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PROPOSAL

from: Commission
dated: 31 January 2006

Subject: Proposal for a Directive of the European Parliament and the Council on the civil liability and financial guarantees of shipowners
(presented by the Commission)

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Ayet PUIGARNAU, Director, to Mr Javier SOLANA, Secretary-General/High Representative.

Encl.: COM(2005) 593 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.11.2005
COM(2005) 593 final

2005/0242 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the civil liability and financial guarantees of shipowners

(presented by the Commission)

{SEC(2005) 1517}

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Issues related to the liability of operators in the maritime transport chain are becoming a central element of Community maritime transport policy. The following two initiatives illustrate this.

- The European Community has recently adopted a scheme for administrative and criminal liability for ship-source pollution offences (Directive 2005/35/EC, OJ L 255, 30.9.2005, p. 11). This system of sanctions, which is based on the United Nations Convention on the Law of the Sea, aims to make all the links in the maritime transport chain more responsible by strengthening the legislation enacted under the International Maritime Organisation (IMO) Convention for the Prevention of Pollution from Ships (Marpol Convention).
- A proposal for a Regulation on the civil liability of passenger carriers by sea has been sent to the European Parliament and the Council as part of this package. The aim of this proposal is to incorporate into Community law the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea which was adopted under the auspices of the IMO. At the same time as adopting this proposal, the Community and the Member States should be able to accede to this Protocol.

This proposal for a Directive supplements this legislation. Its purpose is to establish, at European Union level, a civil liability scheme for shipowners (a category covering all the people responsible for operating a ship) in the event of damage to a third party.

By presenting this proposal the Commission is responding to concerns expressed both by the European Parliament, the European Council and the Council.

On 21 March 2004 the European Parliament called for “a comprehensive and cohesive European maritime policy, which would have as its objective the creation of a European maritime safety area (...) based on (...) the introduction of a system of liability covering the entire maritime transport chain (...)”.

On 21 March 2003 the European Council called for “increasing liability of maritime transport operators” as part of the work on the possible revision of the international compensation system for oil pollution damage.

On 20 December 2000 the Council of Transport Ministers adopted conclusions on maritime safety asking the Member States to “consider possible amendments to the applicable rules in order to render parties other than shipowners liable, as well as the introduction of unlimited liability of shipowners in the event of severe or deliberate infringement of their safety obligations”.

- **Background**

A number of international conventions on the civil liability of shipowners have been adopted.

These conventions all have limitations, starting with the fact that most have not entered into force, and that those which have entered into force have done so only in some countries.

But it is mainly in substance that the rules established by these conventions are unsatisfactory, because they make no real contribution either to preventing damage or to ensuring it is repaired.

- In terms of preventing damage

International schemes only have a very limited preventative and dissuasive effect. These conventions establish a traditional principle of maritime law: the almost complete limitation of operator liability.

Under all these conventions shipowners are entitled to limit their liability. A ship owner only loses this right if it is proved that the damage “resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with the knowledge that such damage would probably result”.

In its ERIKA II communication, the Commission analysed the extent of this “conduct barring limitation” and proposed amending this as part of the revision of one of these international conventions.

In the Commission’s view, “negligence or even gross negligence on behalf of the owner does not meet these criteria and it is evident that in most circumstances it would be very difficult to breach this threshold. (...) The right of shipowners to limit their liability is [therefore] practically unbreakable. (...) At least proof of gross negligence on behalf of the ship owner should trigger unlimited liability. Such a measure would relate the exposure to liability more closely to the conduct of the ship owner and would thus produce both preventive and punitive effects”.

The legitimacy of the principle of limited liability is being increasingly contested. One example outside the maritime transport sector is the adoption, in spring 2004, of the Directive on environmental liability which deals with the principle of operators' unlimited liability (Directive 2004/35/EC, OJ L 143, 30.4.2004, p. 56).

- In terms of repairing damage

Faced with all the legislation establishing a liability regime, some shipowners could be tempted to arrange their own insolvency. Moreover, there is no obligation for general insurance in the maritime area.

It is therefore particularly important for insurance to be made obligatory, or at least to require owners to take out a financial guarantee in order to protect the interests of victims. Such an obligation would also help enhance the quality of the merchant navy (since in principle the insurers themselves would distinguish between sub-standard

ships and others), and would re-establish competition between operators (it is estimated that 5% of ships have no insurance cover).

It is these considerations which have led some international conventions applicable to certain types of pollution to require shipowners to sign financial guarantees (the 1992 Convention on Civil Liability for Oil Pollution Damage, the 1996 Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, which has not yet entered into force, and the 2001 Convention on Civil Liability for Bunker Oil Pollution Damage, which has also not yet entered into force). Outside the areas covered by these Conventions there is no binding international legislation on the matter. However, it should be noted that in 1999 the IMO adopted guidelines recommending that shipowners take out civil liability insurance. Lastly, it should be stressed that obligatory insurance systems have been set up by a number of third countries.

