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*****III REPORT**

on the joint text approved by the Conciliation Committee for a regulation of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents
(PE-CONS 3724/2008 – C6-0047/2009 – 2005/0241(COD))

European Parliament delegation to the Conciliation Committee

Delegation chair: Rodi Kratsa-Tsagaropoulou
Rapporteur: Paolo Costa

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.)

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the joint text approved by the Conciliation Committee for a regulation of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents

(PE-CONS 3724/2008 – C6-0047/2009 – 2005/0241(COD))

(Codecision procedure: third reading)

The European Parliament,

- having regard to the joint text approved by the Conciliation Committee (PE-CONS 3724/2008 – C6-0047/2009),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2005)0592),
 - having regard to the amended Commission proposal (COM(2007)0645),
 - having regard to its position at second reading² on the Council common position³,
 - having regard to the Commission's opinion on Parliament's amendments to the common position (COM(2008)0831),
 - having regard to Article 251(5) of the EC Treaty,
 - having regard to Rule 65 of its Rules of Procedure,
 - having regard to the report of its delegation to the Conciliation Committee (A6-0102/2009),
1. Approves the joint text;
 2. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
 3. Instructs its Secretary-General to sign the act, once it has been verified that all the procedures have been duly completed, and, in agreement with the Secretary-General of the Council, to have it published in the Official Journal of the European Union;
 4. Instructs its President to forward this legislative resolution to the Council and Commission.

¹ OJ C 74 E, 20.3.2008, p. 562.

² Texts adopted, 24.9.2008, P6_TA(2008)0445.

³ OJ C 190 E, 29.7.2008, p. 17.

EXPLANATORY STATEMENT

I. Background

I.1 The 3rd Maritime Package

The 3rd Maritime Package (also known as Erika III Package) was proposed by the Commission at the end of 2005. This package was the follow-up to the Erika I and II Packages which were put forward in the aftermath of the Erika accident in 1999 off the French Atlantic coast. It also followed Parliament's resolution of 21.4.2004 drafted by the Temporary Committee on improving safety at sea (MARE) which was set-up following the Prestige accident in 2002.

The overall aim of the 3rd Maritime Package is to further reinforce existing EU safety legislation and to transpose major international instruments into Community law. Its seven proposals aim at preventing accidents (by improving the quality of European flags, reviewing the legislation on port state control and vessel traffic monitoring and by improving the rules relating to classification societies) and ensuring an effective response in case of an accident (by developing a harmonised framework for accident investigation, introducing rules on compensation of passengers in case of an accident and by introducing rules on ship-owners' liability coupled with a mandatory insurance scheme).

I.2 This proposal

The Proposal for a Regulation on the liability of carriers of passengers by sea and inland waterways in the event of accidents was adopted by the Commission on 23.11.2005. Its objective is finally, after over a decade since the catastrophe of the *Estonia* in the Baltic Sea in 1994, to guarantee at European level a similar level of liability and the mandatory insurance of carriers of passengers in the event of an accident. Until now, this liability has been fixed at different, and in some cases rather low, levels in Member States according to their national legislation or their international commitments. This proposal aims to remove these national differences by incorporating into European law the provisions of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by its protocol of 2002, which provides for higher financial liability. It also adds further provisions adapting the Athens Convention to European law and liability systems of other modes of transport.

II. The legislative procedure before conciliation

II.1 The 3rd Maritime Package in 1st and 2nd reading

For Parliament the Maritime Package was always seen as a package and for this reason its individual files were always dealt with together. The 1st reading on the seven proposals took place in March/April 2007. The Council reached political agreements on six of the eight proposals (one file was split in a directive and a regulation) during its meetings of June and November 2007. Two files (on flag states' obligations and civil liability), however, remained blocked because Member States were reluctant to adopt such legislation at EU level. An attempt in April 2008 to de-block the files was unsuccessful.

Member States sought to exert pressure on the Parliament to continue the legislative procedure of the six by transmitting the common positions. Parliament eventually agreed to

this approach in order to make progress.

Following the transmission of the common positions in June 2008 Parliament nevertheless continued to put pressure on Council to make progress with the two remaining files (known as the "missing two"). This was done by incorporating the substance of these files into some of the active legislative files of the package via amendments.

In parallel negotiations on the six files in 2nd reading continued unsuccessfully. The fate of the "missing two" as well as difficulties in some files led to a decision not to reach a second reading agreement on any file. In plenary Parliament restored its first reading amendments to all files, as well as the amendments which incorporated the substance of the "missing two". The six files subsequently went to conciliation.

