

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) 2008/0055(COD) Directive	Procedure completed
Ship-source pollution and introduction of penalties, including criminal penalties, for pollution offences Amending Directive 2005/35/EC 2003/0037(COD)	
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 7.40.04 Judicial cooperation in criminal matters	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	TRAN Transport and Tourism		10/04/2008
		PPE-DE DE GRANDES PASCUAL Luis	
	Committee for opinion	Rapporteur for opinion	Appointed
	ENVI Environment, Public Health and Food Safety		22/05/2008
		ALDE MATSAKIS Marios	
	JURI Legal Affairs		22/09/2008
		Verts/ALE LICHTENBERGER Eva	
Council of the European Union	Council configuration	Meeting	Date
	General Affairs	2960	14/09/2009
	Justice and Home Affairs (JHA)	2927	26/02/2009
	Justice and Home Affairs (JHA)	2783	05/06/2008
European Commission	Commission DG	Commissioner	
	Energy and Transport	TAJANI Antonio	

Key events			
11/03/2008	Legislative proposal published	COM(2008)0134	Summary
13/03/2008	Committee referral announced in Parliament, 1st reading		
05/06/2008	Debate in Council	2783	
17/02/2009	Vote in committee, 1st reading		Summary

20/02/2009	Committee report tabled for plenary, 1st reading	A6-0080/2009	
26/02/2009	Debate in Council	2927	Summary
04/05/2009	Debate in Parliament		
05/05/2009	Results of vote in Parliament		
05/05/2009	Decision by Parliament, 1st reading	T6-0344/2009	Summary
14/09/2009	Act adopted by Council after Parliament's 1st reading		
21/10/2009	Final act signed		
21/10/2009	End of procedure in Parliament		
27/10/2009	Final act published in Official Journal		

Technical information

Procedure reference	2008/0055(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2005/35/EC 2003/0037(COD)
Legal basis	EC Treaty (after Amsterdam) EC 080-p2
Stage reached in procedure	Procedure completed
Committee dossier	TRAN/6/60658

Documentation gateway

Legislative proposal		COM(2008)0134	11/03/2008	EC	Summary
Economic and Social Committee: opinion, report		CES1516/2008	17/09/2008	ESC	
Committee opinion	ENVI	PE411.924	12/11/2008	EP	
Committee draft report		PE412.321	15/12/2008	EP	
Committee opinion	JURI	PE416.655	22/01/2009	EP	
Amendments tabled in committee		PE418.092	27/01/2009	EP	
Committee report tabled for plenary, 1st reading/single reading		A6-0080/2009	20/02/2009	EP	
Text adopted by Parliament, 1st reading/single reading		T6-0344/2009	05/05/2009	EP	Summary
Commission response to text adopted in plenary		SP(2009)3616	07/07/2009	EC	
Draft final act		03664/2009/LEX	21/10/2009	CSL	

Additional information

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National parliaments	IPEX
European Commission	EUR-Lex

Final act
Directive 2009/123 OJ L 280 27.10.2009, p. 0052 Summary

Ship-source pollution and introduction of penalties, including criminal penalties, for pollution offences

PURPOSE: to amend Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringement.

PROPOSED ACT: Directive of the European Parliament and of the Council.

CONTENT: the new proposal for a directive will replace Framework Decision 2005/667/JHA to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution. This Framework Decision was adopted in 2005 to supplement Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements. Both instruments were adopted out of concern about the illegal operational discharges of polluting substances from ships at sea and in the aftermath of major accidental oil spills. While the Directive contains a precise definition of the infringements along with the rule that they will be subject to effective, proportionate and dissuasive penalties, which may include criminal or administrative penalties, the Framework Decision included provisions on the nature, type and levels of criminal penalties. In a ruling issued on 23 October 2007, the European Court of Justice, seized by the Commission, annulled the Framework Decision and ruled that the provisions related to the definition of criminal offences and to the nature of sanctions should be adopted in an instrument based on the EC Treaty if necessary to ensure that the Community's rules on maritime safety are fully effective.

