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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9.12.2008
COM(2008)846 final

2005/0242 (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 on the civil liability and
financial guarantees of shipowners**

(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) 593 final – 2005/0242 COD):	30.1.2006
Date of the opinion of the Committee of the Regions:	15.6.2006
Date of the opinion of the European Economic and Social Committee:	13.9.2006
Date of the opinion of the European Parliament at first reading:	29.3.2007
Date of transmission of the amended proposal:	24.10.2007
Date of adoption of the common position:	9.12.2008

2. PURPOSE OF THE COMMISSION'S PROPOSAL

The proposal, presented as part of the third maritime safety package, aims to ensure that there is a minimum set of rules common to all Member States governing civil liability and insurance for shipowners and to define the basis for rules to make operators more accountable and guarantee compensation for damages.

The proposal contains the following measures:

- ratification by all the Member States of the Convention of the International Maritime Organisation (IMO) on the Limitation of Liability for Maritime Claims (1996 version) (hereinafter ‘LLMC 1996’). LLMC 1996 basically provides for two things:
 - it enshrines the principle of the limitation of liability by fixing at a relatively high level the threshold beyond which shipowners lose their right to limit their liability (‘reckless personal act or omission’),

- it lays down limits of liability that are sufficiently high to guarantee adequate compensation to victims in most cases (these limits are three times higher than those set out in the previous Convention: LLMC 1976);
- the incorporation of the Convention into Community law, with an amendment, compatible with the Convention, reducing the threshold beyond which the owners of ships flying the flag of a non-contracting State lose their right to limit their liability ('gross negligence');
- establishment of a system of obligatory civil liability insurance for shipowners:
 - cover equivalent to double the ceilings laid down in LLMC 1996,
 - verification by the Member States that insurance has been taken out, with the issue of certificates that are mutually recognised throughout Europe,
 - notification by the captain of a ship that certificates are being carried on board when the ship enters a maritime area under the jurisdiction of a Member State (notification requirement to cover ships in transit),
 - direct action by the victim against the insurer;
- the proposal also makes binding a Resolution of the IMO and the ILO on financial security certificates for abandonment of seafarers.

This system is designed *inter alia* to provide an immediate holding response to the enduring difficulties in implementing a number of IMO Conventions still in abeyance that aim in particular to make insurance for certain types of damage caused by these ships obligatory.

3. COMMENTS ON THE COMMON POSITION

The Commission's initial ambitions, supported by the European Parliament in its opinion at first reading, were considerably curtailed by the Council. The common position retains only part of the initial proposal.

- The following amendments have been made:
 - the title 'Directive on the civil liability and financial guarantees of shipowners' has been superseded by a new title 'Directive on the insurance of shipowners for maritime claims';
 - the requirement to ratify LLMC 1996 has been deleted, the Member States undertaking in a parallel declaration to ratify it by 1 January 2012 (together with the other relevant Conventions); the provision on the incorporation of the Convention into Community law has also been deleted;
 - the provisions on the abandonment of seafarers have been deleted;
 - the provisions on Community checks to ensure that insurance has been taken out have been deleted;
 - the provision requiring notification of the insurance certificate on entry into maritime areas under the jurisdiction of Member States has been deleted;

- the provisions on direct action against insurers have been deleted.
- The following has been retained:
 - the requirement for all ships flying the flag of a Member State (throughout the world) and for all ships entering a maritime area under the jurisdiction of a Member State to have insurance cover;
 - the cover must correspond to the ceilings set out in LLMC 1996;
 - the proof of insurance will be provided by a commercial insurance certificate;
 - whether or not the ship is carrying an insurance certificate can be verified during an inspection under the Port State Control Directive;
 - where the ship is not carrying a certificate, it may be detained or even expelled, without prejudice to any financial penalties to be determined by each Member State;
 - the date of entry into force of the Directive is postponed until 1 January 2012, the date by which the Member States (by means of the declaration referred to above) undertake all to have ratified LLMC 1996.

Despite the deletions made by the Council, the common position retains a number of points of substance. Insurance is not currently obligatory for ships; the requirement laid down in the Directive that all ships, irrespective of where they are registered, must have insurance at the level of the ceilings set out in LLMC 1996, i.e. at levels three times higher than those provided for in the previous Convention, sends out a strong signal to citizens and operators. It should be pointed out that only a small percentage (20%) of global tonnage operates under flags subject to this level of limitation. Furthermore, not all ships are necessarily insured.

4. CONCLUSIONS

The Commission notes that the Council, after having expressed its opposition on principle to the proposal at its meeting in April 2008, was finally able unanimously to adopt a common position on a text that brings added value.