

Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements

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PARLIAMENT AND OF THE COUNCIL

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on ship-source pollution and on the introduction of penalties for infringements

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽²⁾,

Whereas:

- (1) The Community's maritime safety policy is aimed at a high level of safety and environmental protection and is based on the understanding that all parties involved in the transport of goods by sea have a responsibility for ensuring that ships used in Community waters comply with applicable rules and standards.
- (2) The material standards in all Member States for discharges of polluting substances from ships are based upon the Marpol 73/78 Convention; however these rules are being ignored on a daily basis by a very large number of ships sailing in Community waters, without corrective action being taken.
- (3) The implementation of Marpol 73/78 shows discrepancies among Member States and there is thus a need to harmonise its implementation at Community level; in particular the practices of Member States relating to the imposition of penalties for discharges of polluting substances from ships differ significantly.
- (4) Measures of a dissuasive nature form an integral part of the Community's maritime safety policy, as they ensure a link between the responsibility of each of the parties involved in the transport of polluting goods by sea and their exposure to penalties; in order to achieve effective protection of the environment there is therefore a need for effective, dissuasive and proportionate penalties.
- (5) To that end it is essential to approximate, by way of the proper legal instruments, existing legal provisions, in particular on the precise definition of the infringement in question, the cases of exemption and minimum rules for penalties, and on liability and jurisdiction.

- (6) This Directive is supplemented by detailed rules on criminal offences and penalties as well as other provisions set out in Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal law framework for the enforcement of the law against ship-source pollution⁽³⁾.
- (7) Neither the international regime for the civil liability and compensation of oil pollution nor that relating to pollution by other hazardous or noxious substances provides sufficient dissuasive effects to discourage the parties involved in the transport of hazardous cargoes by sea from engaging in substandard practices; the required dissuasive effects can only be achieved through the introduction of penalties applying to any person who causes or contributes to marine pollution; penalties should be applicable not only to the shipowner or the master of the ship, but also the owner of the cargo, the classification society or any other person involved.
- (8) Ship-source discharges of polluting substances should be regarded as infringements if committed with intent, recklessly or by serious negligence. These infringements are regarded as criminal offences by, and in the circumstances provided for in, Framework Decision 2005/667/JHA supplementing this Directive.
- (9) Penalties for discharges of polluting substances from ships are not related to the civil liability of the parties concerned and are thus not subject to any rules relating to the limitation or channelling of civil liabilities, nor do they limit the efficient compensation of victims of pollution incidents.
- (10) There is a need for further effective cooperation among Member States to ensure that discharges of polluting substances from ships are detected in time and that the offenders are identified. For this reason, the European Maritime Safety Agency set up by Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002⁽⁴⁾ has a key role to play in working with the Member States in developing technical solutions and providing technical assistance relating to the implementation of this Directive and in assisting the Commission in the performance of any task assigned to it for the effective implementation of this Directive.
- (11) In order better to prevent and combat marine pollution, synergies should be created between enforcement authorities such as national coastguard services. In this context, the Commission should undertake a feasibility study on a European coastguard dedicated to pollution prevention and response, making clear the costs and benefits. This study should, if appropriate, be followed by a proposal on a European coastguard.
- (12) Where there is clear, objective evidence of a discharge causing major damage or a threat of major damage, Member States should submit the matter to their competent authorities with a view to instituting proceedings in accordance with Article 220 of the 1982 United Nations Convention on the Law of the Sea.
- (13) The enforcement of Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues⁽⁵⁾ is, together with this Directive, a key instrument in the set of measures to prevent ship-source pollution.

- (14) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁶⁾.
- (15) Since the objectives of this Directive, namely the incorporation of the international ship-source pollution standards into Community law and the establishment of penalties — criminal or administrative — for violation of them in order to ensure a high level of safety and environmental protection in maritime transport, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (16) This Directive fully respects the Charter of fundamental rights of the European Union; any person suspected of having committed an infringement must be guaranteed a fair and impartial hearing and the penalties must be proportional,

HAVE ADOPTED THIS DIRECTIVE:

Status: This is the original version (as it was originally adopted).

- (1) [OJ C 220, 16.9.2003, p. 72.](#)
- (2) Opinion of the European Parliament of 13 January 2004 ([OJ C 92 E, 16.4.2004, p. 77](#)), Council Common Position of 7 October 2004 ([OJ C 25 E, 1.2.2005, p. 29](#)), Position of the European Parliament of 23 February 2005 (not yet published in the Official Journal) and Council Decision of 12 July 2005.
- (3) See page 164 of this Official Journal.
- (4) [OJ L 208, 5.8.2002, p. 1.](#) Regulation as last amended by Regulation (EC) No 724/2004 ([OJ L 129, 29.4.2004, p. 1](#)).
- (5) [OJ L 332, 28.12.2000, p. 81.](#) Directive as amended by Directive 2002/84/EC ([OJ L 324, 29.11.2002, p. 53](#)).
- (6) [OJ L 184, 17.7.1999, p. 23.](#)