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Note to the reader (see page 3 of the cover)



⁽¹⁾ Text with EEA relevance

III

(Preparatory Acts)

COUNCIL

COMMON POSITION (EC) No 28/2008

adopted by the Council on 18 November 2008

with a view to the adoption of Directive 2008/.../EC of the European Parliament and of the Council of ... amending Council Directive 80/181/EEC on the approximation of the laws of the Member States relating to units of measurement

(Text with EEA relevance)

(2008/C 330 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) Directive 80/181/EEC ⁽³⁾ requires the United Kingdom and Ireland to fix a date for ending the exemptions, where they are still being applied, in respect of the units of measurement known as 'pint' for milk in returnable bottles and beer and cider on draught, 'mile' for road signs and speed indications, and 'troy ounce' for transactions in precious metals. However, experience has shown that, given the local character of those exemptions and the limited number of products concerned, maintaining the exemptions would not result in a non-tariff barrier to trade and, as a consequence, there is no longer a need to put an end to those exemptions.

(2) It is appropriate to clarify that the scope of Directive 80/181/EEC is consistent with the objectives referred to in Article 95 of the Treaty and that it is not limited to any specific Community fields of action.

(3) Directive 80/181/EEC authorises the use of supplementary indications in addition to the legal units laid down in Chapter I of the Annex to that Directive until 31 December 2009. However, in order to avoid creating obstacles for Community undertakings exporting to certain third countries that require products to be marked in other units than those laid down in Chapter I, it is appropriate to maintain the authorisation to use supplementary indications.

(4) Directive 80/181/EEC supports the smooth functioning of the internal market through the level of harmonisation of units of measurement it prescribes. In this context, it is appropriate that the Commission monitor market developments relating to that Directive and its implementation, notably as concerns possible obstacles to the functioning of the internal market and any further harmonisation required to overcome those obstacles.

(5) It is appropriate that the Commission continue to strongly pursue, in the context of its third country trade relations, including the Transatlantic Economic Council, the acceptance in third country markets of products labelled only in the units of the International System of Units (SI).

(6) Supplementary indications could also allow the gradual and smooth introduction of new metric units which may be developed at the international level.

⁽¹⁾ OJ C 120, 16.5.2008, p. 14.

⁽²⁾ Opinion of the European Parliament of 29 November 2007 (OJ C 297 E, 20.11.2008, p. 105), Council Common Position of 18 November 2008 and Position of the European Parliament of ... (not yet published in the Official Journal).

⁽³⁾ OJ L 39, 15.2.1980, p. 40.

- (7) In 1995, the General Conference on Weights and Measures decided to eliminate the class of SI supplementary units as a separate class in the SI and to interpret the units 'radian' and 'steradian' as dimensionless SI derived units, the names and symbols of which may, but need not, be used in expressions for other SI derived units, as is convenient.
- (8) In 1999, the General Conference on Weights and Measures adopted, within the framework of the SI, the 'katal', the symbol of which is 'kat', as the SI unit for catalytic activity. This new harmonised SI unit was intended to ensure a coherent and uniform indication of units of measurement in the fields of medicine and biochemistry and, as a consequence, to eliminate any risk of misunderstanding arising from the use of non-harmonised units.
- (9) In 2007, in order to eliminate one of the major sources of the observed variability between different realisations of the water triple point, the General Conference on Weights and Measures adopted a note on the definition of the 'kelvin'. The 'kelvin' is defined as a fraction of the thermodynamic temperature of the triple point of water. The note refers to water of a specific isotopic composition.
- (10) Since the acre is no longer in use for land registration purposes in the United Kingdom and Ireland, there is no longer any need to provide for an exemption in that respect.
- (11) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (12) Directive 80/181/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 80/181/EEC is hereby amended as follows:

- (1) Article 1(b) shall be replaced by the following:

'(b) those listed in Chapter II of the Annex only in those Member States where they were authorised on 21 April 1973.;

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

- (2) Article 2(a) shall be replaced by the following:

'(a) The obligations arising under Article 1 relate to measuring instruments used, measurements made and indications of quantity expressed in units of measurement.;

- (3) Article 3(2) shall be replaced by the following:

'2. The use of supplementary indications shall be authorised.;

- (4) the following Article shall be inserted:

'Article 6b

The Commission shall monitor market developments relating to this Directive and its implementation with regard to the smooth functioning of the internal market and international trade and shall submit a report on those developments, accompanied by proposals where appropriate, to the European Parliament and to the Council by 31 December 2019.;

- (5) the Annex shall be amended as follows:

- (a) in Chapter I, point 1.1, the paragraph entitled 'Unit of thermodynamic temperature' shall be replaced by the following:

'Unit of thermodynamic temperature

The kelvin, unit of thermodynamic temperature, is the fraction 1/273,16 of the thermodynamic temperature of the triple point of water.

