



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 16 April 2007**

**7805/07**

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**Interinstitutional File:  
2005/0236 (COD)  
2005/0242 (COD)**

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**CODEC 277  
MAR 20  
ENV 171**

**NOTE**

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from: General Secretariat  
to: Permanent Representatives' Committee/Council

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Subject: - Proposal for a Directive of the European Parliament and of the Council on compliance with flag State requirements  
- Proposal for a Directive of the European Parliament and the Council on the civil liability and financial guarantees of ship-owners  
- Outcome of the European Parliament's first reading (Brussels, 28 to 29 March 2007)

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**I. INTRODUCTION**

The joint debate on both of the above legislative proposals was opened by Commissioner Barrot, who introduced the context of the two proposals, and recalled these were both part of a seven-proposal package on maritime security. He then gave the floor to Mrs Vincenzi (PSE, IT), who presented her report on behalf of the Committee on Transport and Tourism. The rapporteur insisted on the need for those Member states which had not already done so to comply with their obligations set down by the International Maritime Organisation ("IMO"), and therefore fully supported the Commission's proposal to integrate the measures for implementing the mandatory instruments adopted by the IMO into Community law. The Rapporteur also emphasised the need to improve inspection systems<sup>1</sup>. Finally, the Rapporteur pointed out that the Committee had adopted the amendments contained in the draft report unanimously.

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<sup>1</sup> See amendments 25 and 26

The debate continued with the presentation by Mr Savary (PSE, F) of his report, again on behalf of the Committee on Transport and Tourism. The Rapporteur welcomed the proposal, and expressed his full support for the whole seven-proposal package. However, he insisted that the proposal on the civil liability and financial guarantees of ship-owners should also take into account damage caused by hazardous and noxious substances, and suggested the HNS Convention (International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious substances by Sea) be integrated into the Commission's proposal<sup>2</sup>.

Furthermore, he recommended that Member States be encouraged to ratify the "Bunkers Convention" relating to pollution damage from ships' fuel and lubricating oil<sup>3</sup>.

The rapporteur also stressed the need to change the liability ceilings for those third states or Member states which have not ratified the relevant Conventions<sup>4</sup> as well as of the need to have a consistent definition of "gross negligence"<sup>5</sup>. Finally, he recalled that the report also suggests the establishment of a Community Office to administer the register of certificates issued<sup>6</sup>.

## II. DEBATE

The remaining members of the European Parliament who took part in the debate were all in favour of both draft reports.

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<sup>2</sup> See amendment 4

<sup>3</sup> See amendment 4

<sup>4</sup> See amendment 16 and 17

<sup>5</sup> See amendment 10

<sup>6</sup> See amendment 13, 16 and 27

Firstly, Mr. de Grandes Pascual (PPE-DE, ES) referred to the amendment creating a solidarity fund to cover damage caused by ships without a financial guarantee which, he thought, would fill a legal void. Then, Mr. Jarzembowski (DE), speaking on behalf of the PPE-DE group, argued that the adoption of both proposals would not impose too great a burden on the Member States, and Mr Piecyk (DE), speaking on behalf of the PSE group, called for the Council to deal with both proposals swiftly - a point of view which was also echoed by Mr Costa (IT), speaking on behalf of the ALDE group, who also emphasised the need to prevent accidents at sea.

Ms Mc Donald (GUE/NLG, IE) spoke in favour of the proposal on flag state requirements, which, she maintained, was essential in order to ensure an adequate protection of workers. Mr Liberadzki, (PSE, PL) referred to the need to ensure an appropriate level of compensation, and Mr Ortuondo Larrea (ALDE, ES) referred to the problem of pollution caused by the emptying of ships' tanks at sea.

Finally, Mr Barrot presented the Commission's position on many of the EP's amendments, and said it would be provided in writing at a later stage.

### **III. VOTE**

The European Parliament adopted 50 of the amendments contained in the report of Mrs Vincenzi (annex I of this note), and 25 of the amendments contained in the report from Mr Savary (annex II of this note). Of the amendments in Mrs Vincenzi's report, amendments 2, 4 and 5 were only adopted by a small majority. They concern respectively the reference to specific ILO instruments, the harmonised interpretations of technical safety standards, and the conclusion of agreements with third countries.

Of the amendments in Mr Savary's report, amendment 25 on the creation of a solidarity fund met with a lesser degree of support than the others.

The position of the Commission as regards these amendments is as follows:

As regards Mr Savary's rapport

(i) Adopted amendments which the Commission can accept in full:

Amdts 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 24 and 28.

(ii) Adopted amendments which the Commission can accept in principle or in part:

Amdts 5, 21, 23, 26 and 27.

(iii) Adopted amendments which the Commission cannot accept:

Amdts 7 and 25.

As regards Mrs Vincenzi's rapport:

adopted amendments which the Commission can accept in full:

Amdts 1, 3, 7, 10, 11, 14, 16, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 32, 33, 35, 36, 39, 40, 41, 42, 45, 46, 47, 48, 49, 50 and 51.

