Opinion of the Committee of the Regions on the 3rd Maritime Safety Package

(2006/C 229/06)

THE COMMITTEE OF THE REGIONS,

HAVING REGARD TO the letter from the European Commission of 25 November 2005 requesting the CoR's opinion on the 3rd Maritime Safety Package;


HAVING REGARD TO the decision of the Bureau of 12 April 2005 to instruct its Commission for Territorial Cohesion Policy to draw up an opinion on this subject;

HAVING REGARD TO the motion for a European Parliament resolution on improving safety at sea in response to the Prestige accident (2003/2066(INI)), and the work of the MARE Committee (MARE Resolution);

HAVING REGARD TO the opinion expressed by the European Community Shipowners' Associations (ECSA) on behalf of European shipowners associations and their members, and dated, June 2004, and the opinions expressed by the European Seaports Organisation (ESPO), on behalf of European seaports, and dated 10 June 2004 and 10 March 2005, as well as the opinions expressed by INTERTANKO on behalf of its members, dated January 2006;

HAVING REGARD TO the work of the Maritime Safety Umbrella Operation (MUSO) as presented during the seminar addressing: Refuge Area Best Practice: Identification, Planning and Stakeholder Involvement, 23 and 24 February 2006 and the suggestion made during this meeting for the development of a Casualty Management Framework through IMO, that should be incorporated into this Directive;

HAVING REGARD TO the International Maritime Conventions of IMO, including all associated and current assembly resolutions and amendments;

HAVING REGARD TO its draft opinion (CdR 43/2006 rev. 2) adopted on 5 April 2006 by its Commission for Territorial Cohesion Policy (rapporteur: Cllr Flo Clucas (UK/ALDE) (Member of Liverpool City Council));

Whereas:

1) the fact that substandard shipping still persists and that further action is needed to combat those flag States, classification societies, shipowners, ship managers, charterers, terminal operators and ship masters that continue to conduct their business in an irresponsible manner to further commercial gain and with disregard for international rules and safe practices;

2) maritime accidents and incidents that resulted in loss of life and pollution of the oceans, regional and local coastal and maritime area, and thereby causing substantial economic losses, serious environmental damage and considerable public concern;

3) the importance of a vibrant and competitive European maritime transport system for regions and cities — particularly those involved in maritime industries, exports and economic links;

4) the need to ensure coordination with the maritime strategy of the EU, the requirement for mutual synergies and the potential for offering regional and local authorities realistic solutions.

5) the subsidiarity and proportionality principles are of particular relevance to EU measures in the field of transport, as the EU, Member States and regions often share responsibility for legislation and implementation;
6) the new framework of legislative proposals must:
— be compatible with prevailing international standards and agreements within the IMO;
— respect recent international developments.

adopted the following opinion at its 65th plenary session, held on 14 and 15 June 2006 (meeting of 15 June):

The Committee of the Regions,
believes that the third Maritime Safety Package ‘Erika III’ has the potential to considerably improve the safety of maritime transport:

1. Proposal for a directive on the responsibility of the flag states

1.1 thinks that increasing the responsibility of flag States and harmonising the interpretation of the IMO conventions including all their up-to-date assembly resolutions and amendments will be of substantial benefits to the European fleet;

1.2 is of the opinion that the specific proposals put forward to increase the pressure on sub-standard ships, rewarding well operated vessels, and increasing the pressure on the flag States to comply with their responsibilities under the IMO Conventions, are the correct way forward;

1.3 agrees revoking IMO Resolution A.847(20) and replacing it with IMO Resolution A.(...) (23) whereby Member States have to discharge effectively and consistently their obligations as flag States in accordance with IMO Conventions and taking account of IMO Resolution A.(...) (23);

1.4 believes that the economic and social distortions as well as the use of under qualified crews caused by the varying interpretation of IMO Conventions by flag States need to be corrected;

1.5 is of the opinion that the best way to harmonise the interpretation of IMO Conventions including all their up-to-date assembly resolutions and amendments, is to uniformly apply throughout the EU, IMO’s own interpretation of these conventions;

1.6 argues that the syllabuses and training requirements leading to professional maritime qualifications should be harmonised throughout the EU, and that this should be made an integral part of the mutual recognition of certificates of competency;

1.7 is concerned about the possibility and practice of changing classification society and/or flag State in case of disagreement between shipowner/ship manager and the classification society and/or the flag State in matters relating to safety, manning, maintenance, equipment, and operation of the vessel;

