

Initial appraisal of a European Commission Impact Assessment

European Commission proposal on Maritime equipment

Impact Assessment (SWD (2012) 438, SWD (2012) 437 (summary)) for a Commission proposal for a Directive of the European Parliament and of the Council on marine equipment and repealing Directive 96/98/EC (COM (2012) 772)

• Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's Impact Assessment accompanying the proposal for a Directive of the European Parliament and of the Council on marine equipment.

The Proposal attempts to align the existing Marine Equipment Directive from 1996 (MED) with the New Legislative Framework (NLF) for the marketing of products:

- Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93;
- Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC;
- Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC.

• Identification of the issue at stake

Because of the specificities of marine equipment, the MED has not been included in the package of technical harmonisation directives that was aligned to the NLF in 2011. The IA provides a detailed description of the particularities of the maritime equipment sector in Annexes 5 and 6¹. The main problem discussed in the IA is how to align MED with the NLF.

The IA states that, after public consultation with stakeholders, the focus was on two main problems to be addressed by the legislative proposal:

1. Weak implementation and enforcement mechanisms of the IMO (International Maritime Organisation) standards in the EU by the Directive on marine equipment. (IA, p.8); and

¹ The New Approach and the MED (p. 67), and Problematic areas common to New Approach directives, with a specific attention on marine equipment (p. 70).

2. The process of transposition of IMO rules into national law creates legal uncertainty and imposes excessive burden upon the industry and national administrations. (IA, p.14)

According to the Commission, the underlying drivers of these problems are twofold:

1. The MED has not been aligned, in a way compatible with the specificity of the maritime equipment sector, with the tools provided in the NLF regarding the following issues: market surveillance, CE marking, conformity assessment of products, tools for use of legislation (obligations for distributors, harmonised definitions, etc.);
2. The current legislative technique for transposing international safety standards for marine equipment into national law is complex and lengthy'. (IA, p.22)

- **Objectives of the legislative proposal**

The overall objective of the Commission proposal is to contribute to safety at sea, to prevent marine pollution and to ensure the free movement of marine equipment within the EU. (IA p. 7)

The IA indicates more specifically two *general* objectives of the proposal:

1. 'to enhance the implementation and enforcement mechanisms of the MED, thereby guaranteeing the proper functioning of the internal market for marine equipment while ensuring a high level of safety at sea and prevention of marine pollution';
2. 'to simplify the regulatory environment while guaranteeing that IMO requirements are applied and implemented in a harmonised way across the EU, thereby contributing to ensuring that the conditions necessary for the competitiveness of the Union's industry exist pursuant to Article 173 TFEU.' (IA p. 21)

These two general objectives are translated into two more *specific* objectives:

1. to find an optimal way to align the MED with the NLF (...), while taking due account of the specificities of marine equipment in the field of market surveillance, conformity assessment of products and obligations for actors in the distribution chain;
2. to shorten, simplify and clarify the transposition of amendments to IMO standards into the European and national legal frameworks.

- **Range of the options considered**

Based on the extent of alignment of the MED with the NFL, the IA analyses four policy options.

Option 1 – Discontinuation of EU action. The abrogation of the MED would result in differing practices among Member States regarding the application of IMO mandatory requirements, thus raising concerns of increased risk of competition at the expense of safety, as well as of good functioning of the Internal Market. 'For these reasons, the discontinuation of EU action has not been retained for in-depth assessment.' (IA, p.24)

Option 2 – Maximum alignment of the MED with the NLF. Departure from NLF provisions would be accepted in indispensable cases, for example, specific marking. (IA, p.23)

Option 3 – Conditional alignment of the MED with the NLF. This option provides for additional MED-specific solutions in order to improve effectiveness of the instrument. These areas include 'IMO requirements and standards, obligations of economic operators, use of conformity assessment modules, product traceability and safeguard clause'. (IA, p.23)

Option 4 – Minimum alignment of the MED with the NLF. This option adds 'the possibility of creating a MED-specific EU authority for market surveillance and one for notified bodies which would replace the national systems'. However, the NLF gives the choice to the national authorities to exert these two functions themselves (IA, p.23). IA states that this option is 'both ineffective and disproportionate relative to the simpler method of incorporating the marine equipment sector into the general framework created by the NLF, thus reaping the benefits of both resource pooling and cross-sectoral cooperation' (IA p. 25).

