



EU Directive on ship-source pollution and Fair Treatment of Seafarers

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Introductory outline

- Problems with which seafarers are currently confronted
- Shipping crisis
- Criminalisation of seafarers

“There is a danger referring to criminalization of those seafarers whose errors lead to accidents which could have an adverse rather a positive effect on safety on shipping”.

Current trends in shipping

Industry Developments

- **World fleet**

- 17% growth expected by 2012
- New & larger ships

Criminalization can make things worse in

- Decreased recruitment

- Officer shortfall now 34,000
- Shortfall expected to be 87,900 by 2012

- 2012 – extra 50,000 seafarers needed

Marine Accidents as criminal acts

In recent years there has been an increasing trend towards the initiation of criminal proceedings following maritime accidents.

“Criminalization Directive” a reaction to:

- **Erika case in France in 1999**
- **Prestige in Spain in 2000**

Captains treated as scapegoats?

- Erika, 1999
- Virgo, 2001
- Prestige, 2002
- Tasman Spirit, 2003



Seafarers may be held

- Without charge
- Material witnesses
- Administrative and technical reasons



Directive 2005/35/EC so called the “criminalization directive”

The Directive is based on two international conventions:

- MARPOL
- UNCLOS

MARPOL – DIRECTIVE 2005/35/EC

MARPOL

- Distinction between operational and accidental discharges
- if not strict liability
- have been taken to prevent or minimise the discharge and except if the owner/master acted with intent or recklessly with knowledge

DIRECTIVE 2005/35/EC

- No distinction between operational and accidental discharges
- Criminal liability for infringements if committed with intent, recklessness or by serious negligence
- Applies within the territorial seas, EEZ and on the high seas and irrespective of flag
- Applies to owner, master, crew, salvor, charterer, etc.
- MARPOL defence not available within territorial seas
- The owner, master and crew can rely on the MARPOL - outside territorial seas

Directive 2005/35/EC

- **The Directive was adopted in 2005**
- **EU directive was challenged by Industry Coalition on basis that it is contrary to Marpol and Unclos and that standard of serious negligence is unclear**
- **Judgment of the Court of Justice in Case C-308/06 of June 2008**
- **Council Framework decision 2005/6677JHA**

EU Directive 2005/35/EC amended by Directive 2009/123/EC

Directive 2009/123/EC entered into force on 16 November 2009

The system of sanctions or illicit ship-source discharges of polluting substances, needed to be further strengthened by the introduction of criminal penalties;

The text of the amending directive is similar to the annulled decision, but leaves the nature and level of penalties at the member states' discretion;

The Marine State should be obliged to provide criminal penalties in their national legislation regarding discharging polluting substances for which the Directive applies.

Directive 2009/123/EC

- The Maritime State should also apply effective, proportionate and dissuasive penalties to legal persons throughout the Community because frequently ship-source pollution offences are committed in the interest of legal persons or or their benefit.
- “regarded as infringements if committed with intent, recklessly or with serious negligence also in the territorial sea of another Maritime State...”

RESPONSE TO **CRIMINALIZATION**

International Labor Standards include:

- 1. Conventions – binding when ratified and entered into force**
 - 2. Recommendations – not binding, guidance**
- Maritime Labor Convention, 2006**
 - IMO Guidelines on fair treatment of seafarers, 2006**
 - IMO Casualty Investigation Code, 2010**
 - The “Flipping” problem**

Comments

Treating marine accidents as criminal acts affects industry, individuals and affects in consequence marine pollution.

“In recent years there is a trend that some of the best senior officers in a major shipping company have opted for early retirement rather than face the risk of prosecution”

The End