1.8 suggests that classification societies and flag States should insist on full compliance of the vessel with IMO conventions prior to changing classification society and/or flag of registration of a vessel. Further, full compliance with IMO resolutions should be a prerequisite for acceptance of a vessel by a classification society and/or a flag State, and of the vessel’s remaining in class and on the register;

1.9 expresses its agreement that the existing body of the maritime labour instruments will be embodied in this Directive;

1.10 highlights its concern over seafarers’ working time, the fatigue resulting from constant overworking and the dangers of errors, accidents, damage, and possible pollution associated with overworking and inadequate rest periods may cause;

1.11 is of the opinion that leaving the right to exempt ships from the application of basic flag State rules to the sole and entire discretion of the individual administrations could and does result in different levels of safety being achieved in different Member States and distorts competition between flag States. For this reason, the right to exempt should be curtailed to, e.g. naval vessels exclusively;

1.12 recommends that the harmonised interpretations of technical safety standards, at present applicable to passenger vessels … as per Article 12 of Council Directive 98/18/EC of March 1998, should be applied to all merchant ships and fishing vessels;

1.13 advocates maximum cooperation between the maritime authorities and the local authorities in order to adopt an integrated approach towards tackling issues connected with maritime navigation and the impact on the region’s economic and social development;

1.14 agrees that the maritime administrations of the Member States should be able to rely on appropriate resources for the implementation of their flag State obligations;

1.15 concurs with the Directives provision for the development of a database providing essential information on ships flying the flag of a Member State, as well as on ships which have left the register of a Member State;

1.16 agrees with the IMO proposed Member State Audit Scheme, however, requests for this audit scheme to be made compulsory, and be part of a quality certification scheme in accordance with ISO or equivalent standards as specified by the EC;
1.17 *expresses concern* at the criminalisation and vilification of ship masters. While there are occasions where criminal culpability may be evident, this is generally incorrect, inappropriate, and very damaging to a profession who is doing a rather difficult, stressful, and sometimes dangerous job very successfully;

1.18 *identifies concern* about the possible curtailment of ‘right of innocent passage’ and ‘freedom of navigation’ of ships passing through the waters of European States without calling at one of their ports. These rights ought to be respected as far as possible in the interests of safety. It should be made clear to the shipping industry that passing vessels have the obligation to navigate correctly within VTS schemes and follow reporting procedures;

1.19 *is concerned* about the possible additional administrative burden on senior officers if the ship has to report that it is due for inspections as well as providing a certificate of insurance. IMO’s proposal to reduce the certificate inspections by streamlining the process with online electronic certification processes should be expanded to include insurance and be made compulsory. Comment 1.18 also applies to the proposed Directive on Port State Control.

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**RECOMMENDATIONS**

**Recommendation 1.1**

**Article 1**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>CoR Amendment</th>
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<tbody>
<tr>
<td>(c) to provide a mechanism for harmonised interpretations of the measures laid down in the IMO Conventions which have been left to the discretion of the Contracting Parties to those Conventions.</td>
<td>(c) to provide a mechanism ensure for harmonised interpretations of the measures laid down in the IMO Conventions, which have been left to the discretion of the Contracting Parties to those Conventions, by using the interpretation of IMO for said Conventions.</td>
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</tbody>
</table>

**Reason**

Thus far the interpretation of the IMO Conventions has been left to the flag State administrations, or the courts acting on their behalf, causing differing interpretations and varying standards. To harmonise the interpretation of IMO Conventions, the interpretation of IMO of its Conventions ought to be mandatory.

**Recommendation 1.2**

**Article 2**

<table>
<thead>
<tr>
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<tr>
<td>(a) ‘IMO Conventions’ means the following Conventions, together with the Protocols and amendments thereto and related codes of mandatory status adopted in the framework of the International Maritime Organisation (IMO), in their up-to-date version:</td>
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</tr>
<tr>
<td>(i) the 1974 International Convention for the Safety of Life at Sea (SOLAS 74);</td>
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<tr>
<td>(ii) the International Convention on Load Lines, 1966 (LL 66);</td>
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<td>(iii) the International Convention on Tonnage Measurement of Ships, 1969 (Tonnage 69);</td>
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<tr>
<td>(iv) the International Convention for the Prevention of Pollution from Ships;</td>
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<tr>
<td>(v) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 1978);</td>
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<tr>
<td>(vi) the Convention on International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72);</td>
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<tr>
<td>(vii) Code of Safe Practice for Ships Carrying Timber Deck Cargoes and</td>
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</table>
Reason

The Code of Safe Practice for Ships carrying Timber Deck Cargoes should be included in all Directives of the third Maritime Safety Package for the following reasons:

— Timber deck cargo is liable to shifting in heavy weather,
— During winter time, in high latitudes, timber deck cargo is liable to icing.