This definition refers to water having the isotopic composition defined by the following amount-of-substance ratios: 0,000 155 76 mole of ²H per mole of ¹H, 0,000 379 9 mole of ¹⁷O per mole of ¹⁶O and 0,002 005 2 mole of ¹⁸O per mole of ¹⁶O.

(Thirteenth CGPM (1967), resolution 4 and Twenty-third CGPM (2007), resolution 10)';

- (b) in Chapter I, point 1.1.1, the title shall be replaced by the following:

'Special name and symbol of the SI derived unit of temperature for expressing Celsius temperature';

- (c) in Chapter I, point 1.2, the title shall be replaced by the following:

'1.2. SI derived units';

- (d) in Chapter I, point 1.2.1 shall be deleted;

- (e) in Chapter I, points 1.2.2 and 1.2.3 shall be replaced by the following:

'1.2.2. General rule for SI derived units

Units derived coherently from SI base units are given as algebraic expressions in the form of products of powers of the SI base units with a numerical factor equal to 1.

1.2.3. SI derived units with special names and symbols

Quantity	Unit		Expression	
	Name	Symbol	In terms of other SI units	In terms of SI base units
Plane angle	radian	rad		$m \cdot m^{-1}$
Solid angle	steradian	sr		$m^2 \cdot m^{-2}$
Frequency	hertz	Hz		s^{-1}
Force	newton	N		$m \cdot kg \cdot s^{-2}$
Pressure, stress	pascal	Pa	$N \cdot m^{-2}$	$m^{-1} \cdot kg \cdot s^{-2}$
Energy, work; quantity of heat	joule	J	$N \cdot m$	$m^2 \cdot kg \cdot s^{-2}$
Power ⁽¹⁾ , radiant flux	watt	W	$J \cdot s^{-1}$	$m^2 \cdot kg \cdot s^{-3}$
Quantity of electricity, electric charge	coulomb	C		$s \cdot A$
Electric potential, potential difference, electromotive force	volt	V	$W \cdot A^{-1}$	$m^2 \cdot kg \cdot s^{-3} \cdot A^{-1}$
Electric resistance	ohm	Ω	$V \cdot A^{-1}$	$m^2 \cdot kg \cdot s^{-3} \cdot A^{-2}$
Conductance	siemens	S	$A \cdot V^{-1}$	$m^{-2} \cdot kg^{-1} \cdot s^3 \cdot A^2$
Capacitance	farad	F	$C \cdot V^{-1}$	$m^{-2} \cdot kg^{-1} \cdot s^4 \cdot A^2$
Magnetic flux	weber	Wb	$V \cdot s$	$m^2 \cdot kg \cdot s^{-2} \cdot A^{-1}$
Magnetic flux density	tesla	T	$Wb \cdot m^{-2}$	$kg \cdot s^{-2} \cdot A^{-1}$
Inductance	henry	H	$Wb \cdot A^{-1}$	$m^2 \cdot kg \cdot s^{-2} \cdot A^{-2}$
Luminous flux	lumen	lm	$cd \cdot sr$	cd
Illuminance	lux	lx	$lm \cdot m^{-2}$	$m^{-2} \cdot cd$
Activity (of a radionuclide)	becquerel	Bq		s^{-1}
Absorbed dose, specific energy imparted, kerma, absorbed dose index	gray	Gy	$J \cdot kg^{-1}$	$m^2 \cdot s^{-2}$
Dose equivalent	sievert	Sv	$J \cdot kg^{-1}$	$m^2 \cdot s^{-2}$
Catalytic activity	katal	kat		$mol \cdot s^{-1}$

(1) Special names for the unit of power: the name volt-ampere (symbol "VA") when it is used to express the apparent power of alternating electric current, and var (symbol "var") when it is used to express reactive electric power. The "var" is not included in GCPM resolutions.

Units derived from SI base units may be expressed in terms of the units listed in Chapter I.

In particular, derived SI units may be expressed by the special names and symbols given in the above table; for example, the SI unit of dynamic viscosity may be expressed as $m^{-1} \cdot kg \cdot s^{-1}$ or $N \cdot s \cdot m^{-2}$ or $Pa \cdot s$;

(f) in Chapter II, the following row shall be deleted from the table:

Land registration	acre	1 ac = 4 047 m ²	ac;
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- (g) in Chapter II, the final sentence shall be replaced by the following: 'The units listed in this Chapter may be combined with each other or with those in Chapter I to form compound units.'

