

**Protection of the marine environment in cases of accidents at sea:  
the role of the Master's liability**

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The purpose of this communication is to examine the role of the master in the cases of maritime accidents which result in the oil pollution of the sea. In particular, the regime of liability for damage foreseen in the CLC and its incidence in the figure of the master shall be studied, as regards the canalization of the responsibility towards the owner of the ship and whether or not it is possible to require liability directly to the captain. On the other hand, the application of the master's limitation of liability for damage resulting from marine pollution will be affected. In both cases, the CLC examination shall be carried out taking into account the application of this agreement to the Spanish Supreme Court ruling on the "Prestige" case dated January 14, 2016.

In this line, the communication will deal with Directive 2005/35/EC of 7 September 2005 on ship-source pollution and the introduction of penalties for infringements. The captains have been worried about the possibility of being punished, even criminally, for simply incurring negligence (gross negligence, yes), which is why they have raised doubts about the validity of these Community rules. They distance themselves from the international regulations on the subject (MARPOL). Likewise, it will be taken into account the mention that the judgment of the Spanish Supreme Court on the case "Prestige", dated January 14, 2016, carries out this regulation.

In the case of the CLC Convention, the liability for damages derived from marine oil pollution is established on the owner of the ship at the time of the occurrence of the claim (not on the charterer, manager or operator of the ship, for reasons of greater ease in the identification) and on an objective basis: it is answered by owning the ship (liability for risk), not for negligence in the cause of the damage.

The liability of the owner is exclusive in the sense that only the owner of the ship may be held liable, leaving a serious person related to the ship to be excluded, such as the master and the crew (art. 3.4 CLC). However, in the judgement of the Spanish Supreme Court on the case "Prestige", dated January 14, 2016, a civil liability for damages directly to the ship's master is imposed.

This communication will examine the fundamentals that have led to imposing this direct responsibility of the captain and, in addition, without the right to limitation, for damages arising from the contamination caused by the "Prestige". It shall also be established if the decision taken by the Spanish Supreme Court complies with the content of the CLC convention.

On the other hand, the incidence of Directive 2005/35/EC of 7 September 2005 on the masters shall be examined. Article 3.1 of the Directive establishes its territorial scope: it applies to discharges of polluting substances in: (1) the internal waters, including ports, of a Member State; (2) the territorial sea of a Member State; (3) straits used for international navigation subject to the regime of transit passage; (4) the exclusive economic zone or equivalent zone of a Member State; and (5) the high seas.

In material terms, the Directive applies to the ship-source discharges of polluting substances mentioned in MARPOL, i.e. operational and accidental discharges, excluding dumping as per LC/72, which is also excluded from MARPOL. The Directive applies only to those "polluting substances" listed in Annexes I and II of MARPOL, i.e. oil and noxious liquids in bulk.

The Directive considers unlawful discharges as "infringements", and therefore subject to penalties. Article 4 describes these discharges as "criminal offences", and defines them *in general* as ship-source discharges of polluting substances into any areas (internal waters, territorial sea, straits, the exclusive economic zone and the high seas) committed with intent, recklessly or with serious negligence. Discharges involving negligence not considered as "serious" (slight negligence, *culpa levissima*, simple negligence, etc.) are not considered as offences and are therefore not subject to sanctions under the Directive.

After laying down the general rule in Article 4, the Directive goes on in Article 5 to describe the exceptions to the rule on infringements, i.e. special cases in which discharges are considered lawful and therefore do not constitute a criminal offence and are not penalised by sanctions. It is precisely in the framework of these exceptions that it becomes evident how different the Community Directive is from MARPOL.

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