

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2003/0037(COD) Procedure completed
Ship-source pollution and introduction of penalties for infringements Amended by <a href="#">2008/0055(COD)</a>	
Subject 3.20.03.01 Maritime safety 3.20.15.06 Maritime or inland transport agreements and cooperation 3.70.05 Marine and coastal pollution, pollution from ships, oil pollution 3.70.16 Law and environment, liability	

Key players				
European Parliament	Committee responsible	Rapporteur	Appointed	
	<b>TRAN</b> Transport and Tourism		28/07/2004	
		PPE-DE <a href="#">WORTMANN-KOOL</a> <a href="#">Corien</a>		
	Former committee responsible			
	<b>RETT</b> Regional Policy, Transport and Tourism		07/07/2003	
		PPE-DE <a href="#">PEX Peter</a>		
Former committee for opinion				
<b>ENVI</b> Environment, Public Health, Consumer Policy (Associated committee)			19/03/2003	
		PPE-DE <a href="#">GROSSETÊTE</a> <a href="#">Françoise</a>		
<b>LIBE</b> Citizens' Freedoms and Rights, Justice and Home Affairs			20/03/2003	
		GUE/NGL <a href="#">DI LELLO FINUOLI</a> <a href="#">Giuseppe</a>		
<b>JURI</b> Legal Affairs and Internal Market				
Council of the European Union	Council configuration	Meeting	Date	
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2672</a>	12/07/2005	
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2626</a>	02/12/2004	
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2607</a>	07/10/2004	
	<a href="#">Education, Youth, Culture and Sport</a>	<a href="#">2589</a>	10/06/2004	
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2499</a>	27/03/2003	
European Commission	Commission DG	Commissioner		
	Energy and Transport			

Key events
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05/03/2003	Legislative proposal published	<a href="#">COM(2003)0092</a>	Summary
27/03/2003	Debate in Council	<a href="#">2499</a>	
27/03/2003	Committee referral announced in Parliament, 1st reading		
04/11/2003	Vote in committee, 1st reading		Summary
04/11/2003	Committee report tabled for plenary, 1st reading	<a href="#">A5-0388/2003</a>	
12/01/2004	Debate in Parliament		
13/01/2004	Decision by Parliament, 1st reading	<a href="#">T5-0009/2004</a>	Summary
07/10/2004	Council position published	<a href="#">11964/3/2004</a>	Summary
28/10/2004	Committee referral announced in Parliament, 2nd reading		
02/12/2004	Debate in Council	<a href="#">2626</a>	
19/01/2005	Vote in committee, 2nd reading		Summary
01/02/2005	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A6-0015/2005</a>	
22/02/2005	Debate in Parliament		
23/02/2005	Results of vote in Parliament		
23/02/2005	Decision by Parliament, 2nd reading	<a href="#">T6-0040/2005</a>	Summary
12/07/2005	Act approved by Council, 2nd reading		
07/09/2005	Final act signed		
07/09/2005	End of procedure in Parliament		
30/09/2005	Final act published in Official Journal		

### Technical information

Procedure reference	2003/0037(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amended by <a href="#">2008/0055(COD)</a>
Legal basis	Rules of Procedure EP 57; EC Treaty (after Amsterdam) EC 080-p2
Stage reached in procedure	Procedure completed
Committee dossier	TRAN/6/24150

### Documentation gateway

Document attached to the procedure	<a href="#">COM(2002)0681</a>	03/12/2002	EC	
Legislative proposal	<a href="#">COM(2003)0092</a>	05/03/2003	EC	Summary

Economic and Social Committee: opinion, report	<a href="#">CES0755/2003</a> <a href="#">OJ C 220 16.09.2003, p. 0072-0076</a>	19/06/2003	ESC	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0388/2003</a>	04/11/2003	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T5-0009/2004</a> OJ C 092 16.04.2004, p. 0019-0077 E	13/01/2004	EP	Summary
Document attached to the procedure	<a href="#">12722/1/2004</a>	07/10/2004	CSL	
Council position	<a href="#">11964/3/2004</a> OJ C 025 01.02.2005, p. 0029-0040 E	07/10/2004	CSL	Summary
Commission communication on Council's position	<a href="#">COM(2004)0676</a>	12/10/2004	EC	Summary
Committee recommendation tabled for plenary, 2nd reading	<a href="#">A6-0015/2005</a>	01/02/2005	EP	
Text adopted by Parliament, 2nd reading	<a href="#">T6-0040/2005</a> <a href="#">OJ C 304 01.12.2005, p. 0138-0190 E</a>	23/02/2005	EP	Summary
Commission response to text adopted in plenary	<a href="#">SP(2005)1076/2</a>	31/03/2005	EC	
Commission opinion on Parliament's position at 2nd reading	COM(2005)0216	18/05/2005	EC	Summary
Draft final act	<a href="#">03623/2005</a>	07/09/2005	CSL	

