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STATEMENT OF THE COUNCIL'S REASONS

Subject : Common position adopted by the Council with a view to the adoption of a Directive of the European Parliament and of the Council establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC

STATEMENT OF THE COUNCIL'S REASONS

I. Introduction

In the framework of the codecision procedure (art. 251 TEC), the Council reached, on 7 June 2007, a political agreement on the draft Directive establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC.¹ Following legal/linguistic revision, the Council adopted its common position on xx May 2008.

In taking its position, the Council took account of the opinion of the European Parliament in its first reading on 25 April 2007², as well as of the opinions of the Economic and Social Committee³ and of the Committee of Regions⁴. Furthermore, it considered the impact study carried out by the Commission during the examination of the proposed Directive.

The proposal aims at improving safety by establishing clear Community-wide rules on the independent technical investigations to be carried out following maritime casualties and incidents. The aim of such technical investigations is not to determine civil or criminal liability, but to establish the circumstances and to research the causes of maritime casualties or incidents in order to draw all possible lessons from them. The proposal is drawn up in compliance with the rules of international maritime law and in accordance with the definitions and recommendations in the IMO Code for the Investigation of Marine Casualties and Incidents.

II. Analysis of the Common Position

The Council agrees with the objective and most of the main elements of the Commission proposal that provide an adequate mechanism for ensuring appropriate return of experience from accidents and incidents in order to prevent other casualties. The approach adopted by the Council required, however, some modifications of the text, in particular with a view to ensuring the independence and discretion powers of the investigative body.

¹ The Commission transmitted its proposal on 13 February 2006.

² doc. 8724/07 CODEC 389 MAR 28 ENV 206 (not yet published in the Official Journal).

³ CESE 1177/2006 of 13.9.2006 (OJ C 318 of 23.12.2006 - p.195 - 201).

⁴ CdR 43/2006 of 15.6.2006 (OJ C 229 of 22.9.2006, p.38).

The following issues were considered of major importance during the examination of the proposed Directive in the Council bodies and are reflected in the Council's common position:

The Council is of the view that, in coherence with the nature of the legal act, Member States, and in particular their respective investigative bodies, should retain certain flexibility and discretion related to carrying out safety investigations. Contrary to the original proposal that provided for mandatory safety investigations for very serious and serious marine casualties and incidents, the text agreed by the Council limits the obligation for safety investigations to very serious marine casualties or incidents and requires the investigative body in all other cases of marine casualties or incidents to decide whether or not to undertake a safety investigation, taking account in particular of the seriousness of the casualty or incident and the possible lessons to be learned. In addition, in the Council's view, there is no need to refer explicitly to distress alerts as a specific category of incidents that require safety investigations.

Furthermore, and following the example of the railways sector⁵, the Council deems it appropriate to emphasize that the investigative body shall be independent in its organisation, legal structure and decision-making of any party whose interests could conflict with the task entrusted to it in order to carry out safety investigations in an unbiased manner. It is to be understood that each Member State, in accordance with its own administrative organisation, sets up the investigative body as a public structure with the greatest possible autonomy in terms of internal functioning. This structure can be linked to a bigger entity like a ministry or administration, but will have to be regulated by provisions guaranteeing its independence, particularly from other administrative authorities likely to be interested in any maritime accident. For reasons of proportionality, Member States, which have neither ships nor vessels flying their flag, will identify an independent focal point to cooperate in safety investigations involving a substantial interest of that Member State.

⁵ Article 21 of Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) (OJ L 164, 30.4.2004).

In line with the requirements laid down in Community Law for safety investigations in the air transport and railways sectors, the Council agrees with the European Parliament that safety investigations have to be differentiated from criminal investigations or other proceedings aimed at determining liability and apportioning blame. The text of the common position establishes that investigations under this Directive have no other aim than to determine the causes of casualties. At the same time, and in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents, it stipulates that the investigative body should not refrain from full reporting to this effect because fault or liability may be inferred from the findings. In case national law does not provide for a clear separation of safety investigations from criminal or other administrative investigations, Member States have to ensure, by defining the legal status of safety investigations, that these can be carried out as effectively and rapidly as possible and are not unduly precluded or suspended by other investigations.

Concerning the scope of the Directive, the Council includes in its common position small fishing vessels with a length of more than 15m, and not only vessels above 24m length as in the original proposal. This is done for reasons of consistency with the Council's common position on the draft Directive of the European Parliament and of the Council amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system. According to this draft Directive, these vessels are obliged to be equipped with AIS (Automatic Identification System) to improve the possibilities of monitoring these ships and to make them safer in close navigation situations. They should, therefore, also be covered by the Directive concerning the investigation of accidents.

Related to the methodology for investigating marine casualties and incidents, the Council deems it appropriate to provide for more flexibility, while establishing the bases for a continuous exchange of experience. Compared to the original proposal, Member States have more leeway in implementing the principles of the common methodology that is developed with the assistance of the European Maritime Safety Agency and adopted in accordance with the regulatory procedure with scrutiny. At the same time, based on the experience gained in the conduct of safety investigations, the Commission and the Member States will develop guidelines on processes and best practices to be used in implementing the common methodology.

III. Amendments

In agreeing on its common position, the Council took account of the points of view expressed by the European Parliament in its first reading of the proposal. The following elements of the EP's opinion are reflected in the common position, some of them partly or in principle: amendments 3, 9, 10, 11, 22 and 23.

A number of other amendments were, however, not acceptable for the Council. With regard to amendments 2 and 19, the Council believes that the joint methodology should not deal with the findings of safety investigations but rather focus on procedural aspects. Amendments 5 and 8 are in the Council's view not compatible with its approach to the principle of differentiation between criminal and technical investigations. Amendments 7 and 20 could not be accepted because the Council believes that it is not appropriate to specify the competences of the European Maritime Safety Agency (EMSA) in this Directive. Amendments 12 and 13 would restrict the working methods of the investigative body or are too prescriptive. Amendments 14 and 26 could not be accepted because the Council attaches major importance to the principle of impartiality of the investigative body and is of the view that it is up to each Member State to set up this body in accordance with its own administrative structure. Amendment 16 is not compatible with the need to respect national law.

A set of other amendments (4, 6, 15, 17, 18 and 24) was rejected either because they were not entirely clear or they do not correspond to the Council's approach for a concise text.

IV. Conclusion

The Council believes that the text of its Common Position is appropriate and balanced. It shares the aim of the European Parliament to establish a framework ensuring rapid safety investigations into maritime casualties and incidents. The Common Position includes some of the EP amendments adopted in first reading.

The Council reaffirms its engagement to start negotiations with the European Parliament on this text with a view to reaching an agreement as soon as possible.