

PRELIMINARY VERSION

COMMISSION STAFF WORKING PAPER

Content of the Third Maritime Safety Package

(Annex to the Communication from the Commission on the third package of legislative measures on maritime safety in the European Union)

The seven proposals contained in the package are intended to supplement the European maritime safety rules by making the existing measures more effective and thus contributing to the competitiveness of our fleet.. They are as follows:

1.1. A proposal for a Directive on the responsibility of the flag States

With the enlargement of the European Union to 25 Member States, in particular with the arrival of Malta and Cyprus, the EU is now a major maritime power: EU-15's share of the world fleet rose from 16% to 25% after enlargement (28% for the European Economic Area). If flags are disregarded, EU operators' interests account for an even greater share of world tonnage, namely 37% for EU-25 (43% for the European Economic Area).

In spite of the overall good performance of the European flag, it cannot be denied that its quality still needs to be improved. On the basis of the statistics of the Paris Memorandum on port State control for the period 2002-2004, the 15 Member States at that time had an average rate of detention¹ of vessels in memorandum ports of 2.9%. With 25 Member States, the rate rises to 4.6% and the situation becomes even more problematic with the four new candidate States which bring the rate to 5.4%.

It is therefore essential that strict rules should be imposed in order to ensure the exemplary quality of European flags. This quality requirement for flag States is one of the main conclusions of the Joint Ministerial Conference of the Paris and Tokyo Memoranda of Understanding on port State control held in Vancouver on 2 and 3 November 2004.

Making the flag States accept greater responsibility is in fact the main missing link in the existing Community legislation. The Commission's objective is therefore to require Member States to monitor the compliance with international standards of vessels flying their flags, and to have for this purpose a maritime administration operating in accordance with high-quality criteria.

It will be proposed that the audit procedures provided for in the IMO Code on the compliance of flag States with international conventions should be incorporated into Community law and made mandatory. The performance of flag administrations will be audited and assessed in

¹ Ships whose shortcomings are sufficiently serious to be considered a threat to safety, health or the environment are detained in the port of call until the anomalies are rectified.

relation to the provisions of the IMO flag State audit procedure. This initiative is in response to a specific request by the European Parliament in its MARE resolution.

Incentives, in the form of streamlined controls, will be proposed for ships whose flag has shown high-quality results, in particular through the application of the IMO flag State audit scheme. The fact that they have accepted the proposal allows for the possibility of concluding agreements with third countries which undertake to use the same quality standards as the EU Member States, enabling them to benefit from the same incentives.

1.2. Amendment of the Directive on classification societies

The proposal is designed to bring about improvements in the quality of the work of the organisations authorised to carry out ship inspection and certification tasks on behalf of the Member States in a context of independence, competence and responsibility.

The first objective to be achieved is to establish a system of auditing and certification of the quality systems of the recognised organisations that is totally independent of them and has the necessary resources to ensure that it is effective. Continuous control is needed in order to detect rapidly any weaknesses in the rules and methods of the recognised organisations, with a view to individual or collective corrective action being taken under the supervision of the Commission. This will entail the availability of common elements essential to provide a reference framework for this new system and constituting a uniform safety standard for Community flags; it is therefore important that the recognised organisations should cooperate in order to develop common requirements, common procedures and common interpretations (under the authority of the flag States) of the international conventions. These activities, which the main recognised organisations have been carrying out for a long time within the IACS² on a voluntary basis, should be extended to include all the recognised organisations and become mandatory for the organisations to continue to benefit from Community recognition.

This new independent quality control system is complementary to, but different from, the control exercised by the Commission itself: the Commission monitors the compliance of the recognised organisations with the approval criteria and the obligations laid down in the Directive, and has the power to impose penalties.

Secondly, it is important to rectify the weaknesses of the current system of controls and penalties available to the Commission in respect of Community-recognised organisations. This system was set up in order to punish bodies which fail to comply with the provisions of the Directive or whose poor performance constitutes a threat to safety and the environment. However, it has to be admitted that this system is somewhat inflexible, in that the only possibility which it offers, when a shortcoming is established, is to take radical measures such as the suspension and especially the withdrawal of recognition. It is therefore necessary to recast the system by simplifying it and introducing more gradual and more flexible sanction mechanisms – but without removing the possibility of withdrawing recognition in the most serious cases. In this respect, financial sanctions are a powerful and no doubt the most appropriate means of dealing with various infringement situations, including imposing fines in order to bring about the corrective action needed to restore safety guarantees. Lastly, this should be accompanied by a clarification of the Commission's inspection powers in order to

² International Association of Classification Societies.

remove any possible ambiguity about the ability of its inspectors to evaluate the recognised organisations through access to files and ships irrespective of their flag.

