



ECSA Newsletter

European Community Shipowners' Associations

• N° 7/07

COUNCIL OF TRANSPORT MINISTERS **29/30 NOVEMBER**

The Transport Council met on 29 and 30 November 2007 under the Portuguese Presidency with the following key results:

SHIPPING - MARITIME SAFETY PACKAGE III

Political agreement on another two proposals

Athens Convention/carrier's liability for passenger transport

The Council reached a political agreement on a proposal for a Regulation on the liability of carriers of passengers by sea and inland waterways in the event of accidents.

The proposed Regulation aims at establishing a Community regime relating to uniform liability for the carriage of passengers by sea. To this end it incorporates into Community legislation the Athens Convention relating to the carriage of passengers and their luggage by sea as amended in 2002. The proposal also includes several additional requirements related in particular to compensation for damage or loss of mobility equipment, pre-journey information of passengers and advanced payments.

Compared to the initial Commission proposal, the text agreed by the Council contains some changes that concern the scope, the relation between the Regulation and other international conventions on global limitation of liability and the transitory provision of the Regulation. Ministers agreed on all outstanding issues and the text also includes those of the European Parliament's amendments which are acceptable to the Council.

Classification societies

The Council reached a political agreement unanimously on a proposal for a Directive on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations and a Regulation on common rules and standards for ship inspection and survey organisations.

The purpose of the proposal is to recast, in a consolidated text, successive amendments to Directive 94/57/EC establishing common rules and standards for organisations that inspect ships and issue ships' certificates and that, subject to the fulfillment of minimum criteria, set out in the legislative text, are granted recognition at Community level. In addition, it aims at amending certain provisions of Directive 94/57/EC with a view to their reinforcement, harmonisation or simplification, and adding new provisions in particular to reform the system of penalties against recognized organisations that do not fulfill the established minimum criteria. It is understood that in relation to mutual recognition the Council followed the opinion of the European Parliament.

Given the high level of reservations expressed concerning the penalty system in particular, the Council agreed to split the proposal into two separate instruments: a Directive and a Regulation. The Directive includes provisions addressed to the Member States concerning their relationship with ship inspection and survey organisations, while the Regulation contains all provisions related to the recognition at Community level, i.e. the granting, withdrawal, obligations, criteria and sanctions. This change now needs approval by the College of Commissioners as well as the European Parliament.

INTERMODAL QUESTIONS AND NETWORKS

Global Navigation Satellite System (GALILEO)

The Council adopted conclusions on launching the European Global Navigation Satellite System Programmes as a step towards reaching an integrated decision on the European GNSS before the end of the year. The Council conclusions are aimed, in particular, at confirming the need for additional public funding and defining the general principles of public sector governance and public procurement of the programmes.

Communication from the Commission - Freight Transport Logistics Action Plan

The Council adopted conclusions thereby inviting the Commission in particular, within the framework of the Lisbon Strategy, to implement the Freight Transport Logistics Action Plan in co-operation with the Member States, industry and social partners and requests the Commission to regularly review its progress, report to the Council and adjust the priorities and timetables as appropriate. The draft conclusions contain points relating to innovation, logistics quality, simplification, co-modal approach and urban freight mobility. Advanced logistical solutions are important in the light of the growth of freight transport, better use of infrastructure, increased oil dependence, climate change and the need for reduction of pollutant emissions. Since freight transport is often a cross-border activity, concerted action at European level can contribute to logistic performance.

Renewed EU Sustainable Development Strategy

The Council held a public policy debate on the renewed EU sustainable development strategy, following the adoption by the Commission of the 2007 progress report. In June 2006, the European Council adopted a comprehensive renewed EU Sustainable Development Strategy (SDS) which confirmed the policy guiding

principles for sustainable development adopted in 2005 as well as the four key objectives to be pursued, namely: environmental protection, social equity and cohesion, economic prosperity and international responsibilities. The renewed SDS includes provisions for implementation, monitoring and follow-up.

The Member States expressed their support for the renewed EU SDS. While some successes can be noted, the main challenge lies with an effective and coherent implementation of the strategy at all levels. Furthermore, sustainable development in Europe can only be achieved when a global engagement is taken and sustainability is integrated in all external policies of the EU. Putting transport on a sustainable path remains a challenge, in particular in the light of the growth that is expected for the coming years. The EU must continue to work on policy measures that contribute to climate protection, energy efficiency, road safety, improving air quality and reducing noise emissions, which is important for health, and social inclusion. In particular, greater use should be made of economic instruments that provide the appropriate incentives and disincentives.