(ii) Adopted amendments which the Commission can accept in principle or in part:

Amdts 5, 13, 25, 26, 37 and 38.

(iii) Adopted amendments which the Commission cannot accept:

Amdts 2, 4, 6, 8, 9, 12, 15, 17, 31, 34, 43, 44 and 52

The text of the amendments adopted and the European Parliament's legislative resolution are annexed to this note.

## **Compliance with the obligations of flag States \*\*\*I**

**European Parliament legislative resolution of 29 March 2007 on the proposal for a directive of the European Parliament and of the Council on compliance with flag State requirements (COM(2005)0586 – C6-0062/2006 – 2005/0236(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0586)<sup>7</sup>,
  - having regard to Article 251(2) and Article 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0062/2006),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Transport and Tourism (A6-0058/2007),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

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<sup>7</sup> Not yet published in OJ.

## Amendment 1

## Recital 1

(1) The safety of Community shipping and of citizens using it and the protection of the environment should be ensured at all times.

(1) The safety of Community shipping and of citizens using it, **and of operators providing shipping services**, and the protection of the environment should be ensured at all times.

## Amendment 2

## Recital 4

(4) **Due account has to be taken of the ongoing major consolidation by the International Labour Organization (ILO) of the existing body of the maritime labour instruments into a single instrument. That work will also address flag State related obligations, which in a later stage, should be embodied in this Directive.**

(4) **All European Union Member State representatives in the International Labour Organization (ILO) supported the adoption of the ILO Maritime Labour Convention (MLC), 2006, which consolidates the existing body of maritime labour instruments into a single instrument. That Convention also addresses flag State-related obligations and should be incorporated in this Directive once it has entered into force.**

## Amendment 3

## Recital 11

(11) The IMO Conventions give flag States the right to exempt ships from the application of basic flag State rules laid down in the IMO Conventions and to apply equivalent provisions and have left *an important number of requirements to the discretion of the administrations. Leaving this possibility to the sole and entire discretion of the individual administration could result in different levels of safety being achieved in different Member States and might possibly distort competition between flag States.*

(11) The IMO Conventions give flag States the right to exempt ships from the application of basic flag State rules laid down in the IMO Conventions and to apply equivalent provisions and have left *a great many requirements to the discretion of the administrations. Without prejudice to the fact that specific measures need to be implemented with a degree of flexibility, leaving this possibility to the sole and entire discretion of the individual administration could result in different levels of safety being achieved in different Member States and might possibly distort competition between flag States.*

Amendment 4  
Recital 12

(12) The Community has committed itself to *initiate* harmonised interpretations of technical safety standards with regard to passenger ships engaged on international voyages in Article 12 of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships. The same approach should be followed, if necessary and without prejudice to the adoption of harmonised interpretations by the IMO, with regard to similar provisions related to other types of ships to which the IMO Conventions apply.

(12) The Community has committed itself to *initiating* harmonised interpretations of technical safety standards with regard to passenger ships engaged on international voyages in Article 12 of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships. The same approach should be followed, if necessary, ***adopting appropriate solutions on a case-by-case basis and acting at the request of the parties concerned***, and without prejudice to the adoption of harmonised interpretations by the IMO, with regard to similar provisions related to other types of ships to which the IMO Conventions apply.

Amendment 5  
Recital 28

(28) The establishment of a Flag State Memorandum of understanding to establish flag State synergies should be promoted by the Commission.

(28) The establishment of a Flag State Memorandum of understanding, ***under the conditions referred to in IMO Resolutions A.973(24) and A.974(24)***, to establish flag State synergies should be promoted by the Commission, ***and should provide incentives to register vessels in the registers of Member States. If third countries were allowed, subject to guarantees regarding the necessary quality and survey systems, to conclude agreements with the European Community enabling them to benefit from the good reputation of Community standards and from simpler administrative formalities, this could help, at a time when national registers and maritime administrations are engaged in global competition, to raise the overall degree of compliance with the IMO Conventions and eliminate international dumping.***

Amendment 6  
Article 1, paragraph 1, point (a)

(a) to ensure that Member States effectively and consistently discharge their obligations as flag States in accordance with the IMO Conventions;

(a) to ensure that Member States effectively and consistently discharge their obligations as flag States in accordance with the IMO Conventions **and the relevant ILO instruments**;

Amendment 7  
Article 1, paragraph 1, point (b)

(b) to enhance safety and prevent pollution from ships flying the flag of a Member State **and engaged in international trade**;

(b) to enhance safety and prevent pollution from ships flying the flag of a Member State;

Amendment 8  
Article 2, paragraph 1, point (a), point (vi a) (new)

**(via) the 1991 Code of Safe Practice for Ships Carrying Timber Deck Cargoes;**

Amendment 9  
Article 2, paragraph 1, point (a), point (vi b) (new)

**(vib) the 1965 Code of Safe Practice for Solid Bulk Cargoes (BC Code);**

Amendment 11  
Article 3, paragraph 4

4. **In** respect of international shipping Member States shall apply in full the mandatory *flag State related* provisions laid down in the IMO Conventions in accordance with the conditions and in respect of the ships referred to therein and shall take due account of the provisions of the Flag State Code (FSC) in Annex I to this Directive.

