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

2008/0055(COD) - 11/03/2008 - Legislative proposal

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.