The Code of Safe Practice for Dry Bulk Cargoes should be included in all Directives of the third Maritime Safety Package, as bulk carriers have been found to be some of the most dangerous vessels. Handling dry bulk cargoes safely and correctly including their stowage and trimming, sequence of loading of the cargo holds of the vessel in conjunction with de-ballasting in order not to unduly stress the vessel are important for the safety of the ship. Apart from the fuel oil the vessel carries, some dry bulk cargoes are marine pollutants.

Recommendation 1.3

Article 5

<table>
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<tr>
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<tr>
<td>2. When registering a ship in its register for the first time the</td>
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<tr>
<td>Member State concerned shall endeavour to ensure that the ship in</td>
<td>concerned shall endeavour to require that the ship in question complies fully</td>
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<tr>
<td>question complies with the applicable international rules and</td>
<td>with the applicable international rules and regulations as a precondition for</td>
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<tr>
<td>regulations. It shall liaise with the previous flag State, if</td>
<td>registering the vessel by the Member State. It shall liaise with the previous</td>
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<td>necessary.</td>
<td>flag State, if necessary.</td>
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Reason

To stop the undesirable practice of creating the possibility of 'substandard ships' by out-flagging to a less demanding register and in case of disputes with the flag State regarding the safety, manning, operation, and maintenance of the vessel.

2. Proposal for a directive on port state control

2.1 believes that reinforcing and improving the effectiveness of port state control would be beneficial to the community;

2.2 agrees that the reinforcement of ship inspections will have a direct environmental impact and positive economic and social repercussions including fairer competition conditions for maritime transport;

2.3 expresses concern at the use of pilots in strengthening port state control through reporting of deficiencies and by supplementing port- and flag State inspections. Pilots are skilled in navigation and in conning a vessel. They are not trained as port- or flag State inspectors;

2.4 draws attention to the fact that the ship's age should not be taken as sole criteria for the need for expanded inspections. The management of the maintenance of the vessel, the cargoes it carried, and the sea areas it transited during its voyages, all affect the condition of the vessel. A relatively new, but badly built vessel suffering substandard or little maintenance and careless operation due to inadequate management and a less able, under qualified, but cheap crew, being over-stressed during loading, discharging, and ballasting operations and subjected to generally bad weather during its passages will be in a worse condition and presents a considerably larger risk for accidents and pollution than an older vessel that has been well built, well maintained, manned, and operated according to best practice;
2.5 calls for an inspection rate of 100% of the vessels calling at EU ports in anyone year. However, it suggests that each ship will generally be inspected only once during anyone year, unless circumstances warrant more frequent inspections. The results of inspections will immediately be made available to EU port- and flag States upon completion of said inspection(s);

2.6 totally agrees with the intentions to tightening up provisions concerning the human element.

RECOMMENDATIONS

Recommendation 2.1

**Article 5**

<table>
<thead>
<tr>
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<tr>
<td>3. As long as measures envisaged in paragraph 2 are not in force, the total number of inspections of the ships referred to in paragraph (2) and Article 7 to be carried out annually by the competent authority of each Member State shall correspond to at least 25% of the average annual number of individual ships which entered its ports</td>
<td>3. As long as measures envisaged in paragraph 2 are not in force, the total number of inspections of the ships referred to in paragraph (2) and Article 7 to be carried out annually by the competent authority of each Member State shall correspond to at least 25% of the average annual number of individual ships which entered its ports</td>
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**Reason**

Endeavouring to inspect 25% of the vessels will not change the present situation.

Recommendation 2.2

**Article 7**

<table>
<thead>
<tr>
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<tr>
<td>2. When a ship has been authorised to leave a port on condition that the deficiencies are rectified at the next port, the inspection at the next port shall be limited to verifying whether these deficiencies have been rectified.</td>
<td>2. When a ship has been authorised to leave a port on condition that the deficiencies are rectified at the next port, the inspection at the next port shall be limited to verifying whether these deficiencies have been rectified. No ship should be authorised to defer rectification of deficiencies relating to seaworthiness and cargo worthiness and sail to the next port on the promise that deficiencies will be corrected before sailing to the next port will be allowed by port — or flag State.</td>
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</table>

**Reason**

Any vessel leaving port has to routinely comply with the condition of seaworthiness including cargo worthiness. Existing deficiencies may interfere with complying with these obligations.