4. **In particular, in** respect of international shipping Member States shall apply in full the mandatory *flag State-related* provisions laid down in the IMO Conventions in accordance with the conditions and in respect of the ships referred to therein and shall take due account of the provisions of the Flag State Code (FSC) in Annex I to this Directive.

Amendment 12  
Article 3, paragraph 6

6. In accordance with the procedure referred to in Article 18(2) measures may be adopted in order to:

- (a) develop harmonised procedures for the application of exemptions and equivalents applied in accordance with the IMO Conventions;
- (b) establish harmonised interpretations of issues left to the discretion of the Administrations in the IMO Conventions;
- (c) **apply unified interpretations for** provisions laid down in the Conventions.

6. In accordance with the procedure referred to in Article 18(2), **either at the initiative of the Commission or at the request of one or more of the administrations or operators concerned**, measures may be adopted in order to:

- (a) develop harmonised procedures for the application of exemptions and equivalents applied in accordance with the IMO Conventions;
- (b) establish harmonised interpretations of issues left to the discretion of the Administrations in the IMO Conventions;
- (c) **standardise the interpretation and application of** provisions laid down in the Conventions.

Amendment 13  
Article 4, paragraph 1, point (a)

(a) ensure compliance with the requirements of the IMO Conventions;

(a) ensure compliance with the requirements of the IMO Conventions **and specific conventions, the Flag State Code and the relevant ILO instruments**;

Amendment 14  
Article 4, paragraph 1, point (b)

(b) ensure the conduct of investigations into casualties and adequate and timely **handling of cases of ships with** identified deficiencies; **and**

(b) ensure the conduct of investigations into casualties **for all ships under its flag and ensure that** adequate and timely **measures are taken to remedy** identified deficiencies;

Amendment 15  
Article 4, paragraph 1, point (c)

(c) ensure the development, documentation and provision of guidance concerning those requirements that are to the satisfaction of the **Administration**, found in the relevant IMO Conventions;

(c) ensure the development, documentation and provision of guidance concerning those requirements that are to the satisfaction of the **States as contracting parties**, found in the relevant IMO Conventions;

Amendment 16  
Article 4, paragraph 1, point (d)

(d) comprise an appropriate number of qualified personnel to implement and enforce the national legislation implementing the IMO Conventions, including *personnel for performing* investigations and surveys;

(d) comprise an appropriate number of qualified personnel to implement and enforce the national legislation implementing the IMO Conventions, including *qualified flag State surveyors to carry out* investigations, *audits, inspections* and surveys;

Amendment 17  
Article 4, paragraph 2

2. Each Member State shall ensure the training and oversight *of the activities* of flag State surveyors and investigators.

2. Each Member State shall ensure the training *of flag State surveyors* and *the* oversight of flag State surveyors and investigators *and, in the event of accidents or deficiencies, the coastal State, as well as of the activities of recognised organisations, should it delegate authority to such organisations pursuant to Article 7.*

Amendment 18  
Article 4, paragraph 3

3. Each Member State shall develop or maintain a *design review and* technical decision-making capability commensurate with the size and nature of its fleet.

3. Each Member State shall develop or maintain a *capability for reviewing, approving and authorising ship construction and equipment designs, and a* technical decision-making capability commensurate with the size and nature of its fleet.

Amendment 19  
Article 5, paragraph 2

2. **When registering** a ship in its register for the first time the Member State concerned shall ***endeavour to ensure that*** the ship in question complies with the applicable international rules and regulations. It shall liaise with the previous flag State, ***if necessary***.

2. **As a precondition for registration of** a ship in its register for the first time the Member State concerned shall ***ascertain whether*** the ship in question complies with the applicable international rules and regulations ***and ensure that this is confirmed by documentary evidence in its possession. If necessary, but in every case if the ship is not newly built,*** it shall liaise with the previous flag State ***and request it to pass on the necessary documents and data.***

Amendment 20  
Article 5, paragraph 2 a (new)

***2a. If the request is made by a Member State to another Member State, the previous flag State shall be obliged to communicate the documents and the data in question, as provided for by Regulation (EC) No 789/2004 of the European Parliament and of the Council of 21 April 2004 on the transfer of cargo and passenger ships between registers within the Community<sup>1</sup>.***

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<sup>1</sup> *OJ L 138, 30.4.2004, p. 19.*

Amendment 21  
Article 6, paragraph 1, point (c)

(c) ensuring that, during the periodic inspection referred to in point (b), the surveyor checks that seafarers assigned to the ships are familiar with their specific duties and ship arrangements, installations, *equipments* and procedures;

