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*****I**

REPORT

on the proposal for a directive 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
(COM(2008)0134 – C6-0142/2008 – 2008/0055(COD))

Committee on Transport and Tourism

Rapporteur: Luis de Grandes Pascual

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***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. 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). Suggested corrections of this kind are subject to the agreement of the departments concerned.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	15
OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY	19
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS	24
PROCEDURE.....	27

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive 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

(COM(2008)0134 – C6-0142/2008 – 2008/0055(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0134),
 - having regard to Article 251(2) and Article 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0142/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Transport and Tourism and the opinions of the Committee on the Environment, Public Health and Food Safety and the Committee on Legal Affairs (A6-0080/2009),
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.

Amendment 1

Proposal for a directive - amending act

Recital 2

Text proposed by the Commission

(2) On 23 October 2007 the Court of Justice of the European Communities annulled Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution, which had previously supplemented Directive 2005/35/EC with criminal-law measures. This ***amendment to the Directive fills the legal vacuum***

Amendment

(2) On 23 October 2007 the Court of Justice of the European Communities annulled Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution, which had previously supplemented Directive 2005/35/EC with criminal-law measures. This ***judgment created a legal vacuum which this***

following the judgment.

amendment to the Directive seeks to fill.

Amendment 2

Proposal for a directive – amending act Recital 3

Text proposed by the Commission

(3) Criminal penalties, which demonstrate social disapproval of a different nature than administrative sanctions, **strengthen** compliance with the legislation against ship-source pollution in force.

Amendment

(3) Criminal penalties, which demonstrate social disapproval of a different nature than administrative sanctions, **greatly enhance** compliance with the legislation against ship-source pollution in force **and should be sufficiently severe to dissuade all potential polluters from any violation thereof.**

Justification

Terms used in Article 4(4) of the Marpol Convention, which prefers the principle of dissuasion over repression, should be incorporated word for word.

Amendment 3

Proposal for a directive – amending act Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) A consistent set of legislative measures has already been adopted at EU level to reinforce maritime safety and help prevent ship-source pollution. The legislation in question is addressed to flag States, ship owners and charterers, classification societies, port States and coastal States. The existing system of sanctions for illegal ship-source discharges supplementing that legislation needs to be further strengthened by the introduction of criminal penalties .

Justification

A link to current legislation should be made in order to guarantee legal consistency and legal

certainty.

Amendment 4

Proposal for a directive - amending act Recital 4

Text proposed by the Commission

(4) Common rules on criminal penalties make it possible to use more effective methods of investigation and ***assistance*** within and between Member States.

Amendment

(4) Common rules on criminal penalties make it possible to use more effective methods of investigation and ***to ensure effective cooperation*** within and between Member States.

Amendment 5

Proposal for a directive – amending act Recital 5

Text proposed by the Commission

(5) ***Effective***, proportionate and dissuasive penalties ***should also apply*** to legal persons throughout the Community because frequently ship-source pollution offences are committed in the interest of legal persons or for their benefit.

Amendment

(5) ***The Member States should also apply effective***, proportionate and dissuasive penalties to legal persons throughout the Community because frequently ship-source pollution offences are committed in the interest of legal persons or for their benefit.

Justification

The directive confers the power to act on the party taking the measures, namely the Member State, in accordance with the subsidiarity principle and in view of the complexity and diversity of legislation on legal persons.

Amendment 6

Proposal for a directive - amending act Recital 6

Text proposed by the Commission

(6) Member States should provide information to the Commission on implementation of this Directive, in order to enable the Commission to evaluate its

Amendment

(6) Member States should ***be obliged to*** provide information to the Commission on implementation of this Directive, in order to enable the Commission to evaluate its

effect.

effect.

Amendment 7

Proposal for a directive – amending act Recital 7

Text proposed by the Commission

(7) Since the objectives of this Directive cannot be achieved adequately by the Member States and, by reason of the cross-border damage which may be caused by the behaviour concerned, can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the same Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

Amendment

(7) *(Does not affect English version).*

Justification

(Does not affect English version).