Recommendation 2.3

**Article 12**

<table>
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<tr>
<th>Text proposed by the Commission</th>
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<tbody>
<tr>
<td>The identity of the person lodging the complaint shall not be revealed to the master or the shipowner of the ship concerned.</td>
<td>The identity of the person lodging the complaint shall not be revealed to the master or the shipowner, or the ship manager of the ship concerned.</td>
</tr>
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</table>

**Reason**

Not every vessel is managed by its owner. Some ships are owned by banks, who elect to have the vessel managed and operated by a ship manager on their behalf.
Recommendation 2.4

Article 20

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>The Commission shall establish and publish every year a black-list showing the performance of ship operators and companies in accordance with the procedures and criteria laid down in Annex XV.</td>
<td>The Commission shall establish and publish every year a black-list showing the performance of shipowners, ship managers, ship operators, charterers, ships, terminal operators, and companies in accordance with the procedures and criteria laid down in Annex XV.</td>
</tr>
</tbody>
</table>

Reason

Naming them each in the article prevents having the term ‘ship operator’ to be interpreted by the courts to include the offending party. Also, naming them explicitly hopefully ensures that shipowners, ship managers, ship operators, charterers, ships, and terminal operators keep an eye on each other’s performance, as being named in the ‘grey or black list’ is detrimental to business.

Recommendation 2.5

Annex VIII C as referred to in Article 8

<table>
<thead>
<tr>
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<tr>
<td>3. BULK CARRIERS</td>
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<tr>
<td>— possible corrosion of deck machinery mountings,</td>
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<tr>
<td>— possible deformation and/or corrosion of hatch covers,</td>
<td>— possible deformation and/or corrosion of hatch covers,</td>
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<tr>
<td>— possible cracks or local corrosion in transverse bulkheads,</td>
<td>— possible cracks or local corrosion in transverse bulkheads,</td>
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<tr>
<td>— access to cargo holds,</td>
<td>— access to cargo holds,</td>
</tr>
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<td></td>
<td>— ballast tanks: at least one of the ballast tanks within the cargo area is to be examined from the tank manhole/ deck access in first instance and entered if the inspector establishes clear grounds for further inspection,</td>
</tr>
</tbody>
</table>

Reason

Bulk carriers suffer the same ballast tank problems as double hulled tankers do. Ballast tanks are subject to the accumulation of sediments and liable to serious corrosion. Wastage of structural steel, fatigue cracking or buckling of stiffeners affect the safety of the vessel, if they occur can be identified only by a visual inspection, and for this reason should be included in port State control inspections.

3. Proposal for a directive on a Community vessel traffic monitoring and information system

3.1  **applauds** the introduction of a ‘prevention’ component permitting the operational management of maritime risk at Community level as part of the EU’s maritime safety policy;

3.2  **recommends** the introduction of AIS systems on all fishing vessels, inshore as well as off-shore, and not just on those above 15 m length. It is the smaller ones that are most at risk as they are difficult to identify visually as well as by radar if they are built from timber or GRP;
3.3 is in total agreement with catering for the need to improve the operational procedures designed to respond effectively to emergency situations in which ships may find themselves and of the importance of issues concerning guarantees for any economic damage related to the accommodation of ships in distress.

RECOMMENDATIONS

Recommendation 3.1 Am. 5

Article 1

<table>
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<tr>
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<tbody>
<tr>
<td>Article 1 paragraph 8: Article 20 shall be replaced by the following: 'Article 20 — Accommodation of ships in distress in places of refuge' (1) Member States shall ensure that, subject to the results of the assessment of the situation carried out on the basis of the plan referred to in Article 20a, ships in distress are admitted to a place of refuge which make it possible to limit the threat posed by their situation. (2) The accommodation of a ship in distress in a place of refuge shall be the subject of a prior assessment of the situation and a decision taken by an independent competent authority designated by the Member State. (3) The authorities referred to in paragraph 2 shall meet regularly to exchange their expertise and improve the measures taken pursuant to this Article. They may meet at any time, on account of specific circumstances, at the initiative of one of them or of the Commission.</td>
<td>Article 1 paragraph 8: Article 20 shall be replaced by the following: 'Article 20 — Accommodation of ships in distress in places of refuge' (1) Member States shall ensure that, subject to the results of the assessment of the situation carried out on the basis of the plan referred to in Article 20a, ships in distress are admitted to a place of refuge which make it possible to limit the threat posed by their situation. (2) The accommodation of a ship in distress in a place of refuge shall be the subject of a prior assessment of the situation and a decision taken by an independent competent authority designated by the Member State. (2a) The authorities referred to in paragraph 2 shall take advice of all relevant players related to the salvage operation and shall consult, in particular, local (port) authorities before deciding to accommodate a ship in distress in a place of refuge. (2b) The authorities referred to in paragraph 2 shall be responsible for compensating local (port) authorities for any costs and damage resulting from the decision referred to in paragraph 2 if such costs and damage cannot be promptly recovered from the owner or operator of a vessel within the meaning of Article X of Directive XX/XXXX/EC [on civil liability and the financial guarantees given by shipowners]. (3) The authorities referred to in paragraph 2 shall meet regularly to exchange their expertise and improve the measures taken pursuant to this Article. They may meet at any time, on account of specific circumstances, at the initiative of one of them or of the Commission.</td>
</tr>
</tbody>
</table>