(c) ensuring that, during the periodic inspection referred to in point (b), the surveyor checks, ***by the appropriate methods and the necessary means,*** that seafarers assigned to the ships are familiar with their specific duties and ship arrangements, installations, *equipment* and procedures;

Amendment 22  
Article 6, paragraph 1, point (d)

(d) ensuring that the ship's complement, as a whole, *can* effectively co-ordinate their activities in an emergency situation and in performing functions vital to safety or to the prevention or mitigation of pollution;

(d) ensuring that the ship's complement, as a whole, ***has the capability and resources necessary*** effectively ***to*** co-ordinate their activities in an emergency situation and in performing functions vital to safety or to the prevention or mitigation of pollution;

Amendment 23  
Article 6, paragraph 2

2. Member States shall develop and implement an appropriate control and monitoring programme to provide for a timely response to ***deficiencies and alleged pollution incidents reported*** by port or coastal States.

2. ***As laid down in Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system<sup>1</sup>***, Member States shall develop and implement an appropriate control and monitoring programme ***for ships flying their flag in order to be able to provide, not least by using the Community SafeSeaNet data exchange system***, for a timely ***and comprehensive*** response to ***requests for information and clarification submitted*** by port or coastal States ***in the event of accidents or deficiencies***.

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<sup>1</sup> *OJ L 208, 5.8.2002, p. 10.*

Amendment 24  
Article 7, paragraph 1, subparagraph 1

1. Without prejudice to [Directive 94/57/EC or Directive .../.../EC (on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations)], Member States relying upon recognised organisations for the certification of their ships shall develop or maintain a capability, commensurate with the size and nature of their fleet, to continuously monitor the survey and certification process of the recognised organisations acting on their behalf.

1. Without prejudice to [Directive 94/57/EC or Directive .../.../EC (on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations)], Member States relying upon recognised organisations for the ***inspection and*** certification of their ships shall develop or maintain a capability, commensurate with the size and nature of their fleet, to continuously monitor ***and oversee*** the survey and certification process of the recognised organisations acting on their behalf.

Amendment 25  
Article 7, paragraph 2

2. Member States to *whom* paragraph 1 applies shall **ensure that each ship flying their flag is subject to a supplementary survey at intervals not exceeding 12 months**, in order to ensure that **it complies** with the IMO Conventions and national requirements.

2. Member States to *which* paragraph 1 applies shall **provide for the possibility of conducting supplementary investigations concerning ships flying their flag** in order to ensure that **they comply** with the IMO Conventions and national requirements.

Amendment 26  
Article 7, paragraph 3

3. The supplementary **survey** referred to in paragraph 2 shall **not** be required for ships which:

(a) have been in the Member State's register for **at least** two years;

(b) have been **inspected at least once in the previous 12 months in accordance with Directive 95/21/EC<sup>1</sup> or [Directive .../.../EC of the European Parliament and of the Council (on port State control)]; and**

(c) **have not been detained pursuant to Directive 95/21/EC or to [Directive.../.../EC (on port State control)] in the last 12 months.**

3. The supplementary **investigations** referred to in paragraph 2 shall be required **at intervals not exceeding 12 months** for ships which:

(a) have been in the Member State's register for **less than** two years; **and**

(b) have been **detained pursuant to Council Directive 95/21/EC of 19 June 1995 on port State control or to [Directive.../.../EC (on port State control)] at some point in the last 12 months.**

Amendment 27  
Article 7, paragraph 4

4. Once detailed rules of inspection adopted under Article 5(2) of [Directive .../.../EC on *Port State Control*] have entered into force, the supplementary **survey** referred to in **paragraph 2** shall not be **required** for ships to which a low risk profile has been assigned under that Directive at *its* the most recent inspection.

4. Once detailed rules of inspection adopted under Article 5(2) of [Directive .../.../EC (on *port State control*)] have entered into force, the supplementary **investigations** referred to in **paragraphs 2 and 3** shall not be **necessary in any event** for ships to which a low risk profile has been assigned under that Directive at the most recent inspection.

Amendment 28  
Article 7, paragraph 6

6. **Procedures and guidelines** for supplementary *surveys* and minimum criteria for surveyors and inspectors performing supplementary *surveys* shall be established in accordance with the procedure referred to in Article 18(2).

6. **Guidelines necessary to establish investigation procedures and systems of oversight** for supplementary *investigations* and minimum criteria for surveyors and inspectors performing supplementary *investigations* shall be established in accordance with the procedure referred to in Article 18(2).

Amendment 29  
Article 8, paragraph 4

4. Member States shall ensure the implementation of a documented system for **qualification of** personnel and continuous updating of their knowledge as appropriate to the tasks they are authorised to undertake.

4. Member States shall ensure, **by the appropriate methods and the necessary means**, the implementation of a documented system for **ongoing skills development for the** personnel referred to in paragraphs 1 to 3 and continuous updating of their knowledge as appropriate to the tasks they are **appointed or** authorised to undertake.