There remains the question of limited recognition. A so-called ordinary recognition for a classification society is valid for an unlimited period throughout the Community; however, in the case of small companies which meet quality criteria but are smaller than the size required for ordinary recognition, the Directive provides for the possibility of a recognition limited to three years, valid solely for the country making the request and subsequently renewable. This system is too rudimentary, since it does not guarantee market access which also takes into account the real capabilities of the organisations concerned - and should therefore be revised.

1.3. Amendment of the Directive on port State control

Since 1995, when Directive 95/21/EC was adopted, port State control arrangements have been changed on a number of occasions in order to step up controls and extend the areas covered by inspections.

In addition, the geographical scope of port State control has been significantly extended with enlargement, and a clarification is needed between the respective responsibilities of the EU under Directive 95/21/EC, the Paris Memorandum - which includes third countries but not certain Member States - and the related memoranda concerning the Mediterranean and the Black Sea which include several new and prospective EU Member States. This new situation makes it more necessary than ever to ensure the full and unhindered application of the Directive by all the EU Member States and to strengthen regional cooperation between the EU and its neighbours.

In accordance with the objectives of the EU's better regulation policy, the Commission's first objective is to ensure the consolidation of Directive 95/21/EC in a single text and, in so doing, improve the readability and consistency of this text which establishes the Community arrangements for port State control.

The second objective is to respond to the expectations of the European Parliament and the Council following the Prestige accident as regards the reinforcement of port State control, in particular for ships presenting the greatest risks.

The general intent of the measures introduced in the Directive are to make the Community port State control arrangements more dissuasive, particularly in the case of substandard ships, while sparing the operators of high-quality ships possibly excessive controls which might diminish their competitiveness. The role of pilots in the detection of possible shortcomings on board ships will be extended to cover the piloting of ships in transit off the coasts of the Member States. In addition, the ultimate sanction of banning ships will be reinforced and extended to cover all types of ships. Also, measures will be introduced in order to improve the quality of port State control administrations, a vital objective in the light of the gradual enlargement of the EU, and place means at the Commission's disposal for monitoring and implementing the Directive, in particular with the help of the European Maritime Safety Agency.

The Commission's proposal is also intended as a response to the specific concerns expressed by the European Parliament following the report of the MARE Temporary Committee. Given the disquiet expressed by the European Parliament about the proliferation of fraudulent or counterfeit certificates of competence, the Commission is proposing to strengthen the controls and sanctions applicable. Similarly, the Commission is responding to Parliament's request to

increase the transparency of the maritime sector, in particular as regards the identity of operators, by providing for the publication by the Commission of a blacklist of companies operating the ships that are most often detained in or banned from Community ports.

Lastly, the Commission considers that this proposal should be followed by a thorough reform of the Directive on port State control. This reform fits in with the objectives of the revised Lisbon Strategy, refocused on growth and employment, developed by the EU. The rules on port State control are intended primarily to ensure the safety of persons and goods and to protect the environment. Achieving this objective should not result in disproportionate administrative costs, but on the contrary a reduction in overall costs by making better use of resources and reducing the number of unjustified inspections.

The Commission considers that an effective inspection system should make it possible to inspect 100% of ships calling at EU ports and carry out more thorough and more frequent inspections of ships constituting the highest risks, while reducing the burden of inspections on high-quality ships.

On the basis of these objectives, the Commission has requested Paris Memorandum experts to outline a new inspection system. This work has not yet been completed, but the Commission intends to facilitate the rapid incorporation of the results into the Directive.

1.4. Amendment of the Directive on traffic monitoring

The need to clarify and reinforce the provisions of Directive 2002/59/EC on places of refuge is one of the main lessons to be learned from the Prestige accident.

In the resolution adopted on 27 April 2004 (MARE), Parliament stresses the importance of this issue and calls on “each coastal Member State to establish a clear decision-making and command structure for dealing with maritime emergencies and an independent authority having the powers and expertise to take the necessary decisions which are to be binding on all parties concerned, in particular as regards the selection and mandatory assignment of an emergency mooring or port”.

