



COMMISSION OF THE EUROPEAN COMMUNITIES

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2005/0242 (COD)

Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the civil liability and financial guarantees of shipowners

(presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

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(Text with EEA relevance)

1. STAGE OF PROCEDURES

The proposal – COM(2005) 593 – 2005/0242 (COD) – was adopted by the Commission on 23 November 2005 and was sent to the European Parliament and to the Council on 30 January 2006.

The European Economic and Social Committee adopted its opinion on the proposal from the Commission on 13 September 2006.

The Committee of the Regions adopted its opinion on the Commission's proposal on 15 June 2006.

The European Parliament adopted 25 amendments at first reading on 29 March 2007.

2. OBJECTIVE OF THE PROPOSAL

The objective is to ensure that there is a minimum set of rules common to all Member States governing the civil liability and guarantees of shipowners and to define the basis for rules that aim both to prevent accidents and to compensate for damages.

The proposal aims to incorporate into Community law:

- the Convention of the International Maritime Organisation (IMO) on the Limitation of the Liability of Owners of Seagoing Ships (1996 version);
- a Resolution of the IMO and the World Labour Organisation on financial security certificates for abandonment of seafarers.

The proposal also aims to establish a system for guaranteeing mandatory civil liability for shipowners underpinned by an IMO resolution on guarantees.

3. OBJECTIVE OF THE AMENDED PROPOSAL

The amended proposal adapts the original proposal on a number of points as suggested by the European Parliament.

4. OBSERVATIONS ON THE AMENDMENTS ADOPTED BY THE EUROPEAN PARLIAMENT

4.1 Amendments accepted by the Commission

The Commission can accept amendments 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 22, 24 and 28.

4.2 Amendments accepted by the Commission in part or subject to rewording

Amendments 5, 21, 23, 26 and 27.

– Amendment 5

The last part of the amendment describes conduct barring limitation (circumstances under which a shipowner loses the right to limit his liability). The description is, however, incomplete, and needs to be revised in order to reflect all the enacting terms of the Directive, i.e. not just Article 4(2)(a) (reckless personal act or omission) but also Article 4(3) (gross negligence).

Recital 5a (new):

"For ships flying the flag of a State party to the 1996 Convention, it should not be possible to apply limitation of liability under the 1996 convention to victims not party to the maritime transport operation, if the owner of the ship responsible for the damage has failed to act in a professional manner and should have been aware of the harmful effects of his act or omission. For ships not flying the flag of a State party to the 1996 Convention, it should not be possible to apply limitation of liability under the 1996 convention to victims not party to the maritime transport operation, if the owner of the ship responsible for the damage has committed gross negligence."

– Amendment 21

The amendment describes the contents of IMO Resolution A 930(22). The description, however, is not complete, and should also mention the payment of outstanding remuneration.

Article 6, subparagraph 1:

"Each Member State shall take the necessary measures to ensure that every owner of a ship flying its flag has a financial guarantee to protect the seafarers employed or engaged on board the ship in the event of abandonment, in accordance with IMO Resolution A 930(22), **sufficient to cover the costs of accommodation, medical assistance and repatriation and to pay outstanding remuneration.**"

– Amendments 23, 26 and 27

These three amendments cover the creation of a Community Office responsible for managing financial guarantee certificates.

While it may be legitimate to attempt to centralise the management of financial guarantee certificates at a European level, to lessen the burden on Member States and

to enhance the standardisation of procedures, the creation of such an office would have administrative and financial consequences that need to be weighed up. The Commission would therefore like to examine the initiative in greater detail.

One option would be to entrust the tasks to the European Maritime Safety Agency, clarifying the financial and institutional consequences, rather than creating a new office.

New recital:

"It may be appropriate in the future to centralise the management of financial security certificates at European level. The European Maritime Safety Agency could be called upon to perform this role. However it is important to first carefully identify the financial and institutional consequences that this would have for the Agency".

4.3. Amendments not accepted by the Commission

Amendments 7 and 25 cannot be accepted by the Commission.

5. AMENDED PROPOSAL

Having regard to Article 250(2) of the EC Treaty, the Commission amends its proposal as indicated above.