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*****II**

RECOMMENDATION FOR SECOND READING

on the common position adopted by the Council with a view to the adoption of a Directive of the European Parliament and of the Council amending Council Directive 94/57/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (5178/1/2001 – C5-0075/2001 – 2000/0066(COD))

Committee on Regional Policy, Transport and Tourism

Rapporteur: Josu Ortuondo Larrea

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

At the sitting of 30 November 2000 Parliament adopted its position at first reading on the amended proposal for a European Parliament and Council directive amending Council Directive 94/57/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (COM(2000) 142 - 2000/0066 (COD)).

At the sitting of 28 February 2001 the President of Parliament announced that the common position had been received and referred to the Committee on Regional Policy, Transport and Tourism (5178/1/2001 - C5-0075/2001).

The committee had appointed Josu Ortuondo Larrea rapporteur at its meeting of 19 April 2000.

It considered the common position and the draft recommendation for second reading at its meetings of 20 March 2001 and 25 April 2001.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Konstantinos Hatzidakis, chairman; Emmanouil Mastorakis and Rijk van Dam, vice-chairmen; Josu Ortuondo Larrea, rapporteur; Pedro Aparicio Sánchez (for Danielle Darras), Sir Robert Atkins, Emmanouil Bakopoulos, Theodorus J.J. Bouwman, Philip Charles Bradbourn, Felipe Camisón Asensio, Gerard Collins, Garrelt Duin, Alain Esclopé, Giovanni Claudio Fava, Jacqueline Foster, Jean-Claude Fruteau (for John Hume), Mathieu J.H. Grosch, Ewa Hedkvist Petersen, Mary Honeyball, Marie Anne Isler Béguin (for Camilo Nogueira Román), Juan de Dios Izquierdo Collado, Georg Jarzembowski, Dieter-Lebrecht Koch, Giorgio Lisi, Sérgio Marques, Manuel Medina Ortega (for Carmen Cerdeira Morterero, pursuant to Rule 153(2)), Emilio Menéndez del Valle (for Joaquim Vairinhos), Rosa Miguélez Ramos, Francesco Musotto, Juan Ojeda Sanz, Wilhelm Ernst Piecyk, Giovanni Pittella (for Gilles Savary), Samuli Pohjamo, Alonso José Puerta, Reinhard Rack, Isidoro Sánchez García, Dana Rosemary Scallon, Brian Simpson, Hannes Swoboda (for Demetrio Volcic), Johan Van Hecke (for Rolf Berend), Ari Vatanen, Christian Ulrik von Boetticher (for Karla M.H. Peijs) and Mark Francis Watts.

The recommendation for second reading was tabled on 26 April 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the common position adopted by the Council with a view to the adoption of a Directive of the European Parliament and of the Council amending Council Directive 94/57/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (5178/1/2001 – C5-0075/2001 – 2000/0066(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (5178/1/2001 – C5-0075/2001),
- having regard to its position at first reading¹ on the Commission proposal and amended proposal to Parliament and the Council (COM(2000) 142²),
- having regard to the Commission's amended proposal (COM(2000) 849³),
- having regard to Article 251(2) of the EC Treaty,
- having regard to Rule 80 of its Rules of Procedure,
- having regard to the recommendation for second reading of the Committee on Regional Policy, Transport and Tourism (A5-0144/2001),

1. Amends the common position as follows;
2. Instructs its President to forward its position to the Council and Commission.

¹ OJ C (not yet published) .

² OJ C 212, 25.7.2000, p. 114.

³ OJ C (not yet published).

Amendment 1

Recital 20

A recognised organisation should not carry out statutory work if it is identical with or has business, personal or family links to the shipowner or operator. This incompatibility should also apply to surveyors employed by recognised organisations.

A recognised organisation should not ***be authorised or engaged to*** carry out statutory work if it is identical with or has business, personal or family links to the shipowner or operator. This incompatibility should also apply to surveyors employed by recognised organisations.

Justification

It should be stated that this is not just something which organisations must not do, but also something which administrations must not authorise or engage them to do.

