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Committee on Transport and Tourism

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*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council
on common rules and standards for ship inspection and survey organisations
and for the relevant activities of maritime administrations
(COM(2005)0587 – C6-0038/2006 – 2005/0237(COD))

Committee on Transport and Tourism

Rapporteur: Luis de Grandes Pascual

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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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations
(COM(2005)0587 – C6-0038/2006 – 2005/0237(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0587)¹,
 - having regard to Articles 251(2) and 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0038/2006),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Transport and Tourism (A6-0000/2006),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 2

(2) In its resolution of 8 June 1993 on a common policy on safe seas, the Council set the objective of removing all substandard vessels from Community waters and gave priority to Community action to secure the effective and uniform implementation of international rules by elaborating common standards for *classification societies*.

(2) In its resolution of 8 June 1993 on a common policy on safe seas, the Council set the objective of removing all substandard vessels from Community waters and gave priority to Community action to secure the effective and uniform implementation of international rules by elaborating common standards for *recognised organisations*.

¹ Not yet published in OJ.

Justification

Although this is an authentic quotation and the wording was ‘classification societies’ it would seem appropriate to use the same term throughout the directive.

Amendment 2
Recital 5

(5) Member States are responsible for the issuing of international certificates for safety and pollution provided for under conventions such as SOLAS 74, Load Lines 66 and Marpol 73/78, and for the implementation of the provisions thereof.

(5) Member States are responsible for the issuing of international certificates for safety and ***the prevention of*** pollution provided for under conventions such as SOLAS 74, Load Lines 66 and Marpol 73/78, and for the implementation of the provisions thereof.

Justification

There is obviously a mistake in the Commission text, since the purpose of issuing the certificates is to prevent pollution.

Amendment 3
Recital 6

(6) In compliance with such conventions all Member States may authorise to a varying extent ship inspection and survey organisations, generally known as classification societies, for the certification of such compliance and may delegate the issue of the relevant ***safety*** certificates.

(6) In compliance with such conventions all Member States may authorise to a varying extent ship inspection and survey organisations, generally known as classification societies, for the certification of such compliance and may delegate the issue of the relevant certificates ***for safety and the prevention of pollution.***

Justification

Technical improvement to correct a deficiency in the Commission text.

Amendment 4
Recital 8

(8) Furthermore, these organisations ***are given the duty of producing and implementing*** rules for the design, construction, maintenance and inspection

(8) Furthermore, these organisations ***produce and implement*** rules for the design, construction, maintenance and inspection of ships and ***they are given the***

of ships and to meet the requirements of the international conventions for the issue of the relevant certificates. To enable them to carry out that duty in a satisfactory manner they need to have strict independence, highly specialised technical competence and rigorous quality management.

duty of inspecting ships on behalf of the flag States to meet the requirements of the international conventions for the issue of the relevant certificates. To enable them to carry out that duty in a satisfactory manner they need to have strict independence, highly specialised technical competence and rigorous quality management.

Justification

It seems necessary to include an activity as highly skilled as the work delegated by the flag States.

Amendment 5

Recital 17

(17) Divergence in the financial liability regimes of the organisations working on behalf of the Member States would impede the proper implementation of this Directive. In order to contribute to solving this problem it is appropriate to bring about a degree of harmonisation at Community level of the liability arising out of any ***incident*** caused by a recognised organisation, as decided by a court of law, including settlement of a dispute through arbitration procedures.

(17) Divergence in the financial liability regimes of the organisations working on behalf of the Member States would impede the proper implementation of this Directive. In order to contribute to solving this problem it is appropriate to bring about a degree of harmonisation at Community level of the liability arising out of any ***loss or damage*** caused by a recognised organisation, as decided by a court of law, including settlement of a dispute through arbitration procedures.

Justification

The term 'incident' describes a minor or procedural event, whereas 'loss or damage' is more comprehensive and rigorous.

