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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.6.2008
COM(2008) 206 final

2005/0240 (COD)

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT**

pursuant to the second subparagraph of Article 251(2) of the EC Treaty

concerning the

**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**

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and the Council (document COM(2005) 590 final – 2005/0240 (COD)): 13.02.2006

Date of the opinion of the Committee of the Regions: 15.06.2006

Date of the opinion of the European Economic and Social Committee: 13.09.2006

Date of the opinion of the European Parliament, first reading: 25.04.2007

Date of adoption of the common position: 06.06.2008

2. OBJECTIVE OF THE COMMISSION PROPOSAL

In view of the shortcomings in the relevant IMO standards and given that it is essential that the causes of maritime disasters be identified in order to prevent future accidents, the proposal aims at promoting the obligation to conduct a systematic investigation based on high-quality, harmonised standards after major accidents at sea.

3. COMMENTS ON THE COMMON POSITION

Besides the amendments which are essentially drafting changes and do not change the scope of the text, but make it more specific or clearer (see in particular Articles 1, 3, 6, 10, 11, 12, 14, 16 and 19), attention should be drawn to the following differences between the common position and the original proposal:

- in Article 2, the maximum length of fishing vessels to be exempted from the Directive has been decreased from 24 metres to 15 metres;
- in Article 4, the provisions relating to the independence of the investigation have been redrafted to safeguard any prerogatives of the judicial authorities without compromising the fundamental principle that the investigation is independent;

- in Article 5, investigation is no longer mandatory for serious marine casualties; only very serious casualties have to be the subject of a systematic investigation as stipulated by the new code for marine casualty investigations, which is currently in the process of being adopted by the IMO;

All other accidents at sea must undergo an examination procedure to determine whether or not it would be useful to proceed to the investigation stage; distress alerts, on the other hand, have been excluded from the examination procedure which, given the large number of alerts of this type, would represent a very heavy workload for the national administrations without providing any demonstrated added value in terms of maritime safety.

The Council has also restricted the investigation methodology provided for in Article 5(4) to the setting out of mandatory principles for conducting investigations and has added a reference to guidelines which have to be developed by the Commission and Member States to implement the principles contained in the methodology.

- in Article 7, the rights of Member States participating in an investigation as a substantially interested Member State are detailed;
- in Article 8(1), the provisions ensuring the independence of the investigative body have been reformulated without calling this independence into question; furthermore, special provisions have been added for landlocked Member States with no fleet who may simply identify a local contact point to cooperate in the investigation;
- Article 9 has been reformulated to reflect the division of responsibilities between the authorities of certain Member States without the guarantees afforded by this Article being called into question;
- in Article 14(1), the investigative bodies are given the option of producing only a simplified report for investigations which do not concern very serious accidents and whose findings would not help prevent future accidents.

4. DETAILED COMMISSION COMMENTS

4.1. Amendments accepted by the Commission and incorporated in full or in part in the common position

Amendment 5 is acceptable in that it stresses the fact that the investigations provided for by the proposal are not aimed at determining liability or apportioning blame. However, the Commission is of the opinion that it should be reworded so that the proposal preserves the principle whereby the authority responsible for the investigation should not refrain from disclosing all the causes by claiming that liability could be inferred from those findings. This is precisely what the new wording adopted by the Council suggests.

4.2. Amendments accepted by the Commission but not incorporated in the common position

Amendments 3 and 22 state that the guidelines on the fair treatment of seafarers, adopted on 27 April 2006 by the IMO Legal Committee, should be taken into account; these amendments are acceptable only insofar as they refer to accident investigations.

Amendment 9 sets out to further protect the confidentiality of evidence obtained during an investigation through cooperation with other Member States. Such protection is conceivable but only on condition that it is not more restrictive than the protection afforded to the same evidence in the State in which it has been received where, pursuant to Article 9 of the proposal, the judicial authority may require that the evidence be communicated.

Amendment 12, which specifies the period within which the investigation must start, and amendment 15, which sets out to guarantee the independence of the investigative bodies vis-à-vis the authorities responsible for judicial inquiries, are in the Commission's opinion useful clarifications of the original proposal.

4.3. Amendments rejected by the Commission and not incorporated in the common position

Amendments 1 and 14 put the emphasis on the investigative bodies' resources but do away with their permanent nature and dilute the provisions relating to their independence and impartiality.

Amendments 2 and 19 aim at incorporating recommendations for preventing further accidents into the common methodology, which has to be adopted through the comitology procedure. This methodology is not the appropriate instrument for making such recommendations.

Amendments 7 and 20, which explain the background to the recommendations which the Commission might make, state that EMSA is to provide assistance; however, EMSA may only be assigned responsibilities through the Regulation which establishes it.

Amendment 13 introduces an unnecessary mechanism which is difficult to implement, to resolve conflicts between Member States when they are unable to agree which of them should be the lead investigating State.

Amendment 16 removes the possibility for the judicial authorities of Member States to be sent certain – in principle, strictly confidential – information (and in particular witness interviews) collected in the course of an investigation. In so doing, it fails to recognise the prerogatives of judges in many Member States.

Amendment 18 puts too heavy a workload on the Commission by forcing it to report to the Parliament every three years on the state of implementation of the Directive.

5. CONCLUSIONS

The common position, which was adopted unanimously, does not require any changes to the original proposal which the Commission could not accept.

The Commission expressed regret regarding the addition to Article 8(1) of provisions for landlocked Member States without a fleet, but it should be noted that the local contact point which these States have to designate must be independent.

The Commission therefore recognises that the common position alters neither the aims nor the spirit of the proposal and is therefore able to accept it.