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**PV/CONS 29  
TRANS 311  
TELECOM 159  
ENER 255**

**DRAFT MINUTES**

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Subject: **3243rd** meeting of the Council of the European Union (**TRANSPORT, TELECOMMUNICATIONS AND ENERGY**) held in Luxembourg on 6, 7 and 10 June 2013

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## **LEGISLATIVE DELIBERATIONS**

*(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)*

### **"A" ITEMS**

**1. Directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles [First reading] (LA + S)**

PE-CONS 16/13 ENT 93 MI 254 CONSOM 57 COMPET 182 CODEC 717  
OC 183

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 114 of the TFEU).

#### **Statement by Bulgaria**

"Bulgaria supports the adoption of the Directive of the European parliament and of the Council on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles.

Nevertheless, Bulgaria regrets that the possibility for the manufacturer to appoint an authorised representative is not covered by any rules in this Directive. The absence of harmonised provisions governing this general right of the manufacturer could lead to divergent rules and practices in the Member States which, in turn, could create difficulties for economic operators.

In order to minimise the negative effect of the absence of such rules Bulgaria considers it necessary to introduce the relevant reference provisions of Decision No 768/2008/EC in its national legislation."

#### **Statement by the Commission on the Competence of the Committee**

"The Commission regrets the adoption of the Article 45(2b) that has the potential to create confusion and legal uncertainty. The role of the Committees which ensure control by Member States on the Commission's exercise of implementing powers is defined only by Regulation No (EU) 182/2011, adopted on the basis of Article 291, third paragraph, TFEU. Therefore, no other secondary legislative act can alter or would need to specify further this role. In particular, the rules of procedures of committees are adopted by the committees on the basis of Regulation No (EU) 182/2011. As such they are to be applied when the Committee exercise its role defined by Regulation No (EU) 182/2011. Any reference to rules of procedures outside this context is superfluous and inappropriate. It also risks complicating the functioning of the committee."

**2. Regulation of the European Parliament and of the Council on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 [First reading] (LA + S)**

PE-CONS 9/13 AGRILEC 27 VETER 16 CODEC 538 OC 133

The Council approved the amendments set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 43(2) and point (b) of Article 168(4) of the TFEU).

**Statement by the Commission**

"Within the framework of the European Union Strategy for the Protection and Welfare of Animals<sup>1</sup>, the Commission will study the welfare of dogs and cats involved in commercial practices.

If the outcome of that study indicates health risks arising from those commercial practices, the Commission will consider appropriate options for the protection of human and animal health, including proposing to the European Parliament and to the Council appropriate adaptations to current Union legislation on trade in dogs and cats, including the introduction of compatible systems for their registration accessible across Member States.

In light of the above, the Commission will assess the feasibility and appropriateness of an extension of such registration systems to dogs and cats marked and identified in accordance with Union legislation on non-commercial movements of pet animals."

**3. Directive of the European Parliament and of the Council amending Council Directive 92/65/EEC as regards the animal health requirements governing intra-Union trade in and imports into the Union of dogs, cats and ferrets [First reading] (LA)**

PE-CONS 10/13 AGRILEG 28 VETER 17 CODEC 540 OC 134

The Council approved the European Parliament's position at first reading and adopted the proposed act, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 43(2) of the TFEU).

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<sup>1</sup> COM(2012) 6 final/2 Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the European Union Strategy for the Protection and Welfare of Animals 2012-2015.

**4. Directive of the European Parliament and of the Council on safety of offshore oil and gas operations and amending Directive 2004/35/EC [First reading] (LA + S)**

PE-CONS 8/13 ENER 76 ENV 184 MARE 7 COMAR 12 PROCIV 36

CODEC 522 OC 127

The Council approved the amendment set out in the European Parliament's position at first reading and adopted the proposed act amended accordingly, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 192(1) of the TFEU).

**Statement by the Commission**

- "1. The Commission regrets that under § 3 and 5 of article 41 some Member States are partially exempted from the obligation to transpose the Directive and considers that such derogations shall not be regarded as a precedent in order not to affect the integrity of EU law.
2. The Commission notes that Member States may use the option not to transpose and apply Article 20 of the Directive because of the current absence of any company registered in their jurisdiction which has offshore activities outside the territory of the Union.