Reason

The Commission sets out in the Explanatory Memorandum that there is a clear need of making the existing provisions regarding ships in distress in places of refuge clearer and more focused. Therefore the Commission introduces that the accommodation of a ship in distress in a place of refuge shall be the subject of a prior assessment of the situation and a decision taken by an independent competent authority designated by the Member State.

The introduction of the independent competent authority is recommendable as it will guarantee a more objective decision on where a ship in distress can be best accommodated. This proposal shifts decision making power regarding the accommodation of a ship from the local port authority to a national authority. To maintain some interaction and to establish a relation based on trust between the local port authority and the national authority an obligation to consult the port authority is highly recommendable.

Moreover, as the final decision on accommodating a ship in distress is being made by the independent competent authority, the powers of the port authority can be overruled. The possibility for the national authority to overrule the local port authority can leave the latter with a financial burden of a decision which has not been taken by the port authority. It is not logical that port authorities will need to find compensation for costs and damage which are not caused by their own operations nor resulted from a decision the port authority has taken itself.
It is therefore recommendable that the independent competent authority will be fully liable for his decisions and responsible for compensation.

### Recommendation 3.2 Am.6

#### Article 1

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Article 1 paragraph 9: The following Article 20a shall be inserted:</td>
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</tr>
<tr>
<td>Article 20a — Plans for the accommodation of ships in distress</td>
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</tr>
<tr>
<td>(1) Member States shall draw up plans for responding to threats presented by ships in distress in the waters under their jurisdiction.</td>
<td>(1) Member States shall draw up plans for responding to threats presented by ships in distress in the waters under their jurisdiction.</td>
</tr>
<tr>
<td>(2) The plans referred to in paragraph 1 shall be prepared after consultation of the parties concerned, taking into account the relevant IMO guidelines referred to in Article 3(a), and shall contain at least the following:</td>
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</tr>
<tr>
<td>a) the identity of the authority or authorities in charge of receiving and handling alerts;</td>
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</tr>
<tr>
<td>b) the identity of the authority responsible for assessing the situation, selecting a suitable place of refuge and taking a decision on accommodating a ship in distress in the place of refuge selected;</td>
<td>b) the identity of the authority responsible for assessing the situation, selecting a suitable place of refuge and taking a decision on accommodating a ship in distress in the place of refuge selected;</td>
</tr>
<tr>
<td>c) the inventory of potential places of refuge, recapitulating those elements which are conducive to speedy assessment and decision-making, including descriptions of the environmental and social factors and the natural conditions of the potential places considered;</td>
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</tr>
<tr>
<td>d) the assessment procedures for selecting the place of refuge on the basis of places listed on the inventory;</td>
<td>d) the assessment procedures for selecting the place of refuge on the basis of places listed on the inventory;</td>
</tr>
<tr>
<td>e) the resources and installations suitable for assistance, rescue and combating pollution;</td>
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<tr>
<td>f) any international coordination and decision-making mechanisms that may be applicable;</td>
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</tr>
<tr>
<td>g) the financial guarantee and liability procedures in place for ships accommodated in a place of refuge.</td>
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</tr>
<tr>
<td>(3) Member States shall publish the name of the competent authority referred to in Article 20(2) and the list of suitable contact points for receiving and handling alerts. They shall communicate to the Commission the inventory of potential places of refuge, and furthermore communicate the relevant information on the plans and places of refuge to the neighbouring Member States. In implementing the procedures provided for in the plans for accommodating ships in distress, they shall ensure that all relevant information on the plans and places of refuge is made available to the parties involved in the operations, including assistance and towing companies.</td>
<td>(3) Member States shall publish the name of the competent authority referred to in Article 20(2) and the list of suitable contact points for receiving and handling alerts. They shall communicate to the Commission the inventory of potential places of refuge, and furthermore communicate the relevant information on the plans and places of refuge to the neighbouring Member States. In implementing the procedures provided for in the plans for accommodating ships in distress, they shall ensure that all relevant information on the plans and places of refuge is made available to the parties involved in the operations, including assistance and towing companies.</td>
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#### Reason