Article 2

Transposition

1. Member States shall adopt and publish, no later than 31 December 2009, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

They shall apply those measures from 1 January 2010.

When they are adopted by Member States, those measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at ...

For the European Parliament

The President

...

For the Council

The President

...

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 10 September 2007, the Commission adopted a proposal for a Directive of the European Parliament and of the Council amending Council Directive 80/181/EEC on the approximation of the laws of the Member States relating to units of measurement.
2. On 26 September 2007, the Council decided to consult the Economic and Social Committee which gave its opinion on 12 December 2007.
3. The European Parliament voted its Opinion at first reading on 29 November 2007. The Opinion of the Parliament contains no amendments to the Commission's proposal.
4. On 15 July 2008, the Council reached a political agreement with a view to adopting a Common Position in accordance with Article 251 of the Treaty.
5. On 18 November 2008, the Council adopted its Common Position on the proposal as set out in document 11915/08.

II. OBJECTIVES

6. The general objectives of the Commission proposal are to update Directive 80/181/EEC to:
 - include consumer protection and environment in its scope,
 - include as a legal unit a new unit in the International System of Units (SI) ⁽¹⁾,
 - allow the use of supplementary indications indefinitely,
 - remove the requirement on the UK and Ireland to end the limited local exemptions for pint, mile and troy ounce where they are still in use.

III. COMMON POSITION

General

7. The Council, which agrees with the objectives of the proposal, has nevertheless endeavoured to improve some of the provisions and to add further provisions, notably in order to reflect in Community law some additional changes to the SI system and to provide for a Commission report on developments in relation to Directive 80/181/EEC, in particular as concerns the smooth functioning of the internal market and international trade.

Smooth functioning of the Internal Market and international acceptance of SI units

8. Council Directive 80/181/EEC has been reviewed every ten years as concerns local exemptions and the use of supplementary indications. The Council agrees with the intention behind the proposal, which is to increase legal certainty by removing the time limit for the exemptions from the general principle that SI units should be used to the largest extent possible. The Council however deems it important to closely follow the effects of the Directive on units of measurement on the smooth functioning of the Internal Market and on external trade. To this aim, it has inserted a new Article 6b that provides for a Commission report on these effects 10 years after the entry into force of this amending directive.
9. In order to explain the provisions in Article 6b and to reflect the importance of the Commission's monitoring of the smooth functioning of the internal market, the Council added a new Recital (4). The Council also wished to draw the attention to need to further the acceptance in third country markets of products labelled only in SI units, and to this aim introduced Recital (5).

⁽¹⁾ SI means 'Système International d'unité de mesure'. It is based on the Paris Convention from 1875 and regularly updated by the 'Conférence générale des poids et mesures' (CGPM). The most well-known units of the SI system are the metre, the kilogram and the second.

Developments within the SI system

10. The Council agrees with the objective of the Commission to introduce into Community law the new SI unit 'katal'. It however also wishes to reflect other developments within the SI system in Community law. Therefore the definition of the 'kelvin' set out in Chapter I, point 1.1 of the Annex to the directive is updated to reflect resolution 10 of the Twenty-third General Conference on Weights and Measures (CGPM 2007). Furthermore, Points 1.2.1 and 1.2.3 of Chapter I in the Annex are amended to reflect the 1995 CGPM decision to make the 'radian' and 'steradian' dimensionless.
11. The changes to the Annex are reflected in the new Recitals (7) and (9).

Other changes to the Commission proposal

12. The Council has made some small changes to Recitals (3) and (6) in order to reflect the thinking behind the other changes of the proposal. It has also aligned Article 2 with the text agreed for many similar acts and, as a consequence, added Recital (11). Finally, some purely technical changes resulting from the changes described in Point 10 have been introduced in the Annex.

IV. CONCLUSION

13. The Common Position of the Council has the same general objectives as the Commission proposal for an amending Directive. The intention behind the changes introduced is to contribute to the general aims of Directive 80/181/EEC on units of measurement. The Commission indicated, at the time that the Council reached political agreement, general acceptance of the Council changes to the proposal.
-

COMMON POSITION (EC) No 29/2008**adopted by the Council on 9 December 2008****with a view to the adoption of Directive 2008/.../EC of the European Parliament and of the Council of ... on the insurance of shipowners for maritime claims**

(Text with EEA relevance)