Amendment 2

ARTICLE 1, PARAGRAPH 5, SUBPARAGRAPH (a)

Article 6, paragraph 2, subparagraph (b), point (i) (Directive 94/57/EC)

(i) if liability arising out of any incident is finally and definitely imposed by a court of law ***on the Administration***, together with a requirement to compensate the injured parties for loss or damage to property or personal injury or death, which is proved in that court of law to have been caused by a wilful act or omission or gross negligence of the recognised organisation, its bodies, employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to financial compensation from the recognised organisation to the extent that the said loss, damage, injury or death is, as decided by that court, caused by the recognised organisation;

(i) if liability arising out of any incident is finally and definitely imposed ***on the Administration*** by a court of law ***or as part of the settlement of a dispute through arbitration procedures***, together with a requirement to compensate the injured parties for loss or damage to property or personal injury or death, which is proved in that court of law to have been caused by a wilful act or omission or gross negligence of the recognised organisation, its bodies, employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to financial compensation from the recognised organisation to the extent that the said loss, damage, injury or death is, as decided by that court, caused by the recognised organisation;

Justification

The aim is to bring the article into line with Recital 16.

Amendment 3

ARTICLE 1, PARAGRAPH (5), SUBPARAGRAPH (a)

Article 6, paragraph (2), subparagraph (b), point (ii) (Directive 94/57/EG)

(ii) if liability arising out of any incident is finally and definitely imposed by a court of law **on the Administration**, together with a requirement to compensate the injured parties for personal injury or death, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to financial compensation from the recognised organisation to the extent that the said personal injury or death is, as decided by that court, caused by the recognised organisation; the Member States **may** limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR **5** million;

(ii) if liability arising out of any incident is finally and definitely imposed **on the Administration** by a court of law **or as part of the settlement of a dispute through arbitration procedures**, together with a requirement to compensate the injured parties for personal injury or death, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to financial compensation from the recognised organisation to the extent that the said personal injury or death is, as decided by that court, caused by the recognised organisation; the Member States **shall** limit the maximum amount **of compensation** payable by the recognised organisation, which must, however, be at least equal to EUR **4** million **and no more than EUR 7 million**;

Justification

This brings the wording into line with Parliament's first-reading opinion and ensures a comparable competitive environment among the 15 Member States.

Amendment 4

ARTICLE 1, PARAGRAPH (5) SUBPARAGRAPH (a)

Article 6, paragraph (2), subparagraph (b), point (iii) (Directive 94/57/EG)

(iii) if liability arising out of any incident is finally and definitely imposed by a court

(iii) if liability arising out of any incident is finally and definitely imposed **on the**

of law *on the Administration*, together with a requirement to compensate the injured parties for loss or damage to property, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to financial compensation from the recognised organisation, to the extent that the said loss or damage is, as decided by that court, caused by the recognised organisation; the Member States *may* limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 2.5 million;

Administration by a court of law *or as part of the settlement of a dispute through arbitration procedures*, together with a requirement to compensate the injured parties for loss or damage to property, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to financial compensation from the recognised organisation, to the extent that the said loss or damage is, as decided by that court, caused by the recognised organisation; the Member States *shall* limit the maximum amount *of compensation* payable by the recognised organisation, which must, however, be at least equal to EUR 2 million *and no more than EUR 4 million*;

Justification

This brings the wording into line with Parliament's first-reading opinion and ensures a comparable competitive environment among the 15 Member States.

Amendment 5

ARTICLE 1, PARAGRAPH 5, SUBPARAGRAPH (b) Article 6, paragraph 5 (Directive 94/57/EC)

The Commission shall, not later than..... submit a report to the European Parliament and to the Council evaluating the economic impact of the liability regime provided for in this Article on the parties concerned and, more particularly, its consequences for the financial equilibrium of recognised organisations.

This report shall be drawn up in cooperation with the competent authorities of the Member States and the parties concerned, in particular recognised organisations. The Commission shall, if necessary in the light of this evaluation,

The Commission shall, not later than..... submit a report to the European Parliament and to the Council evaluating the economic impact of the liability regime provided for in this Article on the parties concerned and, more particularly, its consequences for the financial equilibrium of recognised organisations.

