



**IMO**  
**INTERNATIONAL MARITIME LAW INSTITUTE**

Established under the auspices of the International Maritime Organization  
A specialized agency of the United Nations



**PORT RECEPTION FACILITIES FOR THE  
DELIVERY OF WASTE FROM SHIPS  
REGULATIONS**

**A Legislation Drafting Project submitted in partial fulfillment of the  
requirements for the award of the Degree of Master of Laws (LL.M.)  
in International Maritime Law at the IMO International Maritime  
Law Institute**

**Submitted By: Dr. Daniel Vella (Malta)**

**Supervisor: Dr. Ángeles Jiménez García-Carriazo**

**Academic Year 2020-2021**

## **Abbreviation List**

## **Table of National Legislation**

### **Explanatory Note**

1. Introduction

2. Background to this Legislation Drafting Project

2.1. Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues

2.2. REFIT Evaluation Report of Directive 2000/59/EC from the Commission to the European Parliament and the Council

3. Replacing the Repealed Directive 2000/59/EC with Directive (EU) 2019/883 - An Analysis into the Structure of the New Directive

3.1. Section 1 (Articles 1 to 3) - General Provisions

3.2. Section 2 (Articles 4 to 5) - Provisions of adequate port reception facilities

3.3 Section 3 (Articles 6 to 9) - Delivery of waste from ships

3.4. Section 4 - Enforcement

3.5. Section 5 - Final Provisions

4. Transposing Directive (EU) 2019/883 Maltese Law

4.1. Introduction

4.2. Enacting Directive (EU) 2019/883 & Repealing Directive 2000/59/EC

4.3. Amending Directive 2010/65/EU

4.4. Issuing Port Notice by Transport Malta on Cost-Recovery Fees

4.5. Conclusion

### **Introducing the Port Reception Facilities for the Delivery of Waste from Ships Regulations**

### **Amending the Vessel Traffic Monitoring and Reporting Requirements Regulations - S.L. 499.34**

### **Repealing the Port Reception Facilities for Shipgenerated Wastes and Cargo Residues Regulations - S.L. 499.30**

### **Issuing Port Notice by Transport Malta on Cost-Recovery Fees**

## Abbreviation List

“**Commission**” means the European Commission.

“**Directive 2000/59/EC**” means the Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues.

“**Directive 2002/59/EC**” means the Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC.

“**Directive 2009/16/EC**” means the Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (Recast).

“**Directive 2010/65/EU**” means the Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC.

“**Directive (EU) 2019/883**” means the Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC.

“**EU**” means the European Union.

“**MARPOL 73/78**” means the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978.

“**REFIT Evaluation Report of Directive 2000/59/EC**” means the Report from the Commission to the European Parliament and the Council of 31 March 2016 on

Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues.

**“Regulations”** means the Port Reception Facilities for Delivery of Waste Regulations, 2021.

**“Regulation (EC) 2099/2002”** means Regulation (EC) 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships.

**“Regulation (EU) 182/2011”** means Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers.

**“Regulation (EU) 2017/352”** means Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports.

**“SafeSeaNet”** means Union Maritime Information and Exchange System.

**“SL”** means Subsidiary Legislation.

**“TFEU”** means the Treaty on the Functioning of the European Union.

## Table of National Legislation

- Cap. 9 Criminal Code;
- Cap. 234 Merchant Shipping Act;
- Cap. 499 Authority for Transport in Malta Act;
- S.L. 499.12 Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations;
- S.L. 499.30 Port Reception Facilities for Ship-Generated Wastes and Cargo Residues Regulations;
- S.L. 499.34 Vessel Traffic Monitoring and Reporting Requirements Regulations;
- Cap. 549 Environmental Protection Act;
- S.L. 549.54 Waste Management (Waste Battery and Accumulators) Regulations
- S.L. 549.63 Waste Regulations;
- S.L. 549.89 Waste Management (Electrical and Electronic Equipment) Regulations.

## **Explanatory Note**

Regulations to transpose Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC into Maltese law.

### **1. Introduction**

On 17 April 2019, the European Parliament and the Council of the European Union (hereinafter ‘EU’) adopted the Directive (EU) 2019/883 on port reception facilities for the delivery of waste from ships (hereinafter Directive (EU) 2019/883)<sup>1</sup> which amended Directive 2010/65/EU on reporting formalities for ships arriving in and/or departing from ports of the Member States (hereinafter Directive 2010/65/EU)<sup>2</sup> and repealed Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues (hereinafter Directive 2000/59/EC).<sup>3</sup> This drafting project aims to propose a draft that entails an accurate transposition of this Directive into Maltese law. Through this explanatory note, the author intends to provide a comprehensive explanation predominantly covering a delineation of the content structure of the Directive. This explanatory note unfolds why the Directive requires transposition and explains how legal drafters shall transpose it.

Per Article 24, Member States shall transpose the Directive by 28 June 2021, at which point they shall immediately inform the European Commission (hereinafter ‘Commission’).<sup>4</sup>

---

<sup>1</sup> Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships and amending Directive 2010/65/EU and repealing Directive 2000/59/EC.

<sup>2</sup> Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC.

<sup>3</sup> Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues.

<sup>4</sup> Directive (EU) 2019/883, Article 24.

## 2. Background to this Legislation Drafting Project

States which are parties to the International Convention for the Prevention of Pollution from Ships 1973 as modified by its 1978 Protocol<sup>5</sup> (hereinafter ‘MARPOL’) aim to ‘achieve the complete elimination of intentional pollution of the marine environment by oil and other harmful substances and the minimisation of accidental discharge of such substances’ globally. In consequence of its aims, MARPOL regulates a myriad of different aspects concerning the regime of marine pollution, including ship waste and adequate port facilities to sustain its discharge.<sup>6</sup> Despite the EU itself not being a party to MARPOL, meaning that its rules do not directly bind it, this convention is highly relevant at Union level since all EU Member States are parties to it.

Through its Resolution of 8 June 1993 on a common policy on safe seas,<sup>7</sup> the then Council of European Communities had agreed to ‘develop the availability and use of reception facilities within the Community’<sup>8</sup> as part of its efforts to generally improve maritime infrastructures of EU Member States. In fact, the EU adopted the now-repealed Directive 2000/59/EC as a consequence of the Member States’ failure to enforce mechanisms of the standards of reception facilities set by MARPOL.<sup>9</sup> In its inception, Directive 2000/59/EC was considered to serve as the EU’s regulatory mechanism harmonising the interests of the protection of the marine environment together with the day-to-day functioning of maritime transport.<sup>10</sup>

Nevertheless, over time, the EU identified several shortcomings in Directive 2000/59/EC and addressed them through the adoption of Directive (EU) 2019/883, which has repealed the former. Therefore, it is imperative for this explanatory note to briefly recapitulate the provisions and effects of Directive 2000/59/EC which served as the

---

<sup>5</sup> International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto.

<sup>6</sup> Gabriela Argüello, ‘Environmentally sound Management of Ship Wastes: challenges and opportunities for European ports’ [2020] 5(12) *Journal of Shipping and Trade*, 1-21, 2.

<sup>7</sup> Council Resolution of 8 June 1993 on a Common Policy for Safe Seas [1993] OJ C271.

<sup>8</sup> *Ibid.*, 2.

<sup>9</sup> Argüello (n. 6) 2.

<sup>10</sup> Recital 4 of Directive (EU) 2019/883.

basis of the current domestic legal regime which the transposition of Directive 2019/883 sets to replace.

## **2.1. Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues**

Directive 2000/59/EC was adopted to enhance the effectiveness of MARPOL regulations on the adequacy of port reception facilities to take on ship-generated waste and cargo residues. In fact, the purpose of Directive 2000/59/EC complements MARPOL regulations as the Directive aims

... to reduce the discharges of ship-generated waste and cargo residues into the sea, especially illegal discharges, from ships using ports in the Community, by improving the availability and use of port reception facilities for ship-generated waste and cargo residues, thereby enhancing the protection of the marine environment.<sup>11</sup>

Due to the transboundary nature of pollution of the seas and in view of the principle of subsidiarity, the EU saw it fit to regulate port reception facilities for ship-generated waste and cargo residues at a Community level.<sup>12</sup> As analysed in further detail below,<sup>13</sup> Directive 2000/59/EC was instrumental in introducing provisions that regulate port reception facilities for ship-generated waste and cargo residues, some of which have been carried forward to the new, current, superseding Directive (EU) 2019/883.

## **2.2. REFIT Evaluation Report of Directive 2000/59/EC from the Commission to the European Parliament and the Council**

In 2016, the Commission carried out a Regulatory Fitness and Performance programme (hereinafter ‘REFIT Evaluation’)<sup>14</sup> providing a thorough assessment of

---

<sup>11</sup> Directive 2000/59/EC, Article 1.

<sup>12</sup> Ibid, Recital 6.

<sup>13</sup> See Section 2.2.

<sup>14</sup> Report from the Commission to the European Parliament and the Council of 31 March 2016 on REFIT Evaluation of Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues. REFIT is an EU-produced mechanism that assesses the impact and effects of existing EU Legislation by conducting stakeholder consultations, impact assessments, and retrospective evaluations. See more on REFIT: <[http://ec.europa.eu/smart-regulation/docs/refit\\_brochure\\_en.pdf](http://ec.europa.eu/smart-regulation/docs/refit_brochure_en.pdf)> accessed 4 March 2021.



the results yielded by Directive 2000/59/EC. The REFIT Evaluation denoted the Directive's direct contribution to increasing the volume of waste that started being delivered to port reception facilities.<sup>15</sup> In its assessment, the Commission attributed this positive result to a number of factors, including, *inter alia*, the increased availability of adequate port reception facilities and the introduction of a cost recovery system.<sup>16</sup>

Directive 2000/59/EC introduced the cost recovery system, instead of the more traditional direct fee system that used to be in place before. The cost recovery system instructed Member States to charge fees covering the costs incurred by their port reception facilities which treat and dispose ship-generated waste to all ships calling in one of the ports of the respective Member States.<sup>17</sup> It was designed to allow Member States to adjust direct fees according to the ship's characteristics, such as its category, type, size, environmental performance, and operation. However, an indirect fee would be applicable regardless of whether such a ship would have made actual use of the facilities.<sup>18</sup>

Notwithstanding the generally positive effects produced by Directive 2000/59/EC on the marine environment at large, the REFIT Evaluation pinpointed three fundamental problems that needed to be addressed to reach better the main objective of reducing discharges into the sea.<sup>19</sup> These were the same issues that eventually led to the EU's decision to repeal Directive 2000/59/EC and adopt Directive (EU) 2019/883.

Firstly, the Commission referred to issues related to the availability of adequate port reception facilities. It highlighted several technical issues arising from the wording of the provisions of Directive 2000/59/EC, including *inter alia*, the need to regulate for the separate collection on land of that waste which is segregated on board in accordance with international norms and standards, as well as the need for continuous consultation with port users at the stages of evaluation and re-approval of waste reception and handling plans. Secondly, the Commission cited shortcomings in the

---

<sup>15</sup> Ibid, 2.2 para 2.

<sup>16</sup> Ibid, 2.2 para 3.

