



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.1.2004
COM(2004) 55 final

2002/0021 (COD)

OPINION OF THE COMMISSION

**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

**on environmental liability with regard to the prevention and remedying of
environmental damage**

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

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1. BACKGROUND

The Proposal COM(2002)17 final¹ was transmitted to the European Parliament and the Council on 19 February 2002 in accordance with the co-decision procedure pursuant to Article 175(1) of the EC Treaty.

The Committee of Regions decided not to give an opinion.

The Economic and Social Committee gave its opinion on 18 July 2002².

The European Parliament gave its opinion at the first reading in session on 14 May 2003.

The Council reached political agreement on a common position on 13 June 2003. The Council adopted the common position formally on 18 September 2003.

On 17 December 2003, the European Parliament adopted four amendments to the Council's common position at second reading.

This opinion presents the Commission's position on the European Parliament's amendments pursuant to Article 251(2)(c) of the EC Treaty.

2. PURPOSE OF THE COMMISSION PROPOSAL

The proposal aims to establish a framework whereby environmental damage, which comprises "damage to protected species and natural habitats", "water damage" and "land damage", would be prevented or remedied through a system of environmental liability. Subject to certain exceptions, the operator that has caused the environmental damage or an imminent threat of such damage occurring is required, in accordance with the « polluter-pays » principle, to bear the cost associated with the implementation of the necessary preventive or remedial measures.

¹ OJ C 151 E, 25.06.2002, p. 132.

² OJ C 241, 07.10.2002, p. 162.

3. COMMISSION OPINION ON THE PARLIAMENT'S AMENDMENTS

3.1. General comments

At its plenary session of 17 December 2003, the European Parliament adopted four amendments: amendments **12**, **22**, **27** and **46**.

The Commission can accept amendment **27** in full and amendment **12** in principle. The remaining two amendments (amendments **22** and **46**) cannot be accepted.

3.2. Detailed comments

3.2.1. Amendment fully accepted

Amendment 27

The Commission accepts amendment **27**, which specifies further one of the items to be addressed by the Commission in its report on the functioning of the Directive. This specification concerns the relationship between shipowners' liability and oil receivers' contributions in the context of the review of the application of Article 4(2) and (4) in relation to the exclusion of pollution, covered by the international instruments listed in Annex IV, from the scope of the Directive.

3.2.2. Amendment accepted in principle

Amendment 12

Amendment **12** specifies that competent authorities should only take remedial actions "as a means of last resort". The Commission accepts this amendment in principle subject to the following rearrangement of Article 6: the words "as a means of last resort" should not be placed at the end of Article 6(2)(e) but rather at the end of Article 6(3).

3.2.3. Amendments not accepted

Amendment 46

Amendment **46** deletes the provision [Article 4(3)] allowing operators to limit their liability in accordance with national legislation implementing the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, or the Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI), 1988. The Commission cannot accept this amendment, as it would significantly disrupt the overall balance of the common position.³ It is to be noted, in that respect that, the limitation of liability contemplated in Article 4(3) would not apply to environmental damage occurring on the territory of Member States which have not ratified and implemented the two conventions at issue. In any case, the Commission may consider whether the application of Article 4(3) had led to undesirable results in the context of the report provided for in Article 18.

³ The Commission stated its full support to the common position in its Communication of 19 September 2003 to the European Parliament [SEC(2003) 1027 final].

Amendment 22

Amendment 22 requires the Commission to present proposals for a harmonised compulsory financial guarantee if no appropriate instruments or markets for insurance or other forms of financial security have been established. Mandatory financial security would be introduced gradually (first for water and soil damage and after a two-year assessment period, for the remediation of damage caused to species and natural habitats). A ceiling may be established for the financial guarantee by case and by location according to some criteria provide for in the amendment. Finally, Member States may decide not to apply this provision to low risk activities. The Commission cannot accept this amendment, as it affects its right of initiative. Moreover, it would be particularly difficult to adopt rules mandating financial security when the economic operators most knowledgeable and economically interested in developing such products have been unable to do so. With respect to paragraphs 2a and 2b of the amendment, the Commission does not see any current need for such additional provisions, which, at this stage and pending new Community legislation on financial security, have only the effect of enabling Member States to adopt measures in the field of financial security. It must be remembered, however, that the Member States may adopt such rules anyway, on the basis of their general power to legislate on their territory, since no provision of the Directive prevents them of doing so.

4. CONCLUSION

Pursuant to Article 250(2) of the EC Treaty, the Commission is amending its proposal as indicated above.