Amendment 30  
Article 8, paragraph 5

5. The flag State shall issue **an** identification **document to all** surveyors carrying out tasks on its behalf on board ships.

5. The flag State shall issue identification **documents attesting to the authority it has conferred on them** to surveyors carrying out tasks on its behalf on board **or on the hull of** ships, **and, if necessary, to the other personnel referred to in paragraph 3.**

Amendment 31  
Article 8, paragraph 5 a (new)

**5a. To improve the guidelines in the light of experience acquired in implementing the provisions in force, Annex II may be amended by the procedure referred to in Article 18(2).**

Amendment 32  
Article 9

*Without prejudice to responsibilities under the Code for the Investigation of Marine Casualties and Incidents, adopted by the IMO by resolution A. 849(20), as annexed to IMO Assembly Resolution A. 884(21), in its up-to-date version*, Member States shall carry out an investigation following a marine casualty or pollution incident involving a ship flying their flag. Such casualty investigations shall be conducted by suitably qualified investigators, competent in matters relating to the casualty. ***For this purpose Member States shall provide qualified investigators***, irrespective of the location of the casualty or incident.

Member States shall carry out an investigation following a marine casualty or pollution incident involving a ship flying their flag, ***observing responsibilities and obligations under the Code for the Investigation of Marine Casualties and Incidents, adopted by the IMO by resolution A. 849(20), as annexed to IMO Assembly Resolution A. 884(21), in its up-to-date version***. Such casualty investigations shall be conducted by suitably qualified investigators, competent in matters relating to the casualty, ***who shall be provided by the Member States***, irrespective of the location of the casualty or incident.

Amendment 33  
Article 11, paragraph 1

1. Member States shall develop or maintain a fleet database for their ships, with the main technical details of each ship and the information listed in paragraph 2, or ensure that they have direct access to a database providing similar information. Member States shall grant the Commission the right to ***extract data from their databases and to exchange*** data with them.

1. Member States shall develop or maintain a fleet database for their ships, with the main technical details of each ship and the information listed in paragraph 2, or ensure that they have direct access to a database providing similar information. Member States shall grant the Commission the right to ***enjoy or share access, as necessary, to the database for their ships, while having the possibility of extracting and exchanging*** data with them.

Amendments 34 and 35  
Article 11, paragraph 2

2. The following information shall be included in the database:

**(a)** particulars of the ship (Name, IMO number, etc.);

**(b)** dates of the surveys, including additional and supplementary surveys, if any, and audits;

**(c)** identification of the recognised organisations involved in the certification and classification of the ship;

**(d)** identification of the body which has inspected the ship under Port State control provisions and dates of the inspections;

**(e)** outcome of the port State control inspections (Deficiencies: **Yes or No**, detentions **Yes or No**);

**(f)** information on casualties;

**(g)** information on infringements under MARPOL and 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 infringements;

2. The following information shall be included in the database **of each Member State**:

**(a) individual information, for each ship registered:**

**(i)** particulars of the ship (Name, IMO number, etc.); **date of registration and, if appropriate, of removal from the register**,

**(ii)** identification of the recognised organisations involved in the certification and classification of the ship **on the instructions of the flag State**,

**(iii)** dates **and outcome (Deficiencies: No or Yes, description, repairs performed or pending; Detentions: No or Yes, and duration)** of the surveys, including additional and supplementary surveys, if any, and audits **performed either directly by the flag State or by recognised organisations to which that State has delegated authority**,

**(iv)** identification of the body which has inspected the ship under Port State control provisions and dates of the inspections,

**(v)** outcome of the port State control inspections (Deficiencies: **No or Yes, description, repairs performed or pending; Detentions: No or Yes, and duration**),

**(vi)** information on casualties,

**(vii)** information on infringements under **IMO Conventions, in particular MARPOL** and 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 infringements,

(h) identification of the ships which have left the register during the previous 12 months.

**(b) General information concerning all ships in its register:**

**(i) record and** identification of the ships which have left the register during the previous 12 months; **during this period all information collected in the database over the period in which they remained in the register must be maintained,**

**(ii) number of annual inspections of all types carried out by or on behalf of the flag State, broken down by procedure.**

Amendment 36  
Article 11, paragraph 3 a (new)

**3a. The information referred to in paragraph 2 shall be immediately forwarded in full to the new flag State if a ship leaves the register and is transferred to another register.**

Amendment 37  
Article 13, paragraph 5

5. If necessary, the **Community** shall develop recommendations **for measures** and proposals **improving the effectiveness** of the IMO auditing system referred to in paragraph 2.

5. If necessary, the **Commission, in cooperation with the Member States,** shall develop recommendations and **make** proposals **to improve the procedures and outcomes** of the IMO auditing system **in the case** referred to in paragraph 2.