<sup>17</sup> Directive 2000/59/EC, Article 8(1).

<sup>18</sup> Ibid, Article 8(2)(a).

<sup>19</sup> REFIT Evaluation of Directive 2000/59/EC, 3.

interpretation and implementation of the Directive's provisions regulating the delivery of ship-generated waste to port reception facilities.<sup>20</sup>

Thirdly, the Commission held that it sought to find ways to reduce the administrative burden created by the wording of Directive 2000/59/EC on Member State authorities and port users. It pointed towards the issue of the Directive being partly inconsistent with the framework of the MARPOL Convention.<sup>21</sup> The Commission held that specific definitions in the Directive, such as the term '*ship-generated waste*', were incomplete and failed to cover the whole spectrum of waste covered by MARPOL. The Commission also pointed towards the flaws in Article 9 of the Directive, which granted a broad scope of application to Member States regarding their power to grant exemptions to vessels.<sup>22</sup> It argued that exemption procedures varied from one Member State to another and that there was also insufficient cooperation in exchanging information on exemptions granted to vessels amongst States.<sup>23</sup> As a result of this, the REFIT Evaluation pointed out that Member State authorities and port users alike were exposed to the drawback of '*disproportionate administrative burden*',<sup>24</sup> the solution for which would be the implementation of a more harmonised approach.<sup>25</sup>

### **3. Replacing the Repealed Directive 2000/59/EC with Directive (EU) 2019/883 - An Analysis into the Structure of the New Directive**

Directive (EU) 2019/883 is the legislative proposal that was adopted to serve as a long term solution in addressing the shortcomings referred to in the previous Chapter.<sup>26</sup> The provisions of Directive (EU) 2019/883 are split into five sections : (i) the general provisions, (ii) provisions of adequate port reception facilities, (iii) delivery of waste from ships, (iv) enforcement, and (v) final provisions.

---

<sup>20</sup> Ibid.

<sup>21</sup> Recital 12 of Directive (EU) 2019/883.

<sup>22</sup> Directive 2000/59/EC, Article 9.

<sup>23</sup> REFIT Evaluation of Directive 2000/59/EC, 3.3.2.

<sup>24</sup> Ibid.

<sup>25</sup> See Martínez-López, A., Ruiz-García, A. and Pérez, I., 2020. Social Cost Benefit Analysis of Port Handling Plans for Annex IV waste of MARPOL: A Case Study in Las Palmas Port. Sustainability, 12(6).

<sup>26</sup> See Section 2.2.

### 3.1. Section 1 (Articles 1 to 3) - General Provisions

The subject matter, definitions, and scope, regulated by Articles 1 to 3 respectively make up the general provisions of the Directive. At the outset, the draftsman's wording of the general provisions is apparent evidence that despite the need for a new Directive, the EU's main aim remains the protection of the marine environment from discharges of waste of all those ships calling at any port located within the regulatory confines of the Union.

The subject matter of the Directive directly addresses the shortcoming of the repealed Directive 2000/59/EC on the administrative burden that port users and Member States encounter daily, as the wording includes the need for 'ensuring the smooth operation of maritime traffic'.<sup>27</sup> Article 1 also reiterates the Commission's appeal on the need to improve both the availability of adequate port facilities and the process of delivery of waste to such facilities.<sup>28</sup>

The Directive definitions are laid down in Article 2, which modifies most of the definitions originally listed in the repealed Directive 2000/59/EC and adds on new ones in accordance with the text of the Directive. The modified terms include the definitions of 'ship', 'MARPOL Convention', 'waste from ships', 'cargo residues', 'port reception facility', 'fishing vessel', 'recreational craft', and 'port'. On the other hand, the new definitions include 'passively fished waste', 'sufficient storage capacity', 'scheduled traffic', 'regular port calls', 'frequent port calls', 'GISIS', 'treatment', and 'indirect fee'.

The Directive's scope is extended to all ships calling at or operating within a port of a Member State, including both fishing vessels and recreational craft.<sup>29</sup> Identical to the scope of the repealed Directive 2000/59/EC, Article 3 also lists a number of exceptions to the applicability of this Directive including all warships, naval auxiliary and all ships owned or used by a State for non-commercial purposes. The Directive

---

<sup>27</sup> Directive (EU) 2019/883, Article 1.

<sup>28</sup> See Section 2.2.

<sup>29</sup> Directive (EU) 2019/883, Article 3(1)(a). In the repealed Directive 2000/59/EC, fishing vessels and recreational craft did not form part of the definition of a 'ship'. Nevertheless, the draftsman had included these two types of seagoing vessels in the scope of the repealed Directive. Directive (EU) 2019/883 resolves this incongruity as it includes these two types of seagoing vessels *ab ovo* as part of the definition of a 'ship' in Article 2.

also introduces an exception of its scopes to vessels engaged in port services per Article 1(2) of Regulation (EU) 2017/352.<sup>30</sup> The exception refers to those ships receiving port services inside the port area or on the waterway access to the port. The port services referred to in this Regulation refer to bunkering, cargo-handling, mooring, passenger services, collection of ship-generated waste and cargo residues, pilotage, and towage.<sup>31</sup> The Directive is also applicable to all Member State ports normally visited by the ships referred to in Article 3(1)(a).<sup>32</sup>

The Directive introduces two new provisos to its scope. Firstly, the provisions of this Directive may be derogated in cases where Member States do not have ports or ships falling within the ambit of the Directive. Secondly, for those Member States which do not have ports as defined in Article 2,<sup>33</sup> the Directive may also be derogated for the provisions which are addressed solely to ports.<sup>34</sup> Any Member State intending to employ any of these derogations shall submit its intentions to the Commission by the entry into force date, being 28 June 2021, and subsequently give annual updates to the Commission indicating any subsequent changes.

### **3.2. Section 2 (Articles 4 to 5) - Provisions of adequate port reception facilities**

This section seeks to address issues that were raised in the REFIT Evaluation already mentioned above.<sup>35</sup> Article 4 on port reception facilities adds to the provisions on port reception facilities from the repealed Directive 2000/59/EC. Member States are bestowed with the responsibility to do their part in facilitating the process for the use of port reception facilities. This includes their duty to avoid undue delays, issue fees for delivery that do not disincentives ship and incorporate a waste management system in response to the waste coming from environmentally friendly ships. The Directive introduces the duty for the relevant port authority to ensure that ‘sufficient

---

<sup>30</sup> Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports.

<sup>31</sup> Ibid, Article 1(2).

<sup>32</sup> Directive (EU) 2019/993, Article 3(1)(b).

<sup>33</sup> Ibid, Article 2(9).

<sup>34</sup> Ibid, Article 3(3).

<sup>35</sup> See Section 2.2.

safety measures to avert risks to persons and the environment at ports' are carried out at the entire reception operation of waste delivery.<sup>36</sup> Article 4(5) also includes the Member States' obligation to ensure compensation for damage caused by undue delay may be claimed by any party involved in the delivery or reception of waste from ships.<sup>37</sup>

Article 5 regulates waste reception and handling plans. Article 5(1) reiterates the need for consultations to be made before implementing appropriate waste reception and handling plans. The Article holds that talks must be '*ongoing*'; they are to be held both before and after adoption. It now also adds a broader list of stakeholders, adding to the pre-existing list: 'local competent authorities, port reception facility operators, organisations implementing extended producer responsibility obligations and representatives of civil society'.<sup>38</sup> Reference is made to Annex 1 of the Directive, which lays down the '*Requirements for Waste Reception and Handling Plans*'. The draftsman has moved the part instructing Member States which information is to be made available to all port users from Annex 1 to Article 5(2) of the Directive. Member States now need to seek re-approval of the waste reception and handling plan every five years and after significant changes in the operation of the port take place.<sup>39</sup> Article 5(5) exempts small non-commercial ports exclusively used by recreational crafts from Articles 5(1), 5(2), 5(3), and 5(4) on two conditions. Firstly, if their port reception facilities are integrated within the waste handling system of the relevant municipality. The second condition is that all information concerning the port's waste management system is available to its users.

### **3.3 Section 3 (Articles 6 to 9) - Delivery of waste from ships**

The point on advance waste notification was amended by Article 6. The Directive refers to the master, operator, or agent of the ship falling within the scope of Directive

---

<sup>36</sup> Directive (EU) 2019/883, Article 4(4).

<sup>37</sup> Ibid, Article 4(5).

<sup>38</sup> Ibid, Article 5(1).

<sup>39</sup> Ibid, Article 5(4). Under Directive 2000/59/EC, Member States were obliged to submit the respective waste reception and handling plans for re-approved at least once every three years and after significant changes in the operation of the port.

2002/59/EC,<sup>40</sup> whose duties to complete Annex 2 of the Directive and to notify such information to the designated authority of the Port Member State have not changed from the repealed Directive 2000/59/EC.<sup>41</sup> Annex 2 is now titled '*Standard Format of the Advance Notification Form for Waste Delivery to Port Reception Facilities*' and is far more comprehensive than its precursor. It now requires ship particulars, port and voyage particulars, and the type and amount of waste and storage capacity that covers all the waste covered by the MARPOL Convention and other waste that is not covered by MARPOL. Those ships covered by an exemption in accordance with Article 9 of the Directive shall not be required to complete this form.

The information divulged under Article 6(1) shall now have to be reported via electronic means within the information, monitoring and enforcement system in accordance with and as referred to in Article 13 of the Directive.<sup>42</sup> The Directive also introduces an obligation on Member States to ensure that information provided to them by the master, operator, or agent of the ship under Article 6(1) is examined and relayed on to relevant enforcement authorities of the State in question without delay.<sup>43</sup>

Article 7 on delivery of waste from ships was thoroughly amended to address the repealed Directive 2000/59/EC anomalies. Article 7(1) has introduced the obligation for the delivery of waste to a port reception facility to be made 'in accordance with the relevant discharge norms laid down in the MARPOL Convention'.<sup>44</sup> Article 7(1) does not apply to small ports with either unmanned vessels or ships remotely located as long as notification is served in accordance with Article 13.<sup>45</sup> On the other hand, Article 7(2) establishes Annex 3 to the Directive, titled '*Standard Format for the Waste Delivery Receipt*', which is a form that needs to be accurately completed and which serves as a waste delivery receipt. The receipt is to be handed over to the

---

<sup>40</sup> Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC.

<sup>41</sup> Directive (EU) 2019/883, Article 6(1).

<sup>42</sup> See Section 3.4.

<sup>43</sup> Article 6(4).

<sup>44</sup> Ibid, Article 7(1).

<sup>45</sup> See Section 3.4.

master, operator, or agent of the ship upon delivery by the port reception facility authorities.

Upon receiving the waste delivery receipt or before departure, Article 7(3) imposes the obligation on the master, operator, or agent of the ship<sup>46</sup> to electronically report such information as per Article 13 of the Directive<sup>47</sup> in accordance with both Directives 2002/59/EC and 2010/65/EU. Article 7(3) adds that all such information dating back to at least two years shall be made available to Member States' authorities if and when requested, along with other relevant books and plans.<sup>48</sup> The two-year obligation of retaining information onboard the ship is another crucial amendment from the repealed Directive 2000/59/EC which required the information to be kept on board until the next port of call.