Amendment 8

Proposal for a directive – amending act Recital 7 a (new)

Text proposed by the Commission

Amendment

7a) The judgments of the Court of Justice of the European Communities of 13 September 2005 in Case C-176/03, Commission v Council and of 23 October 2007 in Case C-440/05, Commission v Council, mean that it is now possible for the Community to impose criminal penalties for illicit ship-source discharges of polluting substances, notwithstanding the power of Member States to impose

penalties of a different type for cases which are not regarded as a criminal offences.

Justification

The inclusion of criminal offences should not imply that administrative infringements no longer exist.

Amendment 9

**Proposal for a directive – amending act
Recital 7 b (new)**

Text proposed by the Commission

Amendment

7b) The high level of safety and protection of the environment in the maritime transport sector justifies the power of Member States to class illicit cases of minor ship-source discharges of polluting substances as administrative infringements under the terms of the current Directive. The effectiveness of the 'polluter pays' principle, whereby the polluting party pays for the damage caused to the environment, requires that illicit cases of minor but repeated ship-source discharges of polluting substances should be punished as criminal offences under the terms of this Directive.

Amendment 10

**Proposal for a directive – amending act
Article 1 – point 1 a (new)
Directive 2005/35/EC
Article 1 – paragraph 1**

Text proposed by the Commission

Amendment

(1a) In Article 1(1) the words “in Article 8” shall be replaced by “in Articles 5a and 5c and the measures concerning liability as referred to in Article 5b”.

Justification

Article 1 (4), (5) and (6) of this Directive are introducing penalties and measures of liability, instead of Article 8 of original Directive 2005/35/EC, whose Article 8 is deleted by Article 1 (7) of this Directive.

Amendment 11

Proposal for a directive – amending act

Article 1 – point 3

Directive 2005/35/EC

Article 4 – title

Text proposed by the Commission

Amendment

"Criminal offences

"Infringements and criminal offences

Amendment 12

Proposal for a directive – amending act

Article 1 – point 3

Directive 2005/35/EC

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Member States may class as administrative infringements illicit cases of minor ship-source discharges of polluting substances into any of the areas referred to in Article 3(1) where the act committed does not cause a deterioration in the quality of the water. Discharges of this type, under the terms of this Directive, shall be termed "minor" cases.

Justification

This reinstates a concept adopted in Framework Decision 2005/667/JHA (now annulled) that distinguished between criminal penalties and penalties of a different type (Article 4(2) of Framework Decision 2005/667/JHA).

Amendment 13

Proposal for a directive – amending act

Article 1 – point 3

Directive 2005/35/EC

Article 4 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Behaviour involving repeated unlawful minor ship-source discharges of polluting substances shall be regarded as a criminal offence if the discharges have been made with intent, recklessly, or are due to serious negligence. The penalty shall, in any event, reflect the total number of minor discharges concerned.

Amendment 14

Proposal for a directive – amending act

Article 1 – point 3

Directive 2005/35/EC

Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. Each Member State shall take the measures necessary to ensure that inciting or aiding and abetting a criminal offence referred to in paragraph 1 is punishable by criminal law.

2. Each Member State shall take the measures necessary to ensure that inciting or aiding and abetting a criminal offence referred to in paragraph 1 is punishable by criminal law ***in those cases where the offence is committed with intent.***

Justification

Inciting or abetting can only occur where there is intent to deceive or act and not when the criminal offence occurs through recklessness or serious negligence.

Amendment 15

Proposal for a directive – amending act

Article 1 – point 3 a (new)

Directive 2005/35/EC

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

(3a) Article 5(1) is replaced by the following:

1. A discharge of polluting substances into any of the areas referred to in Article 3(1) shall not be regarded as an infringement or as a criminal offence if it satisfies the conditions set out in Annex I, Regulations 9, 10, 11(a) or 11(c) or in Annex II, Regulations 5, 6(a) or 6(c) of Marpol 73/78.

