Insurance of shipowners for maritime claims

2005/0242(COD) - 29/03/2007 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the resolution drafted by Gilles **SAVARY** (PES, FR) making some amendments to the proposed directive on the civil liability and financial guarantees of shipowners.

The main amendments were as follows:

- new recitals state that protection of European coasts and European citizens in the face of ecological damage of any kind resulting from maritime accidents is an absolute priority for the EU. Protecting European coasts involves the dual aspects of preventing accidents by ensuring that only safe ships sail and of providing for the arrangements required to ensure that victims can, in as short a time as possible, receive compensation fully commensurate with the damage caused by an accident;

- 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;

- a new recital stated that it should be possible to apply limitation of liability under the 1996 Convention 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;

- it should not be possible to apply limitation of liability under the 1996 Convention 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;

- Parliament amended the definition of “civil liability” and 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;

Member States which are still parties to the 1976 Convention on Limitation of Liability for Maritime Claims must denounce it;

- for the purposes of applying Article 4 of the 1996 HNS Convention, knowledge of probable damage by the person responsible may in all cases be deduced from the nature and circumstances of the personal act or omission of that person committed recklessly;

- when issuing certificates to shipowners, competent authorities shall also consider whether a guarantor has a business establishment in the EU;

- the authority which issued or certified a certificate shall forward a copy of the certification file to the Community Office (see below) so that the latter may include it in the register;

- Member States shall monitor compliance with the rules laid down in the Directive and shall establish penalties for the infringement of these rules. These penalties shall be effective, proportionate and dissuasive;

- Parliament introduced a new Article on a Solidarity fund to cover damage caused by ships without a financial guarantee. It states that a solidarity fund will be set up to compensate third parties, whether natural or legal persons, that have suffered damage caused by ships which, notwithstanding the obligations laid down in the Directive, have sailed in EU territorial waters without being covered by a financial guarantee certificate;

- the amount to be allotted to this fund, and the fund's operating rules, will be determined in accordance with the procedure referred to in the Directive;

- a Community Office shall be established which is responsible for keeping a full register of certificates issued, monitoring and updating their validity, and checking the existence of financial guarantees registered by third countries.

Lastly, Member States reports to the Commission shall assess in particular the procedures for certification and issuing of certificates by Member States and the need to consider whether this task should be delegated wholly or partly to the Community Office.