(2008/C 330 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) One element of Community maritime transport policy is to improve the quality of merchant shipping by making all economic operators act more responsibly.
- (2) Dissuasive measures have already been adopted under Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements ⁽⁴⁾.
- (3) On 9 October 2008, the Member States adopted a statement in which they unanimously recognised the importance of the application of the 1996 Protocol to the 1976 Convention on Limitation of Liability for Maritime Claims by all Member States.
- (4) The obligation to have insurance should make it possible to ensure better protection for victims. It should also help to eliminate substandard ships and make it possible to re-establish competition between operators. Furthermore, in Resolution A.898(21), the International Maritime Organization invited States to urge shipowners to be properly insured.
- (5) Non-compliance with the provisions of this Directive should be rectified. Directive 2008/.../EC of the

European Parliament and of the Council of ... on port State control (recast) ⁽⁵⁾ already provides for the detention of ships in the case of absence of certificates which have to be carried on board. However, it is appropriate to provide for the possibility of expelling a ship which does not carry a certificate of insurance. The modalities of the expulsion should allow the situation to be rectified within a reasonable time period.

- (6) Since the objectives of this Directive, namely the introduction and implementation of appropriate measures in the field of maritime transport policy, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1***Subject-matter**

This Directive lays down rules applicable to certain aspects of the obligations on shipowners as regards their insurance for maritime claims.

*Article 2***Scope**

1. This Directive shall apply to ships of 300 gross tonnage or more.
2. This Directive shall not apply to warships, auxiliary warships or other State-owned or operated ships used for a non-commercial public service.
3. This Directive shall be without prejudice to the regimes established by the instruments in force in the Member State concerned and listed in the Annex hereto.

⁽¹⁾ OJ C 318, 23.12.2006, p. 195.

⁽²⁾ OJ C 229, 22.9.2006, p. 38.

⁽³⁾ Opinion of the European Parliament of 29 March 2007 (OJ C 27 E, 31.1.2008, p. 166), Council Common Position of 9 December 2008 and Position of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ L 255, 30.9.2005, p. 11.

⁽⁵⁾ OJ L ...

*Article 3***Definitions**

For the purpose of this Directive, the following definitions shall apply:

- (a) 'shipowner' means the registered owner of a seagoing ship, or any other person such as the bareboat charterer who is responsible for the operation of the ship;
- (b) 'insurance' means insurance with or without deductibles, and comprises, for example, indemnity insurance of the type currently provided by members of the International Group of P&I Clubs, and other effective forms of insurance (including proved self-insurance) and financial security offering similar conditions of cover;
- (c) '1996 Convention' means the consolidated text of the 1976 Convention on Limitation of Liability for Maritime Claims, adopted by the International Maritime Organization (IMO), as amended by the 1996 Protocol.

*Article 4***Insurance for maritime claims**

- 1. Each Member State shall require that shipowners of ships flying its flag have insurance covering such ships.
- 2. Each Member State shall require shipowners of ships flying a flag other than its own to have insurance in place when such ships enter a port under the Member State's jurisdiction. This shall not prevent Member States, if in conformity with international law, from requiring compliance with that obligation when such ships are operating in their territorial waters.
- 3. The insurance referred to in paragraphs 1 and 2 shall cover maritime claims subject to limitation under the 1996 Convention. The amount of the insurance for each and every ship per incident shall be equal to the relevant maximum amount for the limitation of liability as laid down in the 1996 Convention.

*Article 5***Inspections, compliance, expulsion from ports and denial of access to ports**

- 1. Each Member State shall ensure that any inspection of a ship in a port under its jurisdiction in accordance with Directive 2008/.../EC, includes verification that a certificate referred to in Article 6 is carried on board.
- 2. If the certificate referred to in Article 6 is not carried on board, and without prejudice to Directive 2008/.../EC providing for detention of ships when safety issues are at stake, the competent authority may issue an expulsion order to the ship which shall be notified to the Commission, the other Member

States and the flag State concerned. As a result of the issuing of such an expulsion order, every Member State shall refuse entry of this ship into any of its ports until the shipowner notifies the certificate referred to in Article 6.

*Article 6***Insurance certificates**

- 1. The existence of the insurance referred to in Article 4 shall be proved by one or more certificates issued by its provider and carried on board the ship.
- 2. The certificates issued by the insurance provider shall include the following information:
 - (a) name of ship, its IMO number, and port of registry;
 - (b) shipowner's name and principal place of business;
 - (c) type and duration of the insurance;
 - (d) name and principal place of business of the provider of the insurance and, where appropriate, the place of business where the insurance is established.
- 3. If the language used in the certificates is neither English nor French nor Spanish, the text shall include a translation into one of these languages.

*Article 7***Penalties**

For the purposes of Article 4(1), Member States shall lay down a system of penalties for the breach of national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties provided for shall be effective, proportionate and dissuasive.

