Insurance of shipowners for maritime claims

2005/0242(COD) - 23/11/2005 - Document attached to the procedure

COMMISSION'S IMPACT ASSESSMENT

For further information regarding the context of this issue, please refer to the summary of the Commission's proposal for a Directive of the European Parliament and of the Council on the civil liability and financial guarantees of ship owners – COM(2005)0593.

1- POLICY OPTIONS AND IMPACTS

The Commission considered two potential policy directions.

1.1- Option 1 - to promote the implementation of international conventions. The relatively slow pace of national ratification processes makes the date of entry into force and the geographical scope of these conventions uncertain. This directive would offer a binding instrument under which these conventions could be swiftly and uniformly applied at EU level. In addition, this directive would permit a medium-term possibility of modernising civil liability law in the maritime sector,

1.2- Option 2 - to set up a tailored Community regime aimed partly at removing ceilings on civil liability, but also at obliging ship owners to take out insurance. The interest of such an instrument would be with a view to the harmonisation of applicable law, along the lines recommended at international level (resolutions of the International Maritime Organisation and the International Labour Organisation).

CONCLUSION: **the Commission favoured Option 2** which would involve the establishment of compulsory insurance.

IMPACTS : the impacts relating to Option 2 are described below.

- In terms of removing ceilings, only ship owners guilty of gross negligence will be affected, to the greater benefit of those owners respectful of security standards who will continue to enjoy the protection of limited liability. Establishing an obligatory insurance system will help tackle the problem of sub-standard ships in the same way as applying the other measures contained in this legislative package. Accordingly, it is expected that the risk to insurers will not increase.

- It should also be noted that this approach would presuppose that the Member States which are contracting parties to the 1996 Convention withdraw from it in good time and at the latest by the end of the transposition period for this Directive.

- 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 this new regime in that the market will not be distorted by the actions of unscrupulous operators with no insurance.

- In practical terms, ship owners should follow the procedures to obtain certificates and then notify their on-board presence.

- The crew will also benefit from the protection afforded by the financial guarantee for the repatriation of seafarers.

- The situation of persons who have suffered damage caused by a ship and who demand that this be made good by the owner of that ship (individuals, professionals, but also public authorities) will be improved by the new mechanism removing ceilings and making insurance obligatory. Introducing a direct action will further ease their situation.

- Governments (flag States and port States) are affected in that they must set up a system for issuing and verifying financial guarantee certificates. It should be noted that Member States are already under this obligation, but that this is limited to tankers transporting persistent oils.

2- FOLLOW-UP

The provisions of the directive relating to civil liability (provisions incorporating the 1996 Convention) will be implemented, if necessary, by the national courts where victims can make their claims. Referrals could be made to the Court of Justice to give preliminary rulings and to guarantee the uniform interpretation of the directive's provisions.

The other provisions (the granting and checking of certificates) will be implemented by the Member States as flag states and/or port States, including by the national authorities responsible for the implementation of legislation regarding maritime approaches and coastal areas. The Commission, and where appropriate, the Court of Justice, will seek to guarantee the conformity of these national measures with the directive. The Commission will draw up a report on the implementation of the directive within five years of the directive's entry into force. This report may highlight the necessity for changes to be made to the directive.