Amendment 6

Recital 25

(25) ***It is crucial that*** Community ***inspectors*** have access to ships and ship files regardless of the ship's flag in order to ascertain that the recognised organisations comply with the minimum criteria in respect of all ships in their respective class.

(25) ***As part of monitoring of the operations of recognised organisations,*** Community ***inspectors/auditors must*** have access to ships and ship files regardless of the ship's flag in order to ascertain that the recognised organisations comply with the minimum criteria ***laid down in this***

Directive in respect of all ships in their respective class.

However, recognising that such action may give rise to a conflict of interest with regard to the flag State's sovereignty and the duty of confidentiality of the information required by the administration of the flag State, as laid down in Annex I(B)(3), such a conflict must be resolved through the IMO.

Justification

The first amendments are technical improvements.

The additional paragraph concerns the need to accept the possible conflict of interest on completing the monitoring, which should be settled under the Convention by the IMO.

Amendment 7 Recital 28

(28) The ability of recognised organisations rapidly to identify and correct weaknesses in their rules, processes and internal controls is critical for the safety of the ships they inspect and certify. That ability should be enhanced by means of ***an independent joint*** body which can propose common action for the sustained improvement of all recognised organisations and ensure productive interaction with the Commission.

(28) The ability of recognised organisations rapidly to identify and correct weaknesses in their rules, processes and internal controls is critical for the safety of the ships they inspect and certify. That ability should be enhanced by means of ***a competent body acting independently*** which can propose common action for the sustained improvement of all recognised organisations and ensure productive interaction with the Commission.

Justification

We can delete the word 'joint' as this refers only to recognised organisations when it must be more complex.

The phrase 'a competent body acting independently' replaces 'an independent ... body' because this is no empty declaration of independence but expresses the need for the body to have competence and the ability to manoeuvre.

Amendment 8 Recital 28 a (new)

(28a) The rules and regulations (of the recognised organisations) are a key factor for safety and the prevention of accidents and pollution. The recognised organisations have initiated the process that should lead to harmonisation of their rules and regulations. That process should be encouraged and supported by European legislation, as it should have a positive impact on maritime safety and the competitiveness of the European shipbuilding industry.

Justification

It is clear that the harmonisation of regulations is a process that has already begun and should be encouraged by the EU to promote not only safety at sea but also the European shipbuilding industry's ability to compete.

Amendment 9

Recital 29

(29) Recognised organisations should be obliged to update their technical standards and enforce them consistently in order to harmonise safety rules and ensure uniform implementation of international rules within the Community. Where the technical standards of recognised organisations are identical or very similar, mutual recognition of class certificates should be considered.

(29) Recognised organisations should be obliged to update their technical standards and enforce them consistently in order to harmonise safety rules and ensure uniform implementation of international rules within the Community. Where the technical standards of recognised organisations are identical or very similar, mutual recognition of class certificates should be considered ***in cases where this is possible and taking the most demanding and rigorous certificates as the model.***

Justification

Progressive harmonisation is desirable but it should never be a downward move but should take the best and most demanding practice as the model.

Amendment 10

Article 2, point (k)

“***class*** certificate”

“***classification*** certificate”

Amendment 11
Article 5

The Commission shall refuse to recognise organisations which fail to meet the requirements mentioned in the first paragraph of Article 4 or whose performance is considered an unacceptable threat to safety or the environment on the basis of the criteria laid down in accordance with Article 14.

The Commission shall, ***in accordance with the committee procedure referred to in Article 9(2)***, refuse to recognise organisations which fail to meet the requirements mentioned in the first paragraph of Article 4 or whose performance is considered an unacceptable threat to safety or the environment on the basis of the criteria laid down in accordance with Article 14.

Justification

For such an important decision the Commission should be assisted by the COSS Committee.

