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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.6.2008
COM(2008) 370 final

2005/0237 (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 common rules and standards for ship inspection and
survey organisations and for the relevant activities of maritime administrations and a
Regulation of the European Parliament and of the Council on common rules and
standards for ship inspection and survey organisations**

(Text with EEA relevance)

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1. BACKGROUND

Date on which the proposal was sent to the European Parliament and to the Council (document COM(2005) 587 final – 2005/0237COD): 30 January 2006

Date of the opinion of the European Economic and Social Committee: 13 September 2006

Date of the opinion of the Committee of the Regions: 15 June 2006

Date of the opinion of the European Parliament, first reading: 25 April 2007

Date of adoption of the common position: 6 June 2008

2. PURPOSE OF THE COMMISSION PROPOSAL

The purpose of the proposal is to reform the current system for Community recognition of the bodies tasked by the Member States with inspecting and certifying ship safety under international conventions (classification societies), a system set up by Directive 94/57/EC (OJ L 319, 12.12.1994, p. 20). The recasting technique is used for this fourth updating of the Directive.

More specifically, the aim of the recasting proposal is to:

- (1) strengthen the systems for monitoring recognised organisations by setting up a common but independent body to certify their quality management systems;
- (2) harmonise the current dual system of ordinary and limited recognition, which would mean that recognition will henceforth be granted on the basis of the quality of service and the performance achieved by the organisations concerned, with the size of such organisations no longer a factor;

- (3) simplify and improve the structure of the Community recognition criteria, making them more stringent;
- (4) reform the system of penalties, which currently provides only for suspension or withdrawal of recognition. The aim of the proposal is to establish a system of more measured and more effective financial penalties, retaining the scope for withdrawal for the most serious cases;
- (5) introduce mutual recognition of classification certificates between recognised organisations (certificates of conformity with the organisations' own technical rules), in particular for certificates that apply to marine equipment and are issued on the basis of equivalent technical standards;
- (6) clarify the scope and facilitate the application of certain provisions of the Directive.

3. COMMENTS ON THE COMMON POSITION

3.1. Splitting the proposal into a draft Directive and a draft Regulation

The Council has split the proposal into a draft Directive and a draft Regulation in order to ensure that the system is legally watertight, particularly as it involves imposing obligations on recognised organisations and setting up a system of financial penalties.

The Commission notes that the draft Directive focuses on the relationship between the Member States and the recognised organisations to which they delegate the inspection and certification of ships under international conventions, whereas the draft Regulation deals in full with the recognition system as a whole (including the granting of recognition, the recognition criteria, the recognised organisations' obligations as regards reporting and cooperation, the periodic assessment of recognised organisations, the correction of shortcomings and, finally, withdrawal of recognition).

The Commission accepts this separation in so far as (a) it remains a formal procedure and, aside from the necessary textual amendments, the substance of its proposal is fully respected; and (b) it helps create greater legal certainty for the organisations concerned.

3.2. The draft Directive

The Commission considers the Council's amendments to the recitals to be consistent with the amendments to the legislative part of the text.

Amendments to the legislative part of the text:

- The amendments to Articles 6 and 7 are consistent with the introduction of a regulatory committee procedure with scrutiny under Council Decision 2006/512/EC¹.
- The Council has removed the safeguard clause from Article 8(1), regarding which the Commission had not put forward a proposal. However, the Commission is of the opinion that this should be considered a technical matter, involving the removal of a mechanism

¹ OJ L 200, 22.7.2006, p. 11.

carried over from the initial versions of the Directive but no longer applicable. The mechanism in question is, in fact, incompatible with the powers of assessment and sanction conferred on the Commission by successive amendments. The Commission is therefore able to support this amendment, which does not undermine its right of initiative.

- The Commission reiterated its position on Member States drawing up concordance tables between Member States' transposal measures and the provisions of the Directive, in the interests of citizens, better regulation and transparency. Despite the removal of this requirement from Article 14, the Commission offered no opposition to the Council's agreement with a view to finalising the interinstitutional procedure. However, it expects this horizontal matter to be considered jointly by the institutions.