Justification

The inclusion in the new directive of possible criminal offences previously governed by annulled Framework Decision 2005/667/JHA requires that the amended directive clearly states that the exceptions refer both to criminal offences and to simple infringements.

Amendment 16

Proposal for a directive – amending act

Article 1 – point 3 b (new)

Directive 2005/35/EC

Article 5 – paragraph 2

Text proposed by the Commission

Amendment

(3 b) Article 5(2) is replaced by the following:

2. A discharge of polluting substances into the areas referred to in Article 3(1)(c), (d) and (e) shall not be regarded as an infringement or as a criminal offence for the owner, the master or the crew when acting under the master's responsibility if it satisfies the conditions set out in Annex I, Regulation 11(b) or in Annex II, Regulation 6(b) of Marpol 73/78.

Justification

The inclusion in the new directive of possible criminal offences previously governed by annulled Framework Decision 2005/667/JHA requires that the amended directive clearly

states that the exceptions refer both to criminal offences and to simple infringements.

Amendment 17

Proposal for a directive – amending act

Article 1 – point 4

Directive 2005/35/EC

Article 5 a – paragraph 1

Text proposed by the Commission

1. Each Member State shall take the necessary measures to ensure that the criminal offences referred to in Article 4 are punishable by effective, proportionate and dissuasive criminal penalties.

Amendment

1. Each Member State shall take the necessary measures to ensure that the ***infringements or*** criminal offences referred to in Article 4 are punishable by ***,respectively,*** effective, proportionate and dissuasive ***administrative or*** criminal penalties.

Justification

This is changed to accord with the amendments to Article 4 of Directive 2005/35/EC, which does not restrict infringements to criminal offences but also takes in administrative infringements.

Amendment 18

Proposal for a directive – amending act

Article 2 – subparagraph 1

Text proposed by the Commission

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. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ***12*** months following the date of its entry into force. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Justification

A reasonable amount of time is needed for the directive's implementation, up to a maximum of twelve months from the date of its entry into force. Extending this beyond one year would not

be realistic given that its text is largely based on Framework Decision 2005/667/JHA which had to be implemented by 12 January 2007, meaning that the Member States have already completed a large part of the work needed to implement the directive.

Amendment 19

Proposal for a directive – amending act

Article 1 – point 7 a (new)

Directive 2005/35/EC

Article 10 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(7a) After Article 10(2)(a), the following point is inserted:

“(aa) the monitoring and surveillance activities referred to in point (a) may be entrusted to an interdisciplinary monitoring laboratory (operating in, among other areas, the scientific, legal, and health fields) to be set up within the European Maritime Safety Agency, which shall process the relevant data and analyse their implications, not least in biological, chemical, and physical terms, for the health of the endangered marine ecosystem;”

EXPLANATORY STATEMENT

Background:

In order to tackle a widespread problem in sea transport, namely the worrying increase in illegal operational discharges of ship-source polluting substances, in 2003 the Commission submitted a proposal for a directive¹ based on Article 80(2) (transport) of the EC Treaty which states that ‘The Council may, acting by a qualified majority, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport’. Although international legislation to alleviate the situation already existed at that time – the Marpol 73-78 Convention – the shortcomings in its application and enforcement were becoming evident and it was also clear that the civil liability systems governing ship-source pollution in force then were not dissuasive enough. The proposal for a directive established that ship-source pollution ought to be regarded as a criminal offence subject to criminal penalties. It contained provisions on criminal law that went beyond categorising behaviour (actions that should be penalised) to set out minimum regulations on penalties, liability and jurisdiction, giving guidance on the nature of the penalties. The objections tabled by a considerable number of Member States to the Commission's choice of legal basis, transport policy under the first pillar, meant that the criminal law provisions in the directive had to be withdrawn and a JHA framework decision was submitted in their place. However, in May 2005, both proposals were adopted by Parliament and by the Council. Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements gives precise definitions of said infringements, and includes a clause stating that they are to be ‘subject to effective, proportionate and dissuasive penalties, which may include criminal or administrative penalties’, while provisions on the nature, type and degree of the penalties were included in Framework Decision 2005/667/JHA.