Amendment 12
Article 6, paragraph 2

2. Recognition shall be granted to the ***parent*** entity, ***if any, within the organisation and shall apply to all entities within that organisation.***

2. Recognition shall be granted to the ***relevant legal*** entity ***for all the legal entities that constitute the recognised organisations, without prejudice to the fact that recognition shall extend collectively to all the legal entities in a recognised organisation that contribute to ensuring that the principal legal entity provides cover for their services at world level.***

Justification

Legal clarification that better describes the complex composition of the recognised organisations.

Amendment 13
Article 8, paragraph 2, point (a)

(a) the provisions set out in Appendix II of IMO Resolution A.739(18) on guidelines for the authorisation of organisations acting on behalf of the administration, while drawing inspiration from the Annex,

(a) the provisions set out in Appendix II of IMO Resolution A.739(18) on guidelines for the authorisation of organisations acting on behalf of the administration, while drawing inspiration from the Annex,

Appendices and Attachment to IMO MSC/Circular 710 and MEPC/Circular 307 on a model agreement for the authorisation of recognised organisations acting on behalf of the administration;

Appendices and Attachment to IMO MSC/Circular 710 and MEPC/Circular 307 on a model agreement for the authorisation of recognised organisations acting on behalf of the administration;

Accordingly, when a recognised organisation, its inspectors or its technical staff issue the required certificates on behalf of the administration, they shall be subject to the same legal safeguards and the same jurisdictional protection, including the exercise of any defence actions, as those to which the administration and its members may have recourse in cases where the administration has issued the above required certificates itself.

Justification

To clarify the role of the recognised organisations when they are acting on behalf of the States, it seems desirable to add the content of paragraph 6.5.2 of the Annex to Circular IMO MSC 710.

Amendment 14

Article 8, paragraph 2, point (b)(i)

(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;

(i) if liability arising out of any ***loss or damage*** 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

While the term ‘incident’ may be correct in English it is likely to cause confusion by association with a formal or procedural issue or a trivial matter. The phrase ‘loss or damage’ is more rigorous and is not restrictive.

Amendment 15

Article 8, paragraph 2, point (b)(ii)

(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 may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 4 million;

(ii) if liability arising out of any **loss or damage** 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 may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 4 million;

Justification

While the term ‘incident’ may be correct in English it is likely to cause confusion by association with a formal or procedural issue or a trivial matter. The phrase ‘loss or damage’ is more rigorous and is not restrictive.

Amendment 16

Article 8, paragraph 2, point (b)(iii)

(iii) 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

(iii) if liability arising out of any **loss or damage** is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute

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 may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 2 million;

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 may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 2 million;

Justification

While the term ‘incident’ may be correct in English it is likely to cause confusion by association with a formal or procedural issue or a trivial matter. The phrase ‘loss or damage’ is more rigorous and is not restrictive.

Amendment 17 Article 11, paragraph 2

The preventive and remedial action may include interim protective measures when the potential threat to safety or the environment is immediate.

The preventive and remedial action may include interim protective measures when the potential threat to safety or the environment is immediate.

However, the Commission shall first notify all the Member States that have granted the recognised organisation authority of the measures it proposes to take.

Justification

Since the organisations act on behalf of the Member States it would seem necessary that the latter should be informed before the proposed measures are taken.

Amendment 18
Article 12, paragraph 1, point (a)

(a) whose failure to fulfil the criteria set out in Annex I or its obligations under this Directive or whose worsening performance reveals grave shortcomings in its structure, systems, procedures or internal controls; or

(a) whose **repeated** failure to fulfil the criteria set out in Annex I or its obligations under this Directive or whose worsening performance reveals grave shortcomings in its structure, systems, procedures or internal controls; or

Justification

'Repeated' is added to characterise the gravity of the infringement.

Amendment 19
Article 12, paragraph 1, point (b)

(b) which has provided incorrect, incomplete or misleading information to the Commission in the course of its assessment under Article 16(3) or otherwise obstructed that assessment.

(b) which has **deliberately** provided incorrect, incomplete or misleading information to the Commission in the course of its assessment under Article 16(3) or otherwise obstructed that assessment.

Justification

'Deliberately' is added to characterise the gravity of the infringement.