Already while drawing up a plan for responding to threats presented by ships in distress in the waters of the Member States it is recommendable that the compensation procedure for potential costs and damage occurring as result of ships accommodated in a place of refuge is included.
Local port authorities and communities may be exposed to pollution or other dangers, such as an explosion, while there may be economic damage if the port, bridges, locks or roads are blocked as a result. Such economic damage may be substantial and can increase very fast. The blockade can also have effects beyond the port area as various companies in the hinterland rely on the goods shipped through the port. However, the international funds compensate damage related to oil pollution and do not cover the economic loss ports encounter.

In the absence of insurance requirements for all ships, there is not guarantee that the ship has liability insurances and, even if it has, claimants may not have access to it if the insurer can use any of its defences.

The Directive proposal on civil liability and financial securities of shipowners, will bring substantial improvement to the existing legal framework. However, it is recommendable that the provisions of the Vessel Traffic Monitoring Directive are further improved to ensure that port authorities and local authorities will have clear guarantees that damage and costs related to the accommodation of ships in distress will be fully and promptly compensated.

In this way port and local authorities will be encouraged to play a pro-active role in offering a place of refuge and this will also ensure an effective and efficient cooperation with the independent competent authority the Commission seeks to establish in every Member State.

The Commission has left such compensation for port authorities open in the Third Maritime Safety Package even if the European Parliament explicitly asked the Commission in its 2004 Resolution on Improving Safety at Sea to submit proposals for financial compensation for places of refuge (1).

Recommendation 3.3 Am.7

Article 1

<table>
<thead>
<tr>
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<tr>
<td>Article 1, paragraph 10 Commission proposal:</td>
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<tr>
<td>The following Article 20b shall be inserted:</td>
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<tr>
<td>'Article 20b — Financial guarantees'</td>
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</tr>
<tr>
<td>(1) Prior to accommodating a ship in distress in a place of refuge, the Member State may request the ship's operator, agent or master to present an insurance certificate or a financial guarantee, within the meaning of Article X of Directive XX/XXXX/EC [on civil liability and the financial guarantees given by shipowners], covering his liability for damage caused by the ship.</td>
<td></td>
</tr>
<tr>
<td>(2) The absence of an insurance certificate or financial guarantee does not exonerate the Member States from the prior assessment and decision referred to in Article 20.'</td>
<td>(1) Prior to accommodating a ship in distress in a place of refuge, the Member State may request the ship's operator, agent or master to present an insurance certificate or a financial guarantee, within the meaning of Article X of Directive XX/XXXX/EC [on civil liability and the financial guarantees given by shipowners], covering his liability for damage caused by the ship.</td>
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<td>(2) The absence of an insurance certificate or financial guarantee does not exonerate the Member States from the prior assessment and decision referred to in Article 20.'</td>
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</tr>
<tr>
<td>(3) The authorities referred to in Article 20(2) shall be responsible for any legal action against the ship's operator, agent or master to recover costs and damage caused by the ship.</td>
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</tbody>
</table>

Reason

Port Authorities rank among many creditors of the vessel. They have to share, with these various parties, the compensation amount which is available from the international funds or from the ship's insurance. They often stand last in the queue for compensation despite the far reaching responsibility to accommodate a ship in distress. Moreover, the international funds compensate damage related to oil pollution and do not cover the economic loss ports encounter.

Smaller ports and communities affected by damage resulting from obligatory accommodation of a ship in distress may not have the manpower, financial means or legal expertise to be confronted with long lasting legal action against the ship’s operator, agent or master to recover costs and damage while not even having the final authority in taking this decision.

