



*EU Environmental Policy Briefing**

EU Moves to Criminalise Maritime Pollution

20 March 2008

The European Commission has tabled a new legislative proposal¹ that would require Member States to criminalise the most serious breaches of EU maritime pollution law. The proposed Directive would clarify and strengthen existing EU legislation, amending the 2005 Directive on ship-source pollution and on the introduction of penalties for infringements that only required Member States to impose penalties that ‘*may* include criminal or administrative sanctions’ for serious offenders.

A Council Framework Decision which had been adopted under the EU’s ‘third pillar’ (which deals with police and judicial co-operation in criminal matters and largely excludes the Commission and European Parliament from the decision-making process) to supplement the 2005 Directive was annulled by the European Court of Justice (ECJ) in October last year. The Court ruled that the Decision should have been adopted in cooperation with the other institutions under the EU’s ‘first pillar’ (which deals with environmental and transport legislation). At that time the Commission stressed the positive side of the judgment, saying it confirmed the EU’s mandate to require criminal sanctions for breaches of EU law in the areas of environment and transport.

Under the proposed new Directive, EU countries would be obliged to impose criminal sanctions in the case of intentional, reckless or seriously negligent polluting discharges by ships. EU maritime law will be strengthened if the Directive is adopted, as it will be enforceable through the European Court of Justice, whereas the previous Framework Decision was not. The Commission will therefore be able to launch infringement proceedings against any Member State which fails to properly implement the legislation. Proper implementation would be judged according to whether Member States introduce ‘effective, dissuasive and proportionate’ criminal sanctions against serious offenders. Such sanctions will be required for ‘individuals’ in all Member States, but if a country does not recognise ‘legal persons’ as criminally liable, companies may face administrative penalties instead (albeit for criminal offences).

* This work was funded by the statutory conservation and countryside bodies in the UK, as part of a contractual arrangement with IEEP to provide intelligence on EU environment policy and other policies which impact on the environment. It reflects the independent views of IEEP and not necessarily the views of the funding bodies. For further information contact Emma Watkins at ewatkins@ieep.eu

The lack of standardised penalties in the Directive also stems from the 2007 ECJ ruling, which stated that whilst the EU *could* demand criminal penalties, it could *not* set their level. This clearly leaves countries with some room for manoeuvre when setting penalties, although the Commission will certainly be mindful that sanctions are tough enough, and the conditions noted above should give sufficient basis for a legal challenge if they are not.

Member States would have to implement the Directive within six months of its official adoption. Although this is a short timescale, in principle countries should already have implemented all the provisions of the proposed Directive as they in effect copy those contained in the annulled Framework Decision (which should have been implemented by 12 January last year).

It is worth noting that should the new Lisbon Treaty enter into force, harmonised criminal sanctions would become a legal possibility. The Commission has therefore already indicated that as and when the Treaty comes into force, it will consider tabling a legislative proposal setting EU-wide levels for sanctions.

The draft Directive complements a more general legislative proposal for a Directive to protect the environment through criminal law². The Parliament and Council are aiming to reach agreement on this more general proposal by the summer.

References

1. Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (COM(2008) 134 final), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0134:FIN:EN:PD>
2. Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law (COM(2007) 51 final), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0051:FIN:EN:PDF>

Emma Watkins, Policy Analyst
ewatkins@ieep.eu

© Copyright IEEP 2008