Amendment 20
Article 12, paragraph 3, subparagraph 2

They shall be imposed only after the organisation concerned **has** been given the opportunity to submit **its** observations.

They shall be imposed only after the organisation **and Member States** concerned **have** been given the opportunity to submit **their** observations **to the COSS Committee**.

Justification

To add the option also enabling Member States to submit their allegations to the COSS Committee. This avoids a situation in which they are unable to defend themselves.

Amendment 21
Article 12, paragraph 3, subparagraph 3

The aggregate amount of the fines and periodic penalty payments shall not exceed **10 %** of the total turnover of the recognised organisation in the preceding business year for the activities falling under the scope of this Directive.

The aggregate amount of the fines and periodic penalty payments shall not exceed **5 %** of the total turnover of the recognised organisation in the preceding business year for the activities falling under the scope of this Directive.

Justification

Lowers the aggregate amount of the fines, which seems excessive, from 10 to 5 %.

Amendment 22

Article 13, paragraph 1, point (a)

(a) whose failure to fulfil the criteria set out in Annex I or their obligations under this Directive is such that it constitutes an unacceptable threat to safety or the environment;

(a) whose **repeated and serious** failure to fulfil the criteria set out in Annex I or their obligations under this Directive is such that it constitutes an unacceptable threat to safety or the environment;

Justification

There must be repetition and a degree of gravity in the kind of behaviour to justify a penalty as serious as the withdrawal of recognition.

Amendment 23

Article 13, paragraph 1, point (b)

(b) whose safety and pollution prevention performance is such that it constitutes an unacceptable threat to safety and the environment;

(b) whose **repeated and serious failure in their** safety and pollution prevention performance is such that it constitutes an unacceptable threat to safety and the environment;

Justification

There must be repetition and a degree of gravity in the kind of behaviour to justify a penalty as serious as the withdrawal of recognition.

Amendment 24

Article 14, introductory sentence

The Commission, acting in accordance with the procedure referred to in Article

The Commission, acting in accordance with the procedure referred to in Article

9(2), shall adopt:

9(2), shall adopt **and publish**:

Justification

Publishing the criteria is a requirement in order to provide legal safeguards.

Amendment 25

Article 16, paragraph 3, subparagraph 1

3. All the recognised organisations shall be assessed by the Commission, together with the Member State which submitted the relevant request for recognition, on a regular basis and at least every two years to verify that they meet their obligations under this Directive and fulfil the criteria of Annex I.

3. All the recognised organisations shall be assessed by the Commission, together with the Member State which submitted the relevant request for recognition, on a regular basis and at least every two years to verify that they meet their obligations under this Directive and fulfil the criteria of Annex I. ***The assessment must be confined to the maritime activities of the recognised organisations that fall within the scope of this Directive.***

Justification

It makes sense to distinguish between activities of the recognised organisations that are relevant to the directive and those that are not; the Commission does so with the effects of the liabilities that are relevant to the organisations' business funds.

Amendment 26

Article 20, paragraph 1, subparagraph 1

1. The recognised organisations shall consult with each other periodically with a view to maintaining equivalence of their rules and regulations and the implementation thereof. They shall cooperate with each other with a view to achieving consistent interpretation of the international conventions, without prejudice to the powers of the flag States. Recognised organisations shall agree on the conditions under which they will mutually recognise their respective class certificates based on equivalent standards, taking particularly into account marine equipment bearing the wheelmark in

1. The recognised organisations shall consult with each other periodically with a view to maintaining equivalence ***and securing the harmonisation*** of their rules and regulations and the implementation thereof. They shall cooperate with each other with a view to achieving consistent interpretation of the international conventions, without prejudice to the powers of the flag States. Recognised organisations shall, ***in those cases that are appropriate***, agree on the conditions under which they will mutually recognise their respective class certificates based on equivalent standards, ***taking the most***

accordance with Directive 96/98/EC.

demanding and rigorous models as their reference and taking particularly into account marine equipment bearing the wheelmark in accordance with Directive 96/98/EC.

