

## Circular - Series R

Circular Series R (Regulations) supersedes previous Series F. In the new Series R, relevant legal amendments and amendments to conventions are also published.

**Circular recipients:** (check box)

- Sdir : The Norwegian Maritime Authority
- A: 16 specially authorized employment offices
- U: Selected Foreign Service stations
- P: Equipment manufacturers, any subgroups
- OFF: Offshore companies/platform managers/operators
- Hov: Main organizations
- H.i. Bodies or agencies for their comments
- Others:

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**Reference to:** Regulations of 30 May 2012 No. 488.

*The Circular should be entered into a special diagram or as appropriate in the latest editions of relevant NMA publications and kept until the next editions.*

### **Amendment to the Regulations concerning environmental safety for ships and mobile offshore units**

The Norwegian Maritime Authority (NMA) hereby lays down Regulation concerning amendment to the Regulations of 30 May 2012 No. 488 concerning environmental safety for ships and mobile offshore units. The amendment is related to pollution from foreign ships on the high seas, and is made as part of the implementation of Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements.

Directive 2005/35/EC has been incorporated into point 56V of the EEA Agreement Annex XIII, and the deadline for implementing the directive into Norwegian legislation has expired.

The regulatory amendment expands the scope of application of sections 4 and 7 of the Regulations of 30 May 2012 No. 488 concerning environmental safety for ships and mobile offshore units (hereafter "the Regulations on environmental safety") related to oil pollution and pollution by noxious liquid substances in bulk. The amendment implies that discharges to which sections 4 and 7 of the Regulations on environmental safety apply, committed by foreign ships on the high seas may be sanctioned by Norwegian authorities when a ship voluntarily calls at a Norwegian port, an installation on the Norwegian Continental Shelf or an installation in the Norwegian economic zone.

#### **Consultation**

A proposal for amendment of the Regulations was circulated for comments on 24 January 2013, with deadline for comments on 25 March 2013. The deadline was set to shorter than three months because of the EEA Agreement. The consultation has been published on the NMA's website.

A total of eight consultative statements came in, whereof the majority did not include comments to the proposal.

The Ministry of Fisheries and Coastal Affairs points out that the administrative and economic consequences of the proposal depend on the extent to which Norwegian control authorities are expected to perform inspections on the high seas. As mentioned in the request for comments, the NMA presumes that the Directive will not imply obligations beyond the current requirements with regard to surveillance and inspections on the high seas. The amendment will on the other hand make it possible to use sanctions to follow up illegal discharges in the high seas.

Oslo Police District agrees that the possibility to sanction discharges on the high seas could strengthen the protection of the environment. Nevertheless, there are concerns that the amendment to the Regulations could generate more cases that will require large resources. Oslo Police District furthermore voices a general concern regarding available resources in the Police with regard to maritime safety and environmental cases. The NMA takes note of the comments, but does not see that these contributions will have any significance for the specific regulatory amendment.

## **The background for the regulatory amendment**

### *The relation to Directive 2005/35/EC*

Directive 2005/35/EC applies to the discharge of substances as mentioned in MARPOL<sup>1</sup> Annex I and II, i.e. oil and noxious liquid substances in bulk. The main purpose of the Directive is to achieve a more harmonised penalty system providing a larger degree of equality of treatment. According to the Commission, the basis for the Directive is that the material provisions related to discharge in MARPOL are satisfactory, but that there is a need to strengthen the national implementation of the provisions, as well as to harmonise the penalty systems in the different countries in the event of infringements.

The Directive has to a great extent been implemented into Norwegian legislation by the Regulations on environmental safety. Penal provisions, on the other hand, fall outside of the scope of the EEA Agreement, and an adjustment<sup>2</sup> has been made to the EEA Agreement with regard to Directive 2005/35 in that the second sentence of Article 4 concerning "criminal offences" has been taken out<sup>3</sup>.

In Article 3 (e) of Directive 2005/35 it is set out that the Directive also applies on the high seas, in addition to in territorial seas and economic zone or equivalent.