In order to ensure effective enforcement of this Directive, the Commission underlines that it is incumbent on these Member States to ensure that companies already registered with them do not circumvent the aims of the Directive by extending their business objects to include offshore activities without notification of this extension to the competent national authorities so that they can take the necessary steps to ensure full application of Article 20.

The Commission will take all necessary measures against any circumvention which may be brought to its attention."

**5. Regulation of the European Parliament and of the Council amending Regulation (EC) No 450/2008 laying down the Community Customs Code (Modernised Customs Code) as regards the date of its application [First reading] (LA)**

PE-CONS 23/13 UD 94 ENFOCUSTOM 77 MI 334 COMER 102 TRANS 185

CODEC 923 OC 256

The Council approved the European Parliament's position at first reading and adopted the proposed act, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Articles 33, 114 and 207 of the TFEU).

- 6. Regulation of the European Parliament and of the Council repealing Council Regulation (EC) No 552/97 temporarily withdrawing access to generalized tariff preferences from Myanmar/Burma [First reading] (LA)**  
PE-CONS 12/13 SPG 5 WTO 69 COASI 42 CODEC 623 OC 155

The Council approved the European Parliament's position at first reading and adopted the proposed act, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 207 of the TFEU).

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## AGENDA ITEMS

### TELECOM

- 3. Proposal for a Directive of the European Parliament and of the Council concerning measures to ensure a high level of network and information security across the Union [First reading]**

Interinstitutional file: 2013/0027 (COD)

- Progress report
- Orientation debate

6342/13 TELECOM 24 DATAPROTECT 14 CYBER 2 MI 104  
CODEC 313

10076/13 TELECOM 136 DATAPROTECT 68 CYBER 11 MI 449  
CODEC 1209

The Council took note of the progress report set out in doc. 10076/13 and held an orientation debate on the basis of the questions set out in doc. 10076/13.

- 4. Proposal for a Regulation of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market [First reading]**

Interinstitutional file: 2012/0146 (COD)

- Progress report

10977/12 TELECOM 122 MI 411 DATAPROTECT 73 CODEC 1576

10100/13 TELECOM 141 MI 452 DATAPROTECT 69 EJUSTICE 52  
CODEC 1219

The Council took note of the progress report set out in doc. 10100/13.

## 5. Digital infrastructure and services

- (a) **Proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European telecommunications networks and repealing Decision No 1336/97/EC [First reading]**  
Interinstitutional file: 2011/0299 (COD)
- (b) **Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the costs of deploying high-speed electronic communications networks [First reading]**  
Interinstitutional file: 2013/0080 (COD)
- Progress report  
7999/13 TELECOM 60 COMPET 177 CODEC 686  
10088/13 TELECOM 139 COMPET 369 CODEC 1214

The Council took note of the progress report on these two proposals as set out in doc. 10088/13.

## 6. Proposal for a Directive of the European Parliament and of the Council on the accessibility of public sector bodies' websites [First reading]

Interinstitutional: file 2013/0340 (COD)

- Progress report  
17344/12 TELECOM 250 CONSOM 155 MI 811 CODEC 2936  
10089/13 TELECOM 140 CONSOM 101 MI 451 CODEC 1215

The Council took note of the progress report set out in doc. 10089/13.

## ENERGY

## 7. Proposal for a Directive of the European Parliament and of the Council amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources [First reading]

Interinstitutional file: 2012/0288 (COD)

- Progress report  
15189/12 ENV 789 ENER 417 ENT 257 TRANS 346 AGRI 686  
POLGEN 170 CODEC 2432  
+ REV 1 (fi,sv,cs,sk)  
+ REV 2 (de)  
8920/13 ENER 143 ENV 333 ENT 112 TRANS 186 AGRI 259 POLGEN 53  
CODEC 924

The Council took note of the progress report set out in doc. 8920/13.