Justification

Specifies the aim of progressive harmonisation.

Points out that mutual recognition will take place only when appropriate in cases in which the technical standards are identical or very similar.

The reference model must not be a downward move but must take account of the most rigorous standards.

Amendment 27

Article 20, paragraph 1 a (new)

(1a) Three years from the entry into force of this Directive, the Commission shall submit a report to the Council and Parliament, based on an independent study, on the level reached in the process of harmonising the rules and regulations and on mutual recognition. In the event of failure by the recognised organisations to fulfil the provisions of Article 20(1), the Commission shall propose to the Council and Parliament the measures needing to be adopted.

Justification

The Commission quite rightly does not use imperative terms in the proposed directive, but advocates progressive harmonisation. It makes sense to assess, after a reasonable period, how far the aim has been achieved.

Amendment 28

Article 21, paragraph 1, introductory sentence

1. Recognised organisations shall set up ***by at the latest and maintain a joint body*** to undertake the following tasks:

1. ***The Member States, in conjunction with*** recognised organisations, shall set up ***an Assessment Committee in accordance with the EN 45012 quality standards, in***

which the IMO, industrial associations and non-governmental organisations (NGOs) shall participate on an consultative basis. The Committee shall undertake the following tasks:

Justification

To name the assessment body as the Assessment Committee.

The Committee should be set up not just by recognised organisations but also by the Member States, in consultation with the IMO.

It should have the powers to enable it to act independently, adopting its own rules of procedure.

Amendment 29

Article 21, paragraph 1, subparagraph 1, point (a)

(a) ***continuous quality management system*** assessment;

(a) ***regulation and assessment of the systems for management of the quality of recognised organisations, in accordance with the ISO 9001 quality standard criteria;***

Justification

To name the assessment body as the Assessment Committee.

The Committee should be set up not just by recognised organisations but also by the Member States, in consultation with the IMO.

It should have the powers to enable it to act independently, adopting its own rules of procedure.

Amendment 30

Article 21, paragraph 1, subparagraph 1, point (b)

(b) ***quality system*** certification;

(b) certification ***of the quality system of recognised organisations;***

Justification

To name the assessment body as the Assessment Committee.

The Committee should be set up not just by recognised organisations but also by the Member

States, in consultation with the IMO.

It should have the powers to enable it to act independently, adopting its own rules of procedure.

Amendment 31

Article 21, paragraph 1, subparagraph 1, point (c)

(c) issue of binding interpretations of internationally recognised quality standards, in particular to take account of the specific features of the nature and obligations of recognised organisations, and

(c) issue of binding interpretations of internationally recognised quality **management** standards, in particular to take account of the specific features of the nature and obligations of recognised organisations, and

Justification

To name the assessment body as the Assessment Committee.

The Committee should be set up not just by recognised organisations but also by the Member States, in consultation with the IMO.

It should have the powers to enable it to act independently, adopting its own rules of procedure.

Amendment 32

Article 21, paragraph 1, subparagraph 2

The **joint body shall be independent** of the recognised organisations and shall have the necessary means to carry out its duties effectively and to the highest professional standards.

The **Assessment Committee shall have the necessary competences to act independently** of the recognised organisations and shall have the necessary means to carry out its duties effectively and to the highest professional standards. **The Committee shall define its working methods and rules of procedure.**

Justification

To name the assessment body as the Assessment Committee.

The Committee should be set up not just by recognised organisations but also by the Member States, in consultation with the IMO.

It should have the powers to enable it to act independently, adopting its own rules of procedure.

Amendment 33
Article 21, paragraph 1, subparagraph 3

It shall adopt an annual work plan. ***deleted***

Justification

To name the assessment body as the Assessment Committee.

The Committee should be set up not just by recognised organisations but also by the Member States, in consultation with the IMO.

It should have the powers to enable it to act independently, adopting its own rules of procedure.