II.2. This proposal in 1st and 2nd reading

In its 1st reading Parliament essentially followed the Commission's proposal with one important exception: after a controversial debate a majority rejected the inclusion of inland waterways in the scope of the Regulation. Further amendments were adopted covering issues like the advance payment for victims, information of passengers, liability in case of terrorism, powers of EMSA, exclusion of the possibility to apply other international conventions on liability, adoption of higher limits of liability only after a new codecision procedure and transition periods for ferries.

The Council in its common position also excluded inland waterways and in addition departed in many other aspects significantly from the original proposal. Council limited the scope of the Regulation in case of national transport by sea to so called class A ships thereby excluding the majority of shipping routes of classes B, C and D as defined in Directive 98/18/EC. It also reduced the rather favourable compensation per victim of the Athens Convention by applying a global cap according to the limits of the International Convention on Limitation of Liability for maritime Claims as amended by the Protocol of 1996 (LLMC 96) (global limitation of civil liability). Further changes concerned limitations as regards the advance payment and information rights. Council accepted Parliament's position regarding terrorism related risks. Like for the other files negotiations took place during 2nd reading. Several trialogues took place but no solution could be found for the main issues like the scope and the system of liability.

Following the failure of the negotiations Parliament reinstated in 2nd reading on 24.9.2008 most of its amendments from 1st reading and rejected the limitations Council had introduced.

III. Conciliation

III.1 The 3rd Maritime Package in conciliation

Following the 2nd reading vote of 24.9.2008 and given the political will to conclude the conciliation under the French Presidency the Parliament's conciliation delegation was constituted very quickly on 7.10.2008.

In parallel the pressure applied by Parliament on Council to find agreement on the "missing two" began to yield results. Following an informal Council meeting which discussed the issue in the presence of the TRAN Chair Paolo Costa, political agreements were reached on both files on 9.10.2008.

Parliament and Council held two trialogues (on 4.11. and 2.12.) and one informal meeting on

the most difficult dossiers to run up to the conciliation committee on 8.12 which concluded the negotiations. Parliament's delegation met twice (5.11. and 3.12.) in addition to the meetings of the negotiating team which exceptionally included - because of the size of the package - the TRAN coordinators.

Agreement on the last outstanding issues of the most difficult dossier (of Mr. Costa) was reached on 8.12. On that evening Parliament also gave the Presidency letters confirming its willingness to conclude early 2nd reading agreements on the "missing two" thereby allowing the Council to adopt its two common positions at its meeting on 9.12.

At the conciliation committee the Council was represented by Mr. BUSSEREAU, President-in-Office of the Council and Secretary of State for Transport of France. Vice-President TAJANI represented the Commission. This demonstrated once more that in the case of very difficult negotiations the involvement of the highest political level and the dynamics of a conciliation evening can make a difference in reaching agreement.

The overall result of conciliation for Parliament is very positive. Not only were the "missing two" concluded in parallel but many improvements were also made to the texts agreed in conciliation. This was mainly due to the solidarity between Members who did not allow any file to be concluded without an overall agreement on all of them.

The special circumstances of the Maritime Package showed, however, that it is not an ideal situation when the same Presidency is responsible for negotiations in 2nd and 3rd reading. In Coreper, it seemed very difficult for the Presidency to convince Member States to make yet another effort since psychologically the negotiations had been going on for too long already. For Parliament on the other side a completely new phase had started with conciliation, yet in Council, with the same Presidency, it was regarded as a continuation of the same phase.

III.1 This proposal in conciliation

Discussions on this file were the most difficult ones of the six files in conciliation and could only be concluded during the conciliation evening of 8.12. During that evening two dialogues and two meetings of the EP delegation/Coreper were necessary before the full conciliation committee could be started at 11.30 pm.

IV. Key points of the agreement reached

Following very difficult negotiations Parliament's delegation managed to move the position of Council significantly and could therefore accept the compromise reached. The main points can be summarised as follows:

- **Scope in case of national carriage:** Parliament succeeded in including in the scope also ships of class B and not only of class A as in the common position. Member States were, however, given the possibility to defer application of the regulation to class B ships until the end of 2018 and for 4 years after the date of application for class A ships. By 2016 the Commission has to make a proposal, under the regulatory procedure with scrutiny, about the liability limits applicable for class B ships. In addition, the principle of the step-by-step extension of the scope to all ships was laid down in a recital and a clause introduced according to which the Commission no later

than 30.6.2013 "shall, if appropriate, present a legislative proposal in order, inter alia, to extend the scope of this Regulation to ships covered by classes C and D." (Article 1)