On 13 September 2005², the Court of Justice of the European Communities (CJEC) gave a judgment with very significant legal repercussions in that it stipulated that *the European Union institutions may, on the basis of the first pillar, legislate on criminal matters*. To be precise, the CJEC ruled that under certain conditions the Community legislator could provide for criminal-law-related measures. Subsequent to this, the Commission decided to bring a case for annulment of Framework Decision 2005/667/JHA taking the view that the framework decision had been adopted on the wrong legal basis (Case C-440/05). The CJEC ruled in favour of the European Commission, and on 23 October 2007 it annulled the framework decision ruling that its articles categorising the criminal offences and the nature of the penalties (Articles 2, 3 and 5) could have been adopted on the basis of Article 80(2) (transport) of the EC Treaty, and that the framework decision therefore violated Article 47 of the EU Treaty by usurping the powers of the Community.

Aim of the proposal:

The proposal aims to fill a legal vacuum created by the CJEC decision that left on the

¹ COM(2003) 92 final of 5 March 2003.

² Case C-176/03, Commission v Council, judgment of 13 September 2005.

sidelines a harmonised approach to possible penalties to combat maritime pollution. The Commission's new proposal is based on Directive 2005/35/EC and incorporates the essential elements of annulled Framework Decision 2005/667/JHA.

Situation to date in Parliament:

Due to the complexity and importance of the matter in hand, there was a dispute between the Committee on Transport and the Committee on Legal Affairs as to which committee was responsible. In the end, it was decided, following a recommendation from the Conference of Presidents, that the Committee on Transport should be appointed as the committee responsible and the Committee on Legal Affairs and the Committee on the Environment should issue an opinion duly inviting the main rapporteur to work closely with the two rapporteurs for the opinion.

As a result of this recommendation, the rapporteur held joint meetings with the rapporteurs for the opinion from the Committee on Legal Affairs and the Committee on the Environment, as well as with the shadow rapporteurs so that they would be aware, before the report was presented, of the key questions the rapporteur intended asking, without prejudice to his willingness to engage in dialogue throughout the legislative procedure.

Finally, it should be mentioned that this matter has also been the subject of debate in the Committee on Petitions as a petition on ship-source pollution has been received. The petitioners hope that this new proposal for a directive may help to resolve the serious problem affecting them.

Considerations and rapporteur's proposals:

a) General:

The Commission's proposal is very realistic and prudent, sensibly seeking to fill the legal vacuum created by the CJEC judgment of 13 September 2005 (Case C-176/03) and more specifically by the judgment of 23 October 2007 (Case C-440/05) which annulled Framework Decision 2005/667/JHA.

The rapporteur's initial assessment of the proposal is positive, and he takes the view that it is worthy of receiving Parliament's support subject to certain observations detailed by the rapporteur in the amendments put forward.

The Commission has simply reiterated the consensus reached when Directive 2003/35/EC was debated and adopted, but has done so on a new legal basis, since the judgments mentioned make it possible for the Community legislator to take measures connected to the Member States' criminal law.

b) The judgments of 13 September 2005 (Case C-176/03) and 23 October 2007 (Case C-440/05) of the Court of Justice of the European Communities:

Although it would certainly have been preferable for the Commission to have acquired powers in criminal law matters through a reform of the Treaties rather than through case law,

legally it cannot be denied that both judgments make it possible for the Community to adopt criminal law measures.

This said, a restrictive or tight interpretation may be applied. The rapporteur refuses to endorse the first judgment but does not wish to move outside the strict and exceptional limits established by both judgments.

The judgments are fairly strict in laying down the conditions under which this new power can be exercised, namely:

- A requirement that the measure be essential for combating serious offences against the environment.