## TRANSPORT

### Intermodal

#### **13. Proposal for a Regulation of the European Parliament and of the Council establishing the Connecting Europe Facility [First reading]**

Interinstitutional file: 2011/0302 (COD)

– Progress report

16176/11 CADREFIN 117 POLGEN 177 REGIO 111 ENER 345  
TRANS 292 TELECOM 161 COMPET 472 MI 533 ECO 129

+ REV 3 (bg,et,el,es,hu,it,lt,pl,pt,ro,sl,sv)

+ REV 4 (cs,da,de,en,fi,fr,ga,lv,mt)

+ REV 5 (nl)

10060/13 TRANS 265 FIN 296 CADREFIN 121 POLGEN 83 REGIO 112  
ENER 220 TELECOM 135 COMPET 356 MI 448 ECO 98  
CODEC 1205

The Council examined and endorsed the progress report on the above proposal, as set out in doc. 10060/13.

### Land

#### **14. Fourth railway package**

##### **Proposal for a Directive of the European Parliament and of the Council on the interoperability of the rail system within the European Union (Recast) [First reading]**

Interinstitutional file: 2013/0015 (COD)

– General approach

6013/13 TRANS 39 CODEC 226

10276/13 TRANS 289 CODEC 1273

The Council adopted a general approach on the above proposal as set out in doc. 10813/13, and agreed to enter in these minutes statements by Austria, Italy and Latvia.

#### **Statement by Austria**

"In principle, Austria supports the Commission's initiative to harmonise the technical specifications and systems in the railway sector. Therefore, like many other Member States, Austria also supports the trend to establish harmonised authorisation procedures for the individual subsystems of the interoperable rail network within the framework of and through the European Railway Agency. However, Austria considers that the extensive powers set out in the proposal cannot yet be assigned in full to the Railway Agency at this stage. In particular, the provisions set out in Article 20 on authorisation by the European Railway Agency for the placing on the market of mobile subsystems - which require, too, the involvement of national licensing authorities - do not appear in their practical application to support simplification of these procedures. Accordingly, Austria remains very sceptical about these provisions and can only approve the proposal as a whole subject to the retention of the five year transposition period along with the reporting and information obligations proposed by the Commission.

In addition, Austria considers the definition of "light rail" in the compromise text to be impractical, as this would severely restrict the scope for the future use of light rail systems. Accordingly, Austria would prefer the original definition used in the Commission proposal.

In principle, and along with many other Member States, Austria is also critical of the use of delegated acts and believes that these should be replaced by implementing acts. The application of implementing acts would result in a significantly more transparent legislative procedure."

### **Statement by Italy**

"As the Minister for Infrastructure and Transport, Maurizio Lupi, stated when speaking within the Council, Italy reaffirms its position on the proposal for a Directive on the interoperability of the rail system of the European Union with regard to the following:

- 1) Article 20(1f): proposal to insert the option for NSAs to take precautionary measures pending the resolution of conflicts with the ERA on the legal aspects of putting rolling stock into circulation.
- 2) Article 21: inclusion in the Article that would allow the NSAs to intervene in cases where there is doubt regarding the decision of a railway company to make use of rolling stock on a particular route.
- 3) Article 35: request that the identification number of the body notified within the NANDO system should be assigned 60 days after notification (deadline laid down for conclusion of the recognition procedure by Decision 768/2008).
- 4) Article 1(3)(b): proposal to extend the exclusion from the scope of the Directive of networks which are functionally separate and used only for the operation of local passenger or goods transport services.
- 5) Article 2(1) and Annex I: proposal to insert a distinction between conventional and high-speed rail systems (in accordance with Directive 2008/57/EC)."

### **Statement by Latvia**

"The Republic of Latvia supports the objectives of the proposal for a Directive on the interoperability of the rail system within the European Union (Recast) and welcomes the progress achieved during discussions on this proposal during the Irish Presidency.

However, The Republic of Latvia believes that during next stages of discussions on this proposal further flexibility should be allowed concerning vehicle authorization on networks sharing similar characteristics that at the same time differ from the main rail network in the Union. Taking into account that use of such vehicles is limited to this network only and these vehicles cannot be used on the main rail network in the Union, the national safety authorities of the relevant Member States should be allowed to conclude agreements on common authorisation procedures for the respective network. Such a solution in these specific cases would not require direct involvement of the European Railway Agency, thus ensuring more convenient and cost efficient solution for the applicants."