Parliament also reiterated its request that the Commission should present as soon as possible proposals aimed at providing financial compensation for places of refuge.

Establishing a clear and precise legal framework for places of refuge is therefore the main objective of the proposal to amend Directive 2002/59/EC. It will make it possible to guarantee that the authorities responsible for designating places of refuge are clearly identified and have the necessary information on the basis of which they can take their decisions, including a precise inventory of potential places of refuge along the coasts. The existing provisions concerning transparency and communication of information on refuge plans and places of refuge will also be improved.

In addition, the Commission is proposing that a further step should be taken towards establishing a vast maritime traffic management and information system at Community level based on the most modern and most efficient communication technologies, the foundations for which were laid by Directive 2002/59/EC.

The main aim is to provide the EU with the means for pursuing a genuine maritime safeguard policy, as the basis for a possible future European coastguard service. This objective entails identifying and gathering information as early as possible on ships sailing in Community

waters, in particular ones that are suspect on safety, environmental protection or security grounds.

The Commission has already started to develop a tool which will provide this overview of maritime transport and shipping, namely SafeSeaNet, a platform for the exchange of data between the Member States' maritime administrations concerning the application of Community maritime safety legislation.

With the proposed amendment, the Commission is therefore responding to the European Parliament's request that it should "further develop the SafeSeaNet European data exchange platform in order to add new functionalities and integrate new technical developments" and reminding the Member States that Parliament urges them "to fully use this system with a view to closer monitoring of traffic and better identification of ships likely to pose a risk to safety, security or the environment".

The Commission is also aware of the need to improve the safety of fishermen at sea, since fishing remains one of the most dangerous areas of activity. To this end, it is proposed that fishing vessels should be equipped with automatic identification systems (AIS), in order to reduce the risks of collisions at sea, while examining possible synergies with systems for monitoring fishing fleets.

Lastly, the proposal contains specific provisions enabling coastal States to take appropriate measures to limit the possible dangers to shipping arising from ice formation in certain maritime areas in the north of the EU. The importance of this issue in the light of the greater risks as a result of the increase in the volumes of oil transported in the Baltic Sea area was stressed by the European Parliament in its MARE resolution. It demonstrates the need to develop cooperation between the EU and Russia in the context of the EU/Russia energy partnership. The dialogue established has helped to ensure that the EU's positions are taken into account in the context of the IMO.

1.5. A proposal for a Directive on accident investigations

In stark contrast to the situation in the aviation sector, the international rules on maritime transport investigations suffer from a lack of harmonisation and are not binding.

The difficulty of learning valuable lessons from major accidents is a significant obstacle to understanding the causes of such accidents and consequently the ability to improve maritime safety. It is precisely on the basis of an analysis of the circumstances and causes of accidents or incidents that safety recommendations can be made to shipbuilders, maritime administrations, operators, seafarers and, in general, all the parties responsible for maritime safety.

As stressed in the European Parliament resolution following the Prestige accident: "it is necessary, with a view to preventing further accidents and incidents, that clear guidelines be drawn up in the EU for the carrying-out of an independent investigation into accidents and incidents at sea". Parliament also stressed the need to include in the proposal for a Directive a system guaranteeing the optimum exchange of the results of investigations between Member States, the Commission and the European Maritime Safety Agency.

The Commission is therefore proposing the establishment of a common framework in the EU in order to guarantee the efficiency, objective nature and transparency of maritime accident investigations. This legal framework concerns technical investigations which should be distinguished from judicial procedures intended to establish responsibility or fault.

The proposal for a Directive provides for common principles for carrying out maritime investigations in accordance with the recommendations of the IMO and a system for pooling the results of these investigations. The investigations will be conducted by competent and well-trained investigators working within a stable administrative structure allowing them to carry out their tasks quickly – or urgently – and guaranteeing their impartiality.

Lastly, the Directive will provide a platform for effective technical cooperation to improve cooperation between the national administrations through the expertise of the European Maritime Safety Agency. It provides in particular that accidents involving two or more Member States will be conducted in a joint manner.

However, it should be emphasised that the content of the proposal is without prejudice to any procedures that may have to be followed to quantify damage caused to persons, goods and the environment in the Member States.