The text thus amended incorporates the European Parliament's amendments 3, 5, 7, 9, 13, 29, 34, 35 to 37 and 51, which the Commission had accepted. Amendments 1, 4 and 8, which were drafting changes and had, in principle, been accepted by the Commission, have not been incorporated. Nevertheless, the principle behind the first two is reflected in criterion B(6)(l) of the Annex to the draft Regulation, which the Commission considers to be correct.

The Commission considers the other amendments made by the Council to the legislative part of the text to be minor changes and/or drafting or technical changes. They are therefore acceptable.

3.3. The draft Regulation

The Commission considers the Council's amendments to the recitals to be consistent with the amendments to legislative part of the text, with the exception of recitals 1a and 28a, on which the Commission would make the following observations:

- The Commission does not agree with the new recital 1a, which states that the Regulation must be interpreted in accordance with international law. The Commission is of the opinion that (a) the draft Regulation is entirely consistent with international law and (b) the interpretation of Community law falls exclusively within the jurisdiction of the European Court of Justice, on which the legislature cannot impose constraints.
- The Commission can accept the new recital 28a, as it reflects the need to stipulate that recognised organisations must have a comprehensive set of technical rules and must harmonise these. However, when assessing recognised organisations and organisations applying for recognition, the Commission will continue to require full compliance with both of those obligations.

Amendments to the legislative part of the text:

- The new version of Article 4(1a) states explicitly what was already implicit in the Commission's proposal, i.e. that recognition may be granted only to organisations that meet the recognition criteria.
- The amendment to Article 4(4) enables a more flexible approach to limiting recognition, but any such limitation remains purely qualitative. At the same time, the Commission is placed under an obligation to specify the reasons for this limitation and the conditions subject to which it may be lifted, which enhances the protection of the rights and interests of the organisation concerned.

- In Article 5, the inclusion of deadlines for corrective action increases the pressure on the recognised organisation in question once shortcomings have been detected.
- The Council's amendment to Article 6 will mean first launching an Advisory Committee procedure before the Commission imposes penalties on a defaulting recognised organisation. In general, the Commission considers comitology to be of little relevance to decisions of this type, but recognises that such decisions may affect the relationship between the Member States and the organisations in question, given that Community recognition is ultimately designed to allow Member States to delegate inspection and certification under international conventions. The Commission therefore accepts the solution put forward by the Council, which, whilst allowing Member States to express their opinion on the infringements detected and the penalties to be imposed, rules out any possibility of political irregularities in the procedure. Furthermore, the Council judged it necessary to calculate the upper limit of the fines that may be imposed on an organisation on the basis of its turnover for the previous three financial years, which seems fair. Lastly, giving the Court of Justice full jurisdiction over fines reinforces the procedural guarantees and the protection of the defendant's rights.
- As regards grounds for withdrawal of recognition, the Council has added a fifth case designed, in particular, to prevent public or private subsidies being used to pay the penalties imposed on a recognised organisation. The Commission fully supports this proposal because, were that to occur, the system would lose its deterrent effect.
- The new wording put forward by the Council for Article 9 does not alter the substance of the Commission's initial proposal, and access to documents and vessels for the purposes of assessing recognised organisations is still fully guaranteed.
- Significant improvements have been made to Article 10 as regards mutual recognition of classification certificates, which will henceforth be automatic for all equipment covered by Directive 96/98/EC on marine equipment². The Council stipulates that mutual recognition affects only equipment, materials and components, thus stating explicitly what was already implicit in the original proposal. The Council has introduced two new mechanisms. Firstly, recognised organisations are required to state their reasons where they have not implemented mutual recognition, although this is acceptable only for reasons of safety. Secondly, a safeguard clause will allow recognised organisations to refuse to install specific, non-compliant equipment on board without undermining the principle of mutual recognition. Lastly, the deadline for the Commission to submit a report on the implementation of mutual recognition, as specified by the European Parliament in amendment 53, has been extended from three to five years. In view of the technical complexity of the process to be undertaken by the recognised organisations, the Commission also considers this to be appropriate.
- The Commission welcomes the fact that the common position retains the obligation for recognised organisations to set up a joint independent system to certify their quality management systems. Accordingly, Article 11 incorporates the key elements of the Commission's initial proposal on the subject, leaving the implementation of the system entirely in the hands of the recognised organisations, i.e. without the involvement of the

