Basic information

2003/0088(CNS) CNS - Consultation procedure Decision	Procedure completed
Ship-source pollution: judicial cooperation to repress offences, criminal-law framework. Framework Decision **Subject** 3.70.05 Marine and coastal pollution, pollution from ships, oil pollution 3.70.16 Law and environment, liability 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	DI LELLO FINUOLI Giuseppe (GUE/NGL)	19/05/2003

Committee for opinion	Rapporteur for opinion	Appointed
ENVI Environment, Public Health, Consumer Policy	GROSSETÊTE Françoise (PPE-DE)	16/06/2003
RETT Regional Policy, Transport and Tourism	PIECYK Willi (PSE)	21/05/2003

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	2672	2005-07-12
Justice and Home Affairs (JHA)	2613	2004-10-25
Justice and Home Affairs (JHA)	2618	2004-11-19
Agriculture and Fisheries	2633	2004-12-21

European Commission

Commission DG	Commissioner
Justice and Consumers	

Key events

Date	Event	Reference	Summary
		COM(2003)0227	Summary

02/05/2003	Legislative proposal published		
02/06/2003	Committee referral announced in Parliament		
04/11/2003	Vote in committee		Summary
04/11/2003	Committee report tabled for plenary, 1st reading/single reading	A5-0373/2003	
12/01/2004	Debate in Parliament		
13/01/2004	Decision by Parliament	T5-0008/2004	Summary
25/10/2004	Debate in Council		Summary
19/11/2004	Debate in Council		Summary
21/12/2004	Debate in Council		Summary
12/07/2005	Act adopted by Council after consultation of Parliament		
12/07/2005	End of procedure in Parliament		
30/09/2005	Final act published in Official Journal		

Technical information

Procedure reference	2003/0088(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Legal basis	EC Treaty (after Amsterdam) EC 029 EC Treaty (after Amsterdam) EC 034-p1 EC Treaty (after Amsterdam) EC 031
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/19501

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0373/2003	04/11/2003	
Text adopted by Parliament, 1st reading/single reading		T5-0008/2004 OJ C 092 16.04.2004, p. 0019-0076 E	13/01/2004	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2003)0227	02/05/2003	Summary

Additional information		
Source	**Document**	**Date**
European Commission	EUR-Lex	

Final act	
Justice and Home Affairs act 2005/0667 OJ L 255 30.09.2005, p. 0164-0167	Summary

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.

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

2003/0088(CNS) - 21/12/2004

Subject to parliamentary scrutiny reservations by the Netherlands, the United Kingdom, Sweden, Denmark and Ireland and the examination of the Preamble at a later stage, the Council reached a general approach on the text of a Framework Decision to strengthen the criminal law framework for the enforcement of the law against ship-source pollution. This instrument is complementary to the draft Directive on ship-source pollution and on the introduction of sanctions for infringements.

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

2003/0088(CNS) - 02/05/2003 - Legislative proposal

PURPOSE : to strengthen the criminal law framework for a stricter enforcement of law against ship-source pollution. CONTENT : the purpose of this draft Framework Decision is to reinforce and complement the proposed EU Directive on ship-source pollution and criminal sanctions for pollution offences at sea (refer to COD/2003/0037). Specifically, it aims to fortify criminal law through the approximation of existing Member State provisions on pollution at sea. A further objective is to facilitate and encourage co-operation between the Member States in a bid to repress any such offences. In preparing this legislation the Commission has taken into account a number of already existing, international agreements governing protection of the marine environment. These include, for example, the United Nations Convention on the Law of the Sea (UNCLOS). This draft Framework Decision deals with the detailed rules for imposing penalties provided for by the Directive. Only specific aspects of them are dealt with however, leaving aside more horizontal aspects, which will be dealt with in other contexts. In the most serious cases prison sentences are foreseen - at levels in conformity with the conclusions of the JHA Council. Shorter sentences are not precluded under national law with Member States remaining free to provide for a level of penalties corresponding to lower thresholds. Four types of specific circumstances will fall under the "most serious" category. They include the committing of offences by a criminal organisation and offences as a result of which persons suffer death or serious bodily harm or substantial damage is caused to water quality or to animal or vegetable species or of parts of them. Other penalties include fines. Proposed levels consist of firstly, from 1% to 10% of turnover and secondly from 10% to 20% of turnover. Concerning jurisdiction, each Member State will take measures to establish jurisdiction in : - its inland waterway, (including ports); - its territorial waters; - straits used for international navigation subject to the regime of transit passage; - its exclusive economic area, established in accordance with international law; and - the high seas. Co-ordination between the Member States on proceeding for the settling of conflicts will be strengthened. Concerning criminal investigations in the Port state, port authorities will be allowed to begin criminal investigations if they suspect that a criminal offence has taken place. Further provisions in the proposed Framework Decision allow for Joint Investigations.

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

2003/0088(CNS) - 19/11/2004

The Council debated the draft Framework Decision to strengthen the criminal law framework for the enforcement of the law against ship-source pollution.

The debate focused on discharges in the territorial sea of a Member State, its exclusive economic zone or equivalent zone. In case of such discharges, and in accordance with the Presidency compromise text, ships flying the flag of another Member State would not be considered as foreign ships within the meaning of Article 230 of the UN Convention on the Law of the Sea and therefore in such cases persons, held liable, could also be subject to custodial sentences.

Other issues discussed include the following : the relation between the Framework Decision and the MARPOL and UNCLOS and the possibility of introducing a ceiling for the maximum fines to be imposed to legal persons.

It should also be stated that the JHA Council of 25 and 26 October 2004 discussed the text of this Framework Decision and that the Presidency noted that three Member States could not agree to the proposed text.

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

2003/0088(CNS) - 25/10/2004

The Council discussed the text of the Framework Decision to strengthen the criminal law framework for the enforcement of the law against ship-source pollution, on the basis of a Presidency compromise text.

The debate in the Council focused mainly on the relation between the Framework Decision, MARPOL (Convention for the prevention of pollution from ships) and UNCLOS (UN Convention on the Law of the Sea), as well as on the possibility of introducing a ceiling for the maximum fines to be imposed on legal persons.

The Presidency, noting that three Member States could not agree to the text proposed by the Presidency, decided to forward the draft Framework Decision to the European Council. It should be noted that the fight against intentional or negligent ship-source pollution is among the European Union's priorities. The conclusions of the Copenhagen European Council of 12 and 13 December 2002 (points 32 to 34) and the statement of the JHA Council of 19 December 2002 following the shipwreck of the tanker Prestige, in particular, express the Union's determination to adopt all the measures needed to avoid recurrences of such damage.

To this end, the Council adopted a Common Position on a draft Directive on ship-source pollution and the introduction of sanctions for infringements. The main principle of the draft Directive is that all discharges of polluting substances are considered infringements if they are committed with intent, recklessly or through serious negligence. It allows Member States to take the necessary measures to ensure that these violations are subject to effective, proportionate and dissuasive sanctions which may include criminal or administrative sanctions.

With a view to supplementing these provisions, there should be an approximation of, among other things, the level of penalties corresponding to the seriousness of offences in relation to the natural or legal persons who commit them or are liable for them.

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

2003/0088(CNS) - 13/01/2004 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Giuseppe DI LELLO FINUOLI (EUL/NGL, I) approving the proposal subject to two amendments. (Please see the document dated 04/11/03).