

# EUROPEAN PARLIAMENT

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5 November 2003

**\*\*\*I**

## **REPORT**

on the proposal for a European Parliament and Council directive on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences  
(COM(2003) 92 – C5-0076/2003 – 2003/0037(COD))

Committee on Regional Policy, Transport and Tourism

Rapporteur: Peter Pex

Draftsperson (\*) :

Françoise Grossetête, Committee on the Environment, Public Health and Consumer Policy

(\*) Enhanced cooperation between committees - Rule 162a

***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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(\*) Enhanced cooperation between committees - Rule 162a

## PROCEDURAL PAGE

By letter of 5 March 2003 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 80(2) of the EC Treaty, the proposal for a European Parliament and Council directive on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences (COM(2003) 92 – 2003/0037 (COD)).

At the sitting of 27 March 2003 the President of Parliament announced that he had referred this proposal to the Committee on Regional Policy, Transport and Tourism as the committee responsible and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Legal Affairs and the Internal Market and the Committee on the Environment, Public Health and Consumer Policy for their opinions (C5-0076/2003).

The Committee on Regional Policy, Transport and Tourism appointed Peter Pex rapporteur at its meeting of 7 July 2003.

At the sitting of 5 June 2003 the President of Parliament announced that the Committee on the Environment, Public Health and Consumer Policy, which had been asked for its opinion, would be involved in drawing up the report under Rule 162a.

The Committee on Regional Policy, Transport and Tourism considered the Commission proposal and draft report at its meetings of 9-10 September 2003 and 3-4 November 2003.

At the last meeting it adopted the draft legislative resolution by 33 votes to 0, with 6 abstentions.

The following were present for the vote: Paolo Costa, chairman; Gilles Savary, vice-chairman; Peter Pex, rapporteur; Emmanouil Bakopoulos, Rolf Berend, Graham H. Booth (for Rijk van Dam), Philip Charles Bradbourn, Felipe Camisón Asensio, Chantal Cauquil (for Sylviane H. Ainardi), Jan Dhaene, Konstantinos Hatzidakis, Ewa Hedkvist Petersen, Roger Helmer (for Mathieu J.H. Grosch), Juan de Dios Izquierdo Collado, Georg Jarzembowski, Elisabeth Jeggle (for Renate Sommer), Karsten Knolle (for Dana Rosemary Scallon), Dieter-Lebrecht Koch, Giorgio Lisi, Nelly Maes, Emmanouil Mastorakis, Erik Meijer, Rosa Miguélez Ramos, Enrique Monsonís Domingo, James Nicholson, Josu Ortuondo Larrea, Wilhelm Ernst Piecyk, Samuli Pohjamo, Bernard Poignant, José Javier Pomés Ruiz, Alonso José Puerta, Reinhard Rack, Carlos Ripoll y Martínez de Bedoya, Ingo Schmitt, Brian Simpson, Ulrich Stockmann, Margie Sudre, Ari Vatanen and Brigitte Wenzel-Perillo (for Francesco Musotto).

The opinions of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Legal Affairs and the Internal Market and the Committee on the Environment, Public Health and Consumer Policy are attached.

The report was tabled on 5 November 2003.

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a European Parliament and Council directive on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences (COM(2003) 92 – C5-0076/2003 – 2003/0037(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 92<sup>1</sup>),
  - having regard to Article 251(2) of the EC Treaty and Article 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0076/2003),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Regional Policy, Transport and Tourism and the opinions of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Legal Affairs and the Internal Market and the Committee on the Environment, Public Health and Consumer Policy (A5-0388/2003),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

### Amendment 1 Recital 2

(2) The material standards for ship-source pollution discharges in all Member States are based upon the Marpol 73/78 Convention; but these rules are being ignored on a daily basis by ships sailing in Community waters, without corrective action being taken;

(2) The material standards for ship-source pollution discharges in all Member States are based upon the Marpol 73/78 Convention; but these rules are being ignored on a daily basis by ***a very large number of*** ships sailing in Community waters, without corrective action being taken;

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<sup>1</sup> Not yet published in OJ.

*Justification*

*It is not appropriate to accuse all fleets of failing to comply with the rules.*

Amendment 2  
Recital 2 a (new)

***(2a) Many Community ports lack appropriate facilities for receiving and treating waste; in order to combat intentional pollution, the EU should undertake, by way of a European plan, to set up the necessary infrastructure for degassing and cleaning vessels in all Community ports, which should be capable of dealing with several major difficulties simultaneously.***

Amendment 3  
Recital 3 a (new)

***(3a) Many Member States have not fully satisfied the European Community's expectations with regard to maritime safety, in particular by delaying the application of existing directives and regulations.***

*Justification*

*Recent accidents involving oil tankers have highlighted shortcomings in this sphere. In this context, we have seen that criticism was wrongly directed at 'Europe', given that legislation exists but is not properly enforced.*

Amendment 4  
Recital 4

(4) Measures of a dissuasive nature form an integral part of the Community's maritime safety policy, as they ensure a

(4) Measures of a dissuasive nature form an integral part of the Community's maritime safety policy, as they ensure a

link between the responsibility **of the parties** involved in the transport of polluting goods by sea and their exposure to sanctions; in order to achieve effective protection of the environment, there is therefore a need for effective, dissuasive and proportionate sanctions;

link between the responsibility of **each of the parties** involved in the transport of polluting goods by sea and their exposure to sanctions; in order to achieve effective protection of the environment, there is therefore a need for effective, dissuasive, and proportionate sanctions;