Financial guarantees are granted up to certain levels, above which the ship owner alone must pay all the compensation due to the victim. The possibility of removing the ceilings on civil liability is a real incentive to take account of the risks inherent in owning ships and therefore contributes towards making operators act more responsibly.

Modernising these international Conventions will involve revising them. The revision process is underway for the 1992 Convention on Civil Liability for Oil Pollution Damage. The Commission intends to work for improvements to be made to this convention, such as removing the ceiling on civil liability.

The other relevant international conventions will not be updated in the near future. For this reason the Commission is herewith proposing to follow a pragmatic two step approach..

As a first step, it is proposed that all Member States become contracting parties to the umbrella international convention on liability for maritime transport which is the 1996 Convention on the Limitation of Liability for Maritime Claims. The directive would also incorporate this convention into Community law in order to ensure its full and uniform application all over the EU. With this proposal, the Commission also suggests to make use of a possibility offered by this convention which consists in an incentive for third countries to become party to this convention alike. It is to be noted that in parallel to this directive, Member States are anyhow preparing for the ratification of the abovementioned conventions on hazardous and noxious substance and on bunker oil.

As a second step, the Commission will seek a mandate for negotiating within the IMO the revision of the abovementioned 1996 Convention, in order to review the level at which shipowners lose their right to limit their liability. This future complementary Commission initiative will be based on a consultation with the different stakeholders and an in-depth economic analysis of the issue, and bear in mind developments in the international transport sector.

- **Provisions in force in the area covered by the proposal**

There are no existing provisions in the area covered by the proposal.

- **Coherence with other Union policies and objectives**

This proposal is one of a series of measures aimed at boosting maritime safety as part of the “safety” priority of the Commission’s annual strategy policy. The proposal will help protect the environment by making potential polluters act more responsibly. It will also improve the living and working conditions of seafarers.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

When preparing this new legislative package the Commission held a double round of consultative meetings in May 2004 and February 2005 with representatives of the Member States and the different sectors of the maritime industry, including seafarers, on the basis of staff working papers containing a detailed list of questions on the planned initiatives. The Commission has also collected detailed written comments on these issues.

Summary of responses received and how they have been taken into account

In terms of removing the ceiling on civil liability, industry representatives asserted that the focus should be on the discussions currently being held at international level in line with the possible revision of the 1992 Conventions on Civil Liability and compensation for Oil Pollution Damage.

The industry representatives were divided about obligatory insurance. The representatives of shipowners were sceptical towards the Commission’s initiative. The representatives of insurers emphasised the benefit of such a measure. The representatives of seafarers warmly welcomed the obligation to take out insurance against damage to third parties and for the repatriation of seafarers in the event of abandonment.

- **Obtaining and using expertise**

No external experts were needed.

- **Impact analysis**

The two options are:

- to promote the implementation of international conventions. The relatively slow pace of national ratification processes makes the date of entry into force and the geographical scope of these conventions uncertain. This directive would be the most proper binding instrument under which these conventions can be swiftly and uniformly applied at EU level. In addition, this directive

- would permit a medium-term possibility of modernising civil liability law in the maritime sector,
- to set up an adapted Community regime aimed partly at removing ceilings on civil liability, but also at obliging shipowners to take out insurance. The impact of this second option can be described as follows.

In terms of removing ceilings, only shipowners guilty of gross negligence will be affected, for the greater benefit of those owners mindful of security standards who will continue to enjoy the protection of limited liability. It should also be noted that establishing an obligatory insurance system will help tackle the problem of substandard ships, in the same way as applying the other measures contained in this legislative package. Accordingly, it is expected that the risk to insurers will not increase.

In addition, it should be noted that this approach would presuppose that the Member States which are contracting parties to the 1996 Convention denounce it in good time and at the latest by the end of the transposition period for this Directive.

As regards obligatory insurance, the vast majority of owners who already have a civil liability insurance policy for damage to third parties caused by their ships will benefit from this new regime in that the market will not be distorted by the actions of some unscrupulous operators with no insurance.

In practical terms, shipowners should follow the procedures to obtain certificates and then notify their on-board presence.

The crew will also benefit from the protection afforded by the financial guarantee for the repatriation of seafarers.

The situation of persons who have suffered damage caused by a ship and who demand that this be made good by the owner of that ship (individuals, professionals, but also public authorities) will be improved by the new mechanism removing ceilings and making insurance obligatory. Introducing a direct action will further ease their situation.

Governments (flag States and port States) are affected in that they must set up a system for issuing and verifying financial guarantee certificates. It should be noted that Member States are already under this obligation, but that this is limited to tankers transporting persistent oils.

The Commission has carried out an impact analysis as part of its Legislative and Work Programme, the report on which is available at:
http://europa.eu.int/comm/secretariat_general/impact/index_en.htm.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The purpose of this proposal for a Directive is to establish stringent liability rules applicable to all ships which will help to prevent damage caused by ships and guarantee this is repaired.

