Maritime safety: discharge by the Member States of their obligations as flag States in accordance with the IMO Conventions

2005/0236(COD) - 09/12/2008 - Council position

Although the Council agrees with the Commission as regards the objective of the proposal, it has made some major amendments to the original proposal. A number of the proposed provisions were not acceptable for the Council as they duplicate existing Community legislation and provisions included in other proposals of the third maritime safety package.

Therefore, the 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 political issues are as follows:

Flag State auditing process: the Council follows the proposal by the Commission to introduce an independent audit of Member States' maritime administration. It considers, however, that the creation in the Community framework of a parallel auditing system to the one established at international level through the Voluntary IMO Member State Audit Scheme should be avoided. With a view to harmonising the auditing procedures and ensuring a level playing field, the common position therefore provides for an obligation to request regularly an IMO auditing of the administration and to publish the outcome of the audit. The interval for the renewal of the auditing is set at seven years, taking into account the available resources at IMO level.

Furthermore, the common position ensures that once the IMO Audit Scheme becomes mandatory, the relevant provision of the Directive expires, either automatically eight years after the entry into force of the Directive or earlier, if needed, upon decision of the Commission in accordance with comitology rules (regulatory procedure).

Quality management system: the Council supports the Commission's proposal to ensure that maritime administrations of Member States meet quality criteria related to the management of their tasks. In its common position, the Council, however, takes into consideration the specific situation of the different services concerned and leaves it up to the Member States to determine the international standards that are applicable for the certification of the different parts of their administration.

In addition, following the objective of enhancing the flag State performance of Member States, the Council provides for a mandatory reporting on the performance to the Commission by Member States that are on the black list or, for two consecutive years, on the grey list of flag States established by the Paris MOU. By means of such a report the main reasons for the lack of compliance by the Member State concerned with its flag State requirements shall be identified.

Other flag State requirements: the Council further simplified the Commission's proposal regarding measures to be taken before granting the right to fly the flag of a Member State and in the case of the detention of a ship flying the flag of a Member State by a port State. In this respect, the Council deems it

appropriate, in the framework of a Directive, that Member States decide which measures have to be undertaken to ensure that the ship concerned complies or is brought into compliance with the applicable international rules and regulations.

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.