#### *Justification*

*The directive aims to make each of the parties involved in maritime transport responsible and this should be spelt out.*

#### Amendment 5 Recital 5

(5) Neither the international regime for the civil liability and compensation of oil pollution nor that relating to pollution by other hazardous or noxious substances provide sufficient dissuasive effects to discourage **the parties** involved in the transport of hazardous cargoes by sea from engaging in substandard practices; the required dissuasive effects can only be achieved through the introduction of sanctions of a penal nature, which apply to any person who causes or contributes to marine pollution deliberately or through gross negligence;

(5) Neither the international regime for the civil liability and compensation of oil pollution nor that relating to pollution by other hazardous or noxious substances provide sufficient dissuasive effects to discourage **each of the parties** involved in the transport of hazardous cargoes by sea from engaging in substandard practices; the required dissuasive effects can only be achieved through the introduction of sanctions of a penal nature, which apply to any person who causes or contributes to marine pollution deliberately or through gross negligence;

#### *Justification*

*The directive aims to make each of the parties involved in maritime transport responsible and this should be spelt out.*

#### Amendment 6 Recital 8

(8) There is a need for **further** co-operation among Member States to ensure that illegal discharges are detected in time and that the offenders are identified;

(8) There is a need for **effective** co-operation among Member States to ensure that illegal discharges are detected in time and that the offenders are identified. **For this reason the**

***Commission should present as rapidly as possible a proposal for the creation of a common European coastguard;***

*Justification*

*In order to ensure optimum and above all uniform surveillance on the high seas and hence effective application of this directive, a European coastguard needs to be set up to carry out unannounced checks along all European coasts according to uniform criteria.*

Amendment 7  
Recital 8 a (new)

***(8a) To ensure that criminal sanctions against intentional pollution are effective, the port authorities in Community ports should maintain registers of oil; each Member State must therefore introduce stringent legislation against any failure to maintain those registers and any entry whose authenticity cannot be established in order to prevent uncontrolled degassing, which is the source of most marine pollution.***

Amendment 8  
Recital 10

(10) The Directive fully respects the Charter of fundamental rights.

***(10) Those accused of pollution offences are entitled to a fair and independent hearing and any penalties imposed should be proportionate to the criminal offence. The Directive fully respects *therefore* the *European* Charter of fundamental rights and the provisions relating to justice contained therein.***

*Justification*

*The directive should make it clear that there must be no encroachment whatever on the rights of the accused, who have after all not yet been found guilty. Relevant authorities must be*



*prevented from unjustly treating accused persons as criminals in order to divert attention from their own responsibility.*

#### Amendment 9

##### Article 1

The purpose of this Directive is to incorporate the international standards for ship-source pollution into Community law and to ensure that **persons** responsible for illegal discharges **are** subject to adequate sanctions, including criminal sanctions. The **underlying** objective of the Directive is to improve maritime safety and to protect the marine environment from pollution by ships.

The purpose of this Directive is to incorporate the international standards for ship-source pollution into Community law and to ensure that **each person** responsible for illegal discharges **is** subject to adequate sanctions, including criminal sanctions. The objective of the Directive is to improve maritime safety and to protect the marine environment from pollution by ships.

#### *Justification*

*The directive aims to make each of the parties involved in maritime transport responsible and this should be spelt out.*

#### Amendment 10

##### Article 2, paragraph 3

3. “Illegal discharges” shall mean discharges in violation of Marpol 73/78 **and shall include discharges resulting from damage to the ship or its equipment, which are exempted under Marpol 73/78 Annex I, Regulation 11(b) and Annex II, Regulation 6(b);**

3. “Illegal discharges” shall mean discharges in violation of Marpol 73/78;

#### *Justification*

*The Commission proposes extending the definition of ‘illegal discharges’ to cover also discharges at sea resulting from damage to the ship even where precautions have been taken by those concerned to limit damage and where it is established that the master or owner has not acted recklessly or intentionally. This adaptation of the MARPOL definition creates legal conflict with the international regime. Furthermore, the impact of the modification proposed by the Commission is minimal given that criminal sanctions may be imposed only where offences have been committed intentionally or by gross negligence (Article 6).*

Amendment 11  
Article 3, paragraph 1 a (new)

***1a. However, this directive shall apply to ships sailing under the flag of a Member State irrespective of where the discharge occurred.***

*Justification*

*The scope and enforcement of the directive in respect of vessels sailing under the flag of a Member State are unclear. The flag state is always primarily responsible for enforcing the rules that are applicable to vessels sailing under its flag. It must therefore be obvious that the (criminal) sanctions apply irrespective of the location of the offence.*

Amendment 12  
Article 4, paragraph 1

1. If irregularities or information give rise to suspicion that a ship which is within a port or at an off-shore terminal of a Member State has engaged in an illegal discharge of polluting substances in any of the sea areas referred to in Article 3.1, the Member State shall ensure that an appropriate examination is undertaken in accordance with its national law.

1. If irregularities or information give rise to suspicion that a ship which is within a port or at an off-shore terminal of a Member State has engaged in an illegal discharge of polluting substances in any of the sea areas referred to in Article 3.1, the Member State shall ensure that, ***in accordance with clear rules as to territorial and functional competence***, an appropriate examination is undertaken in accordance with its national law.