The Commission proposes that all Member States ratify the 1996 Convention on the Limitation of Liability for Maritime Claims as soon as possible and in any case before the end of the transposition period for this Directive. It also proposes to incorporate the provisions of this convention into Community law.. Furthermore, the proposal stipulates that ships flying the flag of a State that is not party to this convention be subject to a more severe liability regime with gross negligence as conduct barring limitation. This is in line with Article 15(1) of the convention and will foster accession to it world-wide.

In addition, in order to better respond to the interests of accident victims, the Commission considers it necessary to supplement the legislation on liability by setting up a system of obligatory financial guarantees for shipowners. The proposal for a Directive details both the scope and the conditions of this obligation to have a financial guarantee. Accordingly, it is planned that, taking account of the possible removal of ceilings on liability, the financial guarantee must be a sum equivalent to double the ceilings laid down in the aforementioned 1996 Convention. In addition, the proposal sets up a system for notifying that financial guarantee certificates are on board from the point at which ships enter waters under the jurisdiction of the Member States.

Moreover, the proposal introduces a specific obligation to have a financial guarantee covering the costs linked to the repatriation of seafarers in case of abandonment.

Finally, the Commission will present to the European Parliament and to the Council five years after the entry into force of this directive a report on the experience gained in the application of this directive.

- **Legal basis**

Article 80(2) of the EC Treaty.

- **Principle of subsidiarity**

The subsidiarity principle applies as the proposal does not concern an area in which the Community has exclusive competence.

The objectives of the proposal cannot be satisfactorily achieved by action on the part of the Member States for the following reasons:

Under maritime law a State may in principle only apply its own national legislation to ships flying its flag and to ships entering its ports.

Moreover, there are major disadvantages in having many different forms of national legislation for a global maritime industry. This is why, at a very early stage, States saw the benefit of acting together, either at global or regional level.

The objectives of the proposal may be better achieved through Community action for the following reasons:

Action at the level of the International Maritime Organisation has limitations. The Conventions adopted do not have a monitoring system for checking that they are correctly implemented by contracting countries, or a mechanism to ensure they are

uniformly interpreted. In addition, the objectives of the conventions may not correspond to citizens' current expectations and do not follow the trends of modern law.

The approach is therefore to establish a new, uniform legal framework at European Union level which will fully enforce the internationally recognised principles and will adapt them where necessary.

Adopting this legal framework will make it possible to coordinate the essential points of existing national legislation, such as removing ceilings on civil liability and making insurance obligatory.

The proposal therefore complies with the subsidiarity principle.

- **Principle of proportionality**

The proposal complies with the principle of proportionality for the following reasons.

The minimal legislation drawn up at Community level ties in with national civil liability legislation. As regards obligatory insurance, the conditions for issuing certificates are not harmonised, but could be if necessary through the comitology process.

The main administrative expense for national authorities in applying this Directive is in issuing and verifying the insurance certificates. The financial organisation of the proposal is based in part on this system of certificates.

- **Choice of instruments**

Proposed instrument(s): Directive

Other instruments would not have been adequate for the following reasons:

A Directive is the instrument best adapted to setting out the basic rules of the new legal framework, which will subsequently be implemented by national legislation and regulations.

4) BUDGETARY IMPACT

The proposal has no impact on the Community budget.

5) ADDITIONAL INFORMATION

- Review/revision/sunset clause

The proposal includes a revision clause.

- **Correlation table**

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

- **European Economic Area**

This draft instrument concerns an area covered by the EEA Agreement and must therefore be extended to the European Economic Area.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of [...]

on the civil liability and financial guarantees of shipowners

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

- (1) One element of Community maritime transport policy is to improve the quality of the merchant navy by making all economic operators act more responsibly.
- (2) Dissuasive measures have already been adopted under Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements⁵, supplemented by the Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution⁶.
- (3) The international regime in respect of civil liability and compensation in the event of oil pollution should be improved in order to guarantee that operators in the maritime transport chain ensure that oil is only transported on board tankers of the highest standard.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ L 255, 30.9.2005, p. 11.

⁶ OJ L 255, 30.9.2005, p. 164.

