Insurance of shipowners for maritime claims

2005/0242(COD) - 23/11/2005 - Legislative proposal

PURPOSE: to set up a civil liability scheme for ship-owners in the event of damage to a third party and to set up a system of financial guarantees for ship-owners.

PROPOSED ACT: Directive of the European Parliament and of the Council.

CONTENT: the purpose of this proposal is to establish, at a European level, a civil liability scheme for ship-owners in the event of damage to a third party. To achieve this goal the Commission is proposing the establishment of non-discriminatory rules, applicable to all ships irrespective their flag, which will make a real contribution towards preventing damage caused by ships and to guarantee that damage is made good. In presenting this proposal the Commission is responding to a call from the European Parliament to establish a European maritime policy in which safety is of paramount concern. An effective liability system would contribute to the safety aspect of a European maritime policy. The European Council has also called for increased maritime liability as part of the on-going work on the possible revision of the international compensation system for oil damage.

The Commission notes that, in the case of civil liability, ship-owners are currently subject to a number of international Conventions. The impact of these Conventions is limited, mostly because they are yet to enter into force in many countries. Those that have entered into force have done so in a few countries only. There is no systematic monitoring of the Convention's application nor is there a mechanism to ensure that provisions are uniformly interpreted. In addition, the Convention's substance is often such that it makes no real contribution to either preventing damage or ensuring that any such damage is repaired. For example, the international Conventions apply a traditional principle of maritime law namely, the almost complete limitation of operator liability. The legitimacy of this principle, i.e. limited liability, is being increasingly contested. The Commission points out that a 2004 Directive on environmental liability deals with the principle of operators' *unlimited* liability.

Given that many of the international Conventions are not due for revision within the foreseeable future the Commission is proposing a two-stage, pragmatic approach, to filling the regulatory gaps on civil liability and financial guarantees of ship-owners. The first step would involve all of the EU Member States becoming contracting parties to the umbrella international Convention on liability for maritime transport, the 1996 "*Convention on the Limitation of Liability for Maritime Claims*". In this way, the Convention would be incorporated into Community law, thus guaranteeing its uniform and full application across the EU. Such a move would also act as an incentive for third countries to come on board the 1996 Convention. As a second step, the Commission proposes seeking a mandate for negotiating, within the IMO, a revision of the 1996 Convention in order to review the level at which ship-owners lose their right to limit their liability.

More specifically, the proposed Directive includes provisions whereby:

- ships flying the flag of a state that is not party to this Convention will be subject to a more severe liability regime with gross negligence as conduct barring limitation.

- the financial guarantee must be a sum equivalent to double the ceilings laid down in the aforementioned 1996 Convention.

- a system of notification is set-up that guarantees "financial certificates" are on board all those ships entering waters under the jurisdiction of the EU Member States.

- a specific obligation is introduced whereby ship-owners must have a financial guarantee to cover the costs of repatriating abandoned seafarers.

Such an approach, argues the Commission has a number of advantages. In terms of removing ceilings, only ship-owners guilty of gross negligence will be affected. Establishing an obligatory insurance system will help tackle the problem of substandard ships. As regards obligatory insurance, the vast majority of owners who already have a civil liability insurance policy for damage to third parties caused by their ships will benefit from the new regime in that the market will not be distorted by the actions of a few unscrupulous operators who have no insurance. The crew would also benefit from the proposed financial guarantee for the repatriation of seafarers. Lastly, third parties affected by damage caused by a ship will, undoubtedly, benefit from the removal of ceilings and from obligatory insurance policies.