*Justification*

*The country concerned should incorporate in its national law unequivocal rules governing competence, both territorial and functional (e.g. administrative or military authority, etc.) to avoid time being wasted in the examination of a case and ensure that action is taken with the speed required for such anti-pollution controls.*

Amendment 13  
Article 4, paragraph 3 a (new)

***3a. The provisions of this article shall***

***apply mutatis mutandis to ships sailing under the flag of a Member State irrespective of where the ship is located.***

*Justification*

*In view of the primary responsibility of flag states for the enforcement of rules, the scope of the directive should also be extended to cover ships sailing under the flag of a Member State even where the ship is not located in one of the areas referred to in this article.*

Amendment 14  
Article 5, indent 1

- If the next port of call of the ship is another Member State, the Member States concerned shall co-operate closely in the examination referred to in article 4 paragraph 1 and in deciding on the appropriate ***administrative*** measures in respect of any such discharge;

- If the next port of call of the ship is another Member State, the Member States concerned shall co-operate closely in the examination referred to in article 4 paragraph 1 and in deciding on the appropriate measures in respect of any such discharge;

*Justification*

*The proposal does not spell out precisely what is meant by ‘administrative measures’. Member States should retain the option of taking other appropriate measures as well, e.g. holding a ship under arrest.*

Amendment 15  
Article 6, paragraph 1

1. Member States shall ensure that the illegal discharge of polluting substances, the participation in and instigation of such discharge are regarded as criminal offences, when committed intentionally or by gross negligence.

1. Member States shall ensure that the illegal discharge of polluting substances, the participation in, ***even by omission***, and instigation of such discharge are regarded as criminal offences, when committed intentionally or by gross negligence.

*Justification*

*It is appropriate to make specific reference also to the liability of persons who would have been able to prevent the event, but failed to act despite having the obligation to so do so.*

Amendment 16  
Article 6, paragraph 2

2. Any person (i.e. not only the shipowner but also the owner of the cargo, the classification society or any other person involved), who has been found by a court of law responsible within the meaning of paragraph 1, shall be subject to sanctions, including, where appropriate, criminal sanctions.

2. Any person (i.e. not only the shipowner but also the owner of the cargo, the classification society, ***the competent (port) authority*** or any other person involved), who has been found by a court of law responsible within the meaning of paragraph 1, shall be subject to sanctions, including, where appropriate, criminal sanctions.

*Justification*

*Decisions by the port authorities or responsible agencies may give rise to or exacerbate environmental pollution by shipping, for example, where the competent authority refuses a ship in distress access to a port or a safe anchorage.*

Amendment 17  
Article 6, paragraph 5, point (a)

(a) fines;

(a) ***appropriate*** fines;

Amendment 18  
Article 6, paragraph 5, point (fa)

***(fa) confiscation of the ship***

*Justification*

*Confiscation of the ship may prove to be an effective sanction and should therefore be stipulated as an option in this directive.*

Amendment 19  
Article 6, paragraph 6 a (new)

***6a. The European Commission shall ensure that the directives and regulations on maritime safety are rigorously enforced in the Member States.***

Amendment 20  
Article 8, introductory part

Member States and the Commission shall co-operate, in close collaboration with the European Maritime Safety Agency and, ***where appropriate, in the framework*** of the action programme to respond to accidental or deliberate marine pollution as set up ***by*** Decision No 2850/2000/EC in order to:

Member States and the Commission shall co-operate, in close collaboration with the European Maritime Safety Agency and, ***taking account*** of the action programme to respond to accidental or deliberate marine pollution as set up ***pursuant to*** Decision No 2850/2000/EC ***and of implementation of Directive 2000/59/EC on port reception facilities***, in order to:

*Justification*

*Providing irrefutable evidence of pollution by ships on the open seas is often a complex matter. Proper recording of waste discharged in ports can help furnish proof of discharges at sea, particularly where oil is concerned. Alignment of this directive with the directive on port reception facilities will enhance the impact of both measures.*

Amendment 21  
Article 8, point (a)

(a) develop the necessary information systems required for the effective implementation of this Directive;

(a) develop the necessary information ***and warning*** systems required for the effective implementation of this Directive;

*Justification*

*Setting up a warning network is a useful tool to ensure that all the appropriate checks can be carried out when irregularities suggest that a ship has made an illegal discharge and it is in transit between two ports of call.*

Amendment 22  
Article 8 a (new)

*Article 8a*

*1. Not later than six months after the entry into force of this directive the Commission shall submit to the European Parliament and the Council of the European Union a proposal for the creation of a European coastguard.*

*2. The task of this European coastguard shall be, among other things, to carry out effective and unannounced checks on the high seas.*

*3. The European coastguard shall enjoy all the necessary powers in order to take the measures necessary for implementation of the provisions of this directive where there is a justified suspicion of a pollution offence.*

*Justification*

*In order to ensure optimum and above all uniform surveillance on the high seas and hence effective application of this directive, a European coastguard needs to be set up as swiftly as possible to carry out among other things unannounced checks along all European coast according to uniform criteria.*

Amendment 23  
Article 9

Every **three** years, Member States shall transmit a report to the Commission on the application by their courts and other relevant authorities of this Directive. Based on these reports, the Commission shall submit a Community report to the European Parliament and the Council.

