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Committee on the Environment, Public Health and Food Safety

2008/0055(COD)

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

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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

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 **amendment to the Directive fills the legal vacuum following the judgment.**

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

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 ***serious*** negligence.

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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

Amendment

2. Each Member State shall take the measures necessary to ensure that inciting or aiding and abetting a criminal offence

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. ”

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	+: 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 Kläß, Urszula Krupa, Marios Matsakis, Linda McAvan, Roberto Musacchio, Miroslav Ouzký, Vladko Todorov Panayotov, Vittorio Prodi, Frédérique Ries, Guido Sacconi, Daciana Octavia Sârbu, 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