



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 17 March 2008

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

7630/08

LIMITE

**MAR 43
ENV 167
CODEC 374**

PROGRESS REPORT

from : Shipping Working Party
to COREPER/Council

No. Cion prop. : 6843/06 MAR 23 ENV 131 CODEC 201

No. prev. doc. 7509/08 MAR 40 ENV 156 CODEC 353

Subject : **Preparation for the Council meeting (Transport, Telecommunications and Energy) on 7 April 2008**
Proposal for a Directive of the European Parliament and of the Council on compliance with flag State requirements
- Policy debate/Progress report

Introduction

1. On 24 February 2006, the Commission transmitted to the Council and the European Parliament the above mentioned proposal. The proposal is part of the third maritime safety package. The proposed Directive aims at ensuring that Member States effectively and consistently discharge their obligations as flag States in accordance with the IMO Conventions relating to maritime safety and the prevention of pollution caused by ships. To this effect, the proposal foresees that all Member States become party to the IMO conventions and apply in full the mandatory flag State related provisions laid down therein, and that parts of the IMO Code for the implementation of mandatory IMO instruments ("Flag State Code") as well as the Voluntary IMO Member State Audit Scheme would become compulsory at Community level.

2. The work on the Commission proposal in the relevant Council Working Group started with its presentation and exchange of views under the Finnish and the Portuguese Presidency. Under the Slovenian Presidency the Shipping Working Party, which examined thoroughly the above proposal and Coreper on 7 March 2008 came to the following conclusions:

The position of Member States in relation to the directive on flag State requirements

3. All Member States stated their support for the underlying objective of the Commission proposal to ensure that Member States fulfil their responsibility as regards the obligations they incurred as flag States at international level. In relation to their responsibility as flag States, it can be concluded that EU Member States attach the greatest importance to improving maritime safety and the prevention of pollution caused by ships.
4. Nevertheless, a majority of Member States considers that a legislative text at Community level would not be the right instrument to regulate this aspect of maritime safety, which is already addressed at international level through the Voluntary IMO Member State Audit Scheme and non-mandatory Flag state Code. Member States are of the opinion that a significant number of provisions of the proposed Directive would duplicate existing Community legislation and provisions included in other proposals of the third maritime safety package and entail a disproportionate administrative burden for national administrations. Some delegations expressed serious concerns related to the mandatory ratification of the IMO conventions foreseen by the Directive, which, in some cases, would run against constitutional principles. A significant number of Member States have serious difficulties with the provisions concerning the mandatory application of the IMO Flag State Code at Community level. In general, a large majority of Member States favour a "soft law" approach to ensure that flag States comply with their international obligations.

The two voluntary IMO instruments mentioned above are already implemented by a large number of Member States, several of which have already been or are scheduled to be audited by IMO according to the scheme.

5. On the basis of a simplified proposal presented by the Presidency in February 2008, progress was made on a number of technical issues. In particular, several provisions of the original proposal were deleted, as they were considered to overlap with other legislative texts from third maritime package and/or the Flag State Code, and other provisions were adapted *inter alia* in line with the related IMO provisions. Despite the efforts made by the Presidency to ensure the adoption of the Commission proposal even in a modified version, the majority of delegations pleaded for a more proportionate and effective way to strive for coherent implementation of the international instruments in this field by strengthening the international framework.

Only four delegations fully supported the Commission approach and considered a Community legislative act the appropriate measure to pursue the above objective.

Coreper on 7 March 2008 examined the possibility of deleting Article 3 and of rendering compulsory only the IMO Audit Scheme, but not the Flag State Code, through the proposed Directive. Four delegations supported the Commission's position in favour of rendering the Flag State Code mandatory. Several delegations favoured in principle the deletion of Article 3 relating to the Flag State Code. However, they expressed some concerns related to the fact that even without that provision other remaining articles in the Directive would make the above IMO Conventions and related Protocols compulsory at Community level. Therefore, issues included in these Conventions would become matters of exclusive Community competence. In addition, a significant number of delegations did not see any added value in adopting such a "reduced" Community instrument.

Commission's view on the position by Member States

6. The Commission is of the opinion that, despite the ratification of the relevant IMO Conventions and Protocols by almost all Member States, the effective level of safety and the prevention of pollution caused by ships varies considerably from one flag State to another. In this context, it considers that prove that Community action is necessary lies with the fact that six Member States remain in the grey list of the Paris MoU on Port State control and even one Member State in the black list, which represent eight percent of the EU fleet. Its proposal, therefore, focuses on improving the ways and means to ensure the compliance of flag States with their international obligations, thereby providing for the missing link in the panoply of maritime safety legislation as the prime responsibility for the effective implementation of the international maritime safety conventions lies with the Flag State.

7. The Commission sees the adoption of the proposed Directive as a necessary action to achieve the objective referred to in the preceding paragraph and a clear signal to the international shipping world that the EU Member States are strongly committed to improving maritime safety and the prevention of pollution caused by ships and that they are willing to make compulsory the relevant voluntary IMO instruments. In its view, this would be the most appropriate measure to enhance the performance of all Member States as flag States in order for them to be included, and then to stay, in the white list of the Paris Memorandum of Understanding. While rendering the flag State Code and the IMO audit scheme mandatory for the Member States would be the way to resolve this problem for the EU, the Commission would furthermore be ready to endorse a joint declaration whereby the European Community and its Member States would pursue the objective of rendering these instruments mandatory at international level.

Conclusions

8. The Council has already reached a political agreement on six texts based on five proposals of the third maritime safety package, whose common positions will be shortly transmitted to the European Parliament. Accordingly, the Council reaffirms its engagement to start negotiations with the European Parliament on these texts with a view to reaching an agreement ensuring that their implementation will start as soon as possible.

9. Member States consider the measures proposed by the Directive on flag State requirements as a not appropriate way to achieve the goals of improved safety and pollution prevention in the maritime sector. Instead Member States reaffirm their commitment to take the necessary measures to implement the IMO Conventions and the related Protocols listed in part 1 of the Flag State Code. This would guarantee a level playing field among the maritime administrations of the Member States in order to ensure that they will all be included in the white list of flag States set up in the framework of the Paris Memorandum of Understanding. Member States underline the importance of sharing best practices to this effect in an unbureaucratic way and acknowledge the usefulness of a continuous review and verification by the IMO of the effective implementation of their obligations resulting from the above Conventions.

10. Furthermore, the EU Member States confirm that they will take the appropriate measures within the IMO in order to make the IMO Member State Audit Scheme mandatory, with the aim of achieving a level playing field worldwide concerning the way flag States comply with their international obligations and thus contributing to the improvement of maritime safety and the protection of the marine environment and to the elimination of sub-standard ships.