Amendment 34
Article 21, paragraph 1, subparagraph 4

*It shall provide the Commission **and the authorising Member States** with full information on its annual work plan as well as on its findings and recommendations, particularly with regard to situations where safety might have been compromised.*

***The Assessment Committee** shall provide **the interested parties, including** the Commission, with full information on its annual work plan as well as on its findings and recommendations, particularly with regard to situations where safety might have been compromised.*

Justification

To name the assessment body as the Assessment Committee.

The Committee should be set up not just by recognised organisations but also by the Member States, in consultation with the IMO.

It should have the powers to enable it to act independently, adopting its own rules of procedure.

Amendment 35
Article 21, paragraph 2, subparagraph 1

*2. The **joint body referred to in paragraph 1** shall be periodically **assessed** by the Commission, which may require recognised organisations to take the*

*2. The **Assessment Committee** shall be periodically **audited** by the Commission, which may **under the committee procedure referred to in Article 9(2)***

measures the Commission deems necessary to ensure full compliance with paragraph 1.

require **the Assessment Committee** to **adopt** the measures the Commission deems necessary to ensure full compliance with paragraph 1.

Justification

To name the assessment body as the Assessment Committee.

The Committee should be set up not just by recognised organisations but also by the Member States, in consultation with the IMO.

It should have the powers to enable it to act independently, adopting its own rules of procedure.

Amendment 36

Article 23, paragraph 1

In the course of the assessment pursuant to Article 16(3), the Commission shall verify that the holder of the recognition is the **parent** entity within the organisation. If that is not the case, the Commission shall amend the recognition accordingly by decision.

In the course of the assessment pursuant to Article 16(3), the Commission shall verify that the holder of the recognition is the **relevant legal** entity within the organisation **to which the provisions of this Directive are applicable**. If that is not the case, the Commission shall amend the recognition accordingly by decision.

Justification

Legal clarification that is more in tune with the organisation and composition of recognised organisations.

Amendment 37

Annex I, part B, point 1

1. The organisation provides world-wide coverage **by its exclusive** technical staff or, in exceptional and duly justified cases, through exclusive technical staff of other recognised organisations.

1. The organisation provides world-wide coverage **through** technical staff **employed exclusively by or contracted exclusively to the organisation** or, in exceptional and duly justified cases, through exclusive technical staff of other recognised organisations.

Justification

Clarifies the English version.

Amendment 38
Annex I, part B, point 4 a (new)

(4a) The organisation, its inspectors and technical staff shall carry out their work without in any way prejudicing the intellectual property rights of shipyards, equipment suppliers and shipowners, including patents, licences, know-how or any other kind of knowledge whose use is legally protected at European or national level; in no case may either the organisation or the inspectors and technical staff employed by the organisation pass on or divulge commercially relevant data obtained in the course of their work of inspecting, verifying and monitoring ships under construction or repair.

Justification

In view of the justified doubts of the recognised organisations that entities which are not as technologically advanced as they are will not be recognised, other operators need to respect their intellectual property rights.

Amendment 39
Annex I, part B, point 7

7. The organisation has developed, implemented and maintains an effective internal quality system based on appropriate parts of internationally recognised quality standards and in compliance with EN ISO/IEC 17020:2004 (inspection bodies) and with EN ISO 9001:2000, as interpreted and certified by the **joint body** referred to in Article 21(1).

7. The organisation has developed, implemented and maintains an effective internal quality system based on appropriate parts of internationally recognised quality standards and in compliance with EN ISO/IEC 17020:2004 (inspection bodies) and with EN ISO 9001:2000, as interpreted and certified by the **Assessment Committee** referred to in Article 21(1).

The Assessment Committee shall act independently and shall accordingly have

access to all the resources needed to be able to operate correctly and carry out thorough and consistent work, possessing highly specialised and extensive technical skills and a code of conduct that will safeguard the independence of the auditors' activities.

Justification

To be consistent with the body's name in the amendments.