*Article 8***Reports**

Every three years, and for the first time before 1 January 2015, the Commission shall present a report to the European Parliament and the Council on the application of this Directive.

*Article 9***Transposition**

- 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 2012. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 10

Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 11

Addressees

This Directive is addressed to the Member States.

Done at ...

For the European Parliament

The President

...

For the Council

The President

...

ANNEX

- The International Convention on Civil Liability for Oil Pollution Damage, 1992.
- The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention).
- The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 ('Bunker Oil' Convention).
- The Nairobi International Convention on the Removal of Wrecks, 2007 ('Wrecks Removal' Convention).
- Regulation (EC) No .../2008 of the European Parliament and of the Council of ... on the liability of carriers of passengers by sea in the event of accidents ⁽¹⁾.

⁽¹⁾ OJL...

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

The Commission presented a proposal for a Directive of the European Parliament and of the Council on the civil liability and financial guarantees of shipowners on 31 January 2006 ⁽¹⁾ as one of the proposals of the third maritime safety package.

On 29 March 2007, the European Parliament voted its opinion at 1st reading ⁽²⁾.

On 9 October 2008, the Council reached a political agreement on a draft Directive on the insurance of shipowners for maritime claims. Following legal/linguistic revision, the Council adopted its Common Position on 9 December 2008 in accordance with Article 251 of the Treaty.

In carrying out its work, the Council took account of the opinions of the Economic and Social Committee ⁽³⁾ and of the Committee of Regions ⁽⁴⁾.

II. ANALYSIS OF THE COMMON POSITION

General

The proposal for a Directive on the civil liability and financial guarantees of shipowners, presented by the Commission beginning of 2006, forms part of the third maritime safety package. The Commission proposal aimed at harmonising, at Community level, the regime of civil liability of shipowners and the related ceilings and at introducing a compulsory insurance scheme and financial guarantees for seafarers in case of abandonment.

Although the Council agrees with the objective of the Commission proposal striving for more effective coverage of the interest of victims of damages resulting from the operation of ships, it considers that several provisions of the proposal, creating specific Community rules in parallel to international obligations regarding the same matter, would result in a contradictory situation and be counterproductive in relation to the above mentioned objective. This applies in particular to the provisions relating to the liability regime and the measures concerning seafarers. The proposed provisions rendering the ratification of an IMO Convention mandatory are not acceptable for Member States, particularly for constitutional reasons. Furthermore, the Council deems some provisions, in particular those related to issuing and verifying of certificates, inappropriate as they would create unnecessary administrative burdens.

The Council's Common Position strives for establishing provisions of clearly added value, which currently do not exist nor at international neither at Community level. It therefore focuses on the introduction of an insurance obligation for shipowners at the level of the ceilings laid down in the Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol ('LLMC 96'). It specifies the measures to implement this obligation by means of verifications of a certificate that has to be kept on board of the ships to this effect and provides for sanctions in case of non compliance.

Thus, the Council's Common Position modifies, to a large extent, the original Commission proposal by redrafting it and deleting several parts of the text. This implies that all amendments introduced in the European Parliament's first-reading opinion related to these deleted parts were not accepted by the Council.

In parallel to the Common Position, a declaration of the representatives of the Governments of the Member States of the European Union ⁽⁵⁾ confirms their commitment to do the utmost with a view to ensuring a rapid and effective application of the international conventions on maritime safety, the IMO rules related to flag State obligations and the IMO audit.

⁽¹⁾ Doc. 5907/06.

⁽²⁾ Doc. 7805/07 CODEC 277 MAR 20 ENV 171.

⁽³⁾ CESE 1177/2006 of 13.9.2006 (OJ C 318 of 23.12.2006, p. 195).

⁽⁴⁾ CdR 43/2006 of 15.6.2006 (OJ C 229 of 22.9.2006, p. 38).

⁽⁵⁾ Doc. 15859/08 ADD 1.

Key policy issues*i) Mandatory insurance for maritime claims*

The Council follows the proposal by the Commission to introduce an insurance obligation for ship-owners of ships flying the flag of a Member State and those of ships flying the flag of another State. Relating to the latter, the Council's Common Position specifies that this applies as soon as the ship enters a port under a Member State's jurisdiction, or, if so decided by a Member State, when the ship is operating in its territorial waters.