### *The relation to the EEA Agreement*

Norway is not obliged by the EEA Agreement to implement penal provisions. Even though Norway is therefore not under the obligation to implement the penalty provisions of the Directive, the legislator has considered it appropriate to have penalty provisions for the violation of the requirements related to discharge. The provisions of the Ship Safety and Security Act<sup>4</sup> regarding violation fines in the event of less serious violations and criminal liability in the event of substantial violations are generally considered to be in accordance with the penalty provisions of Directive 2005/35. On the other hand, Norwegian authorities lack legal basis for sanctioning environmental violations committed by foreign ships on the high seas. The Norwegian Regulations on environmental safety currently in force implement MARPOL, and have equivalent scope of application as the Ship Safety and Security Act.

### *The relation to the Ship Safety and Security Act*

The Ship Safety and Security Act with appurtenant regulations applies to Norwegian ships irrespective of their position, cf. section 3 of the Ship Safety and Security Act. For foreign ships, the Ship Safety and Security Act applies in Norwegian territorial waters, in the Norwegian economic zone and on the Norwegian Continental Shelf. The Ship Safety and Security Act provides for the possibility that the King may issue regulations that make the Act applicable to foreign ships outside the mentioned areas.

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1 International Convention for the Prevention of Pollution from Ships (MARPOL)

2 EEA Agreement Annex XIII point 56V

3 Directive 2005/35 has also been amended by Directive 2009/123. The sentence on "criminal offences" in Article 4 has been taken out, and a new subsection 2 has instead been added to the provision. Directive 2009/123 has at present not been incorporated into the EEA Agreement.

4 Act of 16 February 2007 No. 9 relating to Ship Safety and Security (Ship Safety and Security Act)

### *The relation to the Convention on Law of the Sea*

Article 218 (1) of the United Nations Convention on Law of the Sea provides for the possibility that a port State may institute legal proceedings with respect to violations of international rules on the high seas when the ship later voluntarily calls at a port, an installation on the continental shelf or an installation in the economic zone of that State. International law is therefore not a hindrance for amending the Norwegian Regulations on environmental safety, so that even discharge violations committed by foreign ships on the high seas may be sanctioned by way of violations fines and criminal penalties, in accordance with Directive 2005/35.

## **Economic and administrative consequences**

### *Environmental considerations*

Norway is, with its long coastline, interested in harmonised provisions on legal action in the event of environmental violations in European waters. The possibility to take legal action against foreign ships calling at Norwegian ports for discharge violations committed on the high seas will strengthen the environmental safety.

### *Industry interests*

For the Norwegian shipping industry where ships sail under foreign flag, the amendment entails that the companies may be subject to legal action for violations committed outside the areas mentioned in the current section 1. The amendment does not imply the introduction of new regulations, but it expands the scope of application of the existing regulations for foreign ships as regards discharge violations committed on the high seas.

The amendment will entail a larger degree of harmonisation in the EEA, and the follow-up by Norwegian authorities of environmental violations committed on the high seas will to a greater extent be flag State independent.

The Directive has entered into force in the EU, and the deadline for implementation into national legislation has expired. Companies with ships in European trade must therefore already respond to equivalent provisions in the other EEA member states.

### *Administration*

An expansion of the geographical scope of application as regards environmental discharges could contribute to an increased case load for the NMA and the Police. The NMA does not envision a large volume of cases, but larger individual cases could lead to resource-demanding follow-up. It is, however, difficult to envision that the number of discharge violation as a consequence of the proposed amendment will be of such a magnitude that it will not be possible to handle within the framework of the NMA's work with violation fines such as this is organised today. The Police has expressed concern that larger individual cases could create challenges for the police with regard to resources and today's organisation.

The amendment does not imply obligations beyond the current requirements when it comes to surveillance and inspections on the high seas. EMSA's CleanSeaNet has been developed with respect to the rapid detection of environmental discharges, and is presumed to be a key instrument in the enforcement of the prohibition against illegal discharges in the high seas.

## **Attachments**

Regulation concerning amendment to Regulations concerning environmental safety for ships and mobile offshore units is attached.

Olav Akselsen  
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