Article 7(4) then deals with a narrow list of situations whereby a ship is allowed to proceed on to the next port of call without delivering the waste prior to departure from the current port. This list has been amended and now includes those ships that only call at anchorage for less than 24 hours or those that call under adverse weather conditions. This sub-article shall apply without prejudice to any regulations under international law which are more rigorous.<sup>49</sup> The Directive states that the Commission shall also adopt implementing acts to define how Member States shall calculate dedicated storage capacity.<sup>50</sup>

The following article of this section deals with cost recovery systems.<sup>51</sup> Article 8(1) reiterates that the costs of operating port reception facilities shall be covered by the collecting a fee from ships.<sup>52</sup> The draftsman also introduces Annex 4 of the Directive in this sub-article, titled '*Categories of Costs and Net Revenues related to the*

---

<sup>46</sup> Directive 2002/59/EC, Article 3.

<sup>47</sup> See Section 3.4.

<sup>48</sup> For other relevant books and plans, the Directive refers to the Oil Record Book, Cargo Record Book, Garbage Record Book or the Garbage Management Plan.

<sup>49</sup> Directive (EU) 2019/883, Article 7(6).

<sup>50</sup> Ibid, Article 7(4).

<sup>51</sup> Ibid, Article 8.

<sup>52</sup> See Annex 4 - Guidance Document to Determine the Application of Charges at Reasonable Costs for the Use of Port Reception Facilities or, when Applicable, Application of the No-Special-Fee System, in the Mediterranean (UNEP/MED IG.24/22, 2 December 2019) <<https://www.rempec.org/en/knowledge-centre/online-catalogue/guidance-document-decision-ig-24-11.pdf>>.

*Operation and Administration of Port Reception Facilities*'. The elements listed within Annex 4 are included in such costs, and they are categorised as (1) direct costs, (2) indirect costs, and (3) net revenues. The amendments made to Article 8(2) are significant in that they reflect a new approach towards cost recovery systems. The ship's payment due towards the port reception facility irrespective of its delivery of waste is now referred to as the indirect fee,<sup>53</sup> which covers all indirect administrative costs and a significant part of the direct operational costs.<sup>54</sup>

Article 8(2)(c) of Directive (EU) 2019/883 holds that Member States shall not charge a direct fee for the delivery of waste other than cargo residues as defined in MARPOL Annex V,<sup>55</sup> except for those situations whereby the volume of waste delivered is higher than the maximum dedicated storage capacity set out in Annex 2 of the Directive. The Directive also refers to the costs of collection and treatment of passively fished waste,<sup>56</sup> the delivery of residues from tank washing containing high-viscosity persistent floating substances,<sup>57</sup> and waste from gas cleaning systems.<sup>58</sup>

Interestingly, Article 8 also adds to the list of criteria on which Member States may differentiate fees. Similarly to the requirements in the repealed Directive 2000/59/EC, fees may be differentiated based on the category, type, and size of the ship. Article 8(4) of Directive (EU) 2019/883 also introduces the extent of the hazardous nature of the waste and the provision of services to ships outside regular operating hours in the port as factors towards the Member States' criteria for the calculation of fees. The Directive also adds on a new way in which fees may be reduced, as it introduces a provision that allows for fees to be reduced according to the type of trade the ship is engaged in, with express reference made to those ships involved in the short sea shipping trade.<sup>59</sup> Articles 8(6) and (7) deal with the obligations for Member States to ensure fairness and transparency when communicating the costs of port facilities to

---

<sup>53</sup> Ibid, Article 8(2)(a).

<sup>54</sup> Ibid, Article 8(2)(b).

<sup>55</sup> MARPOL Annex V, Regulations for the Prevention of Pollution by Garbage from Ships.

<sup>56</sup> Directive (EU) 2019/883, Article 8(2)(d).

<sup>57</sup> Ibid, Article 8(2)(e).

<sup>58</sup> Ibid, Article 8(2)(f).

<sup>59</sup> Ibid, Article 8(5)(a).



port users and to ensure that data on the volume and quantity of passively fished waste is collected and submitted to the Commission on a bi-yearly basis respectively.

Exemptions from the obligations in Articles 6, 7(1), and 8 have also been subject to a list of amendments. Similarly to the provisions of the repealed Directive 2000/59/EC, an exemption shall be granted in those cases where there is an arrangement ensuring delivery of the waste and payment of the fees in a port along the ship's route. However, this exemption has now become subject to several requirements.<sup>60</sup> Per Article 9(1)(b), such arrangement must be evidenced by a signed contract and by waste delivery receipts. It also has to be notified to all ports forming part of the ship's route and such arrangement needs to be accepted by the port designated to receive the delivery and payment.<sup>61</sup> In line with the exact scope of the Directive, the exemption shall not pose a negative impact on either the marine environment or the maritime safety, health, living or working conditions onboard the ship.<sup>62</sup> Member States shall report and exchange all information on exempted ships in accordance with Article 13,<sup>63</sup> and must also retain the obligation to monitor the requirement of exempted ships visiting their ports.<sup>64</sup> In spite of any exemptions granted to a ship, it shall only proceed to the next port of call if it has enough dedicated storage capacity to store all presently accumulated waste and future accumulated waste during the voyage until the next port of call.<sup>65</sup>

### **3.4. Section 4 - Enforcement**

The draftsman introduces one change to Article 10 on inspections, whereby now the Directive states explicitly that Member States have the right and obligation also to carry out random inspections.<sup>66</sup> Article 11 then deals with inspection commitments. Member States are now obliged to carry out searches on 'at least 15% of the total

---

<sup>60</sup> Argüello (n. 6) 15.

<sup>61</sup> Directive (EU) 2019/883, Articles 9(1)(b)(i)-(iii).

<sup>62</sup> Ibid, Article 9(1)(c).

<sup>63</sup> Ibid, Article 9(3).

<sup>64</sup> Ibid, Article 9(4).

<sup>65</sup> Ibid, Article 9(5).

<sup>66</sup> Ibid, Article 10.

number of individual ships' which call in their respective ports annually.<sup>67</sup> The total number of individual ships per Member State shall be ascertained by calculating an average number of individual vessels calling in such Member State over the previous three years, and the ships shall be selected for inspection based on a Union risk-based targeting mechanism which shall be defined implementing acts adopted by the Commission.<sup>68</sup> To maximise the effects of this Directive, and because that there are categories of ships falling outside the scope of Directive 2002/59/EC, Member States must establish separate procedures for the inspection of such vessels, in line with the risk-based targeting mechanism referred to in the previous sub-article.<sup>69</sup> In situations where the ship fails the inspection carried out by the relevant authority, the Member State in question shall not allow the vessel to leave the port until the waste has been delivered to one of its port reception facilities and shall also apply penalties per Articles 7 and 16 respectively.<sup>70</sup>

One of the most dominant factors which led to the imminent adoption of Directive (EU) 2019/883 is the technological progress that shall enhance cooperation for the delivery of waste from ships amongst Member States. Article 12 of the Directive states that its implementation and enforcement 'shall be facilitated by the electronic reporting and exchange of information between Member States in accordance with Articles 13 and 14'. Article 13 on reporting and exchange of information is a newly added provision aimed towards enhancing how information regarding the delivery of waste is communicated amongst Member States. The first sub-article states that all such reporting and exchange of information shall be based on the Union Maritime Information and Exchange System (hereinafter 'SafeSeaNet'). The second sub-article provides a list of all the information that shall be reported electronically and within a reasonable time, stating that Member States shall do this as per Directive 2010/65/EU. The list includes the reporting of the exact time of arrival and time of departure of every ship calling at one of the Member States' union ports together with an identifier of such port, as well as all information elicited from Annexes 2 (advance waste notification), 3 (waste delivery receipt), and 5 (exemption certificate) of the

---

<sup>67</sup> Ibid, Article 11(1).

<sup>68</sup> Ibid, Article 11(2).

<sup>69</sup> Ibid, Article 11(3).

<sup>70</sup> Ibid, Article 11(4).

Directive.<sup>71</sup> Finally, the third sub-article, making specific reference to Article 5(2) on the information derived from the waste reception and handling plan, holds that Member States shall ensure that all related data is electronically available on SafeSeaNet.

Article 14 of the Directive introduces provisions regarding the recording of inspections. Sub-article 1 establishes that ‘the Commission shall develop, maintain, and update an inspection database to which all Member States shall be connected’. It states that it shall have similar functionalities to the inspection database referred to in Article 24 of Directive 2009/16/EC.<sup>72</sup> Under this Directive, Member States must forward all information which they obtain in relation to the above-mentioned inspections to the inspection database once the report has been completed, an exemption has been granted, or else a prohibition of departure order has been lifted.<sup>73</sup> Member State access to all the information on the inspection database shall be continuous and uninterrupted.<sup>74</sup>

The Directive introduces the obligation on port authorities to ensure that all personnel are well-equipped and adequately trained to deal with waste, specifically all of its health and safety aspects.<sup>75</sup> Article 16 on penalties reflects on the provision on penalties of the repealed Directive 2000/59/EC.

### **3.5. Section 5 - Final Provisions**

Most of the provisions in this section do not require transposition into Maltese law since they deal with procedural requirements at Commission level. Article 17 states that the Commission shall provide for the organisation of exchanges of experience in relation to the application of the new Directive (EU) 2019/883 in Union ports amongst Member States' stakeholders.<sup>76</sup> Article 18 empowers the Commission to

---

<sup>71</sup> Ibid, Article 13(2).

<sup>72</sup> Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (Recast).

<sup>73</sup> Directive (EU) 2019/883, Article 14(2).

<sup>74</sup> Ibid, Article 14(4).

<sup>75</sup> Ibid, Article 15.

<sup>76</sup> In this case, the stakeholders would be national authorities and experts, including those from the private sector, civil society, and trade unions.

adopt delegated acts in a number of situations. Firstly, the Commission may, at any time, amend the Annexes to the Directive to bring such Annexes in line with Union law<sup>77</sup> and also to improve the implementation and monitoring arrangements initially established by the same Directive.<sup>78</sup> Secondly, and only after appropriate analysis, the Commission is empowered to adopt delegated acts to proportionately amend the Directive to avoid a severe and unacceptable threat to the marine environment.<sup>79</sup> This would include amendments made to the MARPOL Convention. In this case, such delegated acts shall be adopted at least three months prior to the date of entry into force or expiration of the tacit international acceptance of the amendment, which would have been made to the MARPOL Convention accordingly.

Subject to a number of conditions, Article 19 regulates the power given to the Commission to adopt those delegated acts referred to in previous Articles.<sup>80</sup> Such power referred to in Article 18 is conferred on the Commission for five years, which started from 27 June 2019. A report shall be drawn up by the Commission in respect of the delegation of power by not later than nine months before the expiration of the five-year period, being 27 June 2024. Unless there is formal opposition by either the European Parliament or the Council which shall be made not later than three months prior to the end of the five-year period, there shall be a tacit extension of the delegation of power for another five-year period. This process shall repeat itself every five years.<sup>81</sup>

Notwithstanding the time extensions referred to in Article 19(2), the European Parliament and the Council both independently enjoy the right to revoke the delegation of power referred to in Article 18 at any time. Unless otherwise specified, the decision to withdraw the delegation of any authority takes effect one day after the publication of such a decision in the Official Journal of the European Union. The validity of delegated acts already in force shall not be affected.<sup>82</sup> Article 19 also

---

<sup>77</sup> Directive (EU) 2019/883, Article 18(1).