Amendment 38  
Article 15

The Commission shall, before the end of [2007], submit to the European Parliament and the Council a report on the feasibility of establishing a Memorandum of Understanding on flag State control obligations, aiming at ensuring *a level playing field between flag* States, which have committed themselves to implement in a mandatory way the Code for the implementation of mandatory IMO instruments, adopted by the International Maritime Organisation (IMO) through Assembly Resolution A. 973 (24) of 1 December 2005, and agreed to be audited in accordance with the provisions of Resolution A. 974 (24) adopted by the IMO Assembly on 1 December 2005.

The Commission shall, before the end of [2007], submit to the European Parliament and the Council a report on the feasibility of establishing a Memorandum of Understanding ***between the European Community, Member States and third countries***, on flag State control obligations, aiming at ensuring *equal competitive conditions as with Member States for those third countries*, which have committed themselves to implement in a mandatory way the Code for the implementation of mandatory IMO instruments, adopted by the International Maritime Organisation (IMO) through Assembly Resolution A. 973 (24) of 1 December 2005, and agreed to be audited in accordance with the provisions of Resolution A. 974 (24) adopted by the IMO Assembly on 1 December 2005.

Amendment 39  
Article 16, title

***Communication*** of information and ***reporting***

***Sending*** of information and ***notices***

Amendment 40  
Article 16, paragraph 1

1. Each Member State shall communicate to the IMO the information required by the provisions of the IMO Conventions.

1. Each Member State shall communicate to the IMO ***and the Commission*** the information required by the provisions of the IMO Conventions.

Amendment 42  
Article 16, paragraph 4

4. The Commission shall, after having received ***reports*** from Member States, prepare a consolidated report concerning the implementation of this Directive. This report shall be addressed to the European Parliament and the Council.

4. The Commission shall, after having received ***the information*** from Member States, prepare a consolidated report concerning the implementation of this Directive. This report shall be addressed to the European Parliament and the Council.

Amendment  
Annex II, paragraph 3, point 1

(1) *appropriate qualifications* from a marine or nautical institution *and relevant sea-going experience as a certificated ship officer* holding or having held a valid STCW II/2 or III/2 certificate of competency; or

(1) *the diploma required by law to serve as an officer on the deck or in the engine department of a ship, obtained* from a marine or nautical institution, *providing evidence of a minimum of three years' experience as an officer at sea, or, alternatively, of one year at sea plus another two years' service with the competent authority of a Member State in a position as a trainee Flag State Surveyor,* or holding or having held a valid STCW II/2 or III/2 certificate of competency; or

Amendment 43  
Annex II, paragraph 3, point 2

(2) passed an examination recognised by the competent Authority as a naval architect, mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least *five* years; or

(2) passed an examination recognised by the competent Authority as a naval architect, mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least *three* years; or *for a period of one year and also served a period of two years with the competent authority of a Member State as a practising Flag State surveyor.*

Amendment 44  
Annex II, paragraph 4

*4. Surveyors qualified under 3(1) must have served for a period of not less than five years at sea as an officer in the deck or engine department, respectively.*

*deleted*

Amendment 45  
Annex II, paragraph 8

8. Surveyors must not have a commercial interest in the ship surveyed *and must not be employed by or undertake work on behalf of* non-governmental organisations which carry out statutory or classification surveys or issue certificates for ships.

8. Surveyors must not have a commercial, *personal or family interest of any kind* in the ship *surveyed, its crew, agent, company, owner or charterer, or in any* non-governmental organisations which carry out statutory or classification surveys or issue certificates for ships.

Amendment 46  
Annex II, point 9

9. Surveyors not fulfilling the above criteria are also accepted if they were employed by a competent authority for statutory surveys or port *state* control inspections at the date of adoption of this Directive.

9. Surveyors not fulfilling the above criteria are also accepted if they were employed by a competent authority for statutory surveys or port *State* control inspections at the date of adoption of this Directive ***and the port State concerned has acceded to the Paris Memorandum of Understanding on Port State Control.***

Amendment 47  
Annex III, paragraph 1, point 1

1. When the competent authority of a Member State (hereinafter called the flag State) is informed that a ship flying its flag has been detained by ***a*** port State it should oversee the appropriate corrective measures to bring the ship into compliance with the applicable regulations and international conventions. ***Such measures should include the following.***

1. When the competent authority of a Member State (hereinafter called the flag State) is informed that a ship flying its flag has been detained by ***another*** port State it should oversee the appropriate corrective measures to bring the ship into compliance with the applicable regulations and international conventions. ***The measures listed below are deemed to be appropriate; the list does not prevent the adoption of equivalent or additional measures, so long as they are consistent with the aims of, and the means of action afforded by, this Directive.***

Amendment 48  
Annex III, paragraph 2, point 3

3. For more serious deficiencies, particularly structural ones and others covered by certificates issued ***on*** the flag ***State's behalf*** by a recognised organisation (RO), the flag State should require ***an*** inspection by one of its surveyors or appoint a surveyor from the RO to carry one out on its behalf. Initially this inspection should focus on those areas where deficiencies have been recorded by the port State. If deemed necessary by the flag State or RO surveyor it may then be extended to a full re-survey for those areas covered by the relevant statutory certificates.