The Commission discards from the outset options 1 and 4. Yet, the analysis of these options, as well as of the reasons for discarding them, could have been clearer, better structured and more detailed. The list of policy options does not include a baseline scenario (status quo). The baseline scenario is outlined by the Commission as a part of the problem definition and the likely evolution of the situation in the area of maritime equipment, absent new EU action, is also described. The Commission states that the problems concerning the MED will grow in the future. The baseline scenario is also used in the assessment of the impacts as a basis for a comparison between the options.

Consequently, the Commission has retained only two policy options: Option 2 and 3 (maximum and conditional alignment with the NLF respectively). The IA includes a comparative table of these two options, based on the following criteria regarding the alignment with the NLF: market surveillance, conformity assessment of products, CE marking, harmonised definitions and procedures (IA, p.26).

The Commission's preferred option is Option 3, because it 'eliminates the most burdensome and confusing need to transpose amendments into the 27 legal systems of the Member States, while Option 2 leaves it untouched. For this reason, Option 3 should be preferred over Option 2'. (IA p. 39)

• **Scope of the Impact Assessment**

The IA assesses the economic, environmental and social impacts of the retained options.

It offers a solely *qualitative* analysis of economic impacts between the two retained policy options, focused on the functioning of the internal market for marine equipment and on operating costs and administrative burdens for economic operators and notified bodies. It is clear from the analysis that the Commission has a preference for policy option 3, highlighting the comparative advantages of it over policy option 2 (for example, better market surveillance by using electronic tags, possibility to avoid conflicts of interest, more balanced obligations to economic operators, etc.). (IA, p.29) 'Option 3 should be expected to slightly improve the functioning of the internal market relative to the baseline.' (IA, p.30)

The IA also provides a balanced analysis of the policy options regarding the impacts on stakeholders, for example, possible costs to public authorities and the Commission, as well as possible benefits to marine equipment users and passengers, like greater levels of safety (IA p.35).

The IA states that environmental and social impacts will be indirect. However, the objectives of the proposal include a 'high level of safety at sea and prevention of marine pollution'. The IA

would benefit from more detailed analysis (ideally, a quantitative one) of the improvement of safety and environment protection, as it is not clear how this improvement will be measured and what is the current extent of the counterfeit marine equipment, for example. (IA p.36)

Annex 12 of the IA provides a detailed quantitative analysis of the impact on industry in case of delayed adoption of MED – such a delay would generate additional costs (for example, lost return on investment, double-certification costs, etc.). 'Thus the total costs incurred by the industry due to the delays in the transposition of IMO requirements into the MED can be estimated at approximately 6 to 7 million € per year' (IA p.90).

The IA provides a comparative table of the assessed policy options, and states that the main difference between the two options 'lies with the specific provisions concerning marine equipment' (IA, p. 37).

Subsidiary and proportionality

Directive 96/98/EC is based on Article 100 TFEU. The IA explains that harmonisation of the IMO regulatory framework by the EU resolves a set of significant problems relating to the free movement of maritime equipment, including diverging national requirements and certification methods, thus ensuring high safety and environmental protection levels (IA, p.20).

- **Budgetary or public finance implications**

The IA briefly mentions that, in case of possible adoption of the retained policy options, costs for Member States' public authorities should actually be reduced. However, the analysis of the costs is not based on any quantitative data.

- **SME test / Competitiveness**

'SMEs, which are a majority among the EU marine equipment industry, are particularly vulnerable to the current problems as they have to face fierce competition in distant markets in a strongly regulated environment – where changes in regulation are very frequent' (IA, p.18). SMEs would also be strongly adversely affected in case of a delayed implementation of the MED (IA, p. 89, Annex 12).

The comparison of the retained options provides a short qualitative analysis of various aspects regarding the expected impacts on SMEs; a qualitative SME test is provided in Annex 10.