With a view to a harmonised global level of insurance cover, the Council, in its Common Position, refers to the ceilings laid down in the LLMC 1996 as amount of the insurance for each ship per incident. The term 'insurance', used in the Common Position, is largely based on the definition set out in IMO Resolution A.898(21) ('Guidelines on shipowner's responsibilities in respect of maritime claims').

ii) Control, compliance and penalties

In order to control the compliance of shipowners with their insurance obligation, the Common Position provides for a verification by the port State, in accordance with the Directive on Port State Control. To this effect, one or more certificates issued by the insurance provider have to be carried on board of the ship. The specificities of the certificate set out in the Common Position are based to a large extent on the original Commission proposal.

The Council considers it important to foresee the possibility for specific sanctions in case the insurance certificate is not carried on board. Without prejudice to the detention of the ship concerned according to the rules on port State control, the ship can be expelled from a port and will be denied entry into any of Member States' ports as long as the situation is not rectified. The Common Position also includes a general provision of penalties to be established for non compliance with the Directive, relating to the Member States' obligation as flag States.

iii) Relation to regimes established in accordance with other liability and compensation instruments

Following the Commission proposal, the Council provides in its Common Position that the Directive does not affect the regimes established according to other international Conventions, namely the CLC Convention, the HNS Convention, the Bunker Oil Convention and the Wrecks Removal Convention, as well as the Regulation transposing the Athens Convention into Community law.

III. CONCLUSION

The Council believes that its Common Position is a tool that contributes to an effective compensation of victims of damages resulting from the operation of ships and to eliminating substandard ships.

The Council notes the contacts which have already taken place with the European Parliament on this proposal in the framework of the negotiations on other proposals of the third maritime safety package. It looks forward to a quick agreement on the text allowing the adoption of the Directive as soon as possible.

COMMON POSITION (EC) No 30/2008**adopted by the Council on 9 December 2008****with a view to the adoption of Directive 2008/.../EC of the European Parliament and of the Council of ... on compliance with flag State requirements****(Text with EEA relevance)**

(2008/C 330 E/03)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) The safety of Community shipping and of citizens using it and the protection of the environment should be ensured at all times.
- (2) In respect of international shipping a comprehensive framework enhancing maritime safety and the protection of the environment with regard to pollution from ships has been set up through the adoption of a number of conventions for which the International Maritime Organisation (hereinafter 'IMO') is the depository.
- (3) Under the provisions of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and of the conventions for which IMO is the depository (hereinafter 'IMO Conventions'), the States which are party to those instruments are responsible for promulgating laws and regulations and for taking all other steps which may be necessary to give those instruments full and complete effect so as to ensure that, from the point of view of safety of life at sea and protection of the marine environment, a ship is fit for the service for which it is intended and is manned with competent maritime personnel.
- (4) Due account has to be taken of the Maritime Labour Convention, adopted by the International Labour Organisation (ILO) in 2006, which also addresses flag State-related obligations.
- (5) On 9 October 2008, the Member States adopted a statement in which they unanimously recognised the importance of the application of the international conventions related to flag States obligations in order to improve

maritime safety and to contribute to preventing pollution by ships.

- (6) Implementation of the procedures recommended by the IMO in MSC/Circ.1140/MEPC/Circ.424 of 20 December 2004 on the transfer of ships between States should strengthen the provisions of the IMO Conventions and Community maritime safety legislation relating to a change of flag and should increase transparency in the relationship between flag States, in the interests of maritime safety.
- (7) The availability of information on ships flying the flag of a Member State, as well as on ships which have left a register of a Member State, should improve the transparency of the performance of a high-quality fleet and contribute to better monitoring of flag State obligations and to ensuring a level playing field between administrations.
- (8) In order to help Member States in further improving their performance as flag States, they should have their administration audited on a regular basis.
- (9) A quality certification of administrative procedures in accordance with the standards of the International Organisation for Standardisation (ISO) or equivalent standards should further ensure a level playing field between administrations.
- (10) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁴⁾.
- (11) Since the objectives of this Directive, namely the introduction and implementation of appropriate measures in the field of maritime transport policy, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

⁽¹⁾ OJ C 318, 23.12.2006, p. 195.

⁽²⁾ OJ C 229, 22.9.2006, p. 38.

⁽³⁾ Opinion of the European Parliament of 29 March 2007 (OJ C 27 E, 31.1.2008, p. 140), Council Common Position of 9 December 2008 and Position of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS DIRECTIVE:

Article 4

Article 1

Subject-matter

1. The purpose of this Directive is:
 - (a) to ensure that Member States effectively and consistently discharge their obligations as flag States; and
 - (b) to enhance safety and prevent pollution from ships flying the flag of a Member State.
2. This Directive is without prejudice to Community maritime legislation, as listed in Article 2(2) of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) ⁽¹⁾, and to Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) ⁽²⁾.