This report shall be drawn up in cooperation with the competent authorities of the Member States and the parties concerned, in particular recognised organisations. The Commission shall, if necessary in the light of this evaluation,

submit a proposal amending this Directive with more specific reference to the principle of **minimum** liability.

submit a proposal amending this Directive with more specific reference to the principle of liability.

Justification

It is important not to prevent any of the aspects of financial liability from being altered and for no minimum limit be set given that, in any case, the amount of compensation payable will be established by the competent court or, where appropriate, the arbitration settlement.

Amendment 6

ARTICLE 1, PARAGRAPH 7

Article 8, paragraph 1, final indent (Directive 94/57/EC)

- **increase** the amounts specified in points (ii) and (iii) of Article 6(2)(b).

- **alter** the amounts specified in points (ii) and (iii) of Article 6(2)(b).

Justification

It should be possible not just to increase the ceilings for financial liability but also to lower them if they are deemed to be too high at any given moment.

Amendment 7

ARTICLE 1, PARAGRAPH 14

Article 15, paragraphs 1 and 2, point (-a) (new) (Directive 94/57/EC)

(-a) paragraphs 1 and 2 shall be replaced by the following:

"1. The recognised organisations shall consult with each other periodically with a view to maintaining equivalence of their technical standards and the implementation thereof in line with the provisions of IMO Resolution 847(20) - 'Guidelines to assist flag States in the implementation of IMO instruments'. They shall provide the Commission with periodic reports on fundamental progress in standards.

2. The recognised organisations shall demonstrate willingness to cooperate with port State control administrations when a ship of their class is concerned, in

particular, in order to facilitate the rectification of reported deficiencies or other discrepancies."

Justification

The need to adjust standards and the implementation thereof to bring them into line with the latest IMO guidelines should be spelt out.

EXPLANATORY STATEMENT

I. Introduction

Following the disaster caused by the sinking of the 'Erika' on 12 December 1999 and the widespread public concern to which it gave rise, the Commission put forward a set of measures to enhance maritime safety and prevent the marine environment from being polluted by oil spills.

Parliament speeded up the procedure for consideration of the Commission's proposed measures by adopting the proposals at first reading on 30 November 2000, particularly those dealing with stricter controls on ships by port States, the introduction of a Community system for the recognition of classification societies and a timetable for the phasing-out of single-hulled vessels, which are considered more of a risk to the marine environment.

As regards classification societies, the Commission submitted a proposal for the amendment of the existing directive establishing a uniform system for the recognition of such societies at Community level, under which, *inter alia*:

- the Commission (together with a regulatory committee) will be responsible for the granting of recognition to classification societies or the withdrawal of such recognition. The Commission will share this responsibility, which was previously the preserve of the Member States;
- recognition may be suspended for a period of one year if shortcomings are identified in the authorised organisation. If the shortcomings persist, recognition may be withdrawn;
- a good record of safety and pollution prevention performance by the classification society as a whole is a *conditio sine qua non* for granting and maintaining recognition;
- in the event of an accident, the financial liability of the authorised organisations is provided for and harmonised at Community level and may be unlimited or limited to different levels in accordance with the seriousness of the act or omission;
- stricter rules will be introduced governing changes from one society to another, in particular the requirement that the society losing the ship should pass on the complete file on the history of the ship concerned to the society gaining it.

II. The legislative procedure up to the Council's common position

1. On 30 November 2000, at first reading, Parliament adopted 18 amendments to the Commission proposals, which included the following changes:

- Classification societies must not be engaged if they have business, personal or family

links to the shipowner or operator. Parliament wishes to prevent there being any ties between the body or persons carrying out inspections and the vessel being inspected.

- Greater transparency is also an important aspect for Parliament. With this in mind, inspection organisations must ensure that all relevant information on their activities is made available to all interested parties on their websites.

- Parliament also calls for thorough scrutiny of classification societies in cases where the accident rate recorded by ships classed by those societies is excessively high, followed by the withdrawal of recognition if corrective measures are not taken.

- Furthermore, Parliament calls for any Member State which grants authorisation to a classification society located in a third country to be able to require the third country in question to grant reciprocal treatment to recognised organisations located in the Community.

