Insurance of shipowners for maritime claims

2005/0242(COD) - 27/02/2007

The committee adopted the report by Gilles SAVARY (PES, FR) amending - under the 1st reading of the codecision procedure - the proposed directive on the civil liability and financial guarantees of shipowners:

- MEPs stressed that oil was not the main concern of the proposal and amended the third recital in order to place emphasis on the role of international conventions on compensation of third party victims for damage related to maritime transport of goods in general (and not just oil pollution), to ensure fair compensation "and encourage operators and their representatives to exercise greater vigilance and professionalism". They also said that it should not be possible to apply limitation of liability to victims not party to the maritime transport operation "if the owner of the ship responsible for the damage has failed to act in a professional manner and should have been aware of the harmful effects of his act or omission";

- the committee introduced a definition of 'gross negligence', meaning "conduct showing an unusual lack of due diligence and care, and a consequent disregard of what should in principle have been clear to everyone in a given situation";

- two new articles (3a and 3b) stipulated that the Member States should become contracting parties to the 2001 Bunker Oil Convention and the 1996 HNS Convention as soon as possible and in any case no later than 18 months after the directive's entry into force;

- MEPs in the committee stressed that the courts responsible for applying the 1996 Convention (the recapitulative text of the 1976 Convention on Limitation of Civil Liability for Maritime Claims, adopted by the IMO, as amended by the 1996 Protocol) must be given the broadest possible margin for interpreting the concept of recklessness in order to break the liability limitation;

- when issuing guarantee certificates to shipowners, the competent authorities of the Member States should include as an assessment criterion the business presence of guarantors in the EU (i.e. in the form of an agent or a branch office);

- the committee introduced a new article providing for Member States to establish penalties for infringements of the directive, so as to encourage operators to comply with their obligations;

- another new article provided for the setting up of a solidarity fund to cover damage caused by ships who have sailed in EU territorial waters without being covered by a financial guarantee certificate;

- lastly, the committee said that a Community Office should be established and given responsibility for keeping a full register of certificates issued, monitoring and updating their validity, and checking the existence of financial guarantees registered by third countries. The possibility of assigning to the Community Office in future the task of issuing guarantee certificates (which is the responsibility of the Member States under the current provisions of the proposed directive) should be kept open.