<sup>78</sup> *Ibid*, Article 18(2).

<sup>79</sup> *Ibid*, Article 18(3).

<sup>80</sup> *Ibid*, Article 19(1).

<sup>81</sup> *Ibid*, Article 19(2).

<sup>82</sup> *Ibid*, Article 19(3).

establishes the need for the Commission to consult experts from each Member State prior to adopting a delegated act.<sup>83</sup> It adds that upon adoption of a delegated act, both the European Parliament and the Council shall be simultaneously notified by the Commission.<sup>84</sup> Nevertheless, the delegated act shall only enter into force if the European Parliament and Council do not object within two months from such notification, or if they both expressly inform the Commission that they will not object. Such a period is extendable by a further two months.<sup>85</sup>

Article 20 on the committee procedure states that the Committee on Safe Seas and the Prevention of Pollution from Ships which was established by Regulation (EC) 2099/2002<sup>86</sup> shall serve as the committee assisting the Commission within the meaning of Article 5 of Regulation (EU) 182/2011<sup>87</sup> on examination procedure.

Article 21 amends point 4 '*Notification of security information*' of point A '*Reporting formalities resulting from legal acts of the Union*' of the Annex to Directive 2010/65/EU titled '*List of Reporting Formalities referred to in this Directive*'. The amendment reflects the adoption of Directive (EU) 2019/883 which formally repeals Directive 2000/59/EC as per Article 22. This Directive shall be reviewed and evaluated by the Commission which shall submit the results of said review to the European Parliament and Council by 28 June 2026.<sup>88</sup> Upon the following review of the European Maritime Safety Agency mandate, the Commission shall also assess whether such agency should be granted more competencies in ensuring the enforcement of this Directive.<sup>89</sup> Finally, Article 24 states that the Directive shall be transposed into national laws by 28 June 2021. Member States shall immediately inform the Commission of its compliance once the relevant domestic legislation is brought into force.

---

<sup>83</sup> Ibid, Article 19(4).

<sup>84</sup> Ibid, Article 19(5).

<sup>85</sup> Ibid, Article 19(6).

<sup>86</sup> Regulation (EC) 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships.

<sup>87</sup> Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

<sup>88</sup> Ibid, Article 23(1).

<sup>89</sup> Ibid, Article 23(2).

## 4. Transposing Directive (EU) 2019/883 Maltese Law

### 4.1. Introduction

The EU strives to accomplish its aims *via* legal acts. The Treaty on the Functioning of the European Union (hereinafter 'TFEU')<sup>90</sup> speaks of five distinct legal acts: regulations, directives, decisions, recommendations, and opinions.<sup>91</sup> Firstly, the legal acts which are not binding are recommendations and opinions.<sup>92</sup> On the other hand, regulations, directives, and decisions are binding.

EU laws aimed to address specific cases within certain EU Member States are normally enacted through decisions that are binding only on those Member States to whom such decisions are addressed. There are also regulations that are all those legal acts intended to be directly effective and applicable in their entirety to Member States.

Directives are legal acts in which the EU sets out goals with which a result must be achieved. Article 288 of TFEU states that a directive 'shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'.<sup>93</sup> When transposing directives, Member States are provided with a certain level of drafting discretion that should be used to best reflect the most efficient way in which that particular State may reach the directives' goals. Directive (EU) 2019/883 is the EU legal act that regulates port reception facilities for the delivery of waste from ships. Section 1 on the general provisions outlines the aims and scope of this Directive accordingly.<sup>94</sup>

The two main ports in Malta where the most maritime activity occurs are the Ports of Marsaxlokk and Valletta. Other ports include the Port of Marsamxett, Port of Cirkewwa, and the Port of St.Paul's Bay. The Port of Mgarr is situated in Malta's sister island, Gozo.<sup>95</sup>

---

<sup>90</sup> Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326.

<sup>91</sup> TFEU, Article 288.

<sup>92</sup> Both recommendations and opinions do not have a binding effect. See <[https://europa.eu/european-union/law/legal-acts\\_en](https://europa.eu/european-union/law/legal-acts_en)> accessed on 30 March 2021.

<sup>93</sup> TFEU, Article 288.

<sup>94</sup> See Section 3.1.

<sup>95</sup> Ports in Malta, Maritime, Transport Malta <<https://www.transport.gov.mt/maritime/local-waters/ports-in-malta-113>> accessed on 2 April 2021.

## **4.2. Enacting Directive (EU) 2019/883 & Repealing Directive 2000/59/EC**

The new Directive (EU) 2019/883 has repealed Directive 2000/59/EC, which means that it has completely replaced it at EU level. Directive 2000/59/EC was transposed into Maltese law by Subsidiary Legislation (hereinafter 'SL') 499.30<sup>96</sup> on 15 May 2004 through Legal Notice 278 of 2004, and was later amended by Legal Notices 290 of 2006 and 425 of 2007; Act XV of 2009; and Legal Notices 332 of 2012 and 364 of 2016.

In order for Maltese law to be reflective of the developments which have been made to ensure more vigorous and robust rules in relation to port reception facilities for the delivery of waste from ships at EU level through Directive (EU) 2019/883, S.L. 499.30 shall be repealed *in toto* by means of a legal notice. It shall be replaced by the enactment of new regulations, also by means of a legal notice, which shall be titled '*Port Reception Facilities for Delivery of Waste Regulations, 2021*' (hereinafter 'the Regulations').

Under the laws of Malta, SL also involves those regulations which Parliament delegates to a particular officer or body, who in turn would be given the power to pass such legislation. This is normally done in relation to the more technical legislative instruments such as the one in question. In this case, the Authority for Transport in Malta Act<sup>97</sup> delegates to the Minister responsible for Transport the power to make regulations in respect of any of the functions of the authority, being Transport Malta, in connection with matters relating to transport by sea, after having consulted with said authority.<sup>98</sup> This means that the Regulations shall only be transposed into Maltese law if approved by the Minister responsible for Transport. Upon the Minister's approval, the Regulations shall be published on the Malta Government Gazette by means of a legal notice. Once this step is completed, the Regulations shall be formally incorporated into the Laws of Malta as SL to the Authority for Transport in Malta Act.

---

<sup>96</sup> Subsidiary Legislation 499.30 of the Laws of Malta on Port Reception Facilities for Ship-generated Wastes and Cargo Residues Regulations.

<sup>97</sup> Chapter 499 of the Laws of Malta.

<sup>98</sup> *Ibid*, Article 43.

The drafting style of the legal notice transposing Directive (EU) 2019/883 into Maltese law shall primarily be characterised as being a hybrid of S.L. 499.30 together with the Directive itself.

### **4.3. Amending Directive 2010/65/EU**

Article 21 of Directive (EU) 2019/883 points out one technical amendment that shall be made to sub-point 4 of point A of the Annex to Directive 2010/65/EU.<sup>99</sup> Directive 2010/59/EC was transposed into Maltese law by S.L.499.34<sup>100</sup> on 1 November 2004 through Legal Notice 458 of 2004, and was later amended by Legal Notices 153 of 2006 and 298 and 425 of 2007; Act XV of 2009; and Legal Notices 506 of 2010, 449 of 2011, 333 of 2012 and 333 of 2019. The amendment to this Directive merely reflects the replacement of Directive 2000/59/EC with Directive (EU) 2019/883 as the existing legislation of port reception facilities for ship-generated waste and cargos and shall also be enacted by means of a legal notice.

### **4.4. Issuing Port Notice by Transport Malta on Cost-Recovery Fees**

Upon the coming into force of the Regulations, the Ports and Yachting Directorate at Transport Malta shall revoke its Port Notice No. 01/17<sup>101</sup> which establishes the Ship-Generated Waste Management. A new port notice establishing cost recovery systems shall be enacted to reflect the new provisions enacted through the Regulations on port fees in relation to the delivery of waste.

### **4.5. Conclusion**

In accordance with Article 24 of the Directive, Malta shall bring into force the necessary provisions by 28 June 2021. These Regulations shall also make reference to Directive (EU) 2019/883 itself. Upon adoption, Malta shall communicate the text of these Regulations to the Commission.<sup>102</sup>

---

<sup>99</sup> See Section 3.5.

<sup>100</sup> Subsidiary Legislation 499.34 of the Laws of Malta on Vessel Traffic Monitoring and Reporting Requirements Regulations.

<sup>101</sup> Port Notice No. 01/17, Transport Malta <<https://www.transport.gov.mt/2017-01-Ship-Generated-Waste-Managment-Fee.pdf-f4079>> accessed on 20 April 2021.

<sup>102</sup> Directive (EU) 2019/883, Article 24(2).



Prior to drafting the Regulations, background checks were carried out which confirm that there are no new relevant amendments to either Directive (EU) 2019/883 or to Annex V of MARPOL. These checks were carried out in order to verify that the Regulations which are being transposed reflect the current status of the Directive.

# Introducing the Port Reception Facilities for the Delivery of Waste from Ships Regulations

L.N. \_\_\_\_ of 2021

## Authority for Transport in Malta Act (CAP. 499)

### Port Reception Facilities for the Delivery of Waste from Ships Regulations, 2021

IN EXERCISE of the powers conferred by article 43(1) and (3) of the Authority for Transport in Malta Act, the Minister for Transport, Infrastructure, and Capital Projects, after consultation with the Authority for Transport in Malta, has made the following regulations:-

1. (1) The title of these regulations is the Port Reception Facilities for Delivery of Waste Regulations, 2021.

Title and  
Commencement

(2) These regulations shall come into force on 28 June 2021.

2. These regulations bring into effect the provisions of the Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC. This Directive aims to protect the marine environment against against the negative effects from discharges of waste from ships using ports and terminals located in the European Union, while ensuring the smooth operation of maritime traffic.

Scope

3. (1) In these regulations, unless the context otherwise requires:

Interpretation

"the Act" means the Authority for Transport in Malta Act;

Cap. 499

"appropriate inspector" shall mean any officer representing the Authority and appointed in terms of the Merchant Shipping Act;

Cap. 234

"Authority" means the Authority for Transport in Malta as established by the Act;

Cap. 499

"authorised port reception facility" means a port waste reception facility that holds a valid permit issued under the Waste Regulations, made under the Environment Protection Act;

S.L. 549.64  
Cap. 549

"cargo residues" means the remnants of any cargo material on board which remain on the deck or in holds or tanks following loading and unloading, including loading and unloading excess or spillage, whether in wet or dry condition or entrained in wash-water, excluding cargo dust remaining on the deck after sweeping or dust of the external surfaces of the ship;

"MARPOL Convention" means the International Convention for the Prevention of Pollution from Ships, in its up-to-date version;

"port" means a place or a geographical area made up of such improvement works and equipment designed principally to permit the reception of ships, including the anchorage area within the jurisdiction of the port;

"passively fished waste" means waste collected in nets during fishing operations;

"port reception facility" means any facility which is fixed, floating or mobile and capable of providing the service of receiving the waste from ships;

"regular port or terminal calls" means repeated voyages of the same ship forming a constant pattern between identified ports or terminals or a series of voyages from and to the same port or terminal without intermediate calls;

"scheduled traffic" means traffic based on a published or planned list of times of departures and arrivals between identified ports and terminals or recurrent crossings that constitute a recognised schedule;

"ship" means a seagoing vessel of any type operating in the marine environment, including fishing vessels, recreational craft, hydrofoil boats, air-cushion vehicles, submersibles and floating craft;

"sufficient dedicated storage capacity" means enough capacity to store the waste on board from the moment of departure until the next port of call, including the waste that is likely to be generated during the voyage;

"terminal" means a place where ships are moored, berthed or docked to obtain services such as handling of cargo or passengers, repairs, waste removal, bunkering, laid-up and any other services related to ships and maritime activities.