Article 2

Scope

This Directive shall apply to the administration of the State whose flag the ship is flying.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (a) 'ship' means a ship or craft flying the flag of a Member State falling within the scope of the relevant IMO Conventions, and for which a certificate is required;
- (b) 'administration' means the competent authorities of the Member State whose flag the ship is flying;
- (c) 'recognised organisation' means an organisation recognised in accordance with Regulation (EC) No .../2009 of the European Parliament and of the Council of ... on common rules and standards for ship inspection and survey organisations ⁽³⁾;
- (d) 'certificates' means statutory certificates issued in respect of the relevant IMO Conventions;
- (e) 'IMO audit' means an audit conducted in accordance with the provisions of Resolution A.974(24) adopted by the IMO Assembly on 1 December 2005.

⁽¹⁾ OJL 324, 29.11.2002, p. 1.

⁽²⁾ OJL 167, 2.7.1999, p. 33.

⁽³⁾ OJL ...

Conditions for allowing a ship to operate upon granting the right to fly the flag of a Member State

1. Prior to allowing a ship to operate, which has been granted the right to fly its flag, the Member State concerned shall take the measures it deems appropriate to ensure that the ship in question complies with the applicable international rules and regulations. In particular, it shall verify the safety records of the ship by all reasonable means. It shall, if necessary, consult with the losing flag State in order to establish whether any outstanding deficiencies or safety issues identified by the latter remain unresolved.

2. Whenever another flag State requests information concerning a ship which was previously flying the flag of a Member State, that Member State shall promptly provide details of outstanding deficiencies and any other relevant safety-related information to the requesting flag State.

Article 5

Detention of a ship flying the flag of a Member State

When the administration is informed that a ship flying the flag of the Member State concerned has been detained by a port State, it shall, according to the procedures it has established to this effect, oversee the ship being brought into compliance with the relevant IMO Conventions.

Article 6

Accompanying measures

Member States shall ensure that at least the following information concerning ships flying their flag is kept and remains readily accessible for the purposes of this Directive:

- (a) particulars of the ship (name, IMO number, etc.);
- (b) dates of surveys, including additional and supplementary surveys, if any, and audits;
- (c) identification of the recognised organisations involved in the certification and classification of the ship;
- (d) identification of the competent authority which has inspected the ship under port State control provisions and the dates of the inspections;
- (e) outcome of the port State control inspections (deficiencies: yes or no; detentions: yes or no);

- (f) information on marine casualties;
- (g) identification of ships which have ceased to fly the flag of the Member State concerned during the previous 12 months.

Article 7

Flag State auditing process

Member States shall take the necessary measures for an IMO audit of their administration at least once every seven years, subject to a positive reply of the IMO to a timely request of the Member State concerned, and shall publish the outcome of the audit in accordance with relevant national legislation on confidentiality.

This Article shall expire at the latest on ... (*), or at an earlier date, as established by the Commission in accordance with the regulatory procedure referred to in Article 10(2), if a mandatory IMO Member State Audit Scheme has entered into force.

Article 8

Quality management system and internal evaluation

1. By ... (**), each Member State shall develop, implement and maintain a quality management system for the operational parts of the flag State-related activities of its administration. Such quality management system shall be certified in accordance with the applicable international quality standards.

2. Member States which appear on the black list or which appear, for two consecutive years, on the grey list as published in the most recent annual report of the Paris Memorandum of Understanding on Port State Control (hereinafter 'Paris MOU') shall provide the Commission with a report on their flag State performance no later than four months after the publication of the Paris MOU report.

The report shall identify and analyse the main reasons for the lack of compliance that led to the detentions and deficiencies resulting in black or grey status.

Article 9

Reports

Every five years, and for the first time by ... (**), the Commission shall present a report to the European Parliament and to the Council on the application of this Directive.

This report shall contain an assessment of the performance of the Member States as flag States.

Article 10

Committee procedure

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Article 3 of Regulation (EC) No 2099/2002.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at two months.

Article 11

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (***) at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 12

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 13

Addressees

This Directive is addressed to the Member States.

Done at ...

For the European Parliament

The President

...

For the Council

The President

...

(*) Eight years after the date of entry into force of this Directive.

(**) Three years after the date of entry into force of this Directive.

(***) 24 months after the date of entry into force of this Directive.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

The Commission presented the proposal for a Directive of the European Parliament and of the Council on compliance with flag State requirements on 24 February 2006 ⁽¹⁾ as one of the proposals of the third maritime safety package.

On 29 March 2007, the European Parliament voted its opinion at 1st reading ⁽²⁾.

