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Committee on Legal Affairs

2005/0242(COD)

12.12.2006

OPINION

of the Committee on Legal Affairs

for the Committee on Transport and Tourism

on the proposal for a directive of the European Parliament and of the Council
on the civil liability and financial guarantees of shipowners
(COM(2005)0593 – C6-0039/2006 – 2005/0242(COD))

Draftsman: Antonio López-Istúriz White

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SHORT JUSTIFICATION

Maritime casualties are one of the areas in which EU action most obviously provides added value in relation to individual action by Member States. They are also an area in which citizens have pinned great hopes on the EU's ability to avert future disasters and end such impunity as the culprits might enjoy. It is therefore vital for the EU institutions to adopt stringent, effective legal rules based on the *two core principles of environmental protection and legal protection of victims*.

From the legal point of view, *the Commission proposal should be welcomed*, since it introduces novel legal arrangements likely to make coasts much safer and enable the victims of maritime casualties to obtain compensation more easily. At the same time, *the proposal is moderate and realistic without, moreover, breaking radically with the status quo*. On the contrary, it is consistent with international law and especially the conventions signed in the International Maritime Organisation.

The following points should be mentioned in particular:

- *'Communitarisation' of the 1996 LLMC*, which most Member States are presently not enforcing;
- the obligation for ships flying the flag of a Member State or a non-member country to have substantial *financial guarantees*, to be called upon in the event of abandonment of seafarers or when an accident has occurred; and
- the introduction of *direct action* whereby victims may apply directly to guarantors with a view to obtaining compensation, a system which will greatly facilitate and speed up the existing legal procedures.

The obligation to take out guarantees not falling below the limits laid down in the LLMC is fundamentally desirable, although the criterion of doubling the ceilings appears to be somewhat arbitrary. Nevertheless, the provision should be supported.

On the other hand, caution would be the most advisable response to the use of serious misconduct as the criterion whereby a shipowner's liability could not be limited if his ship were flying the flag of a state that was not a contracting party to the 1996 Convention and he were to be guilty of *serious misconduct*. The Commission is seeking to challenge the right of shipowners to limit their liability: that is a laudable intention, but it does not seem very realistic and, above all, might prove rather counterproductive; *the change would probably do more harm than good and should consequently not be supported*.

Finally, to enable direct action to be exercised to the best possible effect, it is suggested that, when granting guarantee certificates, the authorities concerned should also take into account the *business presence which guarantors might have established in the EU*.

For all the reasons set out above, the Commission proposal should be endorsed, since it marks a further step forward enabling Europe's coasts and islands to be made safe. This

proposal for a directive is, however, a subsidiary measure: the real priority from the point of view of protecting the environment and citizens is for the CLC and HNS conventions to enter into force in all the Member States.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Recital 1 a (new)

(1a) Protection of European coasts and European citizens in the face of ecological damage of any kind resulting from maritime casualties is an absolute priority for the EU.

Amendment 2
Recital 1 b (new)

(1b) 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.

Amendment 3
Article 2, point 4 a (new)

(4a) “guarantor” means any institution with which a shipowner takes out a financial guarantee;

Amendment 4
Article 4, paragraph 3

3. In accordance with Article 15 of the 1996 Convention, Member States shall ensure that Article 4 of that Convention concerning the barring of limitation for liability does not apply to ships flying the flag of a State which is not a contracting party to the 1996 Convention. In such cases, ***the civil liability regime established by the Member States in accordance with this Directive shall provide that the shipowner loses the right to limit his liability if it is proved that the damage resulted from his personal act or omission, committed with the intent to cause such damage, or through gross negligence.***

3. In accordance with Article 15 of the 1996 Convention, Member States shall ensure that Article 4 of that Convention concerning the barring of limitation for liability does not apply to ships flying the flag of a State which is not a contracting party to the 1996 Convention. In such cases, the shipowner ***may not limit his liability for damage for which he is wholly or partly responsible, whether by action or by omission.***

Or. es

Justification

The use of serious misconduct as the criterion determining a shipowner's unlimited liability might give rise to legal confusion because this concept is not defined and is in danger of being interpreted in judicial practice in conflicting terms that could overlap with the concept of 'inexcusable conduct'. On the other hand, applying the civil liability regime to shipowners whose countries have not signed the 1996 Convention, in addition to providing an incentive to sign and ratify the Convention, does not entail any legal uncertainty.

Amendment 5
Article 7, paragraph 2, subparagraph 1

2. Certificates shall be issued by the competent authorities of the Member States once they are sure that the shipowner complies with the requirements laid down in this Directive.

2. Certificates shall be issued by the competent authorities of the Member States once they are sure that the shipowner complies with the requirements laid down in this Directive. ***When issuing certificates, competent authorities shall also consider the question whether a guarantor has business establishments in the EU.***

Justification

The business presence of guarantors in the EU, whether in the form of an agent or a branch office, should be one of the criteria on which competent authorities should base their assessments when granting guarantee certificates. This would prevent direct action being hamstrung for legal reasons, as would be the case if, for example, victims were obliged to start court proceedings in a country that did not meet the minimum requirements of the rule of law.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on the civil liability and financial guarantees of shipowners
Procedure number	(COM(2005)0593 – C6-0039/2006 – 2005/0242(COD))
Committee responsible	TRAN
Opinion by Date announced in plenary	JURI 14.2.2006
Enhanced cooperation – date announced in plenary	
Draftsman Date appointed	Antonio López-Istúriz White 23.2.2006
Previous drafts(wo)man	
Discussed in committee	3.10.2006
Date adopted	11.12.2006
Result of final vote	+: 9 –: 0 0: 0
Members present for the final vote	Maria Berger, Rosa Díez González, Giuseppe Gargani, Antonio López-Istúriz White, Aloyzas Sakalas, Gabriele Stauner, Rainer Wieland, Jaroslav Zvěřina
Substitute(s) present for the final vote	Kurt Lechner
Substitute(s) under Rule 178(2) present for the final vote	
Comments (available in one language only)	