"waste from ships" means all waste, including cargo residues, which is generated during the service of a ship or during loading, unloading and cleaning operations and which falls within the scope of Annexes I, II, IV, V and VI to MARPOL Convention, as well as passively fished waste;

(2) Without prejudice to the above definition of "waste from ships", it shall be considered to be waste within the meaning of Article 3(1) of Directive 2008/98/EC on waste.

(3) For the purpose of these regulations, the competent authority in Malta shall be the Authority for Transport in Malta, and in respect of any other State, the authority designated as such by the Government.

4. (1) These regulations shall apply to any port or terminal within a port in Malta.

Applicability

For the purpose of these regulations, and to avoid undue delay to ships, the Authority may decide to exclude the anchorage area from its ports and terminals for the purposes of the application of regulations 7, 8 and 9.

(2) These regulations shall apply to all ships, irrespective of their flag, calling at, or operating within, any port or terminal in Malta with the exception of any warship, naval auxiliary, or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.

(3) Sub-regulation (2) does not apply to ships engaged in port services inside the port area or on the waterway access to the port within the meaning of Article 1(2) of Regulation (EU) 2017/352.

(4) The port or terminal operator shall take measures to ensure that, where reasonably possible, ships which do not fall within the scope of these Regulations deliver their waste in a manner consistent with these Regulations.

(5) These regulations shall apply without prejudice to any regulations issued under the Environment Protection Act, in particular the Waste Regulations.

Cap. 549  
S.L. 549.63

5. (1) The port or terminal operator shall ensure that adequate authorised port reception facilities be available to meet the needs of ships normally using the port or terminal in question without causing undue delay to ships.

(2) In sub-regulation (1), "adequate" means capable of receiving the types and quantities of prescribed waste from ships normally using that port or terminal, taking into account the :

- (a) operational needs of the users of the port or terminal;
- (b) size and geographical location of that port or terminal;
- (c) type of ships calling at the port or terminal; and
- (d) the exemptions provided for under regulation 10.

(3) For the purposes of point (d) of sub-regulation (2), the port or terminal operator shall ensure separate collection to facilitate reuse and recycling of waste from ships in ports and terminals as required under regulations issued under the Environment Protection Act, in particular the Waste Management (Waste Battery and Accumulators) Regulations, the Waste Regulations, and the Waste Management (Electrical and Electronic Equipment) Regulations.

Cap. 549  
S.L. 549.54

S.L. 549.63  
S.L. 549.89

In order to facilitate this process, the port or terminal operator may ensure that port reception facilities may collect the separate waste fractions in accordance with waste categories defined in the MARPOL Convention, taking into account the guidelines thereof.

(4) Point (d) of the sub-regulation (2) shall apply without prejudice to the more stringent requirements imposed by Regulation (EC) No 1069/2009 for the management of catering waste from international transport.

(5) The port or terminal operator shall also ensure that the :

- (a) formalities and practical arrangements relating to the use of port reception facilities is simple and expeditious to avoid undue delay to ships;
- (b) fees charged for delivery do not create a disincentive for ships to use the port reception facilities; and
- (c) port reception facilities allow for the management of the waste from ships in an environmentally sound manner in accordance with Directive 2008/98/EC and any regulations issued under the Environment Protection Act, in particular the Waste Regulations.

Cap. 549  
S.L. 549.63

(6) The port or terminal operator or in his default, the Authority shall ensure that waste delivery or reception operations are carried out with sufficient safety measures to avert risks to persons and the environment at ports and terminals covered by these regulations.

(7) The Authority for Transport in Malta shall ensure that any party involved in the delivery or reception of waste from ships can claim compensation for damage caused by undue delay.

(8) A port or terminal operator may, in discharging its duty under sub-regulation (1), join with any other person in providing the port reception facilities, and references in these regulations to the provision of such facilities by the port or terminal operator shall be construed accordingly, and any such power shall also include power to arrange for the provision of such port reception facilities by any other person.

**6.** (1) A port or terminal operator shall prepare a Waste Reception and Handling Plan with respect to the provision and use of port reception facilities in consultation with all stakeholders for the port or terminal which they operate.

Waste  
Reception  
and  
Handling  
Plans

(2) A Waste Reception and Handling Plan prepared under this regulation shall comply with the requirements in the First Schedule.

(3) A port or terminal operator shall submit the first Waste Reception and Handling Plan to the Authority for approval in accordance with sub-regulation (1) within six months from the coming into force of these regulations.

(4) A port operator for a new port, or a terminal operator for a new terminal, shall submit a Waste Reception and Handling Plan to the Authority for approval in accordance with sub-regulation (1), within three months from its first day of operation.

(5) A port or terminal operator shall submit subsequent Waste Reception and Handling Plans to the Authority for approval in accordance with sub-regulation (1) -

- (a) within nine months of any significant change pursuant to sub-regulation (10) to the operation of the port or terminal since the most recent Waste Reception and Handling Plan was approved by the Authority pursuant to sub-regulation (7) or prepared by him pursuant to sub-regulation (1); or
- (b) where no significant change in the port or terminal has occurred, no later than five years after the most recent plan was approved by the Authority pursuant to sub-regulation (7) or prepared by him pursuant to sub-regulation (1), whichever is the sooner.

(6) If the Authority is satisfied that a person who is required to prepare a Waste Reception and Handling Plan is not taking any steps necessary in connection with the preparation of the plan the Authority may, in consultation with the competent authority nominated by the Minister responsible for the environment under the Environment Protection Act, prepare such a plan.

Cap. 549

(7) The Authority may, in consultation with the competent authority nominated by the Minister responsible for the environment under the Environment Protection Act, either approve the Waste Reception and Handling Plan or request modifications thereto and a modified plan to be submitted within a date as directed by the Authority.

Cap. 549

(8) A Waste Reception and Handling Plan that has been approved by the Authority pursuant to sub-regulation (7) or prepared by the Authority pursuant to sub-regulation (6) shall be implemented by the port or terminal operator for the port or terminal to which the plan relates.

(9) The Authority may direct a port or terminal operator to take such steps as are specified for the purposes of ensuring the implementation of a Waste Reception and Handling Plan.

(10) Significant changes in the operation of a port or terminal may include :

- (a) structural changes in traffic to the port;
- (b) development of new infrastructure;
- (c) changes in the demand and provision of port reception facilities; and
- (d) new on-board treatment techniques.

7. (1) The master, operator, or agent of a ship which falls under the scope of regulation 4 of the Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations bound for a port or terminal shall complete truly and accurately the form in the Second Schedule and notify that information to the Authority -

Advance  
waste  
notification

S.L. 499.12

- (a) at least 24 hours prior to arrival, if the port of call is known; or
- (b) as soon as the port of call is known, if this information is available less than 24 hours prior to arrival; or
- (c) at the latest upon departure from the previous port, if the duration of the voyage is less than 24 hours.

(2) It shall be the duty of the master, operator, or agent of a ship to communicate also such information to the port or terminal operator at which the ship will be calling and to call for the authorised port reception facility.

(3) The information from the advance waste notification shall be reported electronically in that part of the information, monitoring and enforcement system referred to in regulation 13, in accordance with the Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations and Vessel Traffic Monitoring and Reporting Requirements Regulations.

S.L. 499.12  
S.L. 499.34

(4) The information referred to in sub-regulation (1) shall be kept on board at least until the next port of call and shall, upon request, be made available to the competent authority.

(5) Any notification or reporting formality obligation that is required in accordance with the provisions of these regulations shall be subject to the provisions of the Vessel Traffic Monitoring and Reporting Requirements Regulations.

S.L. 499.34

**8.** (1) The master, operator, or agent of a ship calling at a port or terminal shall, before leaving the port or terminal, deliver all its waste carried on board to a port reception facility in accordance with the relevant discharge norms laid down in the MARPOL Convention.

Delivery of  
waste from  
ships

(2) Upon delivery, the port or terminal operator from where the waste was delivered shall truly and accurately complete the form set out in the Third Schedule and issue and provide, without undue delay, the waste delivery receipt to the master, operator, or agent of the ship.

(3) Notwithstanding sub-regulation (1), a ship may proceed to the next port of call without delivering the waste, if :



- (a) the information provided in accordance with the Second and Third Schedules shows that there is sufficient dedicated storage capacity for all waste that has been accumulated and will be accumulated during the intended voyage of the ship until the next port of call;
- (b) the information available on board ships falling outside the scope of the Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations shows that there is sufficient dedicated storage capacity for all waste that has been accumulated and will be accumulated during the intended voyage of the ship until the next port of call; or
- (c) the ship only calls at anchorage for less than 24 hours or under adverse weather conditions, unless such an area has been excluded in accordance with the second sub-paragraph of Article 4(1).

S.L. 499.12

Sub-paragraph (3) shall apply without prejudice to more stringent requirements for ships adopted in accordance with international law.

(4) Prior to departure, or as soon as the the waste delivery receipt has been received, the master, operator, or agent of a ship shall electronically report the information contained therein in that part of the information, monitoring and enforcement system referred to in regulation 13, in accordance with the Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations and Vessel Traffic Monitoring and Reporting Requirements Regulations.

S.L. 499.12  
S.L. 499.34

The information from the waste delivery receipt shall be available on board for at least two years, where relevant with the appropriate Oil Record Book, Cargo Record Book, Garbage Record Book or the Garbage Management Plan, and shall be made available upon request to the Member States' authorities.

(5) If it cannot be established whether adequate facilities are not available at the intended port of delivery, or if this port is unknown, and that there is therefore a risk that the waste will be discharged at sea, the Authority may request the master, operator, or agent of the ship to deliver all its waste before departure from the port or terminal.

9. (1) The Authority shall ensure that the costs of operating port reception facilities for the reception and treatment of waste from ships, other than cargo residues, are covered through the collection of a fee from ships. Those costs include the elements listed in the Fourth Schedule.

