into force on May 17, 2006.

²³ See *Official Gazette of the Republic of Croatia (International Agreements)* No. 9/06. For Croatia came into force on November, 21, 2008.

In general, all quantified damage resulting from oil contamination (damage to property, economic losses, restoration of impaired environment), including costs of preventive measures and clean-up measures are covered.

It is very important that claims are presented clearly and in sufficient details so that amounts claimed can be assessed on the basis of the facts and the documentation presented.

Pollution cases which are not covered by specific international regimes outlined above will be governed by the provisions of Croatian Maritime Act.

Article 811 and 812 of the CMA regulates non - contractual liability of ship owner or operator for damages to property and the environment.

The operator of the ship or the shipowner shall be liable for damages caused by the discharges or spillage of substances hazardous or harmful to the environment (oils, bilge oils and the mixtures, bilge water, other bilge substances and other similar compounds).

The liability is strict, subject to very few exceptions.

In connection with expenses caused by pollution it may be of interest to note the provision of article 111 of the new *Contingency Plan for Accidental Marine Pollution in the Republic of Croatia*.²⁴

According said article the polluter is under obligation to pay expenses caused by pollution (clean-up costs, sampling costs, pollution assesment costs, damage to property of persons conducting contingency plan).

5. Conclusion

Finally, it should be noted that Croatia has a comprehensive legal system with regard to marine pollution from ships.

Despite all rules and preventive measures, accidents and illegal activities do occur. It is not only a large pollution event that causes harm, but continued small amount of chronic pollution is just as damaging.

So, the cleanliness of Adriatic Sea can be maintained by:

- better enforcement of legislation,
- continued development of control procedures for the prevention and physical removal of harmful substances from sea,
- collaboration from all Adriatic states.

²⁴ See *Official Gazette of the Republic of Croatia, No. 92/08*.