- As regards financial liability, Parliament agrees with the Commission that ceilings should be placed on the amounts payable by classification societies in the event of an accident caused by an omission or negligence, but calls for those amounts to be reviewed by the Council and Parliament three years after the adoption of the directive, on the basis of a report by the Commission.

- With these amendments, Parliament also establishes a right for classification societies to obtain information on the results of inspections carried out on vessels by the port State and imposes on the societies an obligation to supply the Commission with periodic reports on the progress made on standards.

2. In its amended proposal of 12 December 2000, the Commission took over only part of Parliament's amendments.

3. On the basis of the political agreement reached in December 2000, the Council adopted its common position on 28 February 2001.

- As regards the fundamental issue of financial liability and the amounts payable by a classification society in the event of an accident caused by a wilful act or omission or negligence, the Council is in favour of rules permitting the Member States to set the maximum amount payable by the recognised organisation. The amounts proposed by the Commission and Parliament would therefore be minimum, rather than maximum, amounts (Article 1(5) of the common position).

- The Council also included in its common position a clause providing for the revision of the amount of financial compensation payable, on the basis of a report from the Commission, thus accepting Parliament's request for such a clause.

- At the same time the Council took over a large number of Parliament's main amendments (14, either in full or in part), covering *inter alia* a ban on using any classification society which has business, personal or family links with the shipowner or operator to inspect a given vessel (Ams. 4 and 18) and the possibility for any Member State which grants authorisation to a classification society located in a third country to

require the third country in question to grant reciprocal treatment to recognised organisations located in the Community (Am. 9). The Council also accepted Parliament's proposal that inspections of classification societies should be carried out by the Commission and the Member States every two years and that the societies should be required to make the findings of their quality system management reviews available to the regulatory committee provided for in the directive (Am. 13). It also recognised the right of societies to information on the outcome of inspections (Am. 14) and that of Parliament to be informed by the Commission of progress made by the Member States in implementing the directive (Am. 17). With regard to the principle of transparency, the Council adopted Parliament's proposal that classification societies should be required to place relevant information regarding their activities on their websites (Am. 16). Lastly, it also accepted the clarifications made by Parliament to the annex to the directive (Am. 18).

III. Justification for Parliament's amendments to the Council common position

The rapporteur considers it desirable for a compromise agreement to be reached with the Council, so as to avoid a conciliation procedure and thereby speed up the entry into force of the new directive on rules and standards for ship classification and inspection organisations. This would clearly demonstrate to the general public Parliament's political will to enhance maritime safety and step up action aimed at preventing marine pollution.

However, there remains one major issue on which Parliament and the Council may not see eye to eye, namely the financial liability of classification societies in the event of accidents caused to a greater or lesser extent by negligence or omission on the part of organisations during the performance of their inspection work. The Council's and Parliament's positions on the maximum amount of compensation to be payable in such cases are still some way apart. One possible solution might be to specify upper and lower limits in the directive, inside which each Member State would be free to set the maximum financial liability of organisations operating within its own sphere of jurisdiction.

This would enable a substantial degree of harmonisation of the Community compensation rules to be achieved, while all organisations would be financially responsible for the quality of their work. The end result would, without doubt, be higher standards of inspection and surveying for all Community vessels.

The rapporteur also proposes that provision should be made for the possibility of the amounts of compensation payable being modified under the comitology procedure, and that the arbitration procedure referred to in the common position recitals should be accepted as a means of settling disputes over maritime accidents. At the same time, he considers that recognised organisations should not be authorised or engaged in cases where they or their staff have links with the shipowner or operator.

Furthermore, the rapporteur proposes to reinstate the amendments to paragraphs 1 and 2 of Article 14 (ex Article 15) set out in Amendment 16 which Parliament adopted at first reading, covering periodical consultations between recognised organisations, with a view to keeping their quality standards in line with the provisions of IMO Resolution 847(20), the requirement that those organisations provide the Commission with regular reports on the progress made on those standards, and their willingness to cooperate with port State control administrations.

Lastly, the rapporteur is in favour of the reinstatement of subparagraph (q) – or (oa) in some versions – of Amendment 18 which Parliament adopted at first reading and which covers cases in which a classification society's headquarters or main office is not located inside the Community.