² OJ L 46, 17.2.1997, p. 25. Directive as last amended by Directive 2002/84/EC (OJ L 324, 29.11.2002, p. 53).

Member States or the Commission. The Parliament wanted the Member States to be involved in this, which the Commission accepted in principle. However, this idea will have to be abandoned with a view to developing an international code for recognised organisations, which will include a strong mechanism for independent certification (see below).

- With the committee procedure, the Council has made it possible for the Commission to lay down the techniques for interpreting and applying the criteria set out in the Annex. Given the occasionally very general nature of some of the criteria, such as the resources that recognised organisations are required to have, this can usefully contribute to their effective implementation and increase legal certainty for all concerned.

The text thus amended incorporates, either in whole or in part, amendments 6, 12, 15, 17, 18, 25, 38 to 44, 50, 52 to 56, 59 to 61, 66 and 68, which the Commission had accepted. Amendments 18, 26, 14 and 69, which were accepted by the Commission either in part or in principle, have been incorporated into the common position in a form that the Commission considers satisfactory. Amendments 16, 62, 64, 65 and 71 on the name of the body responsible for certifying the recognised organisations' quality systems were accepted by the Commission only in principle, as the use of the term "committee" could lead to confusion with the committee procedure. In the Commission's opinion, the name chosen by the Council, i.e. "Quality Assessment and Certification System" is an entirely satisfactory compromise.

Other than those set out above, the Commission considers the amendments made by the Council to the legislative part of the text to be minor changes and/or merely drafting or technical changes. They are therefore acceptable.

3.4. Joint Council and Commission Declaration on the development of a code for recognised organisations by the International Maritime Organisation (IMO)

The Commission and the Council are both of the opinion that the system currently being developed by the Community could usefully serve as a model at international level. This is in line with the European Parliament's concerns regarding the need for coordination between the Community system and the international system. The Commission and the Member States are therefore prepared to call on the IMO to draw up a code guaranteeing that classification societies operate to a high level of quality worldwide. The Council and the Commission have therefore signed a joint declaration to this effect, which is annexed to this Communication.

4. CONCLUSIONS

The Council's common position fully addresses the concerns which led the Commission to submit its proposal to recast Directive 94/57/EC and retains the key elements of the measures it recommended. Now that the act has been split into a draft Directive and a draft Regulation, most of those measures have been incorporated into the draft Regulation. Furthermore, the common position incorporates almost all of those amendments put forward by the European Parliament which the Commission was able to accept either in whole or in part.

The Commission is therefore of the opinion that the common position adopted unanimously by the Council forms a good basis for reaching agreement with the European Parliament at second reading and accepts it, subject to the observations and reservations set out above.

ANNEX

STATEMENT BY THE COUNCIL AND THE COMMISSION

"The Council and the Commission consider that the objectives of this Directive of enhancing ship safety and preventing marine pollution should also be pursued at international level. Therefore, Member States and the Commission should, seeking the collaboration of other IMO members, propose to the IMO the development of an international Code for recognised organisations.

Building on the principles of this Directive, this Code should encompass, as appropriate,

a) the mandatory requirements to be met by recognised organisations with regards to statutory work. This includes inter alia the following: general requirements such as independence, impartiality, integrity, competence and responsibility; requirements relating to organisation, management and resources; requirements related to the certification process; requirements related to quality management;

and

b) a framework and procedures for a mandatory Audit Scheme to verify that a recognised organisation meets the requirements referred to in a)."