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THE EUROPEAN UNION**

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## **REPORT**

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from: COREPER  
to: Council

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No. prev. doc.: 13436/08 MAR 145 ENV 595 CODEC 1195

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Subject: Proposal for a Directive of the European Parliament and the Council on the civil liability and financial guarantees of shipowners  
– Political agreement

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## **Introduction**

1. On 2 February 2006 the Commission transmitted the aforementioned proposal for a Directive to the Council and the European Parliament. The Directive forms part of the third maritime safety package.

The European Parliament delivered its first-reading opinion on 29 March 2007.

The Economic and Social Committee and the Committee of the Regions adopted their opinions on 13 September 2006<sup>1</sup> and 15 June 2006<sup>2</sup> respectively.

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<sup>1</sup> OJ C 2006/318, 23.12.2006.

<sup>2</sup> OJ C 2006/229, 22.9.2006.

2. The Council held a public policy debate on the proposal at its meeting on 7 April 2008. During that debate, all the Member States underlined the importance which they attached to improving maritime safety. In particular, Member States stated that they were willing to take the steps necessary to implement the rules relating to shipowners' liability. However, most Ministers said that, in their opinion, the legislative proposal was not the most effective means of achieving the objectives referred to in the proposal for a Directive. Consequently, the Slovenian Presidency considered at the time that there was not enough political support to be able to work on that proposal in the near future.
  
3. In September 2008 the French Presidency submitted a revised version of the proposal to delegations, based on the work carried out under the Slovenian Presidency and on the comments made by delegations. Without prejudice to their general position, all delegations engaged in a thorough examination of the revised draft Directive. It takes account of the concerns expressed by delegations, in particular as regards a possible transfer of powers from the Member States to the Community, an excessive administrative burden for national administrations and direct action against the insurer. It has been possible to resolve most of the technical issues on the basis of this simplified text.

### **Main questions examined by Coreper**

4. At its meeting on 1 October, Coreper examined the amended text presented to it by the Working Party and was able to resolve most of the outstanding questions. Certain questions were the subject of reservations from some delegations that could be lifted at the Council meeting on 9 and 10 October<sup>3</sup>.

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<sup>3</sup> Changes to the previous document (13436/08) are indicated in **bold/ bold + underlining** in the case of new text, in ~~strike through~~ in the case of deleted text, and as [...] in cases where an article or a recital is deleted.

5. The definition of "shipowner" in Article 2(2), p. 9

The definition of "shipowner" plays an important role within the framework of this proposal for a Directive since it will determine who will be liable for certain insurance-related obligations. In that connection, the Presidency suggested following to the letter the definition and scope laid down in IMO Resolution A.898 (21).

However, NL, which maintains its reservation, and CY, on the basis of the wording of the definition of shipowner given in certain international conventions, considered that it should be stipulated that the term refers to the registered owner of a vessel. CY also proposed the addition of "or the bareboat charterer". As a compromise, the Presidency proposed a new wording.

6. At the Coreper meeting on 1 October, ES, IT and SE proposed extending the provisions of Article 5(2) to allow Member States to impose insurance on the owners of ships not flying their flag on their entry into the waters within their jurisdiction. The Presidency had proposed in this connection an optional wording opening up the possibility of such a requirement for Member States in the case of such ships; however, that proposal met with reservations from some Member States and doubts were raised as to its compatibility with the UNCLOS Convention and with the right of "innocent passage" it protects. To facilitate a compromise, the Presidency proposed a new wording which limits this possibility to the entry into a Member State's territorial waters of ships bound for one of its ports.

7. Inspections and compliance (Article 5a(2), page 11)

DK wished to have Article 5a(2) deleted. The UK also wanted to have at least the last sentence of that paragraph deleted. According to the DK and UK delegations, since such inspections are already carried out in the framework of checks by the port State (covered by another third package proposal for a Directive), such a system of penalties would be superfluous and that paragraph would only give rise to new administrative charges for the competent national authorities. The majority of delegations and the Commission could support the Presidency's approach.

8. Penalties, Article 10a, p. 13

Some delegations (PT, MT and SI) expressed their doubts as to the need for provisions on penalties in the context of this Directive. The delegations in question considered such a system of penalties would be superfluous in this Directive, since inspections are carried out within the framework of checks by the port State. The Presidency, supported by a majority of delegations, made the wording more precise in order to clarify that this Article referred to Member States as flag States.

**Other questions outstanding**

9. Apart from the aforementioned questions, DE entered a scrutiny reservation regarding the inclusion of the term "self-insurance" in the definition of insurance (Article 2(4), page 9). MT stated that for the moment it was maintaining its scrutiny reservation on the scope of the Directive (Article 3, page 10).
10. All delegations and the Commission maintain a general reservation on this proposal, in particular as regards the amendments made at the Coreper meeting on 1 October 2008. MT and UK have also entered parliamentary scrutiny reservations on the text as a whole.

## Conclusion

11. With a view to obtaining a political agreement at the Transport, Telecommunications and Energy Council on 9 and 10 October 2008, the Presidency submits the compromise text set out in the annex. The Council is therefore invited to indicate whether it can reach a political agreement on the attached proposal for a Directive.

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Proposal for a  
**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of [...]**  
**on the insurance of shipowners for maritime claims**  
**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>4</sup>,

Whereas:

- (1) One element of Community maritime transport policy is to improve the quality of the merchant [...] **shipping** by making all economic operators act more responsibly.