3. For more serious deficiencies, particularly structural ones and others covered by certificates issued ***by*** the flag ***State or*** by a recognised organisation (RO), the flag State should require ***a special supplementary*** inspection by one of its surveyors or appoint a surveyor from the RO to carry one out on its behalf. Initially this inspection should focus on those areas where deficiencies have been recorded by the port State. If deemed necessary by the flag State or RO surveyor it may then be extended to a full re-survey for those areas covered by the relevant statutory certificates.

Amendment 49  
Annex III, paragraph 3, point 5

5. In all cases the flag State should consider what legal action, including fines, ***against the company may be appropriate.*** In the case of a ship which persistently fails to comply with the requirements of ***the applicable*** regulations and international conventions the flag State should consider what additional sanctions may be necessary including the deletion of the ship from its registry.

5. In all cases the flag State should consider what legal action ***might be taken against the company,*** including fines ***of sufficient severity to discourage infringement of Community standards and international rules.*** In the case of a ship which persistently fails to comply with the requirements of ***Community*** regulations and ***the*** international conventions the flag State should consider what additional sanctions may be necessary, including the deletion of the ship from its registry.

Amendment 50  
Annex III, paragraph 3, point 6

6. When all corrective measures to bring the ship into compliance with the ***applicable regulations and*** international conventions have been completed the flag State should send ***a report*** to IMO in accordance with SOLAS 74 as amended, Chapter I, Regulation 19(d) and paragraph 5.2 of IMO Resolution A. 787 (19) as amended.

6. When all corrective measures to bring the ship into compliance with the international conventions ***and the Community regulations*** have been completed the flag State should send to IMO ***and to the Commission*** a report, ***drawn up*** in accordance with SOLAS 74 as amended, Chapter I, Regulation 19(d) and paragraph 5.2 of IMO Resolution A. 787 (19) as amended, ***with regard to IMO, and containing additional information relating to Community related provisions, with regard to Commission.***

Amendment 51  
Annex III, paragraph 4, point 2

2. It should also include, but not be limited to, the relevant items for an expanded inspection specified in [**Part C of** Annex V to Council Directive 95/21/EC or Part C of Annex VIII to Directive .../.../EC (on port State control)]. Flag State surveyors should not refrain from including, where deemed necessary, functional tests of items such as survival craft and their launching arrangements, main and auxiliary machinery, hatch covers, main electrical power and bilge systems.

2. It should also include, but not be limited to, the relevant items for an expanded inspection specified in [Annex V to Council Directive 95/21/EC or Part C of Annex VIII to Directive .../.../EC (on port State control)]. Flag State surveyors should not refrain from including, where deemed necessary, functional tests of items such as survival craft and their launching arrangements, main and auxiliary machinery, hatch covers, main electrical power and bilge systems.

**Civil liability and financial guarantees of shipowners \*\*\*I**

**European Parliament legislative resolution of 29 March 2007 on the proposal for a directive of the European Parliament and of the Council on the civil liability and financial guarantees of shipowners (COM(2005)0593 – C6-0039/2006 – 2005/0242(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0593)<sup>8</sup>,
  - having regard to Article 251(2) and Article 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0039/2006),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Transport and Tourism and the opinion of the Committee on Legal Affairs (A6-0055/2007),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

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<sup>8</sup> Not yet published in OJ.

Amendment 1  
Recital 1 a (new)

***(1a) Protection of European coasts and European citizens in the face of ecological damage of any kind resulting from maritime accidents is an absolute priority for the EU.***

Amendment 2  
Recital 1 b (new)

***(1b) Protecting European coasts involves the dual aspects of preventing accidents by ensuring that only safe ships sail and of providing for the arrangements required to ensure that victims can, in as short a time as possible, receive compensation fully commensurate with the damage caused by an accident.***

Amendment 3  
Recital 3

(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.

(3) The international ***regimes*** in respect of civil liability and compensation ***of third parties for damage related to maritime transport*** should be ***implemented and*** improved in order to guarantee that operators in the maritime transport chain ensure that ***goods are*** only transported on board ***ships*** of the highest standard, ***to ensure fair compensation of victims who are not party to the maritime transport chain and to encourage operators and their representatives to exercise greater vigilance and professionalism.***

Amendment 4  
Recital 4 a (new)

***(4a) It is also appropriate that the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the HNS Convention) and the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunker Oil Convention) be ratified by all Member States and by a large number of third countries and that all Member States and a large number of third countries ratify the Wreck Removal Convention when it is adopted.***

Amendment 5  
Recital 5 a (new)

***(5a) It should not be possible to apply limitation of liability under the 1996 Convention to victims not party to the maritime transport operation, if the owner of the ship responsible for the damage has failed to act in a professional manner and should have been aware of the harmful effects of his act or omission.***

Amendment 7  
Recital 9

(9) The European Maritime Safety Agency established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council should provide the necessary assistance for the purpose of implementing this Directive.