- (4) It is appropriate that the 1996 Protocol to the 1976 Convention on Limitation of Liability for Maritime Claims (hereafter "the 1996 Convention") be ratified by all Member States and by a large number of third countries.
- (5) In order to ensure the full and uniform application of the 1996 Convention throughout the European Union, it is appropriate to incorporate it into Community law. The Community regime of civil liability should enable shipowners to limit their liability to the ceilings laid down in that Convention and in accordance with the provisions thereof.
- (6) The obligation to have a financial guarantee should make it possible to ensure better protection to victims. It will also help eliminate substandard ships and make it possible to re-establish competition between operators. Such an obligation is a necessary complement to the 1996 Convention. In Resolution A 898(21), the International Maritime Organisation recommended that States make financial guarantees obligatory. The level of insurance cover should be such as to address situations where the ceilings set by the 1996 Convention are insufficient, without imposing a disproportionate burden on the industry.
- (7) Special measures should be taken in order to protect seafarers in the event of abandonment, on the basis of International Maritime Organisation Resolution A 930(22).
- (8) The establishment of certificates proving the existence of a financial guarantee is a key element of this Directive, as are the notification of these certificates, mutual recognition of certificates between Member States and the accessibility of the financial guarantee to victims seeking compensation.
- (9) The European Maritime Safety Agency established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council⁷ should provide the necessary assistance for the purpose of implementing this Directive.
- (10) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁸.
- (11) Since the objectives of the action to be taken, namely the introduction of harmonised rules on liability and financial guarantees for shipowners in order to achieve high quality maritime transport, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

⁷ OJ L 208, 5.8.2002, p. 1. Regulation amended by Regulation (EC) No 724/2004 (OJ L 129, 29.4.2004, p. 1).

⁸ OJ L 184, 17.7.1999, p. 23.

Article 1

Subject-matter

This Directive lays down rules applicable to certain aspects of the obligations on operators in the maritime transport chain as regards civil liability and introduces financial protection adapted for seafarers in case of abandonment.

Article 2

Definitions

For the purpose of this Directive:

- (1) “ship” means a seagoing vessel, irrespective of its flag, of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft;
- (2) “shipowner” means the owner of the ship or any other organisation or person, such as the manager or the bareboat agent or charterer, on whom the shipowner has conferred responsibility for operation of the ship and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities this involves;
- (3) “civil liability” means the liability giving rise to a claim subject to limitation under Article 2 of the 1996 Convention, with the exception of claims covered by Regulation (EC) No .../2006 of the European Parliament and of the Council [on the liability of passenger carriers by sea or by inland waterway in the event of accident]⁹;
- (4) “financial guarantee” means any financial guarantee, such as insurance or the guarantee of a bank or similar financial institution;
- (5) “1996 Convention” means the recapitulative text of the 1976 Convention on Limitation of Civil Liability for Maritime Claims, adopted by the International Maritime Organisation, as amended by the 1996 Protocol;
- (6) “IMO Resolution A 930(22)” means the Resolution of the Assembly of the International Maritime Organisation and the Governing Body of the International Labour Organisation entitled “Guidelines on provision of *financial security in case of abandonment of seafarers*”.

Article 3

Scope

1. This Directive shall apply, in accordance with international law, to maritime areas under the jurisdiction of Member States.
2. This Directive shall apply to ships having a gross register tonnage of 300 or more, except for the regime of liability laid down in Article 4 which shall apply to all ships.

⁹ OJ L [...], [...], p. [...].

3. This Directive shall not apply to warships, auxiliary warships or other State-owned or operated ships used for a non-commercial public service.
4. This Directive shall be without prejudice to the implementation in each Member State of the Conventions listed in Annex I.

Article 4

Regime of liability

1. The Member States shall become contracting parties to the 1996 Convention as soon as possible and in any case before the date indicated in Article 13 of this Directive.
2. The Member States shall determine the regime of civil liability for shipowners and shall ensure that the right of shipowners to limit their liability is governed by all provisions of the 1996 Convention
3. In accordance with Article 15 of the 1996 Convention, Member States shall ensure that Article 4 of that Convention concerning the barring of limitation for liability does not apply to ships flying the flag of a State which is not a contracting party to the 1996 Convention. In such cases, the civil liability regime established by the Member States in accordance with this Directive shall provide that the shipowner loses the right to limit his liability if it is proved that the damage resulted from his personal act or omission, committed with the intent to cause such damage, or through gross negligence.

Article 5

Financial guarantee for civil liability

Each Member State shall take the necessary measures to ensure that every owner of a ship flying its flag has a financial guarantee for civil liability. The limit of this guarantee shall not be less than double the ceiling laid down in the 1996 Convention.

Each Member State shall take the necessary measures to ensure that every owner of a ship flying the flag of a third country has a financial guarantee in accordance with the provisions of the first paragraph as soon as that ship enters its exclusive economic area or equivalent area. The financial guarantee shall be valid for at least three months from the date it is required.

Article 6

Financial guarantee in case of abandonment of seafarers

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 case of abandonment, in accordance with IMO Resolution A 930(22).

Each Member State shall take the necessary measures to ensure that every owner of a ship flying the flag of a third country has a financial guarantee in accordance with the provisions of the first paragraph, as soon as that ship enters a port or an offshore terminal under its jurisdiction or drops anchor in an area under its jurisdiction.

The Member States shall ensure that the system of financial guarantee in case of abandonment of seafarers is accessible, in accordance with IMO Resolution A 930(22).

