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PROGRESS REPORT

From : General Secretariat of the Council

To : COREPER/Council

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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 the civil liability and financial guarantees of shipowners

- Policy debate/Progress report

Introduction

1. On 31 January 2006, the Commission transmitted to the Council and the European Parliament the above mentioned proposal which is part of the third maritime safety package.

The aim of the proposed Directive is to harmonise, at Community level, the ceilings of liability of shipowners and to introduce a compulsory insurance scheme. To this end, it is proposed as a first step, that all Member States become contracting parties to the 1996 Convention on the Limitation of Liability for Maritime Claims (LLMC 1996) and that those rules are incorporated into Community law. As a second step, the Commission will seek a mandate for negotiating at the IMO the revision of the LLMC 1996, in order to review the level at which shipowners lose their right to limit their liability. In addition, the Commission proposes a complementary system of mandatory insurance effective and accessible to victims.

2. The work on the Commission proposal in the relevant Council Working Group started under Portuguese Presidency. The Slovenian Presidency continued the examination of the proposal and the Shipping Working Party as well as Coreper on 7 March examined the above proposal and came to the following conclusions:

Position of Member States in relation to the Directive on civil liability

3. Member States support the aim of the Commission proposal for more effective coverage of the interest of accident victims.

4. In difference to the Commission's approach Member States favour solutions at global level (IMO) rather than specific solutions at community level in order to better reach the above mentioned objective. They refer to the International Conventions on liability and compensation (L&C)¹ and emphasise the need to bring all of them into force as soon as possible. The parallel existence of rules of Community and international law might be contradictory and create confusions. In that context, nearly all delegations opposed the proposed doubling of the LLMC 96 liability ceilings as minimum amount of insurance cover. One delegation is against the principle of any limitation of liability of shipowners. Member States consider that the establishment of a specific Community regime (regional approach) might not only be incompatible with the international obligations accepted by third countries but also discourage the latter of working towards the improvement of international provisions.
5. Furthermore, some delegations expressed serious concerns related to the fact that the adoption of this Directive by qualified majority would create an obligation for all Member States to ratify an international convention. In some cases, this obligation would run against constitutional principles. In addition, some delegations expressed the opinion that this obligation violates European Law, namely the EC Treaty. A large majority of delegations are of the opinion that "soft law" approach would be a more appropriate instrument to reach an effective coverage of accident victims.
6. Nearly all delegations consider that this proposal would create unnecessary burdens for national administrations; they opposed in particular the provisions related to issuing and verification of certificates.
7. Some delegations supported broadly the Commission proposal and considered that it might have some added-value. They considered that, in principle, the establishment of regional rules, to be extended to third countries through the international rules might be a correct approach. They also considered that most of the difficulties perceived by delegations have a pure technical nature and that, therefore, the examination of the Commission proposal should be pursued in order to solve them.

¹ The Convention on Civil Liability for Oil Pollution Damage 1992, the Hazardous and Noxious Substances Convention 1996, the Bunker Oil Convention 2001 and the Wreck Removal Convention 2007

8. Following the discussions at the Shipping Working Party, the Presidency presented a modified proposal taking account of the comments made by delegations. A large majority of the delegations indicated they could not support this modified proposal, despite the major changes introduced by deleting or modifying problematic provisions of the draft Directive. Therefore, the Presidency considered that the work of the Shipping Working Party had reached the point where no other additional changes to the Commission proposal seemed conceivable without significantly reducing the meaning of the Commission proposal. Accordingly, it was agreed to report to Coreper.

9. At the Coreper meeting, on 7 March 2008, the Presidency asked delegations for guidance on how to proceed in the future on this dossier considering the existing deadlock.

Most delegations reiterated their opinion that the appropriate means to deal with this issue should be found at international level given the global nature of the maritime sector. Therefore, they could not support the Commission proposal. Three delegations, however, expressed a different opinion, considering the proposed approach as an adequate solution to deal at Community level with the problems of civil liability and financial guarantees of shipowners.

Commission's view on the position by Member States

10. In response to the above positions by Member States, the Commission recalled that although a number of L&C Conventions have been adopted, some of them have been ratified only by a few number of Member States and their implementation has been delayed. Therefore, there is uncertainty as to if and when these L&C Conventions will actually be in force in all 27 Member States one day. The Commission states that unfortunately several misunderstandings have been created since the very beginning of the proposal's examination. The Commission argued that the proposed Directive does not introduce a regional scheme but it offers an interim solution to overcome the difficulties with the implementation of these Conventions as the Commission proposal is designed to anticipate their entry into force with no duplication effect. Against that background, the Commission stated that the proposal would ensure that the shipping industry benefits from the same regime of limitation of liability all over the EU and that the victims are granted harmonised and sufficiently high compensation ceilings.

The modified Directive gives effect to the solutions favoured at global level and, is in line with international law.

Even when the L&C Conventions enter into force, the proposed Directive would still have an added value because it would cover at the same time certain gaps in these Conventions, particularly regarding insurance provisions for small ships not covered by the international Conventions.

Conclusion

11. During the examination of the above proposal all Member States reaffirmed their strong commitment to take the necessary measures to strengthen the maritime safety policy. It was recalled that the Council has already adopted six political agreements on the basis of five Commission proposals of the third maritime package. The related common positions should be shortly transmitted to the European Parliament in order to reach a quick agreement and start their implementation as soon as possible.

Furthermore, Member States agree to take the necessary steps to implement the existing liability rules of shipowners, in order to help to prevent damage caused by ships to third parties and to effectively respond to the interests of accident victims but not through proposed Civil liability directive. Accordingly, they reaffirm their commitment to examine all possible solutions to achieve that aim, in particular through the ratification as soon as possible of the LLMC 1996 and the implementation of its provisions. This commitment should significantly contribute to the enhancing of maritime safety.
