Insurance of shipowners for maritime claims

2005/0242(COD) - 09/12/2008 - Council position

Although the Council agrees with the objective of the Commission proposal striving for more effective coverage of the interest of victims of damages resulting from the operation of ships, it considers that several provisions of the proposal (creating specific Community rules in parallel to international obligations regarding the same matter) would result in a contradictory situation and be counterproductive in relation to the above mentioned objective. This applies in particular to the provisions relating to the liability regime and the measures concerning seafarers.

The proposed provisions rendering the ratification of an IMO Convention mandatory are not acceptable for Member States, particularly for constitutional reasons. Furthermore, the Council deems some provisions, in particular those related to issuing and verifying of certificates, inappropriate as they would create unnecessary administrative burdens.

Thus, the Council's common position – adopted by unanimity - modifies, to a large extent, the original Commission proposal by redrafting it and deleting several parts of the text. This implies that all amendments introduced in the European Parliament's first-reading opinion related to these deleted parts were not accepted by the Council.

The main issues are as follows:

Mandatory insurance for maritime claims: the Council follows the proposal by the Commission to introduce an insurance obligation for shipowners of ships flying the flag of a Member State and those of ships flying the flag of another State. Relating to the latter, the Council’s common position specifies that this applies as soon as the ship enters a port under a Member State’s jurisdiction, or, if so decided by a Member State, when the ship is operating in its territorial waters.

With a view to a harmonised global level of insurance cover, the Council, in its common position, refers to the ceilings laid down in the LLMC 1996 as amount of the insurance for each ship per incident. The term “insurance”, used in the common position, is largely based on the definition set out in IMO Resolution A.898(21) ("Guidelines on shipowner's responsibilities in respect of maritime claims").

Control and compliance: in order to control the compliance of shipowners with their insurance obligation, the common position provides for a verification by the port State, in accordance with the Directive on Port State Control. To this effect, one or more certificates issued by the insurance provider have to be carried on board of the ship. The specificities of the certificate set out in the common position are based to a large extent on the original Commission proposal.

Penalties: the common position foresees the possibility for specific sanctions in case the insurance certificate is not carried on board. Without prejudice to the detention of the ship concerned according to the rules on port State control, the ship can be expelled from a port and will be denied entry into any of Member States’ ports as long as the situation is not rectified. The common position also includes a general provision of penalties to be established for non compliance with the Directive, relating to the Member States’ obligation as flag States.

Relation to regimes established in accordance with other liability and compensation instruments: following the Commission proposal, the Council provides in its common position that the Directive does

not affect the regimes established according to other international Conventions, namely the CLC Convention, the HNS Convention, the Bunker Oil Convention and the Wrecks Removal Convention, as well as the Regulation transposing the Athens Convention into Community law.

In parallel to the common position, a **declaration** of the representatives of the Governments of the Member States of the European Union confirms their commitment to do the utmost with a view to ensuring a rapid and effective application of the international conventions on maritime safety, the IMO rules related to flag State obligations and the IMO audit.