## 15. Roadworthiness package

- (a) **Proposal for a Regulation of the European Parliament and of the Council on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union and repealing Directive 2000/30/EC [First reading]**

Interinstitutional file: 2012/0186 (COD)

12809/12 TRANS 251 CODEC 1961

+ REV 1 (de)

+ ADD 1

10277/13 TRANS 290 CODEC 1274

- (b) **Proposal for a Directive of the European Parliament and of the Council amending Council Directive 1999/37/EC on the registration documents for vehicles [First reading]**

Interinstitutional file: 2012/0185 (COD)

12803/12 TRANS 250 CODEC 1960

10278/13 TRANS 291 CODEC 1275

- General approach

The Council adopted general approaches on the above proposals, as set out in docs. 10837/13 and 10838/13, and agreed to enter in these minutes statements by Belgium, Italy and Latvia.

### **Statement by Belgium**

"Belgium welcomes the agreement reached on the Roadworthiness package by the Irish Presidency at the TTE Council of 10 June 2013. However, Belgium regrets the lack of ambition concerning certain provisions in the proposal for a regulation on Technical roadside inspection. The general approach reached on this file has significantly weakened the impact of the regulation, by withdrawing the light duty vehicles (N1) from its scope.

There are however growing concerns on the increasing traffic of those vehicles, as well as on their impact on road safety. As the commercial use of those vehicles is at present neither covered by any technical or social European legislation, on the contrary to the heavy duty vehicles, the Belgian authorities would like therefore to recall that it is time for a common approach at EU level to tackle the lack of legislative provisions on light duty vehicles."

### **Statement by Italy**

"As the Minister for Infrastructure and Transport, Maurizio Lupi, stated when speaking within the Council, Italy reaffirms its position on the proposal for a Regulation on the technical roadside inspection of the roadworthiness of commercial vehicles with regard to the following:

- the legal form of the legislative act: we confirm our preference for an instrument directly applicable in the Member States such as the Regulation, which is more effective in a difficult field like road safety;
- the scope of the Regulation: we reaffirm our preference for including the N1 vehicle category in order to ensure more extensive and effective checks on vehicles in circulation in the European Union."

### **Statement by Latvia**

"The Republic of Latvia fully supports the objectives of the proposal on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union and repealing Directive 2000/30/EC that is to ensure that in the intervals between periodic roadworthiness tests, commercial vehicles do not pose significant risks to road safety.

It also aims at the creation of a level playing field regarding the quality of maintenance of the commercial vehicles circulating within the Union by discouraging irresponsible operators from attempting to gain a competitive advantage by operating inadequately maintained vehicles.

The Republic of Latvia would like to underline that motor vehicles of category N1 are primarily intended to be used for commercial purposes and should be considered as commercial vehicles therefore it is important to maintain this vehicle category in the scope of this Directive.

The Republic of Latvia cannot support the deletion of category N1 from the scope of the Directive, as participation of unsafe and/or dangerous motor vehicles in road traffic may pose a significant threat to road safety that is in contradiction with not only the national, but also EU level goals in the context of road safety.

The Republic of Latvia supports also the inclusion of vehicles categories O1 and especially O2 into the scope of the Directive, with the condition, that vehicles of these categories are used in combination with vehicles of category N1, N2, N3, M2 or M3.

Taking into account the given arguments in this statement, the Republic of Latvia cannot give its consent to the general approach concerning the proposal on the technical roadside inspection and abstains in the voting on general approach."

### **Aviation**

#### **16. Proposal for a Regulation of the European Parliament and of the Council on occurrence reporting in civil aviation amending Regulation (EU) No 996/2010 and repealing Directive No 2003/42/EC, Commission Regulation (EC) No 1321/2007 and Commission Regulation (EC) No 1330/2007 [First reading]**

Interinstitutional file: 2012/0361 (COD)

– General approach

18118/12 AVIATION 203 CODEC 3132

10279/13 AVIATION 70 CODEC 1276

The Council adopted a general approach on the above proposal, as set out in doc. 10735/13, with France abstaining. The Council agreed to enter in these minutes a statement by Italy.

## Statement by Italy

"Although we agree with the overall aim of this proposal, and in particular that of harmonisation of occurrence reporting and simplification of methods of acquiring data, and although we welcome various aspects of the text of the general approach (notably the applicability of the mandatory reporting requirement to the general aviation sector, flexibility measures for "small" organisations<sup>1</sup>, the application of "implementing acts" to establish the list of occurrences which must be reported and the detailed list of mandatory information which must be included in occurrence reporting<sup>2</sup>), we have a number of criticisms with regard to certain formulations which run the risk of defeating the object of harmonisation on the one hand and conflicting with ICAO rules on the other.