The Commission, while having committed to examine the impact of legislative proposals on the competitiveness of the relevant sector, provides only a brief 'competitiveness proofing' of both retained options in Annex 11. The conclusion is that 'the contribution of the MED and the review options envisaged under this IA to preserving employment in the marine equipment industry is in any case indirect, and probably also marginal, although most probably also positive'. (IA, p. 88)

- **Simplification and other regulatory implications**

The proposal seeks to better implement the International Maritime Organisation (IMO) requirements into the legislation of the Member States. Likewise, it seeks to align the specificities of the maritime equipment sector to the 'New Legislative Framework' for the marketing of products.

The potential of the retained policy options to simplify the regulatory environment is assessed under the heading 'economic impacts'. Also in this respect, the Commission's preferred option 3 (conditional alignment to the NLF) is said to be the most effective.

- **Relations with third countries**

The IA states that 'neither policy option 2 nor policy option 3 contain trade-related measures, the matter falling completely out of the scope of the MED' (IA, p.36).

However, the IA mentions global competitiveness of producers and distributors of marine equipment, especially stressing the comparative advantage of European producers due to high-value added, innovative and reliable products. Thus, 'more effective enforcement of Marine Equipment Directive' will protect European manufacturers against unfair competition (IA, p. 33-34). The IA also explains that a great share of marine equipment on ships flying under European flags is actually produced in third countries.

- **Stakeholder consultation**

The IA identifies the following stakeholders:

1. Economic operators— marine equipment manufacturers and distributors (including SMEs);
2. Member States' public administrations and governments;
3. Ship passengers and crews (for whom Option 3 provides greater levels of safety) (IA, p.18 and 35).

The Member States and notified bodies have been regularly consulted in a transparent way and within reasonable deadlines by the Commission and European Maritime Safety Agency (EMSA). The IA includes information on the respective questionnaires, as well as details of the meetings. The Commission has also consulted industry representatives, although the Commission has to recognise the fact that the input from stakeholders 'was not accompanied by quantitative information from either the industry or the Member States'. (IA p. 5)

- **Quality of data, research and analysis**

As a basis for this IA, the Commission has used its own studies, stakeholder consultations, as well as expertise of the European Maritime Safety Agency. The assessment of impacts of the policy options relies to a certain extent on two previous IA reports regarding the alignment of sectoral legislation with the NLF:

1. the IA accompanying the Communication on alignment of ten technical harmonisation directives to Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products;
2. the IA accompanying the proposals for the revision of the New Approach.

The IA mentions several problems of data availability, especially lack of quantifiable data. The Commission recognises that 'the present IA and its conclusions are based on the best available sector-related data, even though being occasionally incomplete' (IA, p.5), and, 'in light of the scarce availability of quantitative data, a qualitative assessment is predominant' (IA p.27).

However, the Commission says that it has commissioned a study on competitiveness of the sector in order to obtain meaningful quantitative data (IA, p.18).

- **Commission Impact Assessment Board**

The IA Board of the Commission delivered a first very critical opinion on the draft IA on 11 September 2009 and formulated recommendations for its improvement. As a result, the second draft IA was resubmitted, and the IA Board delivered a second opinion on 28 August 2012. The IA Board encouraged the Commission to better explain the baseline scenario (especially by including quantitative indicators), to provide some quantitative illustration of the simplification benefits and regulatory burden reductions, as well as to strengthen monitoring and evaluation section. Apart from an quantitative analysis, DG MOVE seems to have largely followed up on the recommendations of the Board. (IA p. 6)

- **Coherence between the Commission's legislative proposal and IA**

The legislative proposal and IA submitted by the Commission appear to correspond. The former does not contain substantive elements that have not been addressed in the latter.

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This note, prepared by the Impact Assessment Unit for the European Parliament's Committee on Transport and Tourism, analyses whether the principal criteria laid down in the Commission's own Impact Assessment Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work. This document is also available on the internet at: <http://www.europarl.europa.eu/activities/committees/studies.html>

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