In the rapporteur's opinion, the civil liability systems governing ship-source pollution in force at present are not sufficiently dissuasive.

- The harmonisation proposed by the Commission is the minimum needed to achieve the aim of effectively combating something specific such as ship-source pollution in the context of protection of the environment, an issue with clear European dimensions.

c) Subsidiarity principle:

The use of a directive as a legal instrument fully complies with the subsidiarity principle as this implies that the Member States have an obligation as to the results thereof but are free to choose the means. Furthermore, it gives the Member States plenty of scope as regards implementation when they transpose the directive into their national legal system.

d) Keys points underpinning the rapporteur's amendments:

- A balanced and strict interpretation of the scope of the CJEC judgments of 13 September 2005 and 23 October 2007.

- An assessment at Community level that the existing regulations to deter ship-source pollution have not worked. The Member States do not enforce the Marpol 73/78 Convention equally, its rules are broken daily by the high number of ships sailing in Community waters, and no corrective measures are taken.

- To distinguish between administrative penalties that penalise illegal minor discharges of ship-source polluting substances defined in the Marpol 73/78 Convention and criminal penalties for serious infringements that must be classed by Member States as criminal offences in those cases where the circumstances laid down in the proposal for a directive apply, reinstating a concept previously adopted in Framework Decision 667/2005/JHA, now annulled.

- To raise behaviour involving repeated minor infringements that cause serious pollution to the status of a criminal offence provided they are committed with intent, recklessly or through serious negligence.

The aim is to dissuade certain responsible parties in sea transport who find illegal pollution preferable in reality because paying the administrative penalty costs them less than complying with the relevant legislation.

This very common practice has transformed the former principle of ‘the polluter pays’ to ‘pay to pollute’.

- To distinguish between natural and legal persons, with subsidiarity applying to the latter on account of the complexity and diversity of legislation in Member States.

12.11.2008

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY

for the Committee on Transport and Tourism

on the proposal for a directive 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

(COM(2008)0134 – C6-0142/2008 – 2008/0055(COD))

Rapporteur: Marios Matsakis

SHORT JUSTIFICATION

Background information:

The need for a new proposal to amend an existing directive against maritime pollution became necessary in order to fill a legal vacuum created by a relevant ruling of the European Court of Justice in October 2007. This ruling annulled Framework Decision 2005/667/5HA "to strengthen the criminal-law framework for the enforcement of the law against ship source pollution", on the grounds that its articles on the definition of the criminal offence and the nature of penalties (articles 2, 3 and 5) could have been adopted on the basis of Article 80 (2) of the EC Treaty and that, therefore, the Framework Decision violated Article 47 of the EU Treaty by encroaching upon the powers of the Community.

The proposed amended Directive is fully guided by the ECJ decision above and is therefore thought no longer to suffer from a legal basis problem.

The draft opinion of the Environmental Committee:

The rapporteur considers the amending proposal to be indisputably necessary in order to remedy the legal vacuum created by the ECJ decision with regard to the effective sanctioning of infringements under the 2005 directive. It is important that the said Directive is amended as soon as possible because the delay in implementation of such an important piece of EU legislation could be to the detriment of our marine environment. It should perhaps be noted that such a delay could have been avoided if those concerned did not, in the first place, commit the legal basis error which led to the consequent annulment decision by the ECJ.

Hopefully such an occurrence will be avoided in the future.

Due to the nature and the circumstances under which this proposal is made, the rapporteur

suggests only a very minimal number of amendments.

AMENDMENTS

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

Amendment 1

Proposal for a directive - amending act Recital 2

Text proposed by the Commission

(2) On 23 October 2007 the Court of Justice of the European Communities annulled Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution, which had previously supplemented Directive 2005/35/EC with criminal-law measures. This ***amendment to the Directive fills the legal vacuum following the judgment.***

Amendment

(2) On 23 October 2007 the Court of Justice of the European Communities annulled Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution, which had previously supplemented Directive 2005/35/EC with criminal-law measures. This ***judgment created a legal vacuum which this amendment to the Directive seeks to fill.***

Amendment 2

Proposal for a directive - amending act Recital 3

Text proposed by the Commission

(3) Criminal penalties, which demonstrate social disapproval of a different nature than administrative sanctions, ***strengthen*** compliance with the legislation against ship-source pollution in force.