The criticisms refer to the following Articles:

### Article 2(8) (Definitions) and Article 5(1) and (3) (Voluntary reporting)

Although we can accept the definition of "occurrence" insofar as it realigns European rules on those of the ICAO, by including in the concept of an "occurrence" accidents and serious incidents as provided for in Regulation (EU) No 996/2010, we would emphasise that there is a serious deficiency in this definition in that it does not include events which may be reported via the system of voluntary reporting (because they may represent an air safety hazard). It would have been better to model the definition of an event on that laid down in the future Annex 19 (Standard 5.1.2<sup>3</sup>), under which all the information on irregular situations which may influence air safety come under the voluntary reporting system. It may be noted here that the definition contained in the proposal for a Regulation as originally drafted by the Commission<sup>4</sup> was much more complete.

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<sup>1</sup> See Article 6 (Collection and storage of information) and Article 4 (Mandatory reporting, in particular paragraph 2a on the simplified reporting requirements for individuals using aircraft other than "complex motor-powered aircraft").

<sup>2</sup> See Article 4(2a) (Mandatory reporting) and Article 7(1a) (Quality and content of occurrence reports).

<sup>3</sup> Standard 5.1.2, Annex 19, ICAO: "Each State shall establish a voluntary incident reporting system to facilitate collection of information on actual or potential safety deficiencies that may not be captured by the mandatory incident reporting system."

<sup>4</sup> See 2012/0361 (COD) Article 2(8): "occurrence" means any event which is or could be significant in the context of aviation safety and includes notably accident and serious incident, as defined in Articles 2(1) and (16) of Regulation (EU) No 996/2010, and incident;

The incomplete wording of the concept of an "occurrence" moreover gives rise to a conflict with Article 5, on the system of voluntary reporting. In that case too, it would be better to include a reference to situations which might come within the voluntary reporting system<sup>1</sup>.

#### Article 4(4) (Mandatory reporting)

This Article specifies the time limits prescribed for mandatory reporting for persons (in point 4) and for organisations (in point 7): we would point out that these provisions cause confusion and inconsistency with respect to existing rules, as they allow organisations to transmit all incidents, even the most serious, to the Civil Aviation Authority, taking more than 72 hours, which however has been laid down as the maximum limit under EASA implementing rules<sup>2</sup>. This limit is also advised in the ICAO's 'Safety Management Manual'<sup>3</sup>, which sets more restricted time limits for mandatory reporting of serious incidents and accidents to the competent authority: 24 hours for accidents, 48 hours for serious incidents and 72 hours for incidents.

It is thus essential in our view to align the prescribed time limits for mandatory reporting on the provisions of the existing legislation<sup>4</sup>.

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<sup>1</sup> Paragraphs 1, 2 and 3 of Article 5 (Voluntary reporting) might then be amended as follows:  
1. A voluntary reporting system shall be set up by each organisation established in a Member State to facilitate collection of occurrences *on actual or potential safety deficiencies* that may not be captured by the mandatory reporting system, or other safety related information which is perceived by the reporter as an actual or potential hazard.  
2. A voluntary reporting system shall be set up by each Member State to facilitate collection of occurrences *on actual or potential safety deficiencies* that may not be captured by the mandatory reporting system, or other safety related information which is perceived by the reporter as an actual or potential hazard. This system shall also include but will not be limited to the collection of information transferred by organisations in accordance with paragraph 5a.  
3. The voluntary reporting systems shall allow the collection of occurrences *on actual or potential safety deficiencies* or safety related information which do not have to be mandatorily reported in accordance with Annex I or the reporting of occurrences or safety related information by persons which are not listed in Article 4(3).  
<sup>2</sup> e.g. in Regulations 748/2012, 2042/2003 and 965/2012  
<sup>3</sup> ICAO Document 9859, third edition, Chapter 4, Appendix 3, Annex A  
<sup>4</sup> Paragraphs 4 and 7 of Article 4 should be amended as follows:  
4. Every person listed in paragraph 3 shall report occurrences **to the competent Authority, when applicable**, within 72 hours of becoming aware of the occurrence, unless exceptional circumstances prevent this.  
7. Any organisation established in a Member State that is not covered by the previous paragraph shall report to the competent authority of that Member State, as referred to in Article 6(2), the details of occurrences collected in accordance with paragraph 1 **as soon as practicable, but in any case within 72 hours of the organisation identifying the condition to which the report relates, unless exceptional circumstances prevent this without undue delay from the notification of the occurrence.**