- **Date of application:** The legal uncertainty regarding the date of application was fully realised during conciliation and became very important also because of the debate about transitional periods for the different classes of ships. According to the text of the common position, the Regulation would have become applicable only when the Athens convention enters into force for the Community. This depends on the adoption of a Council Decision (under the Consultation procedure) concerning the conclusion of the Protocol to the Athens Convention, which has not made any progress in Council since 2003. For this reason the Parliament negotiators insisted on a clear and binding date of application. It was agreed that the Regulation would become applicable when the Athens convention enters into force for the Community but not later than 31.12.2012. This was laid down in the text of the Regulation in Article 12 and not only in a declaration of the Council and the Member States as was the position of Council.
- **Limits of liability:** Parliament essentially accepted Council's idea of a global cap by using the LLMC 96 Convention which can reduce the amount of compensation per victim below the ceilings of the Athens convention. It also accepted the possibility of Member States to opt-out "to the top" of the LLMC 96 and adopt higher ceilings. It managed, however, to obtain important safeguards which ensure that Member States, if they have no national legislation implementing the LLMC as amended by the protocol of 1996 (which provides for higher compensation as its predecessors) have to apply the Athens Convention in full. The possibility to limit responsibility in case of terrorism was also clarified.
- **Advance payment:** Parliament could convince Council to accept the scope for the advance payment as initially proposed by the Commission.
- **Information to passengers:** Those provisions were considerably strengthened in several ways. Regarding the point in time of the information of passengers the common position was "at the latest on departure." Parliament achieved an important differentiation: in case of a contract concluded in a Member State the information has to be provided at the point of sale; in case of a point of departure in a Member State it has to be provided prior to departure. Only in all other cases shall the information be provided "at the latest on departure." In addition, the minimum information requirements were better defined and the application of the obligations of tour operators clarified.

It was in particular during the evening of the conciliation committee that the position of the Council significantly shifted: Its starting position on class B was a transition period of 12 years while the Parliament had proposed 4 years. The final agreement sets the transition period of class B until the end of 2018 which would be a transition period of 6 years when the date of application is in 2012.

For classes C and D the Council had proposed a report to be presented by the Commission after 15 years following the date of application considering the extension of the scope to classes C and D. The Parliament had requested a legislative proposal no later than the date of application. The final agreement reached requests the Commission no later than 6 months following the date of application (30.6.2013) to present a legislative proposal to extend to

scope to Classes C and D.

It was also on the evening of 8.12. that Council accepted to include a fixed date for the application of the regulation.

V. Conclusion

As the agreement reached goes much further than what was possible at earlier stages of the procedure, the delegation recommends that the Parliament approves the joint text at 3rd reading.

PROCEDURE

Title	Joint text approved by the Conciliation Committee for a regulation of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents
References	PE-CONS 3724/2008 – C6-0047 – 2005/0241(COD)
Delegation chair(wo)man: Vice-President	Rodi Kratsa-Tsagaropoulou
Committee responsible Chair(wo)man:	TRAN Paolo Costa
Rapporteur(s)	Paolo Costa
Commission proposal	COM(2005)0592 - C6-0057/2006
Date of Parliament's first reading – P number	25.4.2007 P6_TA(2007)0148
Amended Commission proposal	COM(2007)0645
Council common position Date announced in plenary	6389/2/2008 – C6-0227/2008 19.6.2008
Commission position (Article 251(2), subpara 2, indent 3)	COM(2008)0375
Date of Parliament's second reading – P number	24.9.2008 P6_TA(2008)0445
Commission opinion (Article 251(2), subpara 3, point (c))	COM(2008)0831
Date Council received 2nd reading	10.10.2008
Date of Council letter on non-approval of Parliament amendments	27.11.2008
Conciliation Committee meetings	8.12.2008
Date of vote by Parliament delegation	8.12.2008
Result of vote	+: 14 -: 0 0: 0
Members present	Paolo Costa, Emanuel Jardim Fernandes, Luis de Grandes Pascual, Georg Jarzembowski, Anne E. Jensen, Rodi Kratsa-Tsagaropoulou, Rosa Miguélez Ramos, Gilles Savary, Brian Simpson, Dirk Sterckx, Silvia-Adriana Țicău, Dominique Vlasto, Corien Wortmann-Kool
Substitute(s) present	Inés Ayala Sender, Renate Sommer
Substitute(s) under Rule 178(2) present	
Date of agreement in Conciliation Committee	8.12.2008
Agreement by exchange of letters	
Date on which the co-chairmen established that the joint text had been approved and forwarded it to Parliament and the Council	3.2.2009
Date tabled	25.2.2009
Comments (available in one language only)	...

EXTENSION OF DEADLINES

Deadline for second reading by Council	0.0.0000
Deadline for convening the Committee Requesting institution – date	0.0.0000 [Council] – 0.0.0000
Deadline for work in the Committee Requesting institution – date	3.2.2009 Parliament – 19.1.2009
Deadline for adopting the act Requesting institution – date	0.0.0000 [Council] – 0.0.0000