

**Opinion of the European Economic and Social Committee on the '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 — 2008/0055 (COD)

(2009/C 77/17)

On 4 April 2008 the Council decided to consult the European Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Community, on

*Ship-source pollution and the introduction of penalties for infringements.*

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 July 2008. The rapporteur was **Mr Retureau**.

At its 447th plenary session, held on 17 and 18 September 2008 (meeting of 17 September), the European Economic and Social Committee unanimously adopted the following opinion.

## 1. Commission proposals

1.1 The EESC's opinion is sought on the amendments proposed by the Commission to the 2005 directive on ship-source pollution, in order to comply with the case law of the Court of Justice in the field of environmental crime as regards the respective competences of the Community institutions, the effectiveness of Community legislation, and the precedence of the TEC over the TEU in relation to the Community policies and objectives defined in the treaties.

## 2. General comments

2.1 With regard to criminal matters, the EESC again notes that, in principle, no competence is conferred on the Community by the treaties.

2.2 However, the Commission must be concerned with the effectiveness of Community law, for which it has the power of initiative, in order to implement the policies set down in the TEC that fall within its remit. To this end, in its legislative initiatives it can propose that governments, in their national legislation, provide for proportionate, effective, dissuasive penalties — including criminal penalties — against natural and legal persons having committed offences against the environment, whether deliberately or through gross negligence, directly or with accomplices, or who incite offences warranting the enforcement of these penalties.

2.3 In its previous opinion <sup>(1)</sup>, the EESC was critical of the Commission's wide interpretation of the scope of Community powers in criminal matters, and advocated a more moderate interpretation, which ultimately proved to be in line with the case law of the Court of Justice <sup>(2)</sup>. Since 2000, much time has

been lost over an interinstitutional conflict that has now been settled, and this will make it possible to ensure better compliance with environmental legislation in the future.

2.4 The concern is sometimes expressed that the future amendment of the Treaties would lead to new changes in competences and hence in legislation, which would thus lose stability and certainty. However, this fear does not seem to be justified either by the current institutional situation or under any application of the Lisbon Treaty. Whatever happens, Member States do not seem willing to lose their competences in criminal matters, as these are considered sovereign and part of the 'hard core' of State powers. Even a less radical change to the respective competences of legislative institutions would not, *ipso facto*, be justification for a fundamental change to the law.

2.5 Moreover, in ECJ case C-308/2006 regarding the legality of the directive in terms of public international law, the Court declined jurisdiction, thus bringing an end to the action. In fact, even this case were brought before other international courts, it would not be possible to resolve it for legal and political reasons too complex to enter into here. However, even if a court did agree to give an advisory opinion on a draft Community law, this would not suffice to overrule the Community legislature, which is reinforced by the internal supremacy of its law over national legal systems and international law and, moreover, is not bound by the latter.

2.6 Therefore, in full compliance with Community case law, the proposal on ship-source pollution calls upon Member States to provide for and introduce penalties in their criminal legislation for a limited number of serious cases which the proposal

<sup>(1)</sup> OJ C 220, 16.9.2003, p. 72.

<sup>(2)</sup> See ECJ judgment of 23 October 2007, Commission of the European Communities supported by the European Parliament versus the Council, case C-440/05.

identifies. The penalties should be effective, proportionate and dissuasive, in order to combat these clearly defined infringements of Community law.

2.7 This does not entail harmonising applicable criminal law, as Member States are merely called on to treat certain infringements identified by the Community legislature as criminal offences. However, ECJ case law does allow for the introduction of obligations for Member States in criminal matters, which is a

more effective way of strengthening European legislation and compliance therewith for major issues.

2.8 The Committee therefore welcomes and supports the proposal to amend the 2005 directive, and considers that the new means of identifying and monitoring ships to be gradually set up will ensure full compliance with the directive, by effectively and systematically penalising illegal practices.

Brussels, 17 September 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

---

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council facilitating cross-border enforcement in the field of road safety’**

COM(2008) 151 final — 2008/0062 (COD)

(2009/C 77/18)

On 13 May 2008 the Council decided to consult the European Economic and Social Committee, under Article 71(1)(c) of the Treaty establishing the European Community, on the

*Proposal for a Directive of the European Parliament and of the Council facilitating cross-border enforcement in the field of road safety.*

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 16 July 2008. The rapporteur was Mr Simons.

At its 447th plenary session, held on 17 and 18 September 2008 (meeting of 17 September), the European Economic and Social Committee unanimously adopted the following opinion.

## 1. Conclusions

1.1 The Commission’s draft directive sets out proposals aimed at securing the more efficient and more effective enforcement and supervision of traffic offences committed in another Member State.

1.2 Its purpose is to help meet the Commission’s 2001 objective of halving the number of road fatalities between that date and 2010.

1.3 The target will be impossible to meet without further action. The current proposal is part of that process and focuses on tackling traffic offences committed in another Member State.

1.4 The Committee considers the draft directive to be a sound approach to dealing effectively with offences committed in another Member State. This must, however, also be accompa-

nied by effective and efficient checks and penalties. The Committee would therefore call on the Council and the Member States to make urgent improvements on this front.

1.5 The Committee feels that, to make the directive more effective, the list of offences proposed by the Commission needs to be expanded to include all offences that have a bearing on improving road safety.

1.6 In the interests of efficiency and effectiveness, the Committee feels that, to exchange information, use should be made of an existing electronic network, for instance, the EUCARIS system, as the costs involved are low. The Commission is advised at least to carry out a feasibility study — or have one carried out externally — on the possibility of expanding existing systems to incorporate the planned data exchange.