### Article 7(2) (Quality and content of occurrence reports)

This provision states that each occurrence report must contain a classification of the risk and the classification validated by the competent authority or by the EASA and if necessary amended in accordance with a Common European Risk Classification Scheme to be developed within 3 years of the date of adoption of the Regulation.

We consider that, in accordance with the common European risk classification scheme<sup>1</sup>, a wording in which the risk classification must be determined by the organisation or (in the absence of an organisation) by the body which receives the report would certainly be more appropriate and coherent. We consider that the "validation" process to be carried out by the authority for each report is inconsistent with the objective of harmonisation of EU procedures and with the forthcoming adoption of the common European risk classification scheme; this national validation procedure is therefore unjustified and likely to lead to excessive administrative burdens.

### Article 13(3a) (Occurrence analysis and follow up at national level)

We would point out that the 30-day period for presenting the analyses is not at all compatible with the international legislation in force: the ICAO's "Safety Management Manual"<sup>2</sup> provides for a period of 30 days exclusively in the case of incidents, while for serious incidents and accidents it recommends a period of 60 and 90 days respectively.

### Article 15(4) (Protection and appropriate use of the information)

This article refers to cooperation, through advance arrangements, between the competent authorities in the aviation sector and the judicial sector.

In this connection, it seems appropriate to point out how - in the light of long experience acquired by the Civil Aviation Safety Investigation Authorities with reference to Regulation (EU) No 996/2010<sup>3</sup> - it has proved difficult to conclude this kind of agreement with the judicial authority, because of the implications with regard to rules of criminal procedure.

In the light of such problems of implementation and the difficulty in concluding agreements with the judicial authority, even by authorities which guarantee requirements of independence and impartiality (as precisely in the case of the Civil Aviation Safety Investigation Authorities), we propose that this rule be deleted from the text of the proposal.

Finally, we think that the text of the general approach is deficient with regard to the European Aviation Safety Agency. The EASA claims considerable experience in reporting occurrences and it would have been preferable to assign to it more effective powers."

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<sup>1</sup> It would be appropriate to amend Article 7(2) as follows:

2. Each occurrence report referred to in paragraphs 3 and 4 of Article 6 shall contain **the a** safety risk classification of the occurrence collected. This classification shall be **determined by the entity receiving the report validated by the Member State competent authority or EASA**, in accordance with the common European risk classification scheme laid down in paragraph 5.

<sup>2</sup> ICAO Document 9859 Edition 3, Chapter 4, Appendix 3, Annex A.

<sup>3</sup> See Article 12(3) of Regulation (EU) No 996/2010: "Member States shall ensure that safety investigation authorities, on the one hand, and other authorities likely to be involved in the activities related to the safety investigation, such as the judicial, civil aviation, search and rescue authorities, on the other hand, cooperate with each other through advance arrangements."

## Shipping

### 17. **Proposal for a Directive of the European Parliament and of the Council on marine equipment and repealing Directive 96/98/EC [First reading]**

Interinstitutional file: 2012/0358 (COD)

– General approach

17992/12 MAR 149 ENT 319 CODEC 3104

10282/13 MAR 66 ENT 151 CODEC 1279

The Council adopted a general approach on the above Directive, as set out in doc. 10819/13, and agreed to enter in these minutes a statement by Italy (as set out hereafter).

#### **Statement by Italy**

"We are entirely in agreement with the text of the general approach for ships already in operation, which need to acquire new equipment during their commercial life.

On the other hand, there is scope for improving the provisions concerning newly constructed ships: for those ships the shipyard could - as is usually the case - have acquired the equipment in advance of the delivery date. This equipment might no longer comply with the required characteristics at the time when it is installed on board, because of a change in the technical construction standards.