1.6. A Proposal for a Regulation on compensation to passengers in the event of maritime accidents

Issues relating to the safety of passenger ships have been the subject of a number of IMO initiatives which have for the most part already been taken over at Community level. The Commission is also examining how to guarantee the rights of persons with reduced mobility when they use maritime transport, in accordance with the guidelines set out in its communication of 16 February 2005 on strengthening passenger rights within the European Union³. Improving the protection of passengers also entails establishing a system of carrier liability which bears comparison with the systems in force in other areas of transport, in particular aviation and the railways.

The 2002 Athens Convention relating to the carriage of passengers and their luggage by sea adopted under the auspices of the IMO meets the concerns of the Member States and the expectations of the European Parliament and the Commission in this connection. It is now essential to give full effect to the Convention. That is why the Member States and the Community are preparing to accede to it. It is also why the Commission is proposing in this legislative package to incorporate the provisions of the 2002 Athens Convention into Community law.

In adopting this proposal, the European Parliament and the Council will guarantee passengers and carriers rights and obligations that are both effective and uniform throughout Europe. The Community legal system, the nature of which distinguishes it from instruments of international public law such as conventions, will ensure that these provisions are fully effective. Uniformity will make it possible to envisage not only intra-Community transport but also domestic journeys, whether by sea or by inland waterway.

³ COM (2005) 46 final.

1.7. A Proposal for a Directive on the civil liability of shipowners

The Commission considers that it is necessary to examine closely to which extent the privilege of ships' operators to benefit from a limitation of liability is justified.

Liability regimes in the maritime sector, whether general⁴ or sectoral,⁵ are all based on the principle of limitation of liability. The Commission considers that this privilege for the maritime industry may lead to an erosion of the sense of responsibility of operators and that the justification for such a privilege should be reconsidered.

A review of these systems in this respect therefore seems to be essential:

- The international CLC/IOPCF regime concerning oil pollution could be maintained subject to a number of improvements such as removing the ceiling on civil liability. Discussions were held for five years among the contracting parties of CLC/IOPCF in view of evaluating the need to modernise these conventions. The Commission regrets that, at this stage, no agreement was reached between the States concerned and will continue to advocate for a revision of the CLC/IOPCF system, aiming at protecting the interests of victims more effectively and making the operators more responsible. If there is no review, the Commission will propose as soon as possible the establishment of a new Community instrument to this effect, as it did following the Erika accident, in a different context, with its proposal on the COPE Fund.⁶
- The HNS (Hazardous and Noxious Substances) Convention on pollution by chemicals and the Bunker Oil Convention will enable greater account to be taken of the damage resulting from these two types of pollution, but their entry into force, in 2008 at the earliest, and their area of application, remain uncertain given the slowness of the national ratification processes.
- For the other types of pollution and damage to third parties, there is a general system established by the 1976 Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol (the "1996 Convention"). The Commission proposes to incorporate the provisions of the 1996 Convention into a Directive and to ask all Member States to ratify it. Furthermore, the proposed Directive stipulates that ships flying the flag of a State that is not a member of the 1996 Convention may be subject to a more severe liability regime. This is in line with the rules of this Convention and will foster accession to it world-wide. Finally, the Commission proposes to seek a mandate to launch a revision process of this instrument at the IMO, following a consultation of the different stakeholders, an in-depth economic analysis of the issue and bearing in mind developments in the international transport sector.

⁴ 1976 Convention on Limitation of Liability for Maritime Claims (LLMC).

⁵ 1992 International Convention on Civil Liability for Oil Pollution Damage; 1996 International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention); 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Oil Convention).

⁶ Proposal for a regulation of the European Parliament and of the Council on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures (COPE) – part of the ERIKA II package.

In parallel with these initiatives, the Commission intends to promote the introduction of very strict insurance provisions. The proposal for a Directive therefore also covers financial securities intended to cover both third party liability and liability in the event of abandonment of seafarers. In this respect, the Commission's proposal is in line with the European Parliament's request in the context of the MARE resolution that the possibility of requiring insurance for ships sailing in European waters should be examined.

Implementation of the measures contained in this package will, where appropriate, involve the European Maritime Safety Agency set up by Regulation (EC) 1406/2002 of the European Parliament and of the Council.⁷ Some of the measures are in fact already provided for in that regulation. The others will be the subject of a proposal to amend the Regulation setting up the Agency which the Commission intends to submit in the coming months.

⁷ OJ L 208, 5.8.2002, p. 1.