Every **two** years, Member States shall transmit a report to the Commission on the application by their courts and other relevant authorities of this Directive. Based on these reports, the Commission shall submit a Community report to the European Parliament and the Council. ***The Commission shall in this report assess, among other things, the desirability of extending the scope of or of revising this directive.***

### *Justification*

*Choosing to limit the directive's scope for the time being solely to oil and other noxious liquid substances is in itself understandable since that is where the biggest problems are today. In the long term, however, consideration needs to be given to extending its scope to cover, among other things, noxious solid substances (MARPOL V).*

### Amendment 24 Article 12, paragraph 1

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ~~six~~ months following the date of its entry into force and forthwith inform the Commission thereof.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than **twelve** months following the date of its entry into force and forthwith inform the Commission thereof.

### *Justification*

*Careful and accurate implementation of this directive matters greatly. Member States should therefore be given sufficient time for this purpose.*

## EXPLANATORY STATEMENT

The immediate motivation for the present proposal for a directive is the disaster involving the oil tanker 'Prestige' which sank in November 2002 off the coast of Spain. This disaster resulted in serious oil pollution along the Spanish, French and Portuguese coasts and in serious pollution of the marine environment. However, the Commission rightly notes that the greater part of worldwide oil pollution from shipping is not the result of disasters but of deliberate discharges. It therefore makes little sense, in the Commission's view, to do everything possible to prevent disasters if action is not also taken at the same time to combat illegal discharges.

This proposal consists of two measures. Firstly, the directive incorporates into Community law the existing international rules governing discharges, in this case, the global agreements on the discharge of oil and other noxious liquid substances from the 1973 *International Convention for the Prevention of Pollution from Ships* (MARPOL). MARPOL lays down requirements concerning the storage facilities and filtering equipment on ships and stipulates the maximum authorised quantities of discharge and the areas where discharges are and are not allowed.

The directive also deals with the enforcement of these agreements. This section of the proposal contains a number of important new aspects, in particular, the fact that the directive also applies to offences on the high seas (sea areas over which no single state has jurisdiction).

Secondly, the proposed directive specifies that contraventions of the discharge rules are offences and provides guidance concerning the nature of the penalties to be imposed.

For the sake of completeness, it should be noted that, to complement this proposal for a directive, the Commission has produced a draft framework decision of the Council (COM (2003) 227) which is being considered under the third pillar (Justice and Home Affairs cooperation) and on which Parliament is therefore solely entitled to deliver an opinion (Rapporteur: Giuseppe Di Lello Finuolo (LIBE), Draftsman: Wilhelm Ernst Piecyk (RETT)). This framework decision expands on a number of measures and issues in the directive in the field of judicial cooperation. In particular, it deals with the level of penalties, judicial cooperation between Member States and the requirement to investigate in the event of grave suspicions.

### **Comments by rapporteur**

Your rapporteur shares the Commission's concern at the patchy compliance with the discharge rules by the maritime sector and at the implementation and enforcement of these rules by the port and flag states. Parliament has on various occasions since the 'Prestige' disaster pressed for better implementation and enforcement of existing European and IMO rules. This proposal can make a contribution to such enforcement.

Nevertheless, the proposal does prompt a number of brief comments.

### **Proportionality and effectiveness**



- *Lack of detailed problem analysis*

The 'Prestige' disaster created considerable political pressure at European level to take steps to protect the marine environment. This is understandable but a long hard look needs to be taken at the proportionality and effectiveness of this proposed legislation. The Commission indicates that the implementation of MARPOL by the Member States fluctuates greatly both in practice and in legal terms. The explanatory memorandum accompanying the proposal does not, however, show that the Commission has examined in detail what those differences are and what approach they require. The Commission confines itself to referring to a very generally worded IMO document in which no individual Member States are mentioned.

- *Lack of action at world level*

Given that the proposal concerns the implementation and enforcement of worldwide rules, it would have been obvious in the first instance to examine how the situation can be improved at world level. After all, flag states from third countries can be urged only at IMO level to comply with their obligations worldwide. The Commission would be able in its contacts with the Member States to play a stimulating and coordinating role here. It is not evident from the Commission's explanatory memorandum that it pursued this approach.

### **Relationship with existing EU rules**

The present directive is certainly not the only means of combating illegal discharges. A close relationship exists between this proposal for a directive and a number of directives that have already entered into force such as the ones on port state control (95/21/EC), port reception facilities (2000/59/EC) and traffic monitoring (2002/59/EC).

- *Port reception facilities*

Directive 2000/59/EC requires ports to provide sufficient port reception facilities for ship-generated waste and requires vessels subsequently to make use of these facilities. Despite the expiry of the implementation deadlines most Member States have evidently not yet implemented this directive. Your rapporteur fully supports the Commission in bringing these Member States to court in order at last to force through implementation. The existence of adequate port reception facilities does after all deprive shipowners and crews of an important argument in favour of dumping their waste illegally. However, this does certainly not mean that illegal dumping can be excused on the pretext of a lack of port reception facilities; ships should themselves ensure they have enough storage space on board.