In doing so, each transport mode must make its contribution to reducing the adverse consequences of mobility. The Presidency will use the outcome of the debate as input for the conclusions of the European Council (Summit) to be held in Brussels on 13 and 14 December 2007.

Under Any Other Business, the following issues were raised:

- The Commission made a presentation on the **Communication on a European ports policy**.
- The Spanish and Italian delegations informed the Council representatives on the problem in the Mediterranean Sea of **illegal immigration** and the issue of **search and rescue** and said that the issue should be looked at further from the Law of the Sea perspective via mainly the Justice Council.

- The Commission informed the Council representatives of the social partners' agreement on the **ILO Maritime Labour Convention**. The Commission will work now on a proposal for a Directive.
- The Commission informed the Council on their wish to introduce **Community observer status in IMO**. Some Member States expressed reservations and asked for a status quo.

CRIMINAL SANCTIONS FOR SHIP-SOURCE POLLUTION

On 23 October 2007, the European Court of Justice (ECJ) confirmed the view of the European Commission that Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal law framework for the enforcement of the law against ship-source pollution had been adopted on an incorrect legal basis and it therefore annulled this Framework Decision.

The ECJ confirmed that the Community may adopt measures aimed at improving maritime transport safety, including imposing on Member States an obligation to provide for criminal penalties for certain conducts. However, the determination of the type and level of the criminal penalties themselves to be applied do not fall within the Community's competence and remain therefore with the Member States.

On 20 November, the Advocate General at the European Court of Justice – Mrs. Kokott – issued her opinion on the industry's Court case challenging the legal validity of Directive 2005/35/EC of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements. The Advocate General analysed in particular the four preliminary questions raised by the English High Court in relation to Directive 2005/35/EC and concluded that an examination of these questions "*had disclosed no factor of such a kind as to bring into question the validity of Directive 2005/35/EC*".

The European Court of Justice (ECJ) is expected to issue its judgment in the

course of 2008. In general the ECJ follows the Advocate General's opinion.

Furthermore, on 28 November, the European Commission sent reasoned opinions to eight Member States because they have not as yet fully transposed the above-mentioned Directive 2005/35/EC of 7 September 2005 into national law. The deadline for doing so was 1 April 2007. The countries concerned are Cyprus, Estonia, Finland, France, Luxembourg, Malta, Portugal and the United Kingdom. This Commission action is the last step before bringing Member States to the European Court of Justice.

COMPETITION RULES

Stakeholders were invited to submit comments to the European Commission's draft Guidelines on the application of Article 81 EC Treaty to maritime transport services by 9 November.

Comments were submitted by the Danish Competition and Maritime Authorities, the European Shippers Council (ESC) and the Global Shippers' Forum, the European Association CLECAT (representing freight forwarders, logistic service providers and customs agents), ECSA, INTERTANKO and ELAA as well as the Law Firm Holman, Fenwick and Willam.

With regard to liner shipping, carriers expressed supported for the draft Guidelines whilst seeking clarification on the language of the draft Guidelines and suggesting specification by way of illustrative examples.

As expected, the replies from the shippers and also freight forwarders were critical. On the one hand, they asked for more clarification of the draft Guidelines. On the other hand, they questioned the need for having a system of information exchanges on the basis that such system in the liner shipping industry is likely to have market restrictive effects.

As regards tramp shipping and tramp pools, certain parties asked for more clarification as there is no case law or no specific legislation. Others stressed on the

need that the Guidelines should reflect much more the daily reality of tramp shipping and tramp pools, including, amongst others, the significant substitutability between vessel sizes and vessel types. Attention was furthermore drawn to the basic elements of joint production in most agreements making the joint bidding into the market ancillary to the joint production.

It was also felt that the Guidelines should give more guidance on the application of Article 81 (3) EC Treaty and particularly of the four cumulative criteria with regard to tramp pools.

The ECSA submission can be found on the ECSA web site
<http://www.ecsa.be/publications/074.pdf>

ILO MARITIME LABOUR CONVENTION (MLC)

Agreement between the social partners ETF/ECSA

Following the adoption of the ILO Maritime Labour Convention in February 2006, the Commission issued a Communication in June 2006 indicating their intention to transpose relevant parts into EU law, and inviting the Social Partners (ECSA and ETF) to negotiate a Social Partners' Agreement to be implemented via a Directive as the means of doing so.

