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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.11.2008
COM(2008) 827nal

2005/0240 COD

COMMISSION OPINION

**pursuant to Article 251(2), third subparagraph, point (c) of the EC Treaty
on the European Parliament's amendments
to the Council's Common Position regarding the
proposal for a**

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**establishing the fundamental principles governing the investigation of accidents in the
maritime transport sector**

**AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250(2) of the EC Treaty**

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(Text with EEA relevance)

1. INTRODUCTION

Article 251(2), third subparagraph, point (c) of the EC Treaty requires the Commission to deliver an opinion on the amendments proposed by the European Parliament at second reading. The Commission sets out its opinion below on the amendments proposed by Parliament.

2. BACKGROUND

Date of transmission of the proposal to the European Parliament and the Council [(COM (2005) 590 final--C6-0226/2008--2005/0240(COD)]	13 December 2006
Date of the opinion of the European Economic and Social Committee	13 September 2006
Date of the opinion of the Committee of the Regions	15 June 2006
Date of the opinion of the European Parliament at first reading	25 April 2007
Date of adoption of the common position	6 June 2008
Date of the opinion of the European Parliament at second reading	24 September 2008

3. AIM OF THE PROPOSAL

Given that it is essential that the causes of maritime disasters be identified in order to prevent future accidents, the proposal aims at promoting the obligation to conduct a systematic investigation based on high-quality, harmonised standards after major accidents at sea.

The proposal therefore obliges Member States, as flag States, coastal States or substantially interested States, to conduct investigations into serious or very serious marine casualties.

In the event of other casualties or incidents, the proposal makes it mandatory to hold an examination in order to decide whether an investigation should be conducted.

Such investigations, the sole purpose of which is to identify the causes of accidents and the measures to remedy them, and not to attribute blame, must follow a methodology to be adopted through the comitology procedure.

The proposal also lays down that investigations must be conducted by permanent, independent bodies which are provided with sufficient resources and with investigators having the requisite prerogatives to perform their task successfully.

A lead investigating State must be appointed but the investigation must be conducted in cooperation with all the other States concerned, provision being for a permanent cooperation framework to be established to that end. Furthermore, this is to be supplemented by an early alert system and a European database for marine casualties, which will be managed by the European Maritime Safety Agency.

Finally, feedback is guaranteed by the obligation to publish a report presented in accordance with certain minimum requirements and, where appropriate, containing safety recommendations to be taken into account by the authorities concerned.

4. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT

4.1. Amendments accepted by the Commission

The Commission can accept amendments 1, 2, 5, 6 and 16.

4.2. Amendments accepted by the Commission in part

The Commission can accept amendment 11, but only insofar as it relates to registration and control; the remainder of the amendment is not acceptable, however, in that it concerns EMSA's remit, which is the subject of a specific Regulation.

Amendment 21 is also acceptable as regards the first subparagraph of Article 8(1) of the Common Position, but it is not acceptable as regards the second subparagraph, the wording of which in the Common Position is clearer on the question of independence than that suggested by the amendment.

Amendment 32 is acceptable insofar as it introduces a reference to the results of the investigations conducted, but it is not acceptable as regards EMSA's remit, which is the subject of a specific Regulation.

4.3. Amendments accepted in principle by the Commission

Amendment 4 can be accepted, but on condition that it is reformulated in such a manner as to specify that it is the relevant lessons which may be drawn from investigations that are to be taken into account in a review of the investigation methodology.

Amendment 15 is also acceptable, but provided that it is made clear that only the lessons which can be drawn from the investigations, and not the conclusions of the investigations, may be taken into account in the investigation methodology.

Amendment 24 is acceptable if it is reformulated in such a manner as to refer to the early alerts provided for in Article 16 of the Common Position.

Amendment 29 is also acceptable if it is reformulated in such a manner as to specify that the investigation report, including the conclusions and any recommendations, will be made public, particularly in the maritime sector.

Amendment 34 is also acceptable provided that it covers the objectives only of the Directive and not of the Union.

4.4. Amendments rejected by the Commission

Amendments 3, 7, 8, 9, 10, 13, 14, 17 and 20 are aimed at reintroducing distress alerts within the scope of the Directive and at making investigations mandatory not only for very serious casualties but also for serious casualties. These amendments substantially increase the workload of the investigation bodies, which should rather be able to concentrate on casualties in respect of which lessons may be drawn with a view to preventing future disasters.

Amendments 12, 21, 22, 23 and 25 set out to make a clear distinction between safety and other investigations, particularly criminal investigations; in so doing, they jeopardise the balance achieved through long discussions within the Council between the independence of safety investigations and the prerogatives of criminal law judges in many Member States. It is not in any case possible, within the context of a 'first pillar' directive, to lay down provisions which would restrict the prerogatives of a criminal law judge; a clear distinction between the two types of investigation is therefore impossible to achieve in the context of the Directive.

Amendments 18, 19 and 20 introduce into the Directive an arrangement involving the Commission whereby, in the event of a conflict between investigation bodies, one Member State would be appointed as the lead State for conducting an investigation. While the Commission proposal aims to prevent parallel investigations being conducted as far as possible (a point modified by the Common Position), it would be unrealistic to set out to prohibit them completely and an arrangement entrusting the Commission with the task of settling a dispute over such a matter between Member States would be very difficult to implement on a political level.

Amendments 26 and 27 are aimed at replacing point (h) of the Common Position with the wording contained in the text proposed by the Commission, which was, however, less clear on this point.

Amendment 28 is aimed at extending to serious casualties the instances in which the investigative body must produce a full report whereas in some cases, if no lessons can be drawn from the investigation, there would be justification for producing only a simplified report.

Amendment 30 aims to enable the Commission to make substantive changes to investigative reports, whereas the content of reports must be the responsibility of the investigative bodies alone.

Amendment 31 requires the Commission to produce a report on the implementation of the Directive every three years, whereas there is no evidence anywhere that such a requirement would serve any purpose.

Amendment 33 aims to oblige Member States to apply the provisions of the IMO Guidelines on fair treatment of seafarers in the event of a maritime accident. Those Guidelines contain many provisions concerning the criminal (or civil) procedure; they cannot, therefore, be made mandatory in the context of a “first pillar” directive.

5. CONCLUSION

Under Article 250(2) of the EC Treaty, the Commission is amending its proposal in accordance with the above.