CONTENT: the proposal builds on Directive 2005/35/EC and takes over the substantive content of the annulled Framework Decision 2005/667/JHA.

In short, the proposed Directive sets out the following:

- **Criminal offence:** Member States are required to lay down that any ship-source discharge of polluting substances, as defined in Article 2 of Directive 2005/35/EC, into any of the areas referred to in Article 3(1) of Directive 2005/35/EC, if committed with intent, recklessly or with serious negligence, is to be considered a criminal offence. The definition of "criminal offence" corresponds to Article 2 of the annulled Framework Decision 2005/667/JHA;
- **Liability of legal persons:** as stated in the annulled Framework Decision, Member States should ensure that legal persons can be held liable for the criminal offences committed for their benefit by certain persons acting on their behalf or when lack of supervision or control enabled those persons to commit an offence;
- **Penalties:** penalties imposed against ship-source pollution offences must be effective, proportionate and dissuasive, for both natural and legal persons. In addition to this requirement, for the criminal offence defined in the new Article 4 Member States are required to provide that the penalties for natural persons be of a criminal nature. For legal persons, it is not specified whether the penalties should be of a criminal or non-criminal nature. Member States that do not recognise the criminal liability of legal persons in their national law are therefore not under any obligation to change their national system;
- **Implementation period:** the period for implementation by the Member States is six months, taking into account that Article 1 largely covers the same content as Articles 2, 3 and 5 of the annulled Framework Decision 2005/667/JHA. The period for implementation of this Framework Decision ended on 12 January 2007, so Member States will already have done a significant part of the work to implement this Directive.

Ship-source pollution and introduction of penalties, including criminal penalties, for pollution offences

The Committee on Transport and Tourism adopted the report drawn up by Luis de GRANDES PASCUAL (EPP-ED, ES) amending, under the first reading of the codecision procedure, 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.

The main amendments are as follows:

Infringements and criminal offences: an amendment reinstates a concept adopted in [Framework Decision 2005/667/JHA](#) (now annulled) that distinguished between criminal penalties and penalties of a different type. It stipulates that 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 the directive 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.

Moreover, 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.

MEPs also clarify that inciting or aiding and abetting a criminal offence can only occur where there is intent to deceive or act and not when the criminal offence occurs through recklessness or serious negligence.

Exceptions: 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.

Transposition of the directive: MEPs propose to set the time needed for the directive's implementation to 12 months (instead of 6 months) following the date of its entry into force.

Accompanying measures: in accordance with its tasks as defined in Regulation (EC) No 1406/2002, the European Maritime Safety Agency may also entrust the monitoring and surveillance activities 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.

Ship-source pollution and introduction of penalties, including criminal penalties, for pollution offences

The Council took note of the developments in amending Directive 2005/35/EC on ship-source pollution and of the introduction of penalties for infringements, with a view to reaching a first reading agreement with the European Parliament under the codecision legislative procedure.

Ship-source pollution and introduction of penalties, including criminal penalties, for pollution offences

The European Parliament adopted by 588 votes to 42, with 3 abstentions, a legislative resolution amending, under the first reading of the codecision procedure, 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.

The amendments are the result of a compromise negotiated with the Council.

The main amendments are as follows:

Purpose: the compromise stipulates that the purpose of this Directive is to incorporate international standards for ship-source pollution into Community law and to ensure that persons responsible for discharges are subject to adequate penalties, including criminal penalties, in order to improve maritime safety and to enhance protection of the marine environment from pollution by ships.

Infringements: under the terms of this Directive, illicit ship-source discharges of polluting substances will be considered as a criminal offence as long as they have been committed with intent, recklessly or with serious negligence and result in a deterioration of the quality of water.

Less serious cases of illicit ship-source discharges of polluting substances that do not cause a deterioration of the quality of water need not be considered as criminal offences. Such discharges shall be referred to as "minor cases". Repeated minor cases that do not in a singular case but in conjunction result in a deterioration in the quality of water shall be considered a criminal offence when committed with intent, recklessly or with serious negligence.

