



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 7 May 2008**

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**Interinstitutional File:  
2005/0237B (COD)**

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**5726/08  
ADD 1**

**MAR 15  
ENV 38  
CODEC 93**

**STATEMENT OF THE COUNCIL'S REASONS**

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Subject : Common Position adopted by the Council with a view to the adoption of a Regulation of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations (Recast)

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**STATEMENT OF THE COUNCIL'S REASONS**

## I. Introduction

In the framework of the codecision procedure (art. 251 TEC), the Council reached, on 30 November 2007, a political agreement on two separate legal instruments based on the related Commission proposal<sup>1</sup>: a draft Directive on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (recast) and a Regulation on common rules and standards for ship inspection and survey organisations (recast). This document concerns the part of the Commission proposal that constitutes the recast Regulation.<sup>2</sup>

Following legal/linguistic revision, the Council adopted its common position on xx May 2008.

In taking its position, the Council took account of the opinions of the Economic and Social Committee<sup>3</sup> and of the Committee of Regions<sup>4</sup>. A large number of the European Parliament's amendments, adopted at first reading on 25 April 2007<sup>5</sup>, were integrated or reflected in the related text, whether it forms part of the Directive or the Regulation according to the Council's position.

The proposal aims at recasting successive amendments to Directive 94/57/EC establishing common rules and standards for organisations that inspect ships and issue ships' certificates, the so-called "recognised organisations". Furthermore, certain provisions of the existing Directive are amended with a view to simplification or harmonisation or in order to reinforce the current rules, e.g. by strengthening the control of recognised organisations and by reforming the system of penalties against those that do not fulfil the minimum recognition criteria.

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<sup>1</sup> The Commission transmitted on 30 January 2006 its proposal for a recast Directive on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (doc. 5912/06 MAR 11 ENV 50 CODEC 95).

<sup>2</sup> The Council's common position on the draft Directive is set out in doc. 5724/08, the related statement of reasons in doc. 5724/08 ADD 1.

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

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

<sup>5</sup> Doc. 8724/07 CODEC 389 MAR 28 ENV 206 (not yet published in the Official Journal).

## **II. Analysis of the Common Position**

### **a) Form of the legal act**

The main issue raised during the discussions in the Council bodies was the form of the legal act proposed by the Commission. Several provisions in the proposed Directive must be understood to either impose obligations directly or devolve competence on the Commission to impose such obligations on individuals, in this case the recognised organisations. This was confirmed by the Council Legal Service in its opinion of 8 October 2007 (doc. 13616/07) that advised to adopt the act in the form of a Regulation or, alternatively, to redraft the provisions in question or to split the act into one Directive and one Regulation.

In its political agreement, the Council agreed to split the text into two separate instruments, a Directive and a Regulation. The Directive includes the provisions addressed to the Member States concerning their relationship with recognised organisations, while the Regulation contains all provisions related to the recognition at Community level, i.e. the granting and the withdrawal of the recognition by the Commission, the obligations and criteria to be fulfilled by the organisations to be eligible for Community recognition as well as possible sanctions against recognised organisations that fail to fulfil these obligations and criteria.

### **b) Main issues related to the Regulation**

Apart from the decision to include all provisions related to the Community recognition of ship inspection and survey organisations in a new Regulation, the Council deemed appropriate to modify these provisions for reasons of clarity or based on the following considerations:

1) *Scope of recognition and minimum recognition criteria*

The Council, as the European Parliament, considers it important to emphasize that the organisation to be recognised, regardless of its corporate structure, should provide services worldwide. In case of a limited recognition, the common position provides for transparency as to the reasons of the limitation and the conditions to modify it. To avoid any downgrading of the minimum criteria for the recognition, the common position foresees the possibility to fix, through the comitology procedure, rules on the interpretation of, and objectives for, these criteria, in particular concerning the number of staff members to be employed by the recognised organisations.

2) *Imposition of fines against recognised organisations*

In the Council's view the Member States are to be informed through the advisory procedure about any decision to be taken by the Commission in order to impose fines against recognised organisations that do not fulfil their obligations under the Regulation.

3) *Harmonisation of rules and procedures of recognised organisations and mutual recognition of certificates issued by them*

The Council approves the Commission's proposal to encourage recognised organisations to further harmonise their rules and procedures and to consider when to mutually recognise their certificates for materials, equipment and components. The common position includes, however, a set of safeguard clauses. The latter relate to cases where the mutual recognition of certificates cannot be agreed upon between recognised organisations or to cases where it has been confirmed that material, a piece of equipment or a component is not in compliance with its certificate.

In line with the European Parliament, the Commission is asked to provide a report on the level reached in the process of harmonisation of the rules and procedures of recognised organisations and on mutual recognition of certificates issued by them.

4) *Assessment and certification of the quality management systems of recognised organisations*

The Council fully agrees with the broad outlines of the Commission's proposal that recognised organisations set up an entity responsible for the assessment and certification of their quality management systems. Mostly in line with the European Parliament's amendment, the Council emphasizes in the common position that this should be done in accordance with the applicable international quality standards and following the advice from the relevant professional associations working in the shipping industry.

Further modifications by the Council of the provisions related to this Quality Assessment and Certification System aim in particular at streamlining the tasks of this entity and clarifying that it must have the necessary governance and competences to act independently of the recognised organisations.

5) *Introduction of the regulatory procedure with scrutiny*

In accordance with the amended Comitology Decision <sup>6</sup>, the Council introduces in its common position the regulatory procedure with scrutiny to amend the Regulation according to amendments to the international conventions, protocols, codes and resolutions, to update the minimum recognition criteria and to adopt criteria to measure the effectiveness of the rules and procedures as well as the performance of the recognised organisations as regards safety and pollution prevention.

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<sup>6</sup> Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, as amended by Council Decision 2006/512/EC of 17 July 2006 (OJ L 200, 22.7.2006, p. 11.)

### **III. Amendments**

The common position incorporates a large number of the European Parliament's first-reading amendments, either verbatim or partly or in principle: 6, 11, 12, 15, 16, 17, 18, 20, 25, 26, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 50, 52, 53, 54, 55, 56, 59, 60, 61, 62, 64, 66, 68, 69, 71 and 74. The related provisions are often consistent with the amendments, but not identical, due to the necessary adaptation of the text resulting from the splitting of the original proposal into two separate instruments.

The remaining amendments could not be accepted because, in the Council's view, they are not consistent with the procedures of Community recognition (amendment 14), not entirely clear or seem to be redundant (amendments 19, 23, 57 and 67) or are not consistent with the Council's approach to the setting up of the entity responsible for the assessment and certification of the quality management systems of recognised organisations (amendments 63, 65 and partly 74).

### **IV. Conclusion**

The Council believes that its common position is the appropriate way to lay down provisions related to the recognition of ship inspection and survey organisations at Community level by adopting a Regulation, accompanied by a Directive providing for measures to be followed by Member States in their relationship with these organisations.

The text of the common position reflects a large number of the European Parliament's amendments. The Council looks forward to engaging in constructive discussions with the European Parliament with a view to reaching an agreement as soon as possible.

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