Since October last year, there have been a series of meetings between ECSA and ETF, with the Commission providing legal and procedural advice.

In early November, agreement was reached and the text and covering letter was subsequently sent to the Commission for legal scrutiny; should the text be accepted without difficulty by their legal services, the Agreement will be sent in early 2008 to the Council together with a short accompanying Directive to implement the Agreement.

Member States can either accept or reject the Agreement. ECSA has welcomed the outcome, stressing that no additional elements have been introduced, that the

MLC as far as possible remains intact, that there are no transfers of competence from Member States to the EU and that the initiative will not cause a delay in ratification of MLC by Member States.

PORT SECURITY

The European Commission decided to send reasoned opinions to Estonia, Malta, Spain and the United Kingdom for failing to transpose Directive 2005/65/EC of 26 October 2005 on enhancing port security into their national law. Member States should have transposed this Directive by 15 June 2007. Sending a reasoned opinion constitutes the last stage before possible referral to the Court of Justice.

The aim of Directive 2005/65/EC is to establish a Community framework for the security of all port areas. It therefore supplements the measures already in place since 2004 for ships and port facilities (ISPS). It sets out common basic rules for measures designed to prevent deliberate unlawful acts against ports and their various components. It also provides for mechanisms for implementing these measures and checking their conformity.

EMSA

The Administrative Board of the European Maritime Safety Agency met on 28 November in Lisbon and unanimously endorsed a proposal from the European Commission to renew the mandate of EMSA Executive Director, Willem de Ruiter. Mr De Ruiter's second five year term will begin on 16 March 2008.

Mr Ib Matthiesen, head of EMSA's Safety Assessments & Inspections Unit, and EMSA's first ever head of unit, retires end 2007.

EMSA, furthermore, finalised contracts to strengthen its pollution response coverage in the Atlantic and Mediterranean areas. UK ship owner James Fisher Everard will provide a pollution response arrangement based on a pool of three vessels normally trading between the UK and Ireland. Spanish company Mureloil will provide a pool of two vessels which operate in southern Spain. Maltese ship owner

Tankship Management will add a vessel to the already established arrangement in the central Mediterranean Sea and Greek company Environmental Protection Engineering (EPE) will provide a vessel based in southern Greece. All vessels will be equipped during the first half of 2008 and will become operational as pollution response vessels by mid-2008.

EUROPEAN MARITIME DAY TO BE CELEBRATED ANNUALLY

The European Commission has proposed that a "European Maritime Day" be celebrated annually throughout the European Union on 20 May. This initiative is linked to the new Integrated Maritime Policy for the EU, proposed by the Commission in October 2007. During the consultation process on this new policy, numerous stakeholders voiced the opinion that celebrating Europe's maritime heritage and future as well as highlighting its maritime activities would help raise citizens' awareness not only to the importance of the maritime sectors, but also to the key role of the marine environment and Europe's coastal regions, islands and outermost regions.

Similar initiatives already exist, but with a distinct sectoral focus. The aim of European Maritime Day, on the contrary, will be to highlight the whole web of relationships that bind together all maritime and marine-related issues and activities in Europe, in line with the joined-up and cross-cutting approach of the new policy. The first European Maritime Day is planned for 20 May 2008. The Commission encourages all the European regions, ports, cities and other maritime stakeholders to join in the celebrations and to work together so that European Maritime Day can serve in the future as the focal date launching a 'maritime week' of conferences, festivities, networking, best practice exchange and benchmarking activities throughout the EU.

MARCO POLO II

The Commission announced the results under the first call for proposals under

Marco Polo II. The budget available is € 56m. 55 project proposals were submitted and the Commission has retained 27 projects. Negotiations on these 27 project proposals will now start. The total amount of subsidies requested by the proposals is € 58,6m, they represent a modal shift of 30 billion tonnes per kilometre.

The Commission added that the project proposals were of a very high quality. 11 Short Sea Shipping proposals have been retained and one Motorways of the Sea project.

The next call for proposals will be published in January 2008.

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*ECSA WISHES THE
READERS OF THE
NEWSLETTER A MERRY
CHRISTMAS AND A HAPPY
2008.*

07.12.07