

Ship-source pollution and introduction of penalties for infringements

2003/0037(COD) - 07/10/2004 - Council position

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 prejudge 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.