

Ship-source pollution and introduction of penalties, including criminal penalties, for pollution offences

2008/0055(COD) - 21/10/2009 - Final act

PURPOSE: to incorporate international standards for ship-source pollution into Community law and to ensure penalties for infringements of the law.

LEGISLATIVE ACT : Directive 2009/123/EC of the European Parliament and of the Council amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements.

BACKGROUND: to recall, in the aftermath of major accidental oil spills and the increasing number of uncontrolled operational discharges of polluting substances from ships at sea, the Commission proposed a directive in 2003. It provided that ship-source pollution should be considered a criminal offence and consequently should be subject to criminal penalties. The Commission also proposed [Framework Decision 2003/80/JAI](#) providing for the approximation of the levels of criminal penalties for the ship-source pollution criminal offences.

These two instruments were adopted by the Council in 2005. However, the European Court of Justice annulled the above mentioned Framework Decision in 2007 considering that it was adopted on the wrong legal basis.

The Commission proposed a new directive in March 2008 with a view to filling the legal vacuum created by the annulment by the Court.

CONTENT: following a first reading agreement with the European Parliament, the Council adopted this Directive improving current rules on ship-source pollution and on the introduction of penalties for infringements.

The objective of the directive is to incorporate international standards for ship-source pollution into Community law and to ensure that persons responsible for discharges of polluting substances are subject to adequate penalties, including criminal penalties, in order to improve maritime safety and to enhance protection of the marine environment from pollution by ships.

Infringements: under this Directive, illicit ship-source discharges of polluting substances are regarded as a criminal offence as long as they have been committed with intent, recklessly or with serious negligence and result in deterioration in the quality of water. Less serious cases of illicit ship-source discharges of polluting substances that do not cause deterioration in the quality of water need not be regarded as criminal offences. Under this Directive such discharges are referred to as minor cases. Given the need to ensure a high level of safety and protection of the environment in the maritime transport sector, as well as the need to ensure the effectiveness of the principle whereby the polluting party pays for the damage caused to the environment, repeated minor cases, which do not individually but in conjunction result in deterioration in the quality of water, will be regarded as a criminal offence.

Inciting, aiding and abetting: any act of inciting, or aiding and abetting an offence committed with intent is punishable as a criminal offence.

Liability of legal persons: each Member State shall take the necessary measures to ensure that legal persons can be held liable for the criminal offences, committed for their benefit by any natural person acting either individually or as part of an organ of the legal person, and who has a leading position within the structure of the legal person, based on:

- a power of representation of the legal person;
- authority to take decisions on behalf of the legal person; or
- authority to exercise control within the legal person.

Each Member State shall also ensure that a legal person can be held liable where lack of supervision or control by a natural person referred to in paragraph 1 has made the commission of a criminal offence possible for the benefit of that legal person by a natural person under its authority.

The liability of a legal person will not exclude criminal proceedings against natural persons involved as perpetrators, inciters or accessories in criminal offences.

ENTRY INTO FORCE: 16/11/2009.

TRANSPOSITION: 16/11/2010.