- *Monitoring and information system*

Another important directive in this connection is Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system. This system means that coastal states are better informed about the ships sailing in their waters and their cargo. The directive also introduces procedures for tracking down illegal discharges at sea and for the measures which Member States must take at sea where such discharges have taken place. It also makes a voyage data recording system compulsory for certain vessels. This 'black box' records data such as speed, radar information and communications between ship and shore. Your rapporteur considers the implementation of this directive to be of the greatest importance given that the recorded information can play a significant role in proving the guilt or innocence of the crew in the event of discharges.

Your rapporteur feels that detailed implementation and stringent enforcement by the Member States of the above directives should be a priority. The Commission needs to exercise strict supervision here. The present proposal for a directive on criminal sanctions may subsequently be of additional assistance here.

### **Position of ships' crews**

In addition to proportionality and effectiveness, a good look also needs to be taken at what political and social message is conveyed by this directive. Member States must be prevented from starting a witchhunt with the aid of this directive against masters, ships' crews and other accused persons and thereby diverting attention from mistakes possibly made by the port authorities or other agencies. Treating ships' crews as serious criminals before their guilt has been established is bad for the image of a sector which already has considerable difficulty in attracting motivated and well-trained personnel in Europe. The directive must therefore place greater emphasis on safeguarding their rights than is the case at present - with simply a brief reference to the Charter of Fundamental Rights. In addition, as already stated, the black box on ships can serve as a means of proving the guilt or innocence of the crew.

### **Legal aspects**

- *Danger of conflict between legal regimes*

The Commission is proposing to incorporate the MARPOL rules on discharges into Community law. In so doing, however, it also makes a number of modifications to the internationally agreed texts. For example, it abolishes the derogation introduced for discharges resulting from damage to a ship. These modifications are undesirable in terms of content but also contribute to a proliferation of divergent global, European and national rules. Your rapporteur intends therefore to table an amendment reversing this mistaken approach.

- *Wording of proposal*

Some forms of wording in the proposal are unclear or open to various interpretations. Precisely because legal provisions are involved, accuracy and clarity matter greatly. Your rapporteur is accordingly proposing a number of improvements.

- *Implementation and reporting requirements*

In view of the fact that the proposed rules encroach substantially on national jurisdiction and that proper implementation is of the greatest importance, your rapporteur considers it desirable that the Member States be given a longer time for implementation than the six months proposed by the Commission.

Your rapporteur calls into question the arbitrary choice of restricting the proposal to the discharge of oil and other noxious liquid substances and not extending its scope to include noxious solid substances as well (MARPOL V). However, having regard to proportionality and effectiveness, your rapporteur is not directly proposing such an extension but does intend to require the Commission to examine the advantages and disadvantages of such extensions in its first report.

11 June 2003

## **OPINION OF THE COMMITTEE ON CITIZENS' FREEDOMS AND RIGHTS, JUSTICE AND HOME AFFAIRS**

for the Committee on Regional Policy, Transport and Tourism

on the proposal for a European Parliament and Council directive on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences (COM(2003) 92 – C5-0076/2003 – 2003/0037(COD))

Draftsman: Giuseppe Di Lello Finuoli

### **PROCEDURE**

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Giuseppe Di Lello Finuoli draftsman at its meeting of 20 March 2003.

It considered the draft opinion at its meetings of 23 April and 20 May 2003.

At the last meeting it adopted the following amendments by unanimously.

The following were present for the vote: Giacomo Santini (chairman), Johanna L.A. Boogerd-Quaak (vice-chairman), Giuseppe Di Lello Finuoli (draftsman), Alexandros Alavanos (for Ole Krarup, pursuant to Rule 153(2)), Mary Elizabeth Banotti, Alima Boumediene-Thiery, Mogens N.J. Camre (for Niall Andrews), Marco Cappato (for Mario Borghezio), Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Lissy Gröner (for Gerhard Schmid, pursuant to Rule 153(2)), Ewa Hedkvist Petersen (for Joke Swiebel), Margot Keßler, Eva Klamt, Alain Krivine (for Fodé Sylla), Baroness Sarah Ludford, Lucio Manisco (for Ilka Schröder), Bill Newton Dunn, Marcelino Oreja Arburúa, Hubert Pirker, Martine Roure, Heide Rühle, Olle Schmidt (for Francesco Rutelli), Patsy Sørensen, Anna Terrón i Cusí and Maurizio Turco.

## SHORT JUSTIFICATION

This proposal for a directive is consistent with – and suitably complementary to – the proposal for a European Parliament and Council directive on the protection of the environment through criminal law (COM(2001) 139 – C5-0116/2001 – 2001/0076 (COD)), on which the European Parliament delivered its opinion on 9 April 2002.

The particular nature of marine pollution requires the swiftest possible adoption of Community instruments aimed at incorporating, in the national laws of the individual Member States, effective and dissuasive sanctions, as well as rules governing behaviour and cooperation.

As a series of disasters, such as those caused by the sinking of the *Erika* and the *Prestige*, have amply demonstrated, the lack of such rules and sanctions has indeed led to an increase in pollution and prevented timely action being taken to prevent or limit the damage caused.

The proposal for a directive envisages, inter alia, the harmonisation of criminal sanctions and other deterrents for serious acts of pollution in contravention of Community legislation. It extends the sanctions to persons responsible for transport, the use of unsuitable vessels and the resulting pollution, who are excluded from civil liability by virtue of international conventions. It makes implementation of the international Marpol 73/80 Convention more effective for the Member States.