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ C [...], [...], p. [...].

- (2) Dissuasive measures have already been adopted 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<sup>5</sup>.
- (3) [...]
- (4) On [date of adoption of Member States' statement], the Member States adopted a statement in which they unanimously recognize the importance of the application of the 1996 Protocol to the 1976 Convention on Limitation of Liability for Maritime Claims (hereafter "the 1996 Convention") by all Member States.
- (5) [...]
- (6) The obligation to have an insurance should make it possible to ensure better protection to victims. It will also help eliminate substandard ships and make it possible to re-establish competition between operators. Furthermore, in Resolution A 898(21), the International Maritime Organisation invited States to urge shipowners to be properly insured.
- (7) [...]
- (8) [...]
- (9) [...]
- (10) [...]

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<sup>5</sup> OJ L 255, 30.9.2005, p. 11.

(11) Since the objectives of the action to be taken, namely the introduction and implementation of appropriate measures in the field of maritime transport policy, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

## *Article 1*

### **Subject-matter**

This Directive lays down rules applicable to certain aspects of the obligations on shipowners as regards their insurance for maritime claims.

## *Article 2*

### **Definitions**

For the purpose of this Directive:

- (1) [...]
- (2) "shipowner" means the **registered** owner of a seagoing ship, or any other ~~organization or~~ person **such as the bareboat charterer who is responsible** ~~or which has assumed responsibility~~ for the operation of ~~such a~~ **the** ship;
- (3) [...]
- (4) "insurance" means insurance with or without deductibles, and comprises, for example, indemnity insurance of the type currently provided by members of the International Group of P&I Clubs, and other effective forms of insurance (including self-insurance) and financial security offering similar conditions of cover;
- (5) "1996 Convention" means the consolidated 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;

### *Article 3*

#### **Scope**

1. [...]
2. This Directive shall apply to ships of 300 gross tonnage or more.
3. 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 ~~insurance regimes applicable to the claims covered by~~ **established by** the instruments in force in the Member State concerned and listed in Annex I.

### *Article 4*

#### **Regime of liability**

[...]

### *Article 5*

#### **Insurance for maritime claims**

1. Each Member State shall require that shipowners of ships flying its flag have an insurance covering such ships.
2. Each Member State shall require ~~that~~ shipowners of ships flying ~~another~~ **other** flag than its own ~~to~~, have an insurance **in place** when such ships ~~are entering~~ a port under ~~it's~~ the **Member State's** jurisdiction. **Each Member State may require the same when such ships are in its territorial waters providing that they are bound for one of its ports.**

3. The insurance referred to above shall cover maritime claims subject to limitation under the 1996 Convention. The amount of the insurance for each and every ship per incident shall be equal to the relevant maximum amount for the limitation of liability, **calculated according to the ship's gross tonnage**, as laid down in the 1996 Convention.

#### *Article 5a*

#### **Inspections, ~~and~~ compliance, expulsion from ports and denial of access to ports**

1. Each Member State shall ensure that any inspection of a ship in a port under its jurisdiction in accordance with Directive 2008/.../EC of the European Parliament and of the Council of ... [on Port State Control], includes the verification that a certificate referred to in Article 7 is carried on board.
2. If the certificate referred to in Article 7 is not carried on board, the competent authority may issue an expulsion order to the ship which will be notified to the other Member States, the Commission and the Flag State concerned. **As a result of the issuing of such an expulsion order**, every Member State shall refuse entry of this ship into any of its ports until the shipowner notifies the certificate referred to in Article 7.

#### *Article 6*

#### **Financial guarantee in case of abandonment of seafarers**

[...]

#### *Article 7*

#### **Insurance certificates**

1. The existence of the insurance referred to in Article 5 shall be proved by one or more certificates issued by its provider and carried on board the ship.
2. [...]
3. [...]

4. The certificates **issued by the insurance provider** shall include the following information:
- (a) name of ship, its IMO number, and ~~registry~~ **port of registry**;
  - (b) shipowner's name and principal place of business;
  - (c) type and duration of the insurance;
  - (d) name and principal place of business of the provider of the insurance and, where appropriate, the place of business where the insurance is established;
  - (e) [...]
5. If the language used in the certificates is neither English nor French nor Spanish, the text shall include a translation into one of these languages.

*Article 8*

**Notification of the financial security certificate**

[...]

*Article 9*

**Recognition of financial guarantee certificates and exchange of views**

[...]

*Article 10*

**Direct action against the provider of the financial security for civil liability**

[...]

## *Article 10a*

### **Penalties**

**For the purposes of Article 5(1)**, Member States shall lay down a system of penalties for the breach of national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties provided for shall be effective, proportionate and dissuasive.

## *Article 11*

### **Reports**

Every three years, the Commission shall present a report to the European Parliament and the Council on the application of this Directive.

## *Article 12*

### **Committee**

[...]

## *Article 13*

### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2012 at the latest.

When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 14*

**Entry into force**

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

*Article 15*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the European Parliament*

*The President*

[...]

*For the Council*

*The President*

[...]

- The International Convention on Civil Liability for Oil Pollution Damage, 1992.
- 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).
- The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 ("Bunker Oil" Convention).
- The Nairobi International Convention on the Removal of Wrecks, 2007 ("Wrecks Removal" Convention).
- Regulation (EC) No XXX/2008 of the European Parliament and of the Council of ... [on the liability of carriers of passengers by sea in the event of accidents].

[...]

[...]

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