There is a need to describe the features of the joint body, which must be autonomous and have the abilities to fulfil its tasks.

Amendment 40
Annex I, part B, point 8

8. The rules and regulations of the organisation are implemented in such a way that the organisation remains in a position to derive from its own direct knowledge and judgement a reliable and objective declaration on the safety of the ships concerned by means of **class** certificates on the basis of which statutory certificates can be issued.

8. The rules and regulations of the organisation are implemented in such a way that the organisation remains in a position to derive from its own direct knowledge and judgement a reliable and objective declaration on the safety of the ships concerned by means of **classification** certificates on the basis of which statutory certificates can be issued.

EXPLANATORY STATEMENT

Background and purpose of the proposal

The purpose of this fourth revision is none other than to strengthen and clarify the role of classification societies recognised by the EU, now known as ‘recognised organisations’, having found that there are significant failings in the process of inspecting and certifying the safety of the world’s shipping.

Previous directives, particularly Directive 2001/105/EC, one of three proposals in the Erika 1 legislative package, have already raised the serious need to reform the present system for Community recognition of classification societies, set up by Directive 94/57/EC; the substantial progress that they made was then reinforced by the Council’s conclusions of 13 December 2002 and Parliament’s resolutions on strengthening safety at sea (2003/2235(INI) and the resolution adopted after the wreck of the Prestige (2003/2066(INI)).

The reason for returning to this question is the need for further tightening up of the activity of these organisations which, as has been said by the various operators making up the sea transport sector, if they did not exist would need inventing as they fulfil a vital task in maintaining safety at sea.

However, as mentioned there are still serious deficiencies today in the process of inspecting and certifying recognised organisations, and this poses a serious and unacceptable threat to safety and the environment. Recognised organisations are a major concentration of power in the sea transport safety network and must be closely supervised by the appropriate authorities. These should guarantee that the organisations that are required to ensure that the vessels on our seas comply with the relevant international safety and anti-pollution standards act with independence and rigour.

Reforms proposed by the Commission directive

In its ‘Third package of legislative measures on maritime safety’ the Commission has put forward a proposal with the aim of reforming the current rules and regulations for recognised organisations classifying and inspecting ships, thus amending Directive 94/57/EC. Since this directive has already been substantially amended on previous occasions, in this fourth update it has been decided to make use of the technique of recasting the text.

The proposal contains five sections of reform:

1. *Improving the systems for the monitoring of recognised organisations*

The recognised organisations will establish a joint body for quality system assessment and certification. This body will be independent of the recognised organisations and have all the necessary resources to enable work to be carried out in depth and on a continuous basis.

2. *Harmonising the system of ordinary and limited recognition*

The present system limits recognition according to the size of the organisation. The

Commission proposes to abandon this system and to tie in Community recognition based on the organisation's performance in terms of quality and safety. At the same time the Commission is introducing a safeguard mechanism enabling it to prevent a recognised organisation, whatever its size, from acting on behalf of Member States in specialised areas for which it does not have the necessary capability.

The Commission will also examine cases of limited recognition granted under the current directive and decide through the comitology procedure whether the limitations should be replaced or scrapped.

3. *Reform of the recognition criteria*

The aim is to simplify the criteria for granting recognition, since they have been developed in a somewhat disorderly manner. The proposed changes are centred on the number of inspectors in proportion to the fleet being classified, the use of non-exclusive inspectors and consideration of the legal structure of recognised organisations.

4. *Reform of the system of penalties*

The Commission wants ultimately to make the penalty system more flexible. This means creating a list of infringements and penalties, in addition to replacing the suspension of recognition with financial penalties, taking account of the gravity of the infringement and the financial capacity of the recognised organisation concerned (only the basic features of the system will be defined).

5. *Clarifying the scope and facilitating the application of certain provisions in the present directive*

This point refers to the specific arrangements to define the Community's inspection powers. It clarifies the access of inspector-auditors to the ships' documentation.