## AMENDMENTS

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

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Text proposed by the Commission<sup>1</sup>

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Amendments by Parliament

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### Amendment 1 Article 4, paragraph 1

1. If irregularities or information give rise to suspicion that a ship which is within a port or at an off-shore terminal of a Member State has engaged in an illegal discharge of polluting substances in any of the sea areas referred to in Article 3.1, the Member State shall ensure that an appropriate examination is undertaken in accordance with its national law.

1. If irregularities or information give rise to suspicion that a ship which is within a port or at an off-shore terminal of a Member State has engaged in an illegal discharge of polluting substances in any of the sea areas referred to in Article 3.1, the Member State shall ensure that, ***in accordance with clear rules as to territorial and functional competence***, an appropriate examination is undertaken in

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<sup>1</sup> Not yet published in OJ..

accordance with its national law.

*Justification*

*The country concerned should incorporate in its national law unequivocal rules governing competence, both territorial and functional (e.g. administrative or military authority, etc.) to avoid time being wasted in the examination of a case and ensure that action is taken with the speed required for such anti-pollution controls.*

Amendment 2  
Article 5, indent 1

- If the next port of call of the ship is another Member State, the Member States concerned shall co-operate closely in the examination referred to in article 4 paragraph 1 and in deciding on the appropriate administrative measures in respect of any such discharge;

- If the next port of call of the ship is another Member State, the Member States concerned shall co-operate closely in the examination referred to in article 4 paragraph 1 and in deciding on the appropriate administrative measures ***pursuant to this Directive*** in respect of any such discharge;

*Justification*

*To refer to administrative provisions only is too restrictive and would mean ruling out decisions on other kinds of provision.*

Amendment 3  
Article 6, paragraph 1

1. Member States shall ensure that the illegal discharge of polluting substances, the participation in and instigation of such discharge are regarded as criminal offences, when committed intentionally or by gross negligence.

1. Member States shall ensure that the illegal discharge of polluting substances, the participation in, ***even by omission***, and instigation of such discharge are regarded as criminal offences, when committed intentionally or by gross negligence.

*Justification*

*It is appropriate to make specific reference also to the liability of persons who would have been able to prevent the event, but failed to act despite having the obligation to so do so.*

Amendment 4  
Article 6, paragraph 5, point (b a) (new)

As regards natural and legal persons  
Member States shall provide for, *inter alia*,  
the following sanctions:

- (a) fines;
- (b) confiscation of the proceeds gained by  
the offences referred to in paragraph 1.

As regards natural and legal persons, the  
Member States shall provide for, *inter  
alia*, the following sanctions:

- (a) fines;
- (b) confiscation of the proceeds gained by  
the offences referred to in paragraph 1.  
***(ba) confiscation of the vessel.***

*Justification*

*In the interests of consistency, in addition to the confiscation of proceeds and in order to  
introduce effective and dissuasive sanctions, specific provision should also be made for  
confiscating the ship producing the illegal discharge.*

18 June 2003

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET**

for the Committee on Regional Policy, Transport and Tourism

on the proposal for a European Parliament and Council directive on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences (COM(2003) 92 – C5-0076/2003 – 2003/0037(COD))

Draftsman: Marcelino Oreja Arburúa

### **PROCEDURE**

The Committee on Legal Affairs and the Internal Market appointed Marcelino Oreja Arburúa draftsman at its meeting of 18 March 2003.

It considered the draft opinion at its meetings of 21 May and 17 June 2003.

At the last meeting it adopted the following amendments by 28 votes to 1.

The following were present for the vote: Giuseppe Gargani (chairman), Willi Rothley, Ioannis Koukiadis and Bill Miller (vice-chairmen), Marcelino Oreja Arburúa (draftsman), Paolo Bartolozzi, Luis Berenguer Fuster (for Carlos Candal), Maria Berger, Philip Charles Bradbourn (substitute), Michael Cashman (for François Zimeray, pursuant to Rule 153(2)), Bert Doorn, Francesco Fiori (for Janelly Fourtou, pursuant to Rule 153(2)), Pernille Frahm (for Alain Krivine, pursuant to Rule 153(2)), Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Malcolm Harbour, The Lord Inglewood, Kurt Lechner, Klaus-Heiner Lehne, Neil McCormick, Toine Manders, Arlene McCarthy, Manuel Medina Ortega, Hartmut Nassauer (for Rainer Wieland), Angelika Niebler (for Joachim Wuermeling), Anne-Marie Schaffner, Marianne L.P. Thyssen, Diana Wallis and Stefano Zappalà.

## AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

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### Text proposed by the Commission

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### Amendments by Parliament

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#### Amendment 1

##### Article 1

The purpose of this Directive is to incorporate the international standards for ship-source pollution into Community law and to ensure that persons responsible for illegal discharges are subject to adequate sanctions, including criminal sanctions. The underlying objective of the Directive is to improve maritime safety and to protect the marine environment from pollution by ships.

The purpose of this Directive is to incorporate the international standards for ship-source pollution ***from illegal discharges*** into Community law and to ensure that persons responsible for illegal discharges are subject to adequate sanctions, including criminal sanctions. The underlying objective of the Directive is to improve maritime safety and to protect the marine environment from pollution by ships.