(2) The Authority shall ensure that the cost recovery systems shall provide no incentive for ships to discharge their waste at sea. To this end, the Authority shall apply all of the following principles in the design and operation of the cost recovery systems:

- (a) ships shall pay an indirect fee, irrespective of delivery of waste to a port reception facility;
- (b) the indirect fee shall cover:
  - a) the indirect administrative costs;
  - b) a significant part of the direct operational costs, as determined in the Fourth Schedule, which shall represent at least 30% of the total direct costs for actual delivery of the waste during the previous year, with the possibility of also taking into account costs related to the traffic volume expected for the coming year;
- (c) in order to provide for a maximum incentive for the delivery of MARPOL Annex V waste other than cargo residues, no direct fee shall be charged for such waste, in order to ensure a right of delivery without any additional charges based on the volume of waste delivered, except where the volume of waste delivered exceeds the maximum dedicated storage capacity mentioned in the form set out in the Second Schedule to these regulations; passively fished waste shall be covered by this regime, including the right of delivery;
- (d) in order to avoid that the costs of collection and treatment of passively fished waste are borne exclusively by port users, the Authority shall cover, where appropriate, those costs from the revenues generated by alternative financing systems, including by waste management schemes and by Union, national or regional funding available;
- (e) in order to encourage the delivery of residues from tank washing containing high-viscosity persistent floating substances, the Authority may provide for appropriate financial incentives for their delivery;

(f) the indirect fee shall not include the waste from exhaust gas cleaning systems, the costs of which shall be covered on the basis of the types and quantities of waste delivered.

(3) The part of the costs which is not covered by the indirect fee, if any, shall be covered on the basis of the types and quantities of waste actually delivered by the ship. The fee payable to the Authority under this sub-regulation shall be as established, from time to time, by the Authority and may differentiate on the following basis:

(a) the category, type and size of the ship;

(b) the provision of services to ships outside normal operating hours in the port; or

(c) the hazardous nature of the waste.

(4) The fee payable to the Authority under sub-regulation (3) shall be reduced by the Authority on the following basis:

(a) the type of trade the ship is engaged in, in particular when a ship is engaged in short sea shipping trade;

(b) the ship's design, equipment and operation demonstrate that the ship produces reduced quantities of waste, and manages its waste in a sustainable and environmentally sound manner.

(5) The Authority shall arrange for the amount of the fee which it establishes, and the basis on which it has been calculated, to be published both in the English and Maltese languages, in such manner as will bring it to the notice of persons likely to be affected.

(6) The Authority shall ensure that monitoring data on the volume and quantity of passively fished waste are collected, and shall report such monitoring data to the Commission.

**10.** (1) The Authority may exempt a ship calling at a port or terminal from the obligations in regulations 7, 8 and 9 where there is sufficient evidence that the following conditions are met:

Exemptions

(a) the ship is engaged in scheduled traffic with frequent and regular port or terminal calls;

(b) there is an arrangement to ensure the delivery of the waste and payment of the fees in a port along the ship's route which:

a) is evidenced by a signed contract with a port or waste contractor and by waste delivery receipts;

b) has been notified to all ports or terminals on the ship's route; and

c) has been accepted by the port or terminal where the delivery and payment take place, which can be a Union port or terminal or another port or terminal in which, as established on the basis of the information reported electronically into that part of the information, monitoring and enforcement system referred to in Article 13 and in GISIS, adequate facilities are available;

(c) the exemption does not pose a negative impact on maritime safety, health, shipboard living or working conditions or on the marine environment.

(2) If the exemption is granted, the port or terminal operator shall issue an exemption certificate, based on the format set out in the Fifth Schedule, confirming that the ship meets the necessary conditions and requirements for the application of the exemption and stating the duration of the exemption.

(3) The Authority shall report the information from the exemption certificate electronically in that part of the information, monitoring and enforcement system referred to in regulation 13.

(4) The Authority shall ensure effective monitoring and enforcement of the arrangements for the delivery and payment in place for the exempted ships visiting its ports and terminals.

(5) Notwithstanding the exemption granted, a ship shall not proceed to the next port of call if there is insufficient dedicated storage capacity for all waste that has been accumulated and that will be accumulated during the intended voyage of the ship until the next port of call.

**11.** (1) The Authority shall ensure that any ship may be subject to an inspection in order to verify that it complies with the provisions of these regulations.

(2) The Authority shall carry out inspections of ships calling in its ports or terminals corresponding to at least 15% of the total number of individual ships calling in its ports or terminals annually. The total number of individual ships calling in shall be calculated as the average number of individual ships over the previous three years, as reported through that part of the information, monitoring and enforcement system referred to in regulation 13.

(3) The Authority shall use a Union risk-based targeting mechanism when selecting ships for inspections on those ships falling within the scope of these regulations and also on those ships that fall outside the scope of the Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations.

S.L. 499.12

(4) Where the Authority becomes aware or has clear evidence that the, master, operator, or agent of a ship has not complied with the provisions of regulations 7 and 8, or considers that there are clear grounds for believing that the declaration made as per the Second Schedule does not correspond substantially with the state of the ship, it may request an inspection of the ship by an appropriate inspector.

(5) The Authority may detain a ship in the port if it did not deliver its wastes in accordance with these regulations until such a date to ensure compliance with the provisions of these regulations.

(6) Where there is clear evidence that a ship has proceeded to sea without having complied with regulation 8, the Authority shall, if the next port of call of the ship is a port or terminal of another European Union Member State, inform the competent authority of the State in which the port is situated about the ship and the evidence.

(7) Where the Authority has been informed by the competent authority of another state of a ship in respect of which there is clear evidence of the type mentioned in sub-regulation (4), the Authority may request an inspection of the ship by an appropriate inspector at the earliest opportunity.

(8) The Authority shall not in the exercise of its power under this regulation detain or delay the ship without any reason.

**12.** (1) The Authority shall appoint any person to examine, investigate or inspect a port or terminal, or an authorised port reception facility or any relevant document. A person appointed by the Authority to carry out such functions shall have power to -

- (a) board freely, and without previous notice, a ship at any place and at any time of day or night;
- (b) enter into freely, and without previous notice, any port or terminal operator's premises or building at any place and at any time of day or night;
- (c) request the assistance of a member of the Police force in the execution of his duties;
- (d) question any person connected with the execution of these regulations;
- (e) inspect any document the keeping of which is prescribed by these regulations.

(2) Whoever shall hinder or obstruct a person appointed by the Authority from allowing him to carry out his duties under these regulations or refuses to comply with the directions which he may give shall be guilty of an offence.

**13.** The implementation and enforcement of these regulations shall be facilitated by the electronic reporting and exchange of information between European Union Member States in accordance with regulations 14 and 15.

Information,  
monitoring and  
enforcement  
system

**14.** (1) The Authority shall ensure that the following information is reported electronically and within reasonable time in accordance with Vessel Traffic Monitoring and Reporting Requirements Regulations:

Reporting and  
exchange of  
information

S.L. 499.34

- (a) the information on the actual time of arrival and time of departure of every ship falling within the scope of Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations which calls at a port or terminal of a European Union Member State, together with an identifier of the port or terminal concerned;

S.L. 499.12

(b) the information from the advance waste notification, as set out in the Second Schedule;

(c) the information from the waste delivery receipt, as set out in the Third Schedule;

(d) the information from the exemption certificate, as set out in Fifth Schedule.

**15.** The Authorities shall ensure that the information related to inspections under these regulations, including information regarding non-compliance and prohibition of departure orders issued, is transferred without delay to an inspection database, as established by regulation 14(1) of Directive (EU) 2019/883, as soon as (i) the inspection report has been completed; (ii) the prohibition of departure order has been lifted; or (iii) an exemption has been granted.

Recording of inspections.

**16.** The Authority shall ensure that all personnel receive the necessary training to acquire the knowledge which is essential for their work on dealing with waste, with specific attention to health and safety aspects pertaining to dealing with hazardous materials, and that training requirements are regularly updated to meet the challenges of technological innovation.

Training of personnel

**17.** (1) If a port operator or terminal operator or master, operator, or agent of a ship fails to comply with any of the requirements of these regulations or directives given by the Authority or the provisions of the Waste Reception and Handling Plan, the Authority shall hand over to such person a notice containing a general description of the offence and may -

Penalties

(a) require the master, operator, or agent of a ship to remove its waste within such a time and to such a place as he may require and if he fails to comply, the Authority may cause removal of such waste at the risk and expense of the master, operator, or agent of the ship;

(b) impose a penalty of not more than €11,646.87 in respect of each such offence and in the case of a continuing offence or offences, to a further fine not exceeding €1,164.69 for each offence for every day or part thereof;

(c) the penalty shall be paid to the Authority within such time indicated in the notice, which in no case shall be less than seven days, provided that where any penalty imposed under this regulation is not paid within the aforementioned period, ordinary proceedings in respect of the offence may be taken in accordance with the provisions of these regulations;

(d) notwithstanding paragraphs (a) and (b), the Authority may also order the detention of ship until such time as the contravention is rectified.

(2) The compliance of the port operator or terminal operator or master, operator, or agent of a ship with the provisions of sub-regulation (1) shall for all intents and purposes of law, be deemed to be an admission of the commission of the offence, and no further action shall be taken in respect of such offence.

(3) Where any offence against the provisions of these regulations is committed by a body of persons or body corporate, every person who, at the time of the commission of the offence was a director, manager or other similar officer of such body of persons or body corporate, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

(4) Whenever, a port operator or terminal operator or master, operator, or agent of a ship fails to comply with the provision of sub-regulation (1), the Authority may commence proceedings for an offence against these regulations before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, and shall be in accordance with the provisions of the Criminal Code regulating the procedure before the said courts as courts of criminal judicature. The fine (*multa*) for a first offence shall not exceed €11,646.87 for each such offence, and in the case of a continuing offence or offences, to a further fine not exceeding €1,164.69 for each offence for every day or part thereof.

Cap. 9

**18.** Without prejudice to the provisions of regulation 9, all other fees payable to the Authority in terms of these regulations shall be as established, from time to time, by the Authority.

Other fees.



## FIRST SCHEDULE

### Requirements for Waste Reception and Handling Plans in ports (as referred to in regulation 6)

A Waste Reception and Handling Plan shall cover all types of waste from ships normally visiting the port or terminal and shall be developed according to the size of the port or terminal and the types of ships calling at that port or terminal.

A Waste Reception and Handling Plan shall include the following elements:

- (a) an assessment of the need for port reception facilities, in light of the need of the ships normally visiting the port or terminal;
- (b) a description of the type and capacity of port reception facilities;
- (c) a detailed description of the procedures for the reception and collection of waste from ships;
- (d) a description of the cost recovery system;
- (e) a description of the procedure for reporting alleged inadequacies of port reception facilities;
- (f) a description of the procedure for ongoing consultations with port or terminal users, authorised waste management undertakings, terminal operators and other interested parties; and
- (g) an overview of the type and quantities of waste received from ships and handled in the facilities.

In addition, a Waste Reception and Handling Plan should include:

- (a) a summary of relevant national law and the procedure and formalities for the delivery of the waste to port reception facilities;
- (b) an identification of a point of contact in the port;
- (c) a description of the pre-treatment equipment and processes for specific waste streams in the port or terminal, if any;
- (d) a description of methods for recording the actual use of the port reception facilities;
- (e) a description of methods for recording the amounts of waste delivered by ships; and
- (f) a description of methods for managing the different waste streams in the port.