#### Additional information

European Commission

[EUR-Lex](#)

#### Final act

[Directive 2005/35](#)  
[OJ L 255 30.09.2005, p. 0011-0021](#) Summary

[Corrigendum to final act 32005L0035R\(01\)](#)  
[OJ L 033 04.02.2006, p. 0087](#) Summary

[Corrigendum to final act 32005L0035R\(02\)](#)  
[OJ L 105 13.04.2006, p. 0065](#) Summary

## Ship-source pollution and introduction of penalties for infringements

**PURPOSE** : to present a proposal which will lead to the imposition of criminal sanctions on those responsible for pollution by ship. **CONTENT** : the proposed Directive establishes that marine pollution by ships is a criminal offence. Sanctions will be applicable to any person - including the master, the owner, the operator and the charterer of a ship and to the classification society - who has been found to have caused or contributed to illegal pollution intentionally or by means of gross negligence. The penalties may, in the most serious cases, include jail sentences. The proposal responds to calls by the European Council in Copenhagen on 13 December 2002 for further specific measures relating to liability and corresponding sanctions and by the Transport Council of Ministers on 6 December 2002 and the Justice and Home Affairs Council on 19 December for strengthened protection of the environment and criminal sanctions for grossly negligent behaviour leading to marine pollution by ships. The proposal is a further effort by the Commission to try to stop the thousands of deliberate discharges of waste and cargo residues from ships at sea around Europe. The Directive proposed provides detailed rules for the discharge of polluting substances, including oil and chemicals, and makes any violation of those rules illegal in EU waters. In addition, it prohibits pollution on the high seas, irrespective of the flag of the ship. The proposal consists of two distinct, but equally important measures: 1) it incorporates the applicable international discharge rules for ship-source pollution into Community law and regulates the enforcement of these rules in detail. This part of the proposal includes certain important new features, notably the inclusion of violations that have taken place in the high seas (sea areas beyond the jurisdiction of any State); 2) establishes that violations of the discharge rules shall be criminal offences and provides guidance on the nature of the penalties to be awarded. Both these measures fill important legal voids, as ship-source discharges are not currently sufficiently regulated by Community law, and as existing maritime law does not provide sufficient dissuasion from engaging in dangerous practices by those involved in the carriage of polluting substances by sea. Both measures go beyond the problem of oil pollution, as they address pollution offences more generally, including pollution by chemical substances.?

## Ship-source pollution and introduction of penalties for infringements

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The committee adopted the report by Peter PEX (EPP-ED, NL) amending the proposal under the 1st reading of the codecision procedure: - it should be made clear that the aim of the directive is to make each of the parties involved in maritime transport responsible; - it should be specified that the directive shall apply to ships sailing under the flag of a Member State irrespective of where the ship is located and the discharge occurred; - sanctions should be applicable inter alia to the competent (port) authority if it is found to be responsible for illegal discharges, for example by refusing a ship in distress access to a port or a safe anchorage; - sanctions should include confiscation of the ship; - given the patchy compliance of many Member States with existing legislation on maritime safety, the Commission must ensure that these directives and regulations are rigorously enforced in the Member States; - in order to ensure optimum and uniform surveillance and hence effective application of the directive, the Commission should put forward proposals, within 6 months of the directive's entry into force, on setting up a European coastguard with the power to carry out unannounced checks on the high seas; - in the long term, the Commission should assess whether the scope of the directive should be extended to cover discharges of noxious solid substances; - Member States should be given 12 months, rather than 6 months, in which to transpose the directive into national law. Lastly, one amendment sought to make it clear that there must be no encroachment whatever on the rights of those accused of pollution offences, who are entitled to a fair and independent hearing. Bearing in mind the treatment of the captain of the "Prestige" tanker by the Spanish authorities, MEPs were concerned to ensure that the relevant authorities should be prevented from unjustly treating accused persons as criminals in order to divert attention from their own responsibility. ?

