



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT

pursuant to the first subparagraph of Article 189 c (b) of the EC-Treaty

Council Common Position on the proposal for a Council Directive amending
Directive 93/75/EEC concerning minimum requirements for vessels bound for or
leaving Community ports and carrying dangerous or polluting goods

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Subject: Council Common Position on the proposal for a Council Directive amending Directive 93/75/EEC concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods

1. History of the file

Proposal transmitted to the Council on 29.09.1996.
Opinion of the European parliament (first reading) delivered on: 24 April 1997
Opinion of the Economic and Social Committee delivered on 26 February 1997:
Common position adopted on 11.12.1997.

2. Purpose of the Commission proposal

The purpose of this proposal is threefold:

- to include in the list of international Codes and Conventions referred to in the Directive the international Code for the safe carriage of irradiated nuclear fuel, plutonium and high -level radioactive wastes in flasks on board ships (INF Code) of the International Maritime Organization (IMO);
- to supplement the information given in the Annexes to the Directive in the light of developments in international legislation;
- to facilitate the amendments of those Annexes in the light of developments in international legislation by applying the committee procedure.

3. Comments on the common position:

3.1. General observations on the common position

The European Parliament delivered a favourable opinion and requested 11 amendments to the Commission's original proposal. The amendments adopted by the European Parliament aim at strengthening the notification requirements of Directive 93/75/EEC in order to improve prevention and intervention in the case of accidents at sea to vessels carrying hazardous cargoes.

The Council of Ministers adopted a common position on a text which contains the substance of the Commission proposal, supplemented with a number of additional provisions.

The amended proposal submitted by the Commission after 1st reading of the European Parliament was approved by the Council.....

3.2. Outcome of Parliament's amendments at first reading.

The Commission fully shared the concern expressed by the European parliament's amendments concerning the need for additional safety prescriptions for ships carrying radioactive materials by sea, as well the need to extend the existing reporting requirements of Directive 93/75/EEC to ships not bound for a Community port. However, these amendments were not accepted since they were respectively out of the scope of the Directive 93/75/EEC, which set-up a reporting system, and were already covered by other EC safety legislative proposals (in particular the proposed Directive Eurorep).

Therefore, the amended proposal adopted by the Commission includes two of the Parliament proposed amendments:

- the amendment n° 8, aimed at facilitating subsequent modifications of the Annexes to the Directive, through the procedure of the Committee set-up under Directive 93/75/EEC, taking into account future amendments to the INF Code of the International Maritime Organization (IMO) concerning the safe carriage of irradiated nuclear fuel, plutonium and high-level radioactive wastes in flasks on board ships.
- the amendment n° 9, adding to the list of information to be notified in accordance with Annex I of Directive 93/75/EEC the number of crew on board. Such information would be usefully made available to the competent authorities in charge of planning and carrying out emergency response in case of an accident at sea involving a ship carrying hazardous substances.

3.3. New provisions introduced by the Council and position of the Commission thereto:

Recitals:

- The Council modified and re-arranged the recitals in accordance with the text of the common position and in order to rationalise them. The Commission agreed with this re-arrangement for reasons of consistency and clarity.

Article 1, Paragraph 1.

- An editorial improvement of the text, replacing, after the words IMDG Code, the words "and radioactive materials as defined by the INF Code" by the words "including radioactive materials as referred to in the INF Code" has been proposed by the Council.
This change has been accepted by the Commission, as it clarifies that the radioactive substances described in the INF Code may be covered or are already covered by the IMDG Code.

- In the definition of the INF Code, the version of the reference to the version of the Code "in force at the time of adoption of Directive .../.../EC" has been replaced by "as it is in force on 1 January 1996". The Commission can accept this proposal, which gives a clear and precise reference date.

Article 1, Paragraph 2.

- The Council has proposed the addition of the following sentence in Article 11 of Directive 93/75/EEC, related to the scope of the "comitologie" procedure:

"In the first indent, "(e), (f), (g), (h) and (i)" are replaced by "(e), (f), (g), (h), (i) and (j)".

The Commission is in favour of such proposal, which takes into consideration the fact that a new Paragraph (i) (definition of the INF Code) has been inserted in the list of Codes and Conventions of Article 2 of 93/75/EEC Directive,. Therefore, it was necessary to change the numbering of paragraphs and reflect