#### *Justification*

*This will bring all illegal discharges of polluting substances that cause pollution within the field of application of the Directive.*

#### Amendment 2

##### Article 4

1. If irregularities or information give rise to suspicion that a ship which is within a port or at an off-shore terminal of a Member State has engaged in an illegal discharge of polluting substances in any of the sea areas referred to in Article 3.1, the Member State shall ensure that an appropriate examination is undertaken in accordance with its national law.

1. If irregularities or information give rise to suspicion that a ship which is within a port or at an off-shore terminal, ***in territorial or internal waters*** of a Member State has engaged in an illegal discharge of polluting substances in any of the sea areas referred to in Article 3.1, ***the competent authorities of*** the Member State shall ensure that an appropriate examination is undertaken in accordance with its national law.



### *Justification*

*The directive must cover illegal actions within the whole territory of the country, including ports in territorial waters and internal waters, so that the competent authorities will not fail in their obligation to take action on such crimes.*

### Amendment 3

Article 6, Paragraph 5(c a) (new)

***(ca) Confiscation of the ship.***

### *Justification*

*If the confiscation of proceeds is not sufficient, provision should be made for the possibility of confiscating the ship, as a more effective sanction.*

25 June 2003

## **OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER POLICY**

for the Committee on Regional Policy, Transport and Tourism

on the proposal for a European Parliament and Council directive on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences (COM(2003) 92 – C5-0076/2003 – 2003/0037(COD))

Draftsperson (\*): Françoise Grossetête

(\*) Enhanced cooperation between committees - Rule 162a

### **PROCEDURE**

The Committee on the Environment, Public Health and Consumer Policy appointed Françoise Grossetête draftsman at its meeting of 19 March 2003.

It considered the draft opinion at its meetings of 21 May and 17 June 2003.

At the latter/last meeting it adopted the following amendments unanimously.

The following were present for the vote: Caroline F. Jackson (chairman), Mauro Nobilia, Alexander de Roo, Guido Sacconi, (vice-chairmen), Françoise Grossetête (draftsman), María del Pilar Ayuso González, Jean-Louis Bernié, David Robert Bowe, John Bowis, Hiltrud Breyer, Philip Bushill-Matthews (for Marialiese Flemming), Martin Callanan, Dorette Corbey, Chris Davies, Bárbara Dührkop Dührkop (for Béatrice Patrie), Jillian Evans (for Patricia McKenna), Anne Ferreira, Christel Fiebiger (for Pernille Frahm), Karl-Heinz Florenz, Cristina García-Orcoyen Tormo, Salvador Garriga Polledo (for Raffaele Costa), Laura González Álvarez, Robert Goodwill, Cristina Gutiérrez Cortines, María Esther Herranz García (for Avril Doyle), Marie Anne Isler Béguin, Juan de Dios Izquierdo Collado (for Dagmar Roth-Behrendt), Hedwig Keppelhoff-Wiechert (for Eija-Riitta Anneli Korhola), Christa Klauf, Bernd Lange, Peter Liese, Giorgio Lisi (for Jorge Moreira da Silva), Torben Lund, Minerva Melpomeni Malliori, Rosemarie Müller, Riitta Myller, Raimon Obiols i Germà (for Elena Valenciano Martínez-Orozco), Ria G.H.C. Oomen-Ruijten, Mihail Papayannakis, Marit Paulsen, Yvonne Sandberg-Fries, Karin Scheele, Horst Schnellhardt, Inger Schörling, Jonas Sjöstedt, María Sornosa Martínez, Dirk Sterckx (for Jules Maaten), Catherine Stihler, Nicole Thomas-Mauro, Antonios Trakatellis, Kathleen Van Brempt, Daniel Varela Suanzes-Carpegna (for Emilia Franziska Müller), Peder Wachtmeister and Phillip Whitehead.

## SHORT JUSTIFICATION

Although European legislation on the prevention aspects of maritime safety does exist, many Member States have not fully satisfied the European Community's expectations by delaying the application of the relevant regulations and directives. Recent accidents involving oil tankers have highlighted failings in this sphere.

Today, it is vital to check the enforcement of these measures and ensure that they are effective by enhancing the responsibility of all the players involved (classification society, captain, owner, operator, charterer).

In the case of deliberate pollution (degassing) or accidental pollution (shipwreck) it is therefore necessary to impose harmonised penalties that are proportionate to the damage caused and no-one involved should be able to evade the rules. Consequently, it may be time to consider the creation of a European coastguard service, along with ensuring satisfactory coordination between Member States.

## AMENDMENTS

The Committee on the Environment, Public Health and Consumer Policy calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission <sup>1</sup>	Amendments by Parliament
Amendment 1 Recital 2	
(2) The material standards for ship-source pollution discharges in all Member States are based upon the Marpol 73/78 Convention; but these rules are being ignored on a daily basis by ships sailing in Community waters, without corrective action being taken;	(2) The material standards for ship-source pollution discharges in all Member States are based upon the Marpol 73/78 Convention; but these rules are being ignored on a daily basis by <b>a very large number of</b> ships sailing in Community waters, without corrective action being taken;

### *Justification*

*It is not appropriate to accuse all fleets of failing to comply with the rules.*

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<sup>1</sup> Not yet published in OJ.