Article 7

Financial guarantee certificates

1. The existence of the financial guarantees referred to in Articles 5 and 6 and the validity thereof shall be proved by one or more certificates, in accordance with the provisions of this Directive, and following the model set out in Annex II.
2. Certificates shall be issued by the competent authorities of the Member States once they are sure that the shipowner complies with the requirements laid down in this Directive.

When a ship is registered in a Member State, the certificates shall be issued or certified by the competent authority of the State in which the ship is registered.

When a ship is registered in a third country, the certificates may be issued or certified by the competent authority of any Member State.

3. The conditions for the issue and the validity of the certificates, in particular the criteria and conditions for issue, as well as the measures concerning the providers of the financial guarantees, shall be determined in accordance with Article 12(2).
4. The certificates shall comply with the model set out in Annex II and shall include the following information:
 - (a) name of ship and registry port;
 - (b) owner's name and principal place of business;
 - (c) type of guarantee;
 - (d) name and principal place of business of insurer or other person granting the guarantee and, where appropriate, the place of business where the insurance or guarantee is established;
 - (e) the period of validity of the certificate, which shall not exceed the period of validity of the insurance or guarantee.
5. The certificates shall be drawn up in the official language(s) of the issuing Member State. If the language used is neither English nor French, the text shall include a translation into one of these languages.

Article 8

Notification of the financial guarantee certificate

1. The certificate shall be carried on board the ship and a copy shall be deposited with the authority which keeps the record of the ship's registry or, if the ship is not registered in a Member State, with the authority of the State which issued or certified the certificate.

2. The operator, agent or captain of a ship entering the exclusive economic area or equivalent area of a Member State in the cases set out in Article 5 shall notify the authorities of that Member State that a financial guarantee certificate is being carried on board in accordance with the provisions of Annex III.
3. The operator, agent or captain of a ship bound for a port or offshore terminal under the jurisdiction of a Member State or which wishes to drop anchor in an area under the jurisdiction of a Member State in the cases set out in Article 6, shall notify the authorities of that Member State that a financial guarantee certificate is being carried on board in accordance with the provisions of Annex III.
4. The competent authorities of the Member States shall be able to share the information provided for in paragraph 1 through the SafeSeaNet Community platform for maritime data exchange.

Article 9

Mutual recognition by Member States of financial guarantee certificates

Each Member State shall recognise certificates issued or certified by another Member State under Article 7 for all purposes of this Directive and shall consider them as having the same value as certificates which it issued or certified itself, even when the ship is not registered in a Member State.

A Member State may at any time request an exchange of views with the issuing or certifying State should it believe that the insurer or guarantor named on the certificate is not financially capable of meeting the obligations imposed by this Directive.

Article 10

Direct action against the provider of the financial guarantee for civil liability

Any requests for compensation for damage caused by the ship may be addressed directly to the provider of the financial guarantee for civil liability covering the owner's civil liability.

The provider of the financial guarantee may rely on the means of defence which the owner himself would be entitled to invoke, with the exception of those based on the owner declaring bankruptcy or going into liquidation.

The provider of the financial guarantee may also rely on the fact that the damage was the result of intentional fault on the part of the owner. However, it may not rely on any of the means of defence which it could have invoked in an action brought against it by the owner.

The provider of the financial guarantee may, in all cases, require the owner to be joined in the proceedings.

Article 11

Reports

Five years after this Directive enters into force the Member States shall report to the Commission on the experience gained in applying the Directive. On this basis, the Commission shall present a report to the European Parliament and the Council including those proposals for amendments to this Directive which it considers relevant.

Article 12

Committee

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), established by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council¹⁰.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

3. The committee shall adopt its rules of Procedure.

Article 13

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] [*18 months after date of entry into force*] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 14

Entry into force

This Directive shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

¹⁰ OJ L 324, 29.11.2002, p. 1.

Article 15

Addressees

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

ANNEX I

- The International Convention on Civil Liability for Oil Pollution Damage, 1992.
- The International Convention of 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention).
- The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (“Bunker Oil” Convention).

ANNEX II

Model financial guarantee certificate

| Name of ship | Distinctive letter or number | Registry port | Name and address of owner |
|--------------|------------------------------|---------------|---------------------------|
| | | | |

I, the undersigned, certify that the above ship is covered by an insurance policy or other financial guarantee which meets the requirements of Directive 200.././EC on civil liability and financial guarantees for shipowners.

Type of guarantee

Duration of the guarantee

Name and address of the insurer(s) and/or guarantor(s)

Name

Address

This certificate is valid until

Issued or certified by the Government of

Done at.....on.....