On 9 October 2008, the Council reached a political agreement on the draft Directive. Following legal/linguistic revision, the Council adopted its Common Position on 9 December 2008 in accordance with Article 251 of the Treaty.

In carrying out its work, the Council took account of the opinions of the Economic and Social Committee ⁽³⁾ and of the Committee of Regions ⁽⁴⁾.

II. ANALYSIS OF THE COMMON POSITION

General

The proposal for a Directive on compliance with flag State requirements forms part of the third maritime safety package presented by the Commission end of 2005. The main objective of this proposal is to ensure that Member States effectively comply with their obligations as flag States before and after granting flag rights with a view to enhancing maritime safety and to preventing pollution from ships.

Although the Council agrees with the Commission as regards the objective of the proposal, the Council's approach involved major adaptations of the original proposal. A number of the proposed provisions were not acceptable for the Council as they duplicate existing Community legislation and provisions included in other proposals of the third maritime safety package. The proposed provisions rendering the ratification of IMO conventions mandatory were not acceptable for Member States, particularly for constitutional reasons. Therefore, the Council's Common Position focuses in particular on the requirement for Member States to submit their maritime administration to the IMO auditing process. In addition, Member States shall ensure the quality certification of their administrative procedures in accordance with ISO standards or equivalent international standards. Furthermore the Common Position establishes obligations to be complied with by Member States prior to allowing a ship to operate under their flags and in case of a detention of a ship flying the flag of a Member State by a port state.

Resulting from this approach, the Common Position modifies, to a large extent, the original Commission proposal by redrafting it and deleting several parts of the text. This implies that all amendments introduced in the European Parliament's first-reading opinion related to these deleted parts were not accepted by the Council.

In parallel to the Common Position, a declaration of the representatives of the Governments of the Member States of the European Union ⁽⁵⁾ confirms their commitment to do the utmost with a view to ensuring a rapid and effective application of the international conventions on maritime safety, the IMO rules related to flag State obligations and the IMO audit.

Key policy issues

i) *Flag State auditing process*

The Council follows the proposal by the Commission to introduce an independent audit of Member States' maritime administration. It considers, however, that it should be avoided to create in the Community framework a parallel auditing system to the one established at international level through the Voluntary IMO Member State Audit Scheme. With a view to harmonising the auditing procedures and

⁽¹⁾ Doc. 6843/06.

⁽²⁾ Doc. 7805/07 CODEC 277 MAR 20 ENV 171.

⁽³⁾ CESE 1177/2006 of 13.9.2006 (OJ C 318 of 23.12.2006, p. 195).

⁽⁴⁾ CdR 43/2006 of 15.6.2006 (OJ C 229 of 22.9.2006, p. 38).

⁽⁵⁾ Doc. 15859/08 ADD 1.

ensuring a level playing field, the Common Position therefore provides for an obligation to request regularly an IMO auditing of the administration and to publish the outcome of the audit. The interval for the renewal of the auditing is set at seven years, taking into account the available resources at IMO level. The Common Position, furthermore, ensures that once the IMO Audit Scheme becomes mandatory, the relevant provision of the Directive expires, either automatically eight years after the entry into force of the Directive or earlier, if needed, upon decision of the Commission in accordance with comitology rules (regulatory procedure).

ii) *Quality management system*

The Council supports the Commission's proposal to ensure that maritime administrations of Member States meet quality criteria related to the management of their tasks. In its Common Position, the Council, however, takes into consideration the specific situation of the different services concerned and leaves it up to the Member States to determine the international standards that are applicable for the certification of the different parts of their administration.

In addition, following the objective of enhancing the flag State performance of Member States, the Council provides for a mandatory reporting on the performance to the Commission by Member States that are on the black list or, for two consecutive years, on the grey list of flag States established by the Paris MOU. By means of such a report the main reasons for the lack of compliance by the Member State concerned with its flag State requirements shall be identified.

iii) *Other flag State requirements*

In addition to the above mentioned two main issues, the Council further simplified the Commission's proposal regarding measures to be taken before granting the right to fly the flag of a Member State and in the case of the detention of a ship flying the flag of a Member State by a port State. In this respect, the Council deems it appropriate, in the framework of a Directive, that Member States decide which measures have to be undertaken to ensure that the ship concerned complies or is brought into compliance with the applicable international rules and regulations.

III. CONCLUSION

The Council believes that its Common Position is a tool to ensure high quality regarding the way in which Member States accomplish their tasks that they incur as flag States.

The Council notes the contacts which have already taken place with the European Parliament on this proposal in the framework of the negotiations on other proposals of the third maritime safety package. It looks forward to a quick agreement on the text allowing the adoption of the Directive.

NOTE TO THE READER

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.