

Ship-source pollution and introduction of penalties for infringements

2003/0037(COD) - 07/09/2005 - Final act

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.