Another fundamental aspect is the legal structure of recognised organisations: to this end the Commission proposes to introduce a broad organisational concept, so as to ensure that recognition applies at the highest level which that concept entertains. On the question of scope, the text refers to the SOLAS Convention, though excluding a section on protection.

Consultation of interested parties

The rapporteur thought fit to meet the industry a second time to re-acquaint himself with its criteria. He accordingly arranged meetings with IACS, the international umbrella organisation for the main recognised organisations carrying out inspection and certification of more than 90 % of cargo vessels throughout the world and representing ten of the 12 organisations recognised by the Community. There were also meetings with shipbuilders, shipowners and representatives of the European marine equipment industry.

Furthermore, the rapporteur held a public hearing at the European Parliament that was open to the full Committee on Transport, with the aim of meeting the wish of the IACS to explain the scope and significance of recognised organisations.

The rapporteur's considerations and proposals

The rapporteur takes a positive view of the proposed directive, which is a step forward in providing for safety at sea and controlling pollution. However, the report does put forward a number of amendments which in our view improve the proposal.

(a) *Improving the systems for monitoring recognised organisations*

The creation of a joint body for assessing and certifying quality is a welcome development. The rapporteur gives this body a name, 'Assessment Committee', and calls for it to have independent status to safeguard its autonomy of action, and for it to be given the powers required to carry out its work. With regard to its establishment, this will not be a matter solely for the recognised organisations but will take place in conjunction with the Member States and in consultation with the IMO.

(b) *Merging the present twofold system of ordinary and limited recognition*

The Commission proposes to end the present twofold system and calls for a Community recognition scheme based on qualitative criteria, rather than quantitative criteria dependent on size. The rapporteur sees this as a positive reform but points out that *mutual recognition* is a controversial matter.

In the rapporteur's judgement the Commission rightly argues that the approach to mutual recognition should not be imperative but prudential, confining it to cases in which the rules and regulations of the recognised organisations are identical or very similar. The rapporteur has put forward a number of amendments here to further clarify such cases, and ensure that when the rules are harmonised this should be done by reference to the most demanding and rigorous standards.

(c) *Reform of the system of penalties*

In the rapporteur's judgement the system that the Commission advocates comes closer to equity than its predecessor. A system of graduated penalties proportionate both to the severity of the infringement and the organisation's economic capacity is fairer and more effective. However, the rapporteur has proposed some amendments to define more clearly the type of infringement that is likely to be penalised.

The Member States are also brought in, as they must be notified of any corrective or preventive measures that the Commission may require of a recognised organisation that fails to comply with the criteria laid down in Annex I, or with the requirements of the directive when the organisation is acting on behalf of a Member State. Moreover, we have added the option enabling Member States to put their allegations to the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), to avoid a situation in which they are unable to defend themselves. Finally, the total reference figure for penalty fines is reduced to 5 %, as 10 % appears excessive.

(d) *Limited or unlimited liability*

Whether or not recognised organisations should have limited liability is a matter of

controversy, and both sides put forward good reasons to support their views.

Back in 2001, there was provision in Article 8(5) of the directive for the Commission to submit to Parliament and the Council an assessment report on the economic impact of the civil liability regime laid down in Directive 94/57/EC. The Commission undertook to submit such a report by 22 July 2006.

The report's conclusions are as follows.

The directive states that in cases of gross negligence there must be provision for unlimited liability, and this principle is not disputed.

As to the liability arrangements applicable in the event of simple negligence, the directive does not require unlimited liability but leaves it to the parties concerned to negotiate and agree on the sums to be applied. The current situation with cases of simple negligence is this: 17 Member States and Norway have established limited liability for cases of simple negligence. The amounts to a large extent reflect those in the directive, which were thresholds and are now ceilings. Five Member States have approved the option provided by Article 6 of the current directive and have agreed with the authorised recognised organisations on unlimited liability even in cases of simple negligence.

As a result the rapporteur concludes that the Commission proposal is a balanced one and meets the majority's criteria in the European Union.