



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.6.2001
COM(2001) 339 final

2000/0065 (COD)

OPINION OF THE COMMISSION

**pursuant to Article 251(2), third subparagraph, point (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a**

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Council Directive 95/21/EC concerning the enforcement, in respect of
shipping using Community ports and sailing in the waters under the jurisdiction of the
Member States, of international standards for ship safety, pollution prevention and
shipboard living and working conditions (port State control)**

**AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250(2) of the EC Treaty**

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Article 251(2)(c) of the EC Treaty lays down that the Commission shall deliver an opinion on the amendments proposed by the European Parliament at second reading.

The Commission sets out its opinion below on the amendments proposed by Parliament.

1. BACKGROUND

- a) On 22 March 2000, the Commission forwarded to the Council and to the European Parliament its proposal for a Directive (COM (2000) 142 final - COD 2000/0065 of 21 March 2000).¹
- b) The Economic and Social Committee delivered its opinion on 19 October 2000².
- c) The Committee of the Regions delivered its opinion on 21 September 2000³.
- d) On 30 November 2000, the Parliament adopted at first reading its opinion⁴ including certain amendments to the Commission proposal.
- e) On 12 December 2000, the Commission adopted, pursuant to Article 250(2) of the Treaty, the amended proposal COM (2000) 850 final incorporating wholly or in part the amendments adopted by Parliament⁵.
- f) The Council adopted its common position on 26 February 2001.⁶

¹ OJ C 212E, 25.7.2000, p. 102.

² OJ C 14, 16.1.2001, p.22

³ OJ C 22, 24.1.2001, p.19

⁴ Opinion of the European Parliament of 30 November 2000 not yet published in the Official Journal

⁵ COM(2000) 850 final, 12.12.2000 - OJ C 154E, 29.5.2001, p.67

⁶ OJ C 101, 30.3.2001, p. 15

- g) The Council common position and the related Commission opinion were transmitted to Parliament on 27 February 2001.⁷
- h) European Parliament voted on 16 May 2001 (second reading), approving the common position with two amendments.

2. OBJECTIVE OF THE PROPOSED DIRECTIVE

The Commission proposal aims at amending Directive 95/21/EC on port state control.

This proposal is part of the so-called ERIKA I package and aims at tightening up the existing regime for the inspection of ships using Community ports.

The proposal contains the following essential elements:

- the creation of a mandatory inspection regime for certain categories of ships presenting higher risks for the environment or safety (in particular elderly tankers, bulk carriers, passenger ships, etc);
- the refusal of access in the Community ports of the ships, belonging to the categories above, that proved to be manifestly sub-standard;
- the increase transparency of the information on the ships inspected and detained;
- an enhanced system for monitoring the implementation of the Directive and assessing the performance of Member States.

3. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT

Parliament adopted (second reading) two amendments to the Council common position.

The Commission accepted amendment 2 subject to redrafting and amendment 1 in part.

3.1 Amendment 2

Amendment 2 aims at introducing certain obligations in order to assure an in depth assessment of the Port State Control performance by Member states. While the Commission agrees with the principle, it does not agree with the need to introduce new article 2a. For the sake of consistency, the content of the proposed article is better placed in the text of Article 17 of the directive. The issue proposed in the amendment can be incorporated in article 17 adding the following two paragraphs:

"The Commission shall review the implementation of this Directive no later than 36 months after its date of application and propose any appropriate measure. The Commission shall communicate the findings of the review to the Parliament and the Council and will use the review to determine whether it is necessary to propose an amending Directive or further legislation in this area.

⁷ SEC (2001) 344 final, 27.2.2001 not yet published.

The review referred to in the previous paragraph will include an assessment of the performance of each Member State on the basis, inter alia, of the number of qualified port state control inspectors, on the number of inspections carried out, including the mandatory inspections, and on the number of ships that entered the ports of the State."

3.2 Amendment 1

Amendment 1 consists of two parts. The first part seeks to introduce, under article 7b, the obligation to refuse access to Community ports for ships not in compliance with the international and community requirements concerning the voyage data recorder (VDR) equipment. The second part establishes that, 5 years after the entry into force of the directive, the above measure is applied to all ships over 300 GT.

As regards the first part of the amendment, the Commission can accept the idea to reinforce the principle of the importance of the VDR, by introducing the refusal of access order for those vessels not equipped with the VDR as required by international instruments. However the proposed wording is compatible neither with the spirit nor with the operational procedures of article 7b. The Commission is therefore prepared to incorporate the suggested new refusal of access measure in a separate article. This will assure a proper co-ordination with the other provisions of the directive where, for the lack of VDR, the PSC authorities are requested to detain the ship. The wording of this new article should be as follows:

"[Article 9(b)]

Procedures applicable in the absence of Voyage Data Recorders (VDR).

1. Where the inspection reveals that the VDR, as required by the relevant community or international law as applicable, is missing, the competent authority shall ensure that the vessel is detained.
2. Notwithstanding the absence of the equipment referred to in paragraph 1, if the inspection finds no other deficiencies warranting detention, the competent authority may lift the detention for operational reasons. Wherever such a decision is taken, the competent authority shall immediately inform the competent authorities of the other Member States thereof.
3. Member States shall take the measure necessary to ensure that all ships authorised to leave a port in a Member State under the circumstances referred to in paragraph 2 shall be refused access to all ports in the Community, except in the situation referred to in article 11(6), until the owner or operator of the vessel has demonstrated to the satisfaction of the competent authority of the member State in which the detention was imposed, that the ship is now fitted with a VDR in accordance with the international or community requirements as appropriate."

The second part of the amendment extends the refusal of access measure to categories of ships for which the carriage of the VDR is not mandatory under the international requirements. This part of the amendment cannot be accepted by the Commission for the following reasons:

It represents a distortion of the scope of the directive, which is solely intended to verify whether the ship complies with the international requirements and not to indirectly impose additional equipment requirements.

Its implementation has no legal basis since it would imply to detain and ban ships for non-compliance with requirements, which are not included in community or international instruments.

It is not coherent with the European legislative initiatives that are expected to create the above requirements. The provision making mandatory the carriage of VDR on board existing cargo vessels has already been taken up by a proposed directive included in the so-called ERIKA II package, but the applicability of this provision is not extended to ships below 3000 GT.

4. CONCLUSION

In accordance with Article 250(2) of the Treaty, the Commission is altering its proposal in line with the outcome of the Parliament's second reading as indicated above.

It hopes that the Council and Parliament will be able to find common ground so that this Directive, which can provide an essential contribution to maritime safety, can be adopted without further delay.