Ship-source pollution: judicial cooperation to repress offences, criminal-law framework. Framework Decision

2003/0088(CNS) - 12/07/2005 - Final act

PURPOSE: To strengthen the criminal-law framework for law enforcement purposes against ship-source pollution.

LEGISLATIVE ACT: Council Framework Decision 2005/667/JHA

CONTENT: This Council Framework Decision has been designed to introduce common penalties on all legal persons or entities responsible for ship-source pollution. It supplements Directive 2005/35/EC (Please refer to 2003/0037/COD).

For the purpose of this framework Decision, the definitions set out in Directive 2005/35 shall apply.

On the matter of Criminal Penalties, the Decision states that Member States must take all the necessary measures to ensure that infringements will be regarded as a criminal offence. Criminal penalties may be accompanied by other measures such as fines or disqualifications. They will not, however, apply to crew members where an infringement occurs in international navigation straits, exclusive economic zones or on the high seas.

Member States are expected to recognise aiding, abetting or inciting as a criminal offence.

On the matter of penalties, the Member States are expected to take all necessary measures to ensure that the punishments for offences are effective, proportionate and dissuasive. The kind of offences applying to the Framework Decision, typically refer to cases where widespread damage has occurred to water quality, to animal or vegetable species or to parts of them. Severer penalties are to be awarded in the case of death or serious injury of persons. The Decision then goes on to spell out the kind of penalties that may be imposed.

For *intentionally committed* offences a maximum of at least between five and ten years of imprisonment can be imposed in cases where the offence caused significant and widespread damage to water quality, to animal or vegetable species or to parts of them and the death or serious injury of persons.

In cases where an *intentionally committed* offence resulted in significant and widespread damage to water quality or animal or vegetable species or where an offences was committed within a criminal organisation, the offence can be punishable by a maximum of at least between two and five years of imprisonment.

In cases where an offence was the result of *serious negligence* the punishment can be a maximum of at least between two and five years of imprisonment in cases where the death or serious injury of a person is involved and between one and three years of imprisonment where this is not the case but there is significant damage to the environment.

In the case of custodial penalties, the provision will apply, without prejudice, to the United National Convention on the Law of the Sea.

A separate heading deals with the Liability of Legal Persons. Member States are expected to take the necessary measures to ensure that legal persons can be held liable for offences as well as any persons acting either individually or as part of an organ of the legal person, who may have a leading position within the legal person. A legal person can be held liable where a lack of supervision or control by a person can be proven. Penalties imposed on legal persons can include both criminal and non-criminal fines of a maximum of at least EUR 150 000 and EUR 300 000. In serious cases this could rise to between EUR 750 000 and EUR 1 500 000. Other penalties could consist of for example, being excluded from public benefits or a judicial winding-up order.

On the matter of Jurisdiction, the Framework Decisions specifies that Member States must take the necessary measures to establish their jurisdiction either fully or in part of their territory. In addition, they must establish jurisdiction in their exclusive economic zone, on board a ship flying their flag, if one of their nationals has committed the offence or if the place where it was committed does not fall under any territorial jurisdiction, if the benefit of a legal person has registered office in their territory, if the offence has been caused outside of its territory but is likely to cause pollution in its territory (or economic zone) or if the ship is within one of their ports or else at an offshore terminal and on the high seas.

Member States will be expected to try and co-ordinate their actions in cases where an offence is subject to the jurisdiction of one or more Member State. Co-ordinating factors to be taken into account will include, *inter alia*, the territory in which the offence was committed and the Member State from which the flag of the ship was flying when the offence was committed.

Member States are obliged to notify other Member States of an offence as well as setting up national contact points.

Lastly, the territorial scope of the Framework Decision matches that of Directive 2005/35.

DATE OF IMPLEMENTATION: 12/01/2007.

ENTRY INTO FORCE: 01/10/2005.