The procedures for reception, collection, storage, treatment and disposal should conform in all respects to an environmental management scheme suitable for the progressive reduction of the environmental impact of these activities. Such conformity is presumed if the procedures are in compliance with the Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November, 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

A Waste Reception and Handling Plan shall provide for the following information to be made available to all port and terminal users using the port or terminal:

- (g) location of port reception facilities, applicable to each berth, and where relevant, their opening hours;
  - (h) list of waste from ships normally managed by the port or terminal;
  - (i) list of contact points, the port reception facility operators and the services offered;
  - (j) description of the procedures for delivery of the waste;
  - (k) description of the cost recovery system, including waste management schemes and funds as referred to in Annex 4, where applicable.
-

## SECOND SCHEDULE

### STANDARD FORMAT OF THE ADVANCE NOTIFICATION FORM FOR WASTE DELIVERY TO PORT RECEPTION FACILITIES

Notification of the delivery of waste to: ..... (enter name of port of call, as referred to in Article 6 of Directive (EU) 2019/883)

This form should be retained on board the ship along with the appropriate Oil Record Book, Cargo Record Book, Garbage Record Book or Garbage Management Plan as required by the MARPOL Convention.

#### 1. SHIP PARTICULARS

1.1. NAME OF SHIP :	1.5 OWNER OR OPERATOR :
1.2 IMO NUMBER :	1.6 DISTINCTIVE NUMBER OR LETTERS :
	MMSI (MARITIME MOBILE SERVICE IDENTITY) NUMBER :
1.3 GROSS TONNAGE :	1.7 FLAG STATE :
1.4 TYPE OF SHIP : <input type="checkbox"/> Oil Tanker <input type="checkbox"/> Chemical Tanker <input type="checkbox"/> Container <input type="checkbox"/> Bulk Carrier <input type="checkbox"/> Other Cargo Ship <input type="checkbox"/> Passenger Ship <input type="checkbox"/> Ro-ro <input type="checkbox"/> Other (specify)	

#### 2. PORT AND VOYAGE PARTICULARS

2.1 LOCATION/TERMINAL NAME :	2.6 LAST PORT WHERE WASTE WAS DELIVERED :
2.2 ARRIVAL DATE AND TIME :	2.7 DATE OF LAST DELIVERY :
2.3 DEPARTURE DATE AND TIME :	2.8 NEXT PORT OF DELIVERY :
2.4 LAST PORT AND COUNTRY :	2.9 PERSON SUBMITTING THIS FORM (IF OTHER THAN THE MASTER) :
2.5 NEXT PORT AND COUNTRY :	

#### 3. TYPE AND AMOUNT OF WASTE AND STORAGE CAPACITY

Type	Waste to be delivered (m <sup>3</sup> )	Maximum dedicated storage capacity (m <sup>3</sup> )	Amount of waste retained on board (m <sup>3</sup> )	Port at which remaining waste will be delivered	Estimated amount of waste to be generated between notification and next port of call (m <sup>3</sup> )
MARPOL ANNEX I - OIL					
OILY BILGE WATER					
OILY RESIDUES (SLUDGE)					
OILY TANK WASHINGS					
DIRTY BALLAST WATER					
SCALE AND SLUDGE FROM TANK CLEANING					
OTHER (PLEASE SPECIFY)					
MARPOL ANNEX II - NOIXUOUS LIQUID SUBSTANCES (NLS) (1)					
CATEGORY X SUBSTANCE					
CATEGORY Y SUBSTANCE					
CATEGORY Z SUBSTANCE					
OS - OTHER SUBSTANCES					
MARPOL ANNEX IV - SEWAGE					
MARPOL ANNEX V - GARBAGE					
A. PLASTICS					
B. FOOD WASTE					
C. DOMESTIC WASTE (E.G. PAPER PRODUCTS, RAGS, GLASS, METAL, BOTTLES, CROCKERY, ETC.)					
D. COOKING OIL					

(1) Indicate the proper shipping name of the NLS involved.

Type	Waste to be delivered (m <sup>3</sup> )	Maximum dedicated storage capacity (m <sup>3</sup> )	Amount of waste retained on board (m <sup>3</sup> )	Port at which remaining waste will be delivered	Estimated amount of waste to be generated between notification and next port of call (m <sup>3</sup> )
E. INCINERATOR ASHES					
F. OPERATIONAL WASTE					
G. ANIMAL CARCASS(ES)					
H. FISHING GEAR					
I. E-WASTE					
J. CARGO RESIDUES <sup>(1)</sup> (HARMFUL TO THE MARINE ENVIRONMENT - HME)					
CARGO RESIDUES <sup>(2)</sup> (NON-HME)					
MARPOL ANNEX VI - AIR-POLLUTION RELATED					
OZONE DEPLETING SUBSTANCES AND EQUIPMENT CONTAINING SUCH SUBSTANCES <sup>(3)</sup>					
EXHAUST GAS GLEANING RESIDUES					
OTHER WASTE, NOT COVERED BY MARPOL					
PASSIVELY FISHED WASTE					

Notes

1. This information shall be used for port State control and other inspection purposes.
2. This form is to be completed unless the ship is covered by an exemption in accordance with Regulation 10 of the Port Reception Facilities for the Delivery of Waste Regulations (S.L. 499.XX).

<sup>(1)</sup> May be estimates. Indicate the proper shipping name of the dry cargo.

<sup>(2)</sup> May be estimates. Indicate the proper shipping name of the dry cargo.

<sup>(3)</sup> Arising from normal maintenance activities on board.

THIRD SCHEDULE

STANDARD FORMAT FOR THE WASTE DELIVERY RECEIPT

*The designated representative of the port reception facility provider shall provide the following form to the master of a ship that has delivered waste in accordance with Article 7 of Directive (EU) 2019/883*

*This form shall be retained on board the ship along with the appropriate Oil Record Book, Cargo Record Book, Garbage Record Book or Garbage Management Plan as required by the MARPOL Convention.*

1. PORT RECEPTION FACILITY AND PORT/TERMINAL PARTICULARS

1.1. LOCATION/TERMINAL NAME :	
1.2 PORT RECEPTION FACILITY PROVIDER(S) :	
1.3. TREATMENT FACILITY PROVIDER (S) - IF DIFFERENT FROM ABOVE :	
1.4. WASTE DELIVERY DATE AND TIME FROM:	TO :

2. SHIP PARTICULARS

2.1. NAME OF SHIP :	2.5 OWNER OR OPERATOR :
2.2 IMO NUMBER :	2.6 DISTINCTIVE NUMBER OR LETTERS :
	MMSI (MARITIME MOBILE SERVICE IDENTITY) NUMBER :
2.3 GROSS TONNAGE :	2.7 FLAG STATE :
2.4 TYPE OF SHIP : <input type="checkbox"/> Oil Tanker <input type="checkbox"/> Chemical Tanker <input type="checkbox"/> Container <input type="checkbox"/> Bulk Carrier <input type="checkbox"/> Other Cargo Ship <input type="checkbox"/> Passenger Ship <input type="checkbox"/> Ro-ro <input type="checkbox"/> Other (specify)	

3. TYPE AND AMOUNT OF WASTE RECEIVED

<b>MARPOL ANNEX I - OIL</b>	<b>QUANTITY (M<sup>3</sup>)</b>
OILY BILGE WATER	
OILY RESIDUES (SLUDGE)	
OILY TANK WASHINGS	
DIRTY BALLAST WATER	
SCALE AND SLUDGE FROM TANK CLEANING	
OTHER (PLEASE SPECIFY)	
<b>MARPOL ANNEX II - NOIXUOUS LIQUID SUBSTANCES (NLS) (1)</b>	<b>QUANTITY (M<sup>3</sup>) / NAME (1)</b>
CATEGORY X SUBSTANCE	
CATEGORY Y SUBSTANCE	
CATEGORY Z SUBSTANCE	
OS - OTHER SUBSTANCES	
<b>MARPOL ANNEX IV - SEWAGE</b>	<b>QUANTITY (M<sup>3</sup>)</b>

<b>MARPOL ANNEX V - GARBAGE</b>	<b>QUANTITY (M<sup>3</sup>)</b>
A. PLASTICS	
B. FOOD WASTE	
C. DOMESTIC WASTE (E.G. PAPER PRODUCTS, RAGS, GLASS, METAL, BOTTLES, CROCKERY, ETC.)	
D. COOKING OIL	
E. INCINERATOR ASHES	
F. OPERATIONAL WASTE	
G. ANIMAL CARCASS(ES)	
H. FISHING GEAR	
I. E-WASTE	
J. CARGO RESIDUES (2) (HARMFUL TO THE MARINE ENVIRONMENT - HME)	
K. CARGO RESIDUES (2) (NON-HME)	
<b>MARPOL ANNEX VI - AIR-POLLUTION RELATED</b>	<b>QUANTITY (M<sup>3</sup>)</b>
OZONE-DEPLETING SUBSTANCES AND EQUIPMENT CONTAINING SUCH SUBSTANCES (3)	

(1) Indicate the proper shipping name of the NLS involved.

(2) Indicate the proper shipping name of the dry cargo.

FOURTH SCHEDULE

CATEGORIES OF COSTS AND NET REVENUES RELATED TO THE  
OPERATION AND ADMINISTRATION OF PORT RECEPTION FACILITIES

<b>DIRECT COSTS</b>	<b>INDIRECT COSTS</b>	<b>NET REVENUES</b>
<p>Direct operational costs that arise from the actual delivery of waste from ships, including the cost items listed below.</p>	<p>Indirect administrative costs that arise from the management of the system in the port or terminal, including the cost items listed below.</p>	<p>Net proceeds from waste management schemes and national/regional funding available, including the revenue elements listed below.</p>
<p>— Provision of port reception facilities infrastructure, including the containers, tanks, processing tools, barges, trucks, waste reception, treatment installations;</p> <p>— Concessions due for site leasing, if applicable, or for leasing the equipment necessary for the operation of port reception facilities;</p> <p>— The actual operation of the port reception facilities: collection of waste from the ship, transport of waste from the port reception facilities for final treatment, maintenance and cleaning of port reception facilities, costs for staff, including overtime, provision of electricity, waste analysis and insurance;</p> <p>— Preparing for reuse, recycling or disposal of the waste from ships, including separate collection of waste;</p> <p>— Administration: invoicing, issuing of waste delivery receipts to the ship, reporting.</p>	<p>— Development and approval of the Waste Reception and Handling Plan, including any audits of that plan and its implementation;</p> <p>— Updating the Waste Reception and Handling Plan, including labour costs and consultancy costs, where applicable;</p> <p>— Organising the consultation procedures for the (re)evaluation of the waste reception and handling plan;</p> <p>— Management of the notification and cost recovery systems, including the application of reduced fees for ‘green ships’, the provision of IT systems at port level, statistical analysis and associated labour costs;</p> <p>— Organisation of public procurement procedures for the provision of port reception facilities, as well as the issuing of the necessary authorisations for the provision of port reception facilities in ports and terminals;</p> <p>— Communication of information to port users through the distribution of flyers, putting up signs and posters in the port, or publication of the information on the port or terminal’s website, and electronic transmission of the information as required in Article 5;</p> <p>— Management of waste management schemes: Extended Producer Responsibility (EPR) schemes, recycling and application for and implementing of national/regional funds;</p> <p>— Other administrative costs: costs of monitoring and electronic reporting of exemptions required in Regulation 10.</p>	<p>— Net financial benefits provided by extended producer responsibility schemes;</p> <p>— Other net revenues from waste management such as recycling schemes;</p> <p>— Funding under the European Maritime and Fisheries Fund (EMFF);</p> <p>— Other funding or subsidies available to ports for waste management and fisheries.</p>



---

FIFTH SCHEDULE

EXEMPTION CERTIFICATE PURSUANT TO REGULATION 10 IN RELATION  
TO THE REQUIREMENTS UNDER REGULATIONS 7, 8, 9 OF PORT  
RECEPTION FACILITIES FOR THE DELIVERY OF WASTE FROM SHIPS  
REGULATIONS AT THE PORT[S]/TERMINAL[S]  
OF [INSERT PORT OR TERMINAL]

Name of ship	Distinctive number or letters	Flag State
<i>[insert name of ship]</i>	<i>[insert IMO number]</i>	<i>[insert name of the Flag State]</i>

is in scheduled traffic with frequent and regular port calls at the following port(s)/terminal(s) located in Malta according to a schedule or predetermined route.