Amendment

3) Criminal penalties, which demonstrate social disapproval of a different nature than administrative sanctions greatly ***enhance*** compliance with the legislation against ship-source pollution in force.

Amendment 3

Proposal for a directive - amending act Recital 4

Text proposed by the Commission

(4) Common rules on criminal penalties make it possible to use more effective methods of investigation and ***assistance*** within and between Member States.

Amendment

4) Common rules on criminal penalties make it possible to use more effective methods of investigation and ***effective cooperation*** within and between Member States.

Amendment 4

Proposal for a directive - amending act Recital 6

Text proposed by the Commission

(6) Member States should provide information to the Commission on implementation of this Directive, in order to enable the Commission to evaluate its effect.

Amendment

(6) Member States should ***be obliged to*** provide information to the Commission on implementation of this Directive, in order to enable the Commission to evaluate its effect.

Amendment 5

Proposal for a directive – amending act Article 1 - point 1 a (new) Directive 2005/35/EC Article 1 - paragraph 1

Text proposed by the Commission

Amendment

(1a) In Article 1(1) the words “in Article 8” shall be replaced by “in Articles 5a and 5c and measures of liability as referred to in Article 5b of this Directive”.

Justification

Article 1 (4), (5) and (6) of this Directive are introducing penalties and measures of liability, instead of Article 8 of original Directive 2005/35/EC, whose Article 8 is deleted by Article 1 (7) of this Directive.

Amendment 6

Proposal for a directive - amending act

Article 1 - point 3

Directive 2000/35/EC

Article 4 - paragraph 1

Text proposed by the Commission

1. Member States shall ensure that ship-source discharges of polluting substances into any of the areas referred to in Article 3(1) are regarded as criminal offences if committed with intent, recklessly or with **serious** negligence.

Amendment

1. Member States shall ensure that ship-source discharges of polluting substances into any of the areas referred to in Article 3(1) are regarded as criminal offences if committed with intent, recklessly or with negligence.

Amendment 7

Proposal for a directive - amending act

Article 1 - point 3

Directive 2000/35/EC

Article 4 - paragraph 2

Text proposed by the Commission

2. Each Member State shall take the measures necessary to ensure that inciting or aiding and abetting a criminal offence referred to in paragraph 1 is punishable by criminal law. ”

Amendment

2. Each Member State shall take the measures necessary to ensure that inciting or aiding and abetting a criminal offence referred to in paragraph 1 is **adequately** punishable by criminal law. ”

PROCEDURE

Title	Ship-source pollution and penalties for infringements						
References	COM(2008)0134 – C6-0142/2008 – 2008/0055(COD)						
Committee responsible	TRAN						
Opinion by Date announced in plenary	ENVI 13.3.2008						
Drafts(wo)man Date appointed	Marios Matsakis 22.5.2008						
Discussed in committee	8.9.2008						
Date adopted	5.11.2008						
Result of final vote	<table> <tr> <td>+: </td><td>47</td></tr> <tr> <td>–: </td><td>1</td></tr> <tr> <td>0: </td><td>2</td></tr> </table>	+:	47	–:	1	0:	2
+:	47						
–:	1						
0:	2						
Members present for the final vote	Adamos Adamou, Georgs Andrejevs, Margrete Auken, Pilar Ayuso, Irena Belohorská, Johannes Blokland, John Bowis, Frieda Brepoels, Hiltrud Breyer, Martin Callanan, Dorette Corbey, Magor Imre Csibi, Avril Doyle, Mojca Drčar Murko, Edite Estrela, Anne Ferreira, Matthias Groote, Satu Hassi, Gyula Hegyi, Jens Holm, Caroline Jackson, Dan Jørgensen, Christa Klač, Urszula Krupa, Marios Matsakis, Linda McAvan, Roberto Musacchio, Miroslav Ouzký, Vladko Todorov Panayotov, Vittorio Prodi, Frédérique Ries, Guido Sacconi, Daciana Octavia Sărbu, Amalia Sartori, Carl Schlyter, Richard Seeber, Kathy Sinnott, Bogusław Sonik, María Sornosa Martínez, Antonios Trakatellis, Thomas Ulmer, Anja Weisgerber, Glenis Willmott						
Substitute(s) present for the final vote	Bairbre de Brún, Christofer Fjellner, Anne Laperrouze, Johannes Lebech, Caroline Lucas, Andres Tarand, Lambert van Nistelrooij						