## Ship-source pollution and introduction of penalties for infringements

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The European Parliament adopted a resolution drafted by Peter PEX (EPP-ED, NL) and made certain amendments to the proposal: - a new recital states that, in order to ensure that criminal sanctions against intentional pollution are effective, the port state control authorities should maintain registers of oil; each Member State must therefore introduce stringent legislation against any failure to maintain those registers and any entry of which the authenticity cannot be established, in order to prevent uncontrolled degassing which is the source of most marine pollution; - another new recital states that in order to ensure that all Community ports have adequate facilities to receive ship-generated waste and cargo residues, Directive 2000/59/EC on port reception facilities should be fully enforced without further delay; - Parliament pointed out 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; - the Directive will apply to ships sailing under the flag of a Member State irrespective of the location in which the discharge occurred; - sanctions should be applicable, inter alia, to the competent port authority if it is found to be responsible for illegal discharges; - sanctions should include confiscation of the ship; - given the patchy compliance of many Member States with existing legislation on maritime safety, the Commission must ensure that these directives and regulations are rigorously enforced in the Member States; - the European Maritime Safety Agency will play a coordination role with regard to the enforcement of the Directive. It will create an EU public online database on illegal discharges and ships which do not comply with the Directive; - the Commission should fix a timetable, details of which are suggested, for the installation of onboard monitoring equipment; - Member States must transmit a report to the Commission every two years, rather than every three years. The Commission's own report should assess, inter alia, the desirability of revising or extending the scope of the Directive; - those accused of pollution offences are entitled to a fair and independent hearing and any penalties imposed should be proportionate to the criminal offence; Amendments were also adopted on the definition of illegal discharges and on the development of the necessary information and warning systems.?

## Ship-source pollution and introduction of penalties for infringements

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The Council adopted its common position with the Greek and Maltese delegations voting against the draft Directive. The Council considers that the transposition of the MARPOL regime regarding ship-source pollution into Community law will ensure a stricter and more harmonised application and enforcement in the Member States. It shares the view that it is necessary to establish that all discharges of polluting substances are considered infringements if they are committed with intent, recklessly or by serious negligence.

Following the principle of respecting the MARPOL provisions, exceptions are provided in the case when a discharge is made in order to save lives or the ship itself. The exception under the MARPOL Convention concerning the owner and the master in cases of discharges resulting from accidents applies in international sea areas and the exclusive economic or equivalent zone of Member States. In these cases, as a logical consequence of the MARPOL provisions, the crew is protected when acting under the master's responsibility. In Member States' internal waters and territorial sea, on the other hand, the Council deems it appropriate to exercise the Community's rights under Article 211(4) of UNCLOS, in order to enhance the protection of the coastline, and to lift the exception provided for discharges resulting from accidents.

The Council considers that sanctions against infringements of ship-source pollution have to be effective, proportionate and dissuasive and may include criminal or administrative sanctions. It also agrees that these sanctions have to apply to any person found responsible for marine pollution, i.e. shall cover the whole chain of responsibility. Whilst the infringements are defined in the Directive, the Council is of the view that the minimum binding rules for criminal penalties, liability and jurisdiction should be established in the parallel Framework Decision proposed by the Commission and examined by the Council in its "Justice and Home Affairs" formation.

The Council welcomes the streamlining of strict enforcement measures against ships calling at any port of a Member State in line with the relevant international guidelines. It endorses the enhanced information sharing on suspected discharges between Member States and third countries, either as port or as flag States, in order to facilitate the enforcement of the appropriate measures.

Finally, the Council is of the view that all possibilities under the UNCLOS Convention to protect the coastline and the resources of this area shall be used, including enforcement measures by coastal States with respect to ships in transit navigating in the territorial sea or exclusive economic or equivalent zone in accordance with Article 220(6) of UNCLOS, when there is clear objective evidence of a discharge causing major damage or threat of major damage to the coastline or any resources of the territorial sea or the exclusive economic or equivalent zone. In this case, the Member State concerned shall submit the matter to its competent authorities with a view to instituting proceedings, including detention of the ship, in accordance with its national law.

More specifically, concerning the amendments made by the Council, the common position states that considering the fact that the Council follows a considerably different approach to this draft Directive compared to the originally proposed text, it was not possible to reflect the major part of the amendments proposed by the European Parliament in first reading in the common position.

- The concept of setting up a European coastguard was not part of the original Commission proposal. Whilst the Council considers it important to address means enhancing the protection of the European coastline, it does not want to prejudice any Commission initiative to that effect, possibly leading to a separate legislative act, which the Council will consider with interest.

- Although the Council shares the EP's concerns with regard to the implementation of Community legislation on maritime safety, it feels that the enforcement of existing legislative acts, like Directive 2000/59/EC on port reception facilities, falls into the competence of the Member States and its monitoring is one of the tasks of the Commission under the Treaty.

