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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9.12.2008
COM(2008)848 final

2005/0236 (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 adopted by the Council with a view to the adoption of a Directive of
the European Parliament and of the Council on compliance with flag State obligations**

(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: 17.2.2006

(document COM(2005)586 final – 2005/0236COD):

Date of the opinion of the European Economic and Social Committee: 13.9.2006

Date of the opinion of the Committee of the Regions: 15.6.2006

Date of the opinion of the European Parliament at first reading: 29.3.2007

Date of adoption of the common position: 9.12.2008

2. PURPOSE OF THE COMMISSION'S PROPOSAL

In view of the major disparities which exist, including within the European Union, as regards flag States' compliance with their international obligations on maritime safety and the prevention of pollution caused by ships, the proposal seeks to ensure that the Member States meet their obligations effectively and in a coordinated manner.

3. COMMENTS ON THE COMMON POSITION

The Commission notes that, after expressing its opposition in principle to the proposal at its April 2008 meeting, the Council considered it necessary to remove from the operative part certain important provisions such as those concerning the ratification of international conventions and the mandatory application in the Community of the Flag State Code of the International Maritime Organisation (IMO).

Although the text on which the Council has expressed agreement is therefore less ambitious than that proposed by the Commission, the latter notes that, in the common position, the following obligations in particular continue to be incumbent on Member States:

- before authorising a ship to fly their respective flag, check that it complies with international rules;

- make sure that ships which fly their respective flag and have been detained in the context of a port State inspection are brought into conformity with the relevant IMO conventions;
- whilst waiting for the IMO audit scheme to become mandatory, subject their maritime authorities to such an audit and publish the results;
- put in place a quality management system for their maritime authorities which is certified in accordance with international standards;
- in the case of Member States whose flag is blacklisted or which, for two consecutive years, appears on the grey list of the Paris Memorandum of Understanding on port State control, report the reasons for the poor performance to the Commission.

These binding provisions will help to improve the quality of the worst performing European flags.

4. CONCLUSIONS

The Commission takes note of the firm undertaking given by the Member States, as set out in the statement signed by their representatives meeting in the Council, a) to ratify the main international conventions on maritime safety; b) to apply the IMO Flag State Code and the related audit scheme for maritime authorities; and c) to encourage the IMO to make these two instruments mandatory worldwide.

Consequently, and in the light of the above, the Commission supports the common position adopted unanimously by the Council which adds value as it should effectively improve the quality of European flags and provide conditions of competition in the Community which ensure that the choice of flag cannot be based on the lowest level of requirements.