

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

2008/0055(COD) - 05/05/2009 - Text adopted by Parliament, 1st reading/single reading

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.