



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.5.2005
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2003/0037 (COD)

OPINION OF THE COMMISSION
pursuant to Article 251(2), third subparagraph, point (c) of the EC Treaty, on the
European Parliament's amendments to the Council's common position regarding the
proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on ship-source pollution and on the introduction of sanctions, including criminal
sanctions, for pollution offences

AMENDING THE PROPOSAL OF THE COMMISSION pursuant to Article 250 (2) of the
EC Treaty

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1. INTRODUCTION

Article 251(2), third subparagraph, point (c) of the EC Treaty requires the Commission to deliver an opinion on amendments proposed by the European Parliament at second reading. The Commission sets out its opinion below on the amendments proposed by Parliament.

2. BACKGROUND

Date of transmission of the proposal to the European Parliament and the Council (Document COM(2003) 92 final - 2003/0037 (COD))	5 March 2003
Date of the opinion of the European Economic and Social Committee	19 June 2003
Date of the opinion of the European Parliament, first reading	13 January 2004
Date of adoption of the common position by qualified majority	7 October 2004
Date of adoption of the resolution at second reading by the European Parliament containing 16 amendments to the common position	23 February 2005

3. PURPOSE OF THE PROPOSAL

The proposal has a two-fold objective:

- to incorporate into Community law the relevant provisions of international law applicable to the prevention and combating of pollution. Thus, the proposal transcribes firstly the provisions of the United Nations Convention on the law of the sea and secondly those of MARPOL, the international Convention for the prevention of pollution, particularly those provisions defining illegal discharges of polluting substances at sea.
- to ensure that the persons responsible for such illegal discharges – i.e. not only captains and shipowners, but also charterers and classification societies – will actually be prosecuted and will be subject, under certain conditions, to criminal

sanctions. It must be possible for them to be held criminally liable where the discharge was deliberate, but also in the event of an accidental discharge caused by serious negligence.

4. OPINION OF THE COMMISSION ON THE AMENDMENTS ADOPTED BY THE PARLIAMENT

Parliament adopted 16 amendments to the Council's common position at second reading.

The Commission can accept those 16 amendments in their entirety, as negotiated during the trialogue meetings in which it fully participated. However, the Commission would make the following comments on amendments 27, 29, 33 and 37 as well as on amendment 2.

- Amendments Nos 27 and 33 on the "institutional" question

These amendments reflect the compromise reached between the European Parliament and the Council on the question of criminal sanctions. The Commission intends to seek the inclusion in the minutes of the meeting of the Council which adopts the directive of the following statement, the contents of which were made public during the debates in the plenary session of 22 February 2005:

"The Commission notes that the European Parliament and the Council, when adopting this Directive, did not wish to include a mandatory system of criminal sanctions for illegal discharges of polluting substances at sea.

It takes the view that, as a result, the text fails to match the ambitions of its proposal as regards the desired effect of providing deterrence with a view to preventing and combating pollution at sea.

The Commission would point out that, at its meeting in Brussels in March 2003, the European Council had called for 'the adoption, before the end of 2003, on the basis of the Commission's recent proposal, of a system of sanctions, including criminal sanctions, for pollution offences, on the appropriate legal basis'. The Commission believes that Article 80(2) of the EC Treaty constitutes such a legal basis.

The Commission has always maintained that it is perfectly permissible for the legislature to establish a system of criminal sanctions in a first pillar instrument if it believes this to be necessary in order to achieve a Community objective.

The Commission can none the less support the solution adopted by the legislature, but would stress that this does not prejudice the position which it is defending before the Court in Case C-176/03, and reserves its institutional rights."

- Amendments Nos 29 and 37 concerning the coastguard

The Commission confirms its agreement to this approach.

- Amendment No 2 on the review of the international system of compensation

The Commission would also clarify that Amendment No 2 on the review of the international system of compensation voted in the Committee on Transport was not taken up in the

compromise package. The aim of that amendment was to amend recital 7. At the invitation of the European Parliament and of the Council, the Commission made the following statement regarding recital 7:

“The Commission reaffirms its determination to continue to help the Member States in their efforts to coordinate their positions in the context of the work of the IOPCF intersessional working group on the review of the international system of compensation for damage caused by oil pollution.

The Commission will continue to urge the Member States to ratify international conventions on liability and compensation in the maritime sector (such as the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention), the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (“Bunker Oil” Convention), the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, and the 1996 Protocol to the Limitation of Liability for Maritime Claims Convention, 1976 (LLMC Convention)).

The Commission confirms its intention, already made public in its work programme for 2005, to submit, in its next package of legislation on maritime safety, a proposal relating to shipowners’ liability seeking to require of shipowners entering a Member State’s port that they be covered by insurance against civil liability, in cases not already covered by the relevant international conventions.”

5. CONCLUSION

The Commission notes that the European Parliament and the Council have not wished to make it mandatory, under this Directive, to establish a system of criminal sanctions for illegal discharges of polluting substances at sea. On this point, the Commission expresses in its statement its regret regarding the ambition levels attained by the future Directive. This apart, the Commission recognises that the result achieved changes neither the aims nor the spirit of its proposal, and it can therefore support it.