Signature and name of official who issued or certified the certificate

ANNEX III

List of information to be notified under Article 8 of this Directive

- 1) Ship identification (name, call sign, IMO identification number, MMSI number)
- 2) Date and time
- 3) Position in latitude and longitude or true bearing and distance in nautical miles from a clearly identified landmark
- 4) Port of destination
- 5) Estimated time of arrival at the port of destination or pilot station, as required by the competent authority, and estimated time of departure from that port
- 6) Financial guarantee certificate carried on board
- 7) Address from which detailed information on the certificate may be obtained

As far as possible, the information provided for under 6) and 7) may be communicated with other notifications as long as this complies with the conditions laid down in Article 8(2) of this Directive.

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

Proposal for a Directive of the European Parliament and of the Council on the civil liability and financial guarantees of shipowners

2. ABM / ABB FRAMEWORK

Policy area: Energy and Transport

Activities: Maritime and river transport, intermodality.

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex-BA lines)) including headings: Not applicable

3.2. Duration of the action and of the financial impact: Not applicable

3.3. Budgetary characteristics (add rows if necessary): Not applicable

| Budget line | Type of expenditure | | New | EFTA contribution | Contributions from applicant countries | Heading in financial perspective |
|-------------|---------------------|--|---------|-------------------|--|----------------------------------|
| | Comp/Non-comp | Diff ¹ /Non-diff ² | | | | |
| | Comp/Non-comp | Diff ¹ /Non-diff ² | YES/ NO | YES/ NO | YES/ NO | No [...] |
| | Comp/Non-comp | Diff/Non-diff | YES/ NO | YES/ NO | YES/ NO | No [...] |

¹ Differentiated appropriations.

² Non-differentiated appropriations.

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

| Expenditure type | Section no. | | Year n | n+1 | n+2 | n+3 | n+4 | n + 5 and later | Total |
|---|-------------|-----|--------|-----|-----|-----|-----|-----------------|-------|
| Operational expenditure³ | | | | | | | | | |
| Commitment Appropriations (CA) | 8.1 | a | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Payment Appropriations (PA) | | b | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Administrative expenditure within reference amount⁴ | | | | | | | | | |
| Technical and administrative assistance (NDA) | 8.2.4 | c | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL REFERENCE AMOUNT | | | | | | | | | |
| Commitment Appropriations | | a+c | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Payment Appropriations | | b+c | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Administrative expenditure <u>not</u> included in reference amount⁵ | | | | | | | | | |
| Human resources and associated expenditure (NDA) | 8.2.5 | d | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Administrative costs, other than human resources and associated costs, not included in reference amount (NDA) | 8.2.6 | e | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

³ Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

⁴ Expenditure within Article xx 01 04 of Title xx.

⁵ Expenditure within Chapter xx 01 other than Articles xx 01 04 or xx 01 05.

Total indicative financial cost of intervention

| | | | | | | | | | |
|--|---------|---|---|---|---|---|---|---|---|
| TOTAL CA including cost of Human Resources | a+c+d+e | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL PA including cost of Human Resources | b+c+d+e | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

Co-financing details

The legislative proposal does not provide for cofinancing on the part of the Member States

EUR Million (to 3rd decimal place)

| Co-financing body | | Year n | n +1 | n +2 | n +3 | n +4 | n+5 and later | Total |
|---------------------------------|-----------|--------|------|------|------|------|---------------|-------|
| | f | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL CA including co-financing | a+c+d+e+f | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

4.1.2. Compatibility with financial programming

- Proposal is compatible with existing financial programming.
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement⁶ (i.e. flexibility instrument or revision of the financial perspective).

4.1.3. Financial impact on revenue

- Proposal has no financial impact on revenue
- Proposal has financial impact – the effect on revenue is as follows:

NB: all details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.

⁶ See points 19 and 24 of the Interinstitutional Agreement.

EUR million (to one decimal place)

| Budget line | Revenue | Prior to action [Year n-1] | Situation following action | | | | | |
|-------------|------------------------------|----------------------------|----------------------------|-------|-------|-------|-------|--------------------|
| | | | [Year n] | [n+1] | [n+2] | [n+3] | [n+4] | [n+5] ⁷ |
| | a) Revenue in absolute terms | | 0 | 0 | 0 | 0 | 0 | 0 |
| | b) Change in revenue | Δ | 0 | 0 | 0 | 0 | 0 | 0 |

4.2. Human Resources FTE (including officials, temporary and external staff) – see details under point 8.2.1.

No impact on staff expenditure. Management by existing staff.

| Annual requirements | Year n (2007*) | n+1 | n+2 | n+3 | n+4 | n+5 and later |
|---------------------------------|----------------|-----|-----|-----|-----|---------------|
| Total number of human resources | 0 | 0 | 0 | 0 | 0 | 0 |

5. CHARACTERISTICS AND OBJECTIVES

5.1. Need to be met in the short or long term

The international rules on the civil liability of shipowners are unsatisfactory because they do not actually help prevent damage or ensure that this is made good.

Non-discriminatory rules applicable to all ships, irrespective of their flag, which help to prevent damage caused by ships and ensure that it is made good should be added to Community legislation.

