

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0373/2003

4 November 2003

REPORT

on the proposal for a Council framework decision to strengthen the criminal law framework for the enforcement of the law against ship-source pollution (COM(2003) 227 – C5-0244/2003 – 2003/0088(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Giuseppe Di Lello Finuoli

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 27 May 2003 the Council consulted Parliament, pursuant to Articles 29, 31 and 24 of the Treaty on European Union, on the proposal for a Council framework decision to strengthen the criminal law framework for the enforcement of the law against ship-source pollution (COM(2003) 227 - 2003/0088(CNS)).

At the sitting of 2 June 2003 the President of Parliament announced that he had referred the framework decision to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on the Environment, Public Health and Consumer Policy and the Committee on Regional Policy, Transport and Tourism for their opinions (C5-0244/2003).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Giuseppe Di Lello Finuoli rapporteur at its meeting of 19 May 2003.

The committee considered the proposal for a Council framework decision and draft report at its meetings of 7 October and 3 and 4 November 2003.

At the latter meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Robert J.E. Evans, vice-chairman; Johanna L.A. Boogerd-Quaak, vice-chairwoman; Giacomo Santini, vice-chairman; Giuseppe Di Lello Finuoli, rapporteur; Alima Boumediene-Thiery, Giuseppe Brienza, Kathalijne (for Patsy Sørensen) Maria Buitenweg, Carmen Cerdeira Morterero, Gérard M.J. Deprez, Bárbara Dührkop Dührkop (for Martin Schulz pursuant to Rule 153(2)), Margot Keßler, Timothy Kirkhope, Eva Klamt, Alain Krivine (for Fodé Sylla), Baroness Ludford, Lucio Manisco (for Ilka Schröder), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Elena Ornella Paciotti, Wilhelm Ernst Piecyk (for Michael Cashman pursuant to Rule 153(2)), Hubert Pirker, Martine Roure, Heide Rühle, Francesco Rutelli, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco and Christian Ulrik von Boetticher.

The Committee on the Environment, Public Health and Consumer Policy decided on 7 October 2003 not to deliver an opinion; the Committee on Regional Policy, Transport and Tourism decided on 3 November 2003 not to deliver an opinion.

The report was tabled on 4 November 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council framework decision to strengthen the criminal law framework for the enforcement of the law against ship-source pollution
(COM(2003) 227 – C5-0244/2003 – 2003/0088(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2003) 227)¹,
 - having regard to Articles 29, 31 and 34 of the Treaty on European Union (C5-0244/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0373/2003),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Article 3, paragraph 1, point b)

b) where the offences caused ***the death or serious injury of*** persons;

b) where the offences caused ***substantial damage to*** persons;

Justification

Emphasis should be placed on prevention and punishment should not therefore be reserved solely for exceptionally serious incidents involving the death of individuals or serious injury to them. The scope of protection must also be extended to the protected environment.

¹ Not yet published in OJ.

The proposed changes establish consistency between points b) and d) and bring the framework decision into line with the directive adopted by Parliament on 9 April 2002.

Amendment 3
Article 3, paragraph 1, point d)

d) where the offences caused substantial damage to animal or vegetable species or to parts of them.

d) where the offences caused substantial damage to animal or vegetable species or to parts of them ***or to the protected environment.***

Justification

Emphasis should be placed on prevention and punishment should not therefore be reserved solely for exceptionally serious incidents involving the death of individuals or serious injury to them. The scope of protection must also be extended to the protected environment.

The proposed changes establish consistency between points b) and d) and bring the framework decision into line with the directive adopted by Parliament on 9 April 2002.

EXPLANATORY STATEMENT

The most advanced laws on the preventive protection of the environment through criminal law is contained in the Council of Europe Convention on that topic (Strasbourg, 4 November 1998), but that text has never been ratified by any of the EU Member States.

On that issue the European Parliament approved, in July 1999, a framework decision (proposed by Denmark) to which it made amendments which brought it reasonably into line with the substance and the objectives of the above-mentioned Council of Europe Convention.

On 18 February 2002 the Council adopted a draft framework decision on the protection of the environment through criminal law. The Commission expressed a general reservation about the framework decision, pointing out that environmental protection (including, naturally, protection of waters) was covered by a large number of Community texts, most of which made provision for administrative sanctions; it therefore considered that the issue should be dealt with using a Community instrument (first pillar) based on Article 175(1) of the EC Treaty, not least in order to establish an *acquis communautaire* with a view to the forthcoming enlargement.

Parliament continues to share the Commission's views on this matter, as can be seen from the recommendation on criminal sanctions and Community law (B5-0707/2001) which it adopted on 15 November 2001, in which it called on the Council to refrain from taking any action on environmental criminal law before the draft directive on the protection of the environment through criminal law was adopted. Parliament considers nonetheless that it should give its opinion on this proposal for a framework decision, both because the pillar-based distinction is due to disappear and because the framework decision complements the aforementioned Directive 2003/ /EC, which, in turn, is consistent with the proposal for a directive adopted by the Commission on 13 March 2001.

The Commission, contesting the Council's power to propose a third-pillar instrument in a field (the environment) which lies within the Community's area of competence, proposed a directive (COM(2001) 139 - C5-0116/2001 - 2001/0076(COD)) which Parliament endorsed on 9 April 2002.

The Court of Justice was called upon to settle the conflict of competence.

Although Parliament agreed with the Commission that environmental matters lay within the Community's area of competence, it approved the December 2001 proposal for a framework decision, subject to amendments which made it complementary to the directive proposed by the Commission.

In March 2003, following the environmental disaster caused by the oil tanker *Prestige*, the Commission proposed a specific directive relating to pollution caused by ships and to the introduction of sanctions (including criminal sanctions) applicable to pollution offences. The directive is consistent with, and suitably complementary to, the 2001 proposal for a directive.

Amongst other things the directive provides for the harmonisation of criminal and other deterrent sanctions applicable to acts of pollution which infringe Community law. It also extends those sanctions to persons - those engaged in transport operations using unsuitable

vessels and liable for any resulting pollution damage - who have hitherto been exempted, under international conventions, from third-party liability, and it enables the Member States to implement the Marpol 73/80 International Convention more effectively.

The Council has therefore proposed the framework decision designed to strengthen the criminal framework for the enforcement of the law against ship source pollution, which is sufficiently consistent with the directive proposed by the Commission.