22.1.2009

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Transport and Tourism

on the proposal for a directive 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
(COM(2008)0134 – C6-0142/2008 – 2008/0055(COD))

Rapporteur: Eva Lichtenberger

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Transport and Tourism, as the committee responsible, to incorporate the following amendment in its report:

Amendment 1

Proposal for a directive – amending act
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) A consistent set of legislative measures has already been adopted at EU level to reinforce maritime safety and help prevent ship-source pollution. The legislation in question is addressed to flag States, ship owners and charterers, classification societies, port States and coastal States. The existing system of sanctions for illegal ship-source discharges supplementing that legislation needs to be further strengthened by the introduction of criminal penalties for any illegal discharge.

Justification

A link to current legislation should be made in order to guarantee legal consistency and legal certainty.

PROCEDURE

Title	Ship-source pollution and penalties for infringements	
References	COM(2008)0134 – C6-0142/2008 – 2008/0055(COD)	
Committee responsible	TRAN	
Opinion by Date announced in plenary	JURI 13.3.2008	
Drafts(wo)man Date appointed	Eva Lichtenberger 22.9.2008	
Discussed in committee	4.11.2008	15.12.2008
Date adopted	20.1.2009	
Result of final vote	+: 20 -: 0 0: 0	
Members present for the final vote	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Neena Gill, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Eva-Riitta Siitonen, Francesco Enrico Speroni, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka	
Substitute(s) present for the final vote	Eva Lichtenberger, József Szájer, Jacques Toubon	

PROCEDURE

Title	Ship-source pollution and penalties for infringements
References	COM(2008)0134 – C6-0142/2008 – 2008/0055(COD)
Date submitted to Parliament	11.3.2008
Committee responsible Date announced in plenary	TRAN 13.3.2008
Committee(s) asked for opinion(s) Date announced in plenary	ENVI JURI 13.3.2008 13.3.2008
Rapporteur(s) Date appointed	Luis de Grandes Pascual 10.4.2008
Discussed in committee	16.2.2009
Date adopted	17.2.2009
Result of final vote	+ : 38 - : 0 0 : 1
Members present for the final vote	Gabriele Albertini, Etelka Barsi-Pataky, Paolo Costa, Michael Cramer, Luis de Grandes Pascual, Arūnas Degutis, Petr Duchoň, Saïd El Khadraoui, Emanuel Jardim Fernandes, Francesco Ferrari, Georg Jarzembowski, Stanisław Jałowiecki, Timothy Kirkhope, Jaromír Kohlíček, Sepp Kustatscher, Jörg Leichtfried, Bogusław Liberadzki, Eva Lichtenberger, Marian-Jean Marinescu, Erik Meijer, Josu Ortuondo Larrea, Reinhard Rack, Ulrike Rodust, Luca Romagnoli, Brian Simpson, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Michel Teychenné, Silvia-Adriana Ţicău
Substitute(s) present for the final vote	Zsolt László Becsey, Johannes Blokland, Philip Bradbourn, Luigi Cocilovo, Jas Gawronski, Pedro Guerreiro, Lily Jacobs, Rosa Miguélez Ramos, Corien Wortmann-Kool