5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

The Commission intends to work to improve the CLC Convention, for example by removing the ceiling on civil liability. By following this approach the Commission is responding to concerns expressed both by the European Parliament and the European Council.

On 21 March 2004 the European Parliament called for “a comprehensive and cohesive European maritime policy, which would have as its objective the creation of a European

⁷ Additional columns should be added if necessary, i.e. if the duration of the action exceeds 6 years.

maritime safety area (...) based on (...) the introduction of a system of liability covering the entire maritime transport chain (...)".

5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The objective is to establish non-discriminatory rules, applicable to all ships irrespective of their flag, which will make a real contribution towards preventing damage caused by ships and to ensuring that damage is made good:

- in order to ensure such damage is better prevented, the Commission considers it vital to remove ceilings on civil liability.
- in addition, in order to better respond to the interests of victims of accidents, the Commission considers it necessary to supplement the legislation on liability by setting up a system of obligatory financial guaranties for shipowners.

The proposed Directive details both the scope and the conditions of the obligation to have a financial guarantee. Accordingly, to take account of the possible removal of ceilings on liability, it is proposed that the financial guarantee will be a sum equivalent to double the ceilings laid down in the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims.

5.4. Method of implementation (indicative)

Show below the method(s)⁸ chosen for the implementation of the action.

Centralised Management

Directly by the Commission

Indirectly by delegation to:

Executive agencies

Bodies set up by the Communities, as referred to in Article 185 of the Financial Regulation,

National public-sector bodies/bodies with public-service mission

Shared or decentralised management

With Member States

With third countries

Joint management with international organisations (please specify)

Relevant comments:

⁸ If a number of methods are indicated, please provide details in the "Comments" section.

6. MONITORING AND EVALUATION

The draft Directive includes a provision requiring Member States to notify the Commission of the national implementing measures (NIM) to be adopted with a view to transposing the Directive into national law.

In the event of failure to communicate these national implementing measures (as well as incomplete notification thereof) infringement procedures will automatically be launched in accordance with Article 226 of the Treaty.

6.1. Evaluation:

6.1.1. *Ex ante evaluation*

The following potential impacts have been identified in the impact analysis:

- Responsible owners will gain most from the new system in that they already have a civil liability policy for damage caused by their ships to third parties and competition on the market will not be distorted by the actions of unscrupulous operators who have no insurance.
- In terms of removing ceilings, only shipowners guilty of gross negligence will be affected, to the advantage of responsible owners who will continue to enjoy the protection of limited liability.
- Insurers will not necessarily see an increase in the number of insurance policies, nor will they be more exposed to risk since it is their responsibility to ensure – in the same way as other links in the maritime transport chain – that the ships which they insure comply with international standards.
- The other operators in the maritime transport chain may be affected if any additional costs incurred by the owner are passed on to them. However, we have seen that more widespread insurance should not lead to additional expenses. In practical terms, the crew and the ship owner's agents should follow the procedures for notifying that there is a certificate on board. The crew will also benefit from the protection afforded by the financial guarantee for the repatriation of seafarers.
- "Coastal residents" (any person who may be affected by damage caused by a ship and who may demand that the ship owner repair this damage, including individuals, professionals but also public authorities). The situation of coastal residents will be improved by the new obligatory insurance mechanism. Introducing a direct action will ease their situation further still. Coastal residents will be the first to benefit from the new system of obligatory insurance.
- Governments (flag States and port States) are affected in that they must set up a system for issuing and verifying financial guarantee certificates. The Member States are already

obliged to do this under the CLC system, but the obligation only applies to tankers. Third countries which have adopted a system of obligatory insurance for all types of ships have designated specialised teams.

6.1.2. *Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past).*

Not applicable

6.1.3. *Terms and frequency of future evaluation*

Not applicable.

7. **ANTI-FRAUD MEASURES**

Not applicable.

8. DETAILS OF RESOURCES

8.1 Objectives of the proposal in terms of their financial cost: **Not applicable**

| (Headings of Objectives, actions and outputs should be provided) | | Commitment appropriations in EUR million (to 3 decimal places) | | | | | | | | | | | | | | |
|--|--|--|-------------|------------|-------------|------------|-------------|------------|-------------|------------|-------------|------------|--------------------|------------|-------------|------------|
| | | Av. cost | Year n | | Year n+1 | | Year n+2 | | Year n+3 | | Year n+4 | | Year n+5 and later | | TOTAL | |
| Type of output | | | No. outputs | Total cost | No. outputs | Total cost | No. outputs | Total cost | No. outputs | Total cost | No. outputs | Total cost | No. outputs | Total cost | No. outputs | Total cost |
| OPERATIONAL OBJECTIVE No 1 ⁹ | | | | | | | | | | | | | | | | |
| Action 1 | | | | | | | | | | | | | | | | |
| - Output 1 | | | | | | | | | | | | | | | | |
| - Output 2 | | | | | | | | | | | | | | | | |
| Action 2 | | | | | | | | | | | | | | | | |
| - Output 1 | | | | | | | | | | | | | | | | |
| Sub-total Objective 1 | | | | | | | | | | | | | | | | |
| OPERATIONAL OBJECTIVE No 2..... | | | | | | | | | | | | | | | | |
| Action 1 | | | | | | | | | | | | | | | | |
| - Output 1 | | | | | | | | | | | | | | | | |
| Sub-total Objective 2 | | | | | | | | | | | | | | | | |