4. Directive establishing the fundamental principles governing the investigation of accidents in the maritime transport sector

4.1 agrees with the general objective of the Commission’s proposal to improve maritime safety by establishing clear Community-wide guidelines on the technical investigations to be carried out following maritime casualties and incidents and the importance of such investigations;

4.2 supports the provision that accident investigations should focus on risk prevention and be based on IMO’s principles and recommendations, and be targeted at how legislation, the operation of vessels, preparedness for, and conducting emergency responses can be improved;

4.3 emphasises the need for extensive use of the relevant models and methods developed in the framework of the IMO to investigate maritime accidents.

RECOMMENDATIONS

Recommendation 4.1

Article 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>CoR Amendment</th>
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<tr>
<td>(d) fishing vessels with a length of less than 24 metres;</td>
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</table>

Reason

In its Directives on ‘Port State Control’ and ‘Flag State Responsibility’, the Commission rightly described fishing as one of the most dangerous activities. The smaller the vessel, the more accident prone it is with frequent loss of life! For this reason it is proposed to delete item (d) of Article 2 and to investigate accidents and incidents involving fishing vessels in the same thorough way as this Directive proposes to investigate accidents and incidents involving merchant ships.

5. Directive to establishing common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations

5.1 agrees with the need for effective monitoring and an audit of classification societies, their subsidiaries and participating undertakings and to introduce penalties for failure to comply with their obligations and to establish, at international and Community level, exhaustive technical inspection mechanisms which provide reliable information about the real state of ships.

5.2 concurs with the suggestion that the recognised organisations should establish a joint body for quality system assessment and certification. The joint body must be independent, have all the necessary resources to enable work to be carried out in-depth and on a continuous basis, and be in a position to propose both individual and collective measures in order to improve the quality of the recognised organisations’ work;

5.3 agrees that cooperation between the recognised organisations should be extended to ensure that their technical regulations are compatible and that these regulations and international conventions are interpreted and applied in a uniform manner to provide a common basis for evaluation and instruments which will enable corrective measures to be taken as required to achieve a uniform level of safety in the Community, technical cooperation between Classification Societies, compatibility between regulations, the application of IMO’s interpretation of international conventions throughout the EU, and thus lead to genuine mutual recognition of class certificates and marine equipment;
5.4 requests that the last line in item (31) ‘and inform the flag State when necessary’ be changed to ‘and make this information immediately available to the flag State’.

RECOMMENDATIONS

Recommendation 5.1

Article 12

Text proposed by the Commission | CoR Amendment
--- | ---
2. Without prejudice to paragraph 1, where an organisation fails to implement the preventive and remedial action required by the Commission, or incurs unjustified delays, the Commission may impose periodic penalty payments on the said organisation until the required action is fully implemented. | 2. Without prejudice to paragraph 1, where an organisation fails to implement the preventive and remedial action required by the Commission, or incurs unjustified delays, the Commission may request the European Court of Justice to impose periodic penalty payments on the said organisation until the required action is fully implemented.

Reason

It is believed to be more acceptable to the offending party if fines are levied by the European Court of Justice using the advice of the Commission rather than directly by the Commission.

Recommendation 5.2

Article 20

Text proposed by the Commission | CoR Amendment
--- | ---
The recognised organisations shall establish and implement appropriate common requirements concerning cases of transfer of class where special precautions are necessary. Those cases shall as a minimum include the transfer of class of ships of fifteen years of age or over and the transfer from a non-recognised organisation to a recognised organisation. | The recognised organisations shall establish and implement appropriate common requirements concerning cases of transfer of class where special precautions are necessary. Those cases shall as a minimum include the transfer of class of ships of ten years of age or over and the transfer from a non-recognised organisation to a recognised organisation or from a recognised organisation to a non-recognised organisation.

Reason

The period of reclassification is generally four years with a one-year grace. In practice this works out as about five years. At the age of 10, a vessel is no longer as operationally efficient as a newer one. Also steel replacement may be required in bulkheads and stiffeners and pipe work for water ballast and cargo may be in need of replacement, especially the bends. This is the ideal time to sell the vessel on, relatively cheaply, and have the new owner performing and paying the repair work. The new owner is usually a less demanding one and the new flag often a flag of convenience. Equally, the new classification society is not necessarily a ‘recognised organisation’ as defined by the Commission.

6. Regulation on the liability of carriers of passengers by sea and inland waterways in the event of accidents

6.1 agrees with the initiative to incorporate the Athens Convention into Community law for compulsory insurance rather than to leaving it to the discretion of the shipowner through P&I clubs;

6.2 welcomes the initiative to extend the application of the provisions of the Athens Convention to domestic traffic but feels that including all inland waterways may not be appropriate and asks the Commission to clarify the definition of inland waterway and advises it less extensive measures would suffice here;
6.3 expresses agreement that for shipping incidents, the 2002 Protocol to the Athens Convention introduces a strict liability regime. That strict liability is aimed at improving the position of claimants, that the liability is not dependent on an act of fault or negligence by the carrier and that therefore there is no need for the claimant to prove the liability of the carrier.