Liability: each Member State shall take the measures necessary to ensure that legal and natural persons can be held liable for the criminal offences referred to in the Directive.

Inciting, aiding and abetting: Member States shall ensure that inciting, aiding and abetting an offence committed with intent is punishable as a criminal offence.

Penalties: infringements shall be subject to effective, proportionate and dissuasive penalties.

Liability of legal persons: a new article stipulates that each Member State shall take the measures necessary to ensure that legal persons can be held liable for criminal offences committed for their benefit by any natural person acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- a power of representation of the legal person; or
- an authority to take decisions on behalf of the legal person; or
- an authority to exercise control within the legal person.

Moreover, a legal person can be held liable where lack of supervision or control by a natural person has made possible the commission of an offence for the benefit of that legal person by a natural person under its authority.

The liability of a legal person shall not exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in the criminal offences referred to in the Directive.

Penalties against legal persons should be effective, proportionate and dissuasive.

Ship-source pollution and introduction of penalties, including criminal penalties, for pollution offences

PURPOSE: to incorporate international standards for ship-source pollution into Community law and to ensure penalties for infringements of the law.

LEGISLATIVE ACT : Directive 2009/123/EC 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.

BACKGROUND: to recall, in the aftermath of major accidental oil spills and the increasing number of uncontrolled operational discharges of

polluting substances from ships at sea, the Commission proposed a directive in 2003. It provided that ship-source pollution should be considered a criminal offence and consequently should be subject to criminal penalties. The Commission also proposed [Framework Decision 2003/80/JAI](#) providing for the approximation of the levels of criminal penalties for the ship-source pollution criminal offences.

These two instruments were adopted by the Council in 2005. However, the European Court of Justice annulled the above mentioned Framework Decision in 2007 considering that it was adopted on the wrong legal basis.

The Commission proposed a new directive in March 2008 with a view to filling the legal vacuum created by the annulment by the Court.

CONTENT: following a first reading agreement with the European Parliament, the Council adopted this Directive improving current rules on ship-source pollution and on the introduction of penalties for infringements.

The objective of the directive is to incorporate international standards for ship-source pollution into Community law and to ensure that persons responsible for discharges of polluting substances are subject to adequate penalties, including criminal penalties, in order to improve maritime safety and to enhance protection of the marine environment from pollution by ships.

Infringements: under this Directive, illicit ship-source discharges of polluting substances are regarded as a criminal offence as long as they have been committed with intent, recklessly or with serious negligence and result in deterioration in the quality of water. Less serious cases of illicit ship-source discharges of polluting substances that do not cause deterioration in the quality of water need not be regarded as criminal offences. Under this Directive such discharges are referred to as minor cases. Given the need to ensure a high level of safety and protection of the environment in the maritime transport sector, as well as the need to ensure the effectiveness of the principle whereby the polluting party pays for the damage caused to the environment, repeated minor cases, which do not individually but in conjunction result in deterioration in the quality of water, will be regarded as a criminal offence.

Inciting, aiding and abetting: any act of inciting, or aiding and abetting an offence committed with intent is punishable as a criminal offence.

Liability of legal persons: each Member State shall take the necessary measures to ensure that legal persons can be held liable for the criminal offences, committed for their benefit by any natural person acting either individually or as part of an organ of the legal person, and who has a leading position within the structure of the legal person, based on:

- a power of representation of the legal person;
- authority to take decisions on behalf of the legal person; or
- authority to exercise control within the legal person.

Each Member State shall also ensure that a legal person can be held liable where lack of supervision or control by a natural person referred to in paragraph 1 has made the commission of a criminal offence possible for the benefit of that legal person by a natural person under its authority.

The liability of a legal person will not exclude criminal proceedings against natural persons involved as perpetrators, inciters or accessories in criminal offences.

ENTRY INTO FORCE: 16/11/2009.

TRANSPOSITION: 16/11/2010.