⁹ As described under Section 5.3.

| OPERATIONAL OBJECTIVE No°n | | | | | | | | | | | | | | |
|----------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Sub-total objective n.1 | | | | | | | | | | | | | | |
| TOTAL COST | | | | | | | | | | | | | | |

8.2 Administrative expenditure

8.2.1 Number and type of human resources

| Types of post | | Staff to be assigned to management of the action using existing and/or additional resources (number of posts/FTEs) | | | | | |
|--|------------|--|----------|----------|----------|----------|----------|
| | | Year n | Year n+1 | Year n+2 | Year n+3 | Year n+4 | Year n+5 |
| Officials or temporary staff ¹⁰ (06 01 01) | A*/AD | 0 | 0 | 0 | 0 | 0 | 0 |
| | B*, C*/AST | 0 | 0 | 0 | 0 | 0 | 0 |
| Staff financed ¹¹ by Art. XX 01 02 | | 0 | 0 | 0 | 0 | 0 | 0 |
| Other staff financed ¹² by Art. XX 01 04/05 | | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | | 0 | 0 | 0 | 0 | 0 | 0 |

8.2.2 Description of tasks deriving from the action: Tasks

Not applicable

8.2.3 Sources of human resources (statutory)

- Posts currently allocated to the management of the programme to be replaced or extended
- Posts pre-allocated within the APS/PDB exercise for year n
- Posts to be requested in the next APS/PDB procedure
- Posts to be redeployed using existing resources within the managing service (internal redeployment)
- Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

¹⁰ Cost of which is NOT covered by the reference amount.

¹¹ Cost of which is NOT covered by the reference amount.

¹² Cost of which is included within the reference amount.

8.2.4 Other administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)

EUR million (to 3 decimal places)

| Budget line (Number and heading) | Year n | Year n+1 | Year n+2 | Year n+3 | Year n+4 | Year n+5 and later | TOTAL |
|---|--------|-------------|-------------|-------------|-------------|-----------------------|-------|
| 1. Technical and administrative assistance (including related staff costs) | | | | | | | 0 |
| Executive agencies ¹³ | | | | | | | 0 |
| Other technical and administrative assistance | | | | | | | 0 |
| - <i>intra muros</i> | | | | | | | 0 |
| - <i>extra muros</i> | | | | | | | 0 |
| Total technical and administrative assistance | | | | | | | 0 |

8.2.5 Financial cost of human resources and associated costs not included in the reference amount

EUR million (to 3 decimal places)

| Type of human resources | Year n | Year n+1 | Year n+2 | Year n+3 | Year n+4 | Year n+5 and later |
|--|--------|-------------|-------------|----------|----------|-----------------------|
| Officials and temporary staff (06 01 01) | 0 | 0 | 0 | 0 | 0 | 0 |
| Staff financed by Art. XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line) | 0 | 0 | 0 | 0 | 0 | 0 |
| Total cost of human resources and associated costs (NOT in reference amount) | 0 | 0 | 0 | 0 | 0 | 0 |

Calculation– *Officials and Temporary agents*

Not applicable

Calculation– *Staff financed under Article XX 01 02*

Not applicable

¹³ Reference should be made to the specific legislative financial statement for the Executive Agency/Agencies concerned.

8.2.6 Other administrative expenditure not included in reference amount

EUR million (to 3 decimal places)

| | Year n | Year n+1 | Year n+2 | Year n+3 | Year n+4 | Year n+5 and later | TOTAL |
|---|-----------|-------------|-------------|-------------|-------------|-----------------------------|-------|
| XX 01 02 11 01 – Missions | 0 | 0 | 0 | 0 | 0 | 0 | 0* |
| XX 01 02 11 02 – Meetings and conferences | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| XX 01 02 11 03 – Committees ¹⁴ | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| XX 01 02 11 04 - Studies and consultations | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| XX 01 02 11 05 - Information systems | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. Total other management expenditure (XX 01 02 11) | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 3. Other expenditure of an administrative nature (specify including reference to budget line) | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total administrative expenditure, other than human resources and associated costs (NOT included in reference amount) | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

* No impact on the current budget for missions

Calculation - *Other administrative expenditure not included in reference amount*

Not applicable

¹⁴ Specify the type of committee and the group to which it belongs.