



ECSA SEMINAR 06/03/07 – MARITIME SAFETY PACKAGE III “A constructive approach” PHILIPPE LOUIS- DREYFUS

The seven proposals contained in the Maritime safety Package III are now on the table since November 2005. The reaction to the package was in general positive since the proposals have a proactive rather than reactive character which have seen in the past.

Nevertheless, some proposals created serious concern with industry and Member States. The Council of Transport Ministers is dealing with the seven proposals one by one taking into account their specific merits. The European Parliament decided to approach them as a package.

Let's quickly go through them starting with the five proposals directly related to maritime safety.

The Port State Control Directive

Already in the nineties prior to the three safety Packages the shipping industry suggested a targeting of port state controls on substandard ships and rewarding quality shipping with less controls.

It is therefore evident that ECSA strongly supports the general aims of the new Directive, especially the stated intention to move away from the requirement for national PSC authorities to inspect 25% of all visiting ships, so that resources can be better targeted at ships that are more likely to be sub-standard. The 25% inspection requirement is in the process of review but initiatives are likely to be introduced at a later stage following the Paris MOU's examination of the system.

We fully support the desire to place emphasis on flag state performance, encouraging flag states to improve on their performance. The Equasis data base is an evident instrument to assist in the targeting of ships with a doubtful reputation.

Flag State Directive

In the pre-consultations to the Safety Package the industry suggested that Member States should volunteer to participate in the IMO Flag Audit Scheme and supported the full implementation of the Code on the Implementation of Mandatory IMO Instruments. We still have the same view on a flag state compliance initiative, the contents of which should be consistent with IMO.

The political dimension of this issue is a matter for EU Member States to address. The industry has a distinct interest because the outcome could have a wider practical impact on the quality of future regulatory decision making at IMO. The aim of the industry is to have well performing Flag States, and full contribution of Member States expertise in the decision making process of the IMO.

Casualty Investigation

The aim of establishing a framework for conducting technical investigations on marine casualties and improving the exchange of information among Member States is fully supported.

It is important that those who contribute essential information to making investigations effective can do so without fear of subsequent prosecution. The industry consequently welcomes the distinction made in the Directive between technical investigations conducted in order to learn from accidents and investigations to establish the legal responsibility for any non compliance with international regulations.

The shipping industry also believes that it would be helpful if the directive could include a reference to the need for Member States to adhere to the IMO/ILO Guidelines on the Fair Treatment of Seafarers in the Event of a Maritime Accident.

Traffic Monitoring Directive

The vessel traffic monitoring Directive has always had full support of ECSA and the amendments proposed can further enhance its efficiency. Key point is an efficiently working system of places of refuge for ships in need of shelter. In this respect the industry welcomes the initiative to place requirements on Member States to provide appropriate places of refuge as well as an appropriate structure. The example of the MSC Napoli gives evidence of the necessity to designate an independent competent authority deciding on the basis of safety and technical considerations.

Classification Societies

A proposal to clarify the role of classification societies in relation to their statutory and class responsibilities has its benefits. We understand that discussions with the Classification Societies are continuing and are convinced that appropriate solutions will be found on the outstanding issues.

LEGAL PROPOSALS

Contrary to the five safety proposals of the Third Maritime Safety Package, the two liability proposals of this Package are more controversial in substance, particularly, the proposal for a Directive on civil liability and financial guarantees for shipowners.

The first proposal which is already under discussion in both the Parliament and the Transport Council covers liability of carriers of passengers by sea and inland waterways in the event of accidents.

ECSA understands the political willingness to provide passengers with equal compensation for damage suffered, regardless the transport mode with which they are traveling. However, attention has been drawn to the fact that the proposed

extension of the 2002 Athens Convention to domestic sea traffic or cabotage should not result in unrealistic obligations for small companies providing local ferry services.

There is a serious risk that the proposal would make these services economically unviable and eventually affect the service itself offered to passengers. Therefore, ECSA has supported the idea to carry out a study assessing the financial impact of the Commission's proposal to extend the 2002 Athens Convention to domestic sea traffic or cabotage.

With regard to the proposals on civil liability and financial guarantees I would like to stress the necessity of a proper insurance and liability system. Whether an EU Directive is required to fulfil this aim is questionable.

In the pre-consultation round ECSA suggested that rather than adopting additional legislation the European Community should apply the IMO Guidelines on Shipowners' Responsibilities in respect of Maritime Claims providing for a system of compulsory insurance. By doing so, the EU would ensure its adherence to international standards. Furthermore, ECSA believes that insurance should be evidenced by a certificate of entry in a P&I Club but not by a certificate issued by an EU Member State.

In addition, ECSA supports the proposal to have insurance to cover costs linked to the repatriation of abandoned seafarers but it is of the opinion that this issue should be further pursued in the IMO/ILO working group as agreed by the General Conference of the International Labour Organisation in February 2006.

ECSA also underlines the need to maintain the current test for breaking the shipowners' limitation, notably "recklessly and with the knowledge that damage would probably result" rather than introducing "gross negligence" as conduct barring limitation. This test is the commonly used term in all modern maritime liability conventions and it is internationally accepted and understood.

I would like to conclude by making reference to the much welcomed exercise of Vice President Günther Verheugen to cut red-tapes and to simplify existing EC legislation.

European Community Shipowners' Associations

In line with this Commission policy, ECSA believes that in the field of shipowners' liabilities, the appropriate way forward is not to introduce regional legislation. Instead we would urge prompt ratification of the relevant international Conventions notably:

- The international Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;
- The Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims;
- The international Convention on Civil Liability for Bunker Oil Pollution Damage;

This is the most relevant way to deliver on a global basis the necessary insurance and liability system as required.

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