In this connection, since:

1. Article 2 does not provide a definition of "new ship" - which is however contained in Directive 96/98/EC;
2. the Commission Circular (ref. TREN/G/FK D (2008) 442447 of 1 December 2008), issued at the time of the fourth amendment of Directive 96/98/EC, contains a clear reference to the case in question (although the circular, in accordance with the new Article 4 of the amended Directive, will be obsolete when it enters into force);

we think it appropriate for the Directive in question to refer to the above Circular<sup>1</sup>, and for the following paragraph 2 to be inserted into Article 4:

***2. For the purpose of paragraph 1, in the case of new construction, Member States shall use the date when the keel was laid or the date when the ship arrived at a similar stage of construction as the reference date for the determining the applicable requirements.***

The above proposal derives from the requirement that a shipowner should acquire equipment that is in compliance on the keel-laying date and that it should, by virtue of any updating of the international standards, remain in compliance on the date on which it is placed on board.

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<sup>1</sup> ".....In the case of new constructions, where a considerable time may elapse between the moment the goods are supplied and the moment the ship is delivered, consultation with the Administration will be necessary. Although there is no specific rule for this case, Directive 96/98/EC provides an element of guidance in article 3 in conjunction with Article 2(1), whereby the directive applies to new ships which are defined as those **.....the keel of which is laid or which is at similar stage of construction on or after the date of entry into force of this Directive.....** The Commission would thus strongly recommend Member States to use the date when the keel was laid or the date when the ship arrived at a similar stage of construction as the reference date for determining the applicable requirements."



The keel-laying date is that on which, once the contract is signed, the ship begins to exist: from that moment contracts for supplying equipment can be drawn up, an action that normally occurs prior to delivery of the actual equipment and its installation on board.

As regards "alternative design" (Article 8(2)), we consider that in the absence of explicit references thereto, the Member States may nevertheless try the procedure provided for in the SOLAS Convention, as indicated in the recital below (conveniently inserted by the Presidency into the text of the general approach):

*(xx) As well as setting out detailed performance and testing standards for marine equipment, the international instruments sometimes allow for measures that deviate from the prescriptive requirements but which, under certain conditions, are suitable to satisfy the intent of those requirements. The International Convention for the Safety of Life at Sea (SOLAS), 1974 allow for alternative design and arrangements which could be applied by individual Member States acting under their own responsibility.*

The application of the principle of alternative design - in accordance with the principles set out in the SOLAS Convention - would therefore not fall within the scope of the Directive and the implementation of the international instrument would remain the exclusive competence and responsibility of the Member State.

Finally, with regard to the provisions on the transfer of an extra-Community ship to the flag of an EU Member State (Article 7), we would stress that referring only to the Directive implies that a standard of equivalence relating to the last update is necessary for the equipment already on board. This means that, with regard to the activities planned for the evaluation and acceptance of the equipment installed on board extra-Community ships that switch to an EU Member State flag, reference must be made to the MED requirements applicable on the date of installing the equipment on board. While we endorse the logical and correct choice made, on the basis of experience acquired, serious doubts nevertheless arise as to how to retrieve the data, in view of the age of the ship and the fact that the interlocutor is a non-Community State not subject to particular regulatory constraints on maritime equipment. The addition of a reference to the phrase "relevant instruments and keel-laying" would make the text clearer, enabling the administration receiving the ship to evaluate the standard of the equipment on the basis of the date when it was installed on board, if available, or when the keel was laid<sup>1</sup>. This need derives from the fact that the current wording would, from a formal point of view, allow to be maintained on board only equipment or materials for which the exact time of installation on board could be objectively proved by way of documentary evidence.

This approach would inevitably lead Member States to adopt excessively strict evaluation criteria if it were not possible to present the kind of evidence referred to above.

In this circumstance, following evaluations, including of a technical nature, carried out case-by-case on any equipment, the reference to the date of keel-laying, within the new Directive, would act as a sort of safeguard clause, determining those cases for which the only problem in granting an authorisation for maintaining the equipment on board would be linked to a mere bureaucratic obstacle and not connected to technical aspects or the quality of the equipment.

The legislation on the laying of a ship's keel is in fact bound by various Conventions."

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<sup>1</sup> It would be appropriate to amend paragraph 1 of Article 7 by adding at the end: *.....in accordance with the applicable international instruments and this Directive taking into account the keel laid.....* as of the date referred to in Article 39(1).