6.4 notes the reservation expressed by shipowners and P&I clubs regarding Article 3 (1) of the Athens Convention on the liability for incidents caused by terrorism.

6.5 stresses the need to find internationally acceptable proposals as the only solution in the impasse reached owing to the refusal of the insurance industry to accept the new liability limits and related insurance requirements provided for in the Commission's proposal for a regulation.

7. Directive on the civil liability and financial guarantees of shipowners

7.1 agrees with the call of the European Parliament for ‘a comprehensive and cohesive European maritime policy, which would have as its objective the creation of a European maritime safety area based on the introduction of a system of liability covering the entire maritime transport chain’

7.2 nevertheless considers that any arrangement regarding the issue of liability and compensation for maritime pollution must be international.

7.3 supports possible amendments to the applicable rules in order to render parties other than shipowners liable, as well as the introduction of unlimited liability of shipowners in the event of severe or deliberate infringement of their safety and anti-pollution obligations.

7.4 underlines the need for any amendment of the Civil Liability Convention to maintain the balance of participation between each side (shipowners and cargo operators) based on the arrangements promoted through the voluntary proposals/undertakings of ship operators.

7.5 requests that ‘parties other than shipowners’ is to include ship managers and charterers.

7.6 expresses concern that the compatibility with international law in the application of the Directive should be recognised.

7.7 suggests that ship masters should not be included in the definition of ‘parties other than shipowners’ unless they behaved grossly negligent in the execution of their duties.

7.8 expresses concern about the disparity between this Directive and the Hague/Hague–Visby Rules and the Hamburg Rules, governing shipowners’ liability under Bills of Lading, Sea Waybills and Charter parties as used in international maritime transport, which may give rise to confusion as to which liability regime would apply as it is felt that the wording of this Directive does not make it totally clear whether it applies to pollution damage only, or whether it includes other damage to third parties.

7.9 agrees with the Commission that establishing an obligatory insurance system will help tackle the problem of substandard ships.

7.10 requests that the wording of the insurance policy the ship is to carry, clearly states that it covers damage to places of refuge.
RECOMMENDATIONS

Recommendation 7.1

Article 1

<table>
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<tr>
<th>Text proposed by the Commission</th>
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<tbody>
<tr>
<td>This Directive lays down rules applicable to certain aspects of the obligations on operators in the maritime transport chain as regards civil liability and introduces financial protection adapted for seafarers in case of abandonment.</td>
<td>This Directive lays down rules applicable to certain aspects of the obligations on operators and on users of ships in the maritime transport chain as regards civil liability and introduces financial protection adapted for seafarers in case of abandonment.</td>
</tr>
</tbody>
</table>

Reason

The term ‘operators and users of ships’ includes charterers other than bare boat charterers who use ships, including substandard ships under time-, trip-, voyage-, and consecutive voyage charters. They must be included in this Directive and bear the same obligations as ‘shipowners’, as defined in this Directive, do, i.e. provide a financial guarantee. After all, it is their oil that causes the pollution! This would have the following effects:

— Ensure that charterers have an obligation not to use substandard vessels.

— The commercial advantage gained by a charterer of using a substandard vessel, at a lower freight rate, is lost due to the increased costs of the financial guarantee as it involves the added risk of using a substandard vessel.

— It becomes financially unattractive to charterers to use substandard vessels and fewer cargoes will be available to them.

— The incentive to operate, charter, and use substandard vessels is therefore diminished, and the owners of such ships will be forced to either bring the ship, its manning and operation into full compliance with international regulations, or to scrap them.

Recommendation 7.2

Article 2

<table>
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<tr>
<td>(7) A definition of the word ‘operator’ as used in Article 1 of this Directive should be included.</td>
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</table>

Reason

The possible question as to ‘who is an operator’ should be forestalled.

Local and regional authorities are key players in implementing the strategy whether in cleaning up polluted areas, providing safe havens for vessels, assisting those in difficulty, or where local citizens are themselves seafarers, or rescuers of those in peril. It is disappointing therefore that the 3rd Maritime Safety Package does not give sufficient importance to the role that such authorities can play in achieving the intended results.


The President
of the Committee of the Regions
Michel DELEBARRE