[ ]

and calls at these ports at least once a fortnight :

[ ]

and has made arrangement to ensure the payment of the fees and the delivery of waste to the port or a third party at the port of:

[ ]

and is thus exempted, in accordance with Regulation 10, from the requirements on :

mandatory delivery of waste from ships;

the advance waste notification; and

the payment of the mandatory fee, at the following port(s)/terminal(s):

This certificate is valid until [ ], unless the grounds for issuing the certificate are changed before that date.

Place and date

---

Name  
Title

# Amending the Vessel Traffic Monitoring and Reporting Requirements Regulations - S.L. 499.34

L.N. \_\_\_ of 2021

## Authority for Transport in Malta Act (CAP. 499)

### Vessel Traffic Monitoring and Reporting Requirements (Amendment) Regulations, 2021

IN EXERCISE of the powers conferred by article 43(1) and (3) of the Authority for Transport in Malta Act, the Minister for Transport, Infrastructure, and Capital Projects, after consultation with the Authority for Transport in Malta, has made the following regulations:-

1. (1) The title of these regulations is the Vessel Traffic Monitoring and Reporting Requirements (Amendment) Regulations, 2021 and they shall be read and construed as one with the Vessel Traffic Monitoring and Reporting Requirements Regulations hereinafter referred to as "the principal regulations".

Citation and  
Entry into  
force.

S.L. 234.58

(2) These regulations shall come into force upon publication in the Government Gazette.

2. Sub-regulation (9) of regulation 18 of the principal regulations shall be amended as follows:

Amends  
regulation 18  
of the principal  
regulations.

"(9) For the purposes of this regulation and regulation 19, "legal act of the Union" means:

(a) Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system as transposed by these regulations and the Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations;

S.L. 499.12.

(b) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders;

(c) Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships as transposed by the Port Reception Facilities for Delivery of Waste Regulations;

S.L. 499.XX

(d) Regulation (EC) No. 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security as transposed by the Ports Security Regulations;

(e) Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code and Regulation (EC) 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code); and

S.L. 234.25

(f) Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community as transposed by the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations."

---

# Repealing the Port Reception Facilities for Shipgenerated Wastes and Cargo Residues Regulations - S.L. 499.30

L.N. \_\_\_ of 2021

## Authority for Transport in Malta Act (CAP. 499)

### Port Reception Facilities for Shipgenerated Wastes and Cargo Residues (Revocation) Regulations, 2021

IN EXERCISE of the powers conferred by article 43(1) and (3) of the Authority for Transport in Malta Act, the Minister for Transport, Infrastructure, and Capital Projects, after consultation with the Authority for Transport in Malta, has made the following regulations:-

1. (1) The title of these regulations is the Port Reception Facilities for Shipgenerated Wastes and Cargo Residues (Revocation) Regulations, 2021.

Title and entry into force.

(2) These regulations shall come into force upon publication in the Government Gazette.

2. The Port Reception Facilities for Shipgenerated Wastes and Cargo Residues (Revocation) Regulations of 2004 are hereby being revoked.

Revokes the Port Reception Facilities for Shipgenerated Wastes and Cargo Residues Regulations. L.N. 278 of 2004.

# Issuing Port Notice by Transport Malta on Cost-Recovery Fees

Ports and Yachting Directorate

Port Notice No. **XX/2021**

Our Reference: **XX/XXX/XXX/XX/XXX XXX**

**Notice to:**     **Ship Owners**  
                  **Ship Masters**  
                  **Ship Agents**  
                  **Operators of Terminals and Port Facilities**

---

## Reception and Treatment of Waste Fee

---

The Authority hereby reminds all Owners, Masters and Agents of ships as well as Operators of Terminals and Port Facilities that the Directive (EU) 2019/883 of the European Parliament and of the Council, transposed through the Port Reception Facilities for the Delivery of Waste from Ships Regulations (S.L. **499.XX**), states that Member States shall ensure that the costs of operating port reception facilities for the reception and treatment of waste from ships shall be covered through the collection of a fee from ships.

This means that all ships calling a port or terminal of a Member State shall have to contribute significantly to such costs irrespective of actual use of the port reception facilities. On the other hand, ships discharging waste shall continue to pay directly the authorised reception facility only if such services are actually used.

### Applicable Fees

In view of the above-mentioned Regulations, ships calling in a port or terminal in Malta have to pay the following fee per each ship's call in such port:

- (a) €**XX** per 1,000 gross tons, or part thereof, up to a maximum of €**XXX**; and
- (b) €**XX** per 50 persons on board, or part thereof, up to a maximum of €**XXX**.

### Exemptions

The following are exempted from the payment of the reception and treatment of waste fee:

- A. Only one fee shall be levied in respect of those ships which leave a port and re-enter within 72 hours. If a ship re-enters a port after the lapse of the 72-hour period, a new fee will be applicable.
- B. Recreational craft authorised to carry no more than 12 passengers and fishing vessels.
- C. Ships which discharge waste to a local authorised port reception facility, provided that the Owner, Master or Agent of the ship submits to the Authority a declaration from the authorised port reception facility showing that it has charged for the actual use of the facility.

This declaration has to be sent to the Authority within 15 days after the departure of the ship from a port or terminal. After the lapse of the 15-day period, the invoice in respect of the delivery of waste fee shall be issued and no refund will be given.

- D. Ships that call a terminal which charges a delivery of waste fee in terms of the Waste Reception and Handling Plan approved by the Authority.
- E. Ships covered by an Exemption Certificate.

### **Exemption Certificate**

To be exempted and provided with an Exemption Certificate, ships must be engaged in *scheduled traffic with frequent and regular port calls* and give sufficient evidence of *arrangement to ensure the delivery of waste and payment of fees in a port along the ship's route*. The Authority has defined these terms as follows

- A. **Scheduled** : The ship in question must operate a series of ship crossings so as to serve traffic between the same two or more ports, either according to a published timetable or with crossings so regular or frequent that they constitute a recognisable systematic series.
- B. **Regular** : The ship in question must make repeated journeys between those nominated ports or terminals and no others.
- C. **Frequent** : The ship in question must visit a port or terminal in Malta at least once a fortnight for a duration of not less than three (3) months.

In order for the Exemption Certificate to be issued, an Application Form as per attached must be submitted to the Authority together with the following evidence:

- A. Evidence of the scheduled, regular, and frequent nature of the trade of the ship (copy of the ship's schedule for the respective port of calls);

- B. Evidence of a contract/arrangement with the port/company to which the waste is to be landed/delivered; and
- C. Proof that this contract/arrangement is active (recent copy of an invoice or delivery note).
- D. Proof that all ports on the ship's route are notified of this contract/arrangement (copy of official correspondence).

An Exemption Certificate shall be valid for one (1) year from the date of issue.

If there is any change in any of the details in the Exemption Certificate or the Certificate has expired, the exemption would immediately become void and a new Application Form must be submitted.

In the case of a new scheduled service or expiry of an existing Exemption Certificate, the Application Form has to be submitted to the Authority at least fifteen (15) working days before the commencement of the scheduled service or the expiry date, as the case may be.

An administrative fee of €XXX shall be applicable for each Exemption Certificate issued.

The above-mentioned fees shall be applicable as from 29 June 2021.

Port Notice 01/2017 will remain in force and applicable until 28 June 2021.

Capt . **XXX XXX**  
Port Officer  
Ports and Yachting Directorate

**DATE**

### Application Form for an Exemption

In accordance with regulation 10 of the Port Reception Facilities for the Delivery of Waste from Ships Regulations (S.L. 499.XX)

Ports and Yachting Directorate

	<i>Operator</i>		<i>Ship Agent</i>	
Name:				
Address:				
E-mail:				
Tel. No.:				
Name of Ship:	Type:	IMO number	Flag:	
Approximate amount of waste produced on vessel per voyage and storage capacity (m <sup>3</sup> ) for the following types of waste:		Volume per voyage	Storage Capacity	
	Garbage			
	Waste Oils			
	Sewage			

The undersigned applies for exemption from advance waste notification, delivery of waste, and cost recovery systems as prescribed in regulations 7,8, and 9 of S.L. 499.XX.

The ship is engaged in scheduled traffic between the following ports : *(The vessel must operate a series of ships crossings so as to serve the same two or more ports, either according to a published timetable or with crossings so regular or frequent that they constitute a recognisable systematic series)*

---

Does the vessel deviate from this route at any time? If yes, please state why

---

Frequency of port calls in Malta: *(The vessel must visit a port or terminal in Malta at least once a fortnight and must make repeated journeys between those nominated ports or terminals and no others)*

---

Duration of service: *(the duration of the service must not be less than 3 months)*



From: \_\_\_\_\_ To: \_\_\_\_\_

Has an Exemption been applied for, granted or refused for any other Port on this route? If yes, please state when and where?

Name of waste management company/companies and port/s with which the waste management arrangement has been concluded (waste oils, garbage, sewage):

Name and Address of Collector of waste:	<u>Waste Oils</u>	<u>Sewage</u>	<u>Garbage</u>
Name of port/s:			

Signature :

Name in Block Letters:

Date:

For an exemption to be considered, please ensure that the following documents are provided and attached to this application form in accordance with Port Notice **XX/2021**:

(Please tick "X" against the appropriate box)

Evidence of the scheduled, regular and frequent nature of the trade of the vessel (copy of the vessel's schedule for the respective port of calls);	<input type="checkbox"/>
Evidence of a contract with the port/company to which the waste is to be landed/delivered; and	<input type="checkbox"/>
Proof that this contract/arrangement is active (recent copy of an invoice or delivery noted).	<input type="checkbox"/>
Proof that all ports on the ship's route are notified of this contract/arrangement (copy of official correspondence).	<input type="checkbox"/>

**NOTE :** Fee of €**XXX** to be paid upon the issue of Certificate.