



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.10.2004
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2003/0037 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**common position of the Council on the adoption of a Directive of the European
Parliament and of the Council on pollution caused by ships and the introduction in
particular of criminal sanctions for infringements involving pollution**

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and the Council (document COM(2003)92 final - 2003/0037(COD)): 6 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

2. AIM OF THE COMMISSION PROPOSAL

The aim of the proposal is two-fold:

- to incorporate into Community law the relevant provisions of international law applicable to the prevention and combating of pollution. The proposal therefore 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 the 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.

3. COMMENTS ON THE COMMON POSITION

The common position chiefly makes two changes to the text of the initial proposal.

-The scope

The aim of the proposal was to define infringements involving pollution by generally making serious negligence a constituent part of the infringement. However, the proposal did not provide any details regarding exceptions to the rule, but referred to the international law applicable pursuant to the safeguard clause (Article 7).

The common position does in this respect provide clarification as these exceptions to the rule are spelt out. The changes made concern only the form, not the substance.

-The question of criminal sanctions

The Commission accepts the text of the common position. Nevertheless, it made the following statement during the adoption of the political agreement at the Transport Council meeting on 11 June 2004:

“The Commission notes that the Council did not wish to make it mandatory to establish a system of criminal sanctions for illegal discharges of polluting substances at sea.

The Commission takes the view that, in this way, the Council’s compromise text does not attain the ambitions of its proposal in so far as the desired effect of providing deterrence against preventing and combating pollution at sea is concerned.

The Commission would point out that, at its meeting in Brussels in March 2002, the European Council 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 would recall its view, which it has always maintained and as supported by the European Parliament, that it is perfectly possible for the legislator to establish a system of criminal sanctions if it believes this to be necessary in order to achieve a Community objective. Since it does not wish to obstruct the legal process, the Commission therefore accepts this solution, which falls short of its initial proposal, but wishes to stress that this does not prejudice the position which it is defending before the Court in Case C-176/03.”

4. COMMENTS MADE BY THE COMMISSION DEPARTMENTS

4.1. Amendments accepted by the Commission and incorporated in full or in part in the common position

Amendments 1, 4, 6 (in part) and 8 (in part) are useful clarifications of the text of the proposal.

4.2. Amendments accepted by the Commission, but not incorporated in the common position

Amendments 2, 5, 9, 12, 18, 20 and 23 were, in the Commission's view, useful clarifications of the text of the proposal.

Amendments 6 and 22 concerning the creation of a European coastguard had been accepted by the Commission in principle.

4.3. Amendments rejected by the Commission and not incorporated in the common position

Amendments 16, 17, 19, 21 and 29 were redundant.

Amendments 3, 11, 13, 30, 31 and 32 went far beyond the scope of this Directive.

Amendments 10, 14, 24 and 27 did not correspond to the proposal's objectives.

5. CONCLUSION

The Commission notes that the Council did not wish to make it mandatory to establish a system of criminal sanctions for illegal discharges of polluting substances at sea. On this point, the Commission expressed in its statement to the Transport Council its regret regarding the ambitions achieved by the common position. This apart, the Commission recognises that the common position changes neither the aims nor the spirit of the proposal, and it can therefore support it. This support is justified more particularly in order to see the co-decision procedure continue and to enable this Directive to be adopted as soon as possible.