Amendment 2  
Recital 2 a (new)

***(2a) Many Community ports lack appropriate facilities for receiving and treating waste; in order to combat intentional pollution, the EU should undertake, by way of a European plan, to set up the necessary infrastructure for degassing and cleaning vessels in all Community ports, which should be capable of dealing with several major difficulties simultaneously.***

Amendment 3  
Recital 3 a (new)

***(3a) Regrets that many Member States have not fully satisfied the European Community's expectations with regard to maritime safety, in particular by delaying the application of existing directives and regulations.***

*Justification*

*Recent accidents involving oil tankers have highlighted shortcomings in this sphere. In this context, we have seen that criticism was wrongly directed at 'Europe', given that legislation exists but is not properly enforced.*

Amendment 4  
Recital 4

(4) Measures of a dissuasive nature form an integral part of the Community's maritime safety policy, as they ensure a link between the responsibility ***of the parties*** involved in the transport of polluting goods by sea and their exposure to sanctions; in order to achieve effective protection of the environment, there is therefore a need for effective, dissuasive and proportionate sanctions;

(4) Measures of a dissuasive nature form an integral part of the Community's maritime safety policy, as they ensure a link between the responsibility of ***each of the parties*** involved in the transport of polluting goods by sea and their exposure to sanctions; in order to achieve effective protection of the environment, there is therefore a need for effective, dissuasive, and proportionate sanctions;

### *Justification*

*The directive aims to make each of the parties involved in maritime transport responsible and this should be spelt out.*

#### Amendment 5 Recital 5

(5) Neither the international regime for the civil liability and compensation of oil pollution nor that relating to pollution by other hazardous or noxious substances provide sufficient dissuasive effects to discourage ***the parties*** involved in the transport of hazardous cargoes by sea from engaging in substandard practices; the required dissuasive effects can only be achieved through the introduction of sanctions of a penal nature, which apply to any person who causes or contributes to marine pollution deliberately or through gross negligence;

(5) Neither the international regime for the civil liability and compensation of oil pollution nor that relating to pollution by other hazardous or noxious substances provide sufficient dissuasive effects to discourage ***each of the parties*** involved in the transport of hazardous cargoes by sea from engaging in substandard practices; the required dissuasive effects can only be achieved through the introduction of sanctions of a penal nature, which apply to any person who causes or contributes to marine pollution deliberately or through gross negligence;

### *Justification*

*The directive aims to make each of the parties involved in maritime transport responsible and this should be spelt out.*

#### Amendment 6 Recital 8

(8) There is a need for ***further*** co-operation among Member States to ensure that illegal discharges are detected in time and that the offenders are identified;

(8) There is a need for ***effective*** co-operation among Member States to ensure that illegal discharges are detected in time and that the offenders are identified;

#### Amendment 7 Recital 8 a (new)

***(8a) To ensure that criminal sanctions against intentional pollution are effective, the port authorities in Community ports should maintain registers of oil; each Member State must therefore introduce stringent legislation against any failure to***

***maintain those registers and any entry whose authenticity cannot be established in order to prevent uncontrolled degassing, which is the source of most marine pollution.***

#### Amendment 8

##### Article 1

The purpose of this Directive is to incorporate the international standards for ship-source pollution into Community law and to ensure that ***persons*** responsible for illegal discharges ***are*** subject to adequate sanctions, including criminal sanctions. The underlying objective of the Directive is to improve maritime safety and to protect the marine environment from pollution by ships.

The purpose of this Directive is to incorporate the international standards for ship-source pollution into Community law and to ensure that ***each person*** responsible for illegal discharges ***is*** subject to adequate sanctions, including criminal sanctions. The underlying objective of the Directive is to improve maritime safety and to protect the marine environment from pollution by ships.

#### *Justification*

*The directive aims to make each of the parties involved in maritime transport responsible and this should be spelt out.*

#### Amendment 9

##### Article 5 a (new)

##### ***Article 5a***

***In order to ensure effective application of these measures and optimum surveillance, the European Commission should propose, as soon as possible, the creation of a Community inspection body whose role would include carrying out unannounced checks at sea.***

#### *Justification*

*The creation of European coastguard teams, who would receive identical training and would be mobile and deployable in all seas would be a way of combating maritime pollution and would allow close surveillance of our coasts.*

Amendment 10  
Article 6, paragraph 5, point (a)

(a) fines;

(a) ***appropriate*** fines;

Amendment 11  
Article 6, paragraph 6 a (new)

***6a. The European Commission shall ensure that the directives and regulations on maritime safety are rigorously enforced in the Member States.***

Amendment 12  
Article 8, point (a)

(a) develop the necessary information systems required for the effective implementation of this Directive;

(a) develop the necessary information ***and warning*** systems required for the effective implementation of this Directive;

*Justification*

*Setting up a warning network is a useful tool to ensure that all the appropriate checks can be carried out when irregularities suggest that a ship has made an illegal discharge and it is in transit between two ports of call.*

Amendment 13  
Article 9

Every ***three*** years, Member States shall transmit a report to the Commission on the application by their courts and other relevant authorities of this Directive. Based on these reports, the Commission shall submit a Community report to the European Parliament and the Council.

Every ***two*** years, Member States shall transmit a report to the Commission on the application by their courts and other relevant authorities of this Directive. Based on these reports, the Commission shall submit a Community report to the European Parliament and the Council.

*Justification*

*Recent tanker accidents have highlighted shortcomings in the application of Community decisions. Consequently, the deadlines for forwarding information on the outcomes of this Directive should be shortened. This tool will also be useful in measuring the effectiveness of the system and comparing data.*