(9) The European Maritime Safety Agency established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council should provide the necessary assistance for the purpose of implementing this Directive, ***especially with a view to averting legal inconsistencies between Member States.***

Amendment 9  
Article 2, point 3

(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];

(3) “civil liability” ***for the purposes of the 1996 Convention*** means the liability ***by virtue of which a third party to the maritime transport operation responsible for the damage caused is entitled to make*** a claim subject to limitation under Article 2 of ***that*** 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];

Amendment 10  
Article 2, point 3 a (new)

***(3a) "gross negligence" means conduct showing an unusual lack of due care and a consequent disregard of what should in principle have been clear to everyone in a given situation.***

Amendment 11  
Article 2, point 5

(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;

(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 ***and reproduced in Annex Ia***;

*(Annex Ia to be amended accordingly)*

Amendment 12  
Article 2, point 5 a (new)

***(5a) “Bunker Oil Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001;***

Amendment 13  
Article 2, point 5 b (new)

**(5b) 'HNS convention' means the International Convention of 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;**

Amendment 14  
Article 2, point 6

(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”.

(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”, **reproduced in Annex Ib.**

*(Annex Ib to be amended accordingly)*

Amendment 15  
Article 3

1. This Directive shall apply, **in accordance with international law**, to maritime areas under the jurisdiction of Member States.

1. This Directive shall apply, **with the exception of Articles 3a and 3b**, to:

**(a)** maritime areas under the jurisdiction of Member States, **in accordance with international law;**

**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.

**(b)** 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.

**3.** This Directive shall not apply to warships, auxiliary warships or other State-owned or operated ships used for a non-commercial public service.

**2.** 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.

**3.** This Directive shall be without prejudice to the implementation in each Member State of the Conventions listed in **Articles 3a and 3b, and Annex I.**

Amendment 16  
Article 3 a (new)

*Article 3a*

*Civil liability for bunker oil pollution  
damage*

*Member States shall become contracting parties to the Bunker Oil Convention as soon as possible and in any case before the date indicated in Article 13.*

Amendment 17  
Article 3 b (new)

*Article 3b*

*Damage caused by the carriage by sea of  
hazardous and noxious substances*

*Member States shall become contracting parties to the HNS Convention as soon as possible and in any case before the date indicated in Article 13.*

Amendment 19  
Article 4, paragraph 1

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.

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. *Member States which are still parties to the 1976 Convention on Limitation of Liability for Maritime Claims must denounce it.*

Amendment 20  
Article 4, paragraph 2 a (new)

*2a. For the purposes of applying Article 4 of the 1996 Convention, knowledge of probable damage by the person responsible may in all cases be deduced from the nature and circumstances of the personal act or omission of that person committed recklessly.*

Amendment 21  
Article 6, paragraph 1

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 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), **and to cover costs of accommodation, medical care, and repatriation.**

Amendment 22  
Article 7, paragraph 2, subparagraph 1

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.

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 issuing certificates, competent authorities shall also consider whether a guarantor has a business establishment in the EU.**

Amendment 23  
Article 8, paragraph 1

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.

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. **The authority concerned shall forward a copy of the certification file to the Community Office provided for in Article 10b so that the latter may include it in the register.**

Amendment 24  
Article 8 a (new)

**Article 8a**

**Penalties**

***Member States shall monitor compliance with the rules laid down in this Directive and shall establish penalties for the infringement of these rules. These penalties shall be effective, proportionate and dissuasive.***

Amendment 25  
Article 10 a (new)

**Article 10a**

***Solidarity fund to cover damage caused by ships without a financial guarantee***

***A solidarity fund shall be set up to compensate third parties, whether natural or legal persons, that have suffered damage caused by ships which, notwithstanding the obligations laid down in this Directive, have sailed in EU territorial waters without being covered by a financial guarantee certificate.***

***The amount to be allotted to this fund, and the fund's operating rules, shall be determined in accordance with the procedure referred to in Article 12.***

Amendment 26  
Article 10 b (new)

*Article 10b*

*Community Office*

*A Community Office shall be established which is responsible for keeping a full register of certificates issued, monitoring and updating their validity, and checking the existence of financial guarantees registered by third countries.*

Amendment 27  
Article 11

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.

Five years after this Directive enters into force the Member States shall report to the Commission on the experience gained in applying the Directive. ***These reports shall assess in particular the procedures for certification and issuing of certificates by Member States and the need to consider whether this task should be delegated wholly or partly to the Community Office referred to in Article 10b.*** 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.

Amendment 28  
Annex I, indents 2 and 3

***- 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).***

***deleted***

***- The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 ("Bunker Oil" Convention).***