- As the objective of this Directive is to clearly define discharges of polluting substances from ships as infringements under Community law, the Council is of the opinion that other technical provisions like onboard monitoring equipment or oil registers go beyond the scope of this proposal.

- According to the basic principle of the Council's approach laid out above, the MARPOL provisions for discharges, including the exception concerning the owner and the master in cases of discharges resulting from accidents, apply in international sea areas and the exclusive economic or equivalent zone of Member States. In these cases, the crew is also explicitly excluded when acting under the master's responsibility. In the internal waters and territorial sea of the Member States, on the contrary, this exception is not granted in accordance with the possibilities under Article 211(4) of UNCLOS.

- Concerning the scope of the Directive, the Council considers it appropriate to treat all ships, regardless of their flag, in a certain sea area on an equal footing with a view to avoiding a disadvantageous position for ships sailing under the flag of a Member State.

- While the common position does not include any detailed provision on the nature of penalties given that the minimum rules towards a harmonisation of criminal penalties are subject of the parallel Framework Decision, Article 7 paragraph 2 refers to enforcement measures by coastal States in accordance with UNCLOS 220(6), including the detention of the ship, in the specific cases referred to in this Article.

Furthermore, the common position includes some other smaller modifications and clarifications to the

Commission proposal. On a few points, amendments proposed by the European Parliament were partially or totally integrated with a view to ensuring a consistent legislative text.

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## Ship-source pollution and introduction of penalties for infringements

The Commission notes that the Council did not wish to make it mandatory to establish a system of criminal sanctions for illegal discharges of polluting substances at sea. On this point, the Commission expressed in its statement to the Transport Council its regret regarding the ambitions achieved by the common position. This apart, the Commission recognises that the common position changes neither the aims nor the spirit of the proposal, and it can therefore support it. This support is justified more particularly in order to see the co-decision procedure continue and to enable this Directive to be adopted as soon as possible.

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## Ship-source pollution and introduction of penalties for infringements

The committee adopted the report by Corien WORTMANN-KOOL (EPP-ED, NL) amending the Council's common position under the 2nd reading:

- the wording of the original Commission proposal relating to the purpose of the directive, which had been deleted by the Council, should be reinstated (incorporation of international standards into Community law and provision for "criminal sanctions");

- whereas the Council text stated that ship-source discharges of polluting substances should be regarded as "infringements" if committed with intent, recklessly or by "serious" negligence, the committee went back to some of the wording in parts of the Commission proposal, thereby reflecting Parliament's position at 1st reading. It therefore proposed that such discharges should be regarded as "criminal offences" if committed with intent, recklessly or by "gross" negligence;

- the Commission text (as amended by Parliament at 1st reading) setting out guidelines for imposing sanctions should be reinstated. MEPs argued that the text made it clear that anyone in the logistical chain (i.e. not only the shipowner but also the owner of the cargo, the classification society and even the competent port authority) could be prosecuted;

- the role of the European Maritime Safety Agency (EMSA) should be strengthened: it should assist the Member States in tracing illegal discharges by providing satellite monitoring and surveillance and should carry out audits in the Member States;

- finally, the Commission should compile a feasibility study on setting up a European coastguard service.

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## Ship-source pollution and introduction of penalties for infringements

The European Parliament adopted the report by Corien WORTMANN-KOOL (EPP-ED, NL) amending the Council's common position. (Please refer to the summary dated 19/01/2005).

In the near future, ship-source discharges of polluting substances committed with intent, recklessly or by serious negligence will be regarded as criminal offences. Parliament voted strongly in favour of an agreement, reached last week at an informal trilogue between Parliament and Council delegations on the common position regarding pollution from ships. Until now, Council had been reluctant to accept such Parliament's proposals, arguing that criminal sanctions were a competence of the Member States.

All the 13 compromise amendments were adopted following the agreement with Council. Criminal sanctions could, in the most serious cases, even include imprisonment or heavy fines. The new directive will be supplemented by detailed rules on criminal offences and sanctions in order to strengthen the legal framework for the enforcement of the law against ship-source pollution. Under the new law, all those responsible in the pollution chain could be prosecuted, not only captain and crew.

Another success for the EP Delegation was the agreement on the setting up of a European coastguard, opposed by some Member States. The Commission will now undertake a feasibility study on the coastguard dedicated to pollution prevention and response, making clear the costs and benefits. This study should be followed by a proposal on a coastguard by 2006. The European Maritime Safety Agency (EMSA) will assist.

Another compromise amendment was adopted setting out a number of tasks for the EMSA regarding this directive. It is intended that the EMSA would work with the Member States in developing technical solutions and providing technical assistance in relation to this directive, such as tracing discharges by satellite monitoring and surveillance. The agency should assist the Commission in implementation, including visits to Member States if appropriate.

Lastly, every three years, Member States shall transmit a report to the Commission on the application of this Directive by the competent authorities. In this report, the Commission shall assess, inter alia, the desirability of revising or extending the scope of this Directive. It shall also describe the evolution of relevant case-law in the Member States and shall consider the possibility of creating a public database containing such relevant case-law.

## Ship-source pollution and introduction of penalties for infringements

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The Commission can accept in their entirety the 16 amendments adopted by the Parliament as negotiated during the trialogue meetings in which it fully participated.

The Commission notes that the European Parliament and the Council have not wished to make it mandatory, under this Directive, to establish a system of criminal sanctions for illegal discharges of polluting substances at sea. On this point, the Commission expresses in its statement its regret regarding the ambition levels attained by the future Directive. This apart, the Commission recognises that the result achieved changes neither the aims nor the spirit of its proposal, and it can therefore support it.

## Ship-source pollution and introduction of penalties for infringements

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**PURPOSE:** Corrigendum to Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (Directive first published in Official Journal of the European Union L 255 of 30 September 2005).

The objective of this Directive is to incorporate international ship-source pollution standards into Community law. It also establishes penalties, be they criminal or administrative, in order to ensure a high level of safety and environmental protection in maritime transport (for details, please refer to the summary of the final act).

The corrigendum concerns the date of implementation of the Directive: 1st April 2007 instead of 1 March 2007.

## Ship-source pollution and introduction of penalties for infringements

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**PURPOSE:** The introduction penalties for infringements of ship source pollution.

**LEGISLATIVE ACT:** Directive 2005/35/EC of the European Parliament and of the Council.

**CONTENT:** The objective of this Directive is the incorporation of international ship-source pollution standards into Community law. It also establishes penalties, be they criminal or administrative, in order to ensure a high level of safety and environmental protection in maritime transport. The Directive has to be read in conjunction with Council Framework Directive 2005/667/JHA (please refer to 2003/0088/COD). The Directive does not prevent Member States from taking more stringent measures against ship-source pollution. A number of terms are defined by the Directive including, inter alia, polluting substances, discharge and ship. Marpol 73/78 relates to the International Convention for the Prevention of Pollution from Ships, 1973 and its 1978 Protocol in its most up-to-date version. As far as the scope of the Directive is concerned it will apply to the internal waters, (including ports), of a Member States, the territorial sea of a Member State, straits used for international navigation, subject to the regime of transit passage, Member States? exclusive economic zone or equivalent thereof and the high seas. The Directive will apply to discharges of polluting substances from any ship, irrespective of its flag. Warships are exempted from the Directive?s provisions.

Member States are expected to recognise any polluting discharge from ships as an infringement, if committed with intent, recklessly or by serious negligence. Any such infringement will be regarded as a criminal offence, in which case the provisions of Directive 2005/667/JHA will apply. Member States will be given the right to conduct inspections in both ports and off-shore terminals in cases where it suspects that pollution is being illegally discharged into the water. Should an infringement have taken place the Member State will inform the competent authorities and of the flag State. If, on the other hand, a Member State suspects that a ship is infringing this Directive on, for example, the high seas and/or straits used for international navigation and if, the ship calls at the next port of a Member State, then the Member State in which the ship is docked may seek an immediate inspection.

Member States are equally expected to notify a country if the next port of call is a port outside of the EU. In cases where there is clear evidence of ship-source pollution, a Member State may submit the matter to its competent authorities with a view to instituting proceedings. The ship could be detained in accordance with national law. The consequent penalties should be considered effective, proportionate and dissuasive.

Within the context of this Directive, the Commission, together with the Member States and the European Maritime Safety Agency, will work

closely together to try and respond to cases of deliberate marine pollution. The EMSA will develop the necessary information systems required for the effective implementation of this Directive as well as establishing common practices and guidelines. These refer, in particular, to monitoring and early identification of ships discharging polluting substances and reliable methods of tracing polluting substances to a particular ship.

IMPLEMENTATION: 01/03/2007

ENTRY INTO FORCE: 01/10/2005.

## Ship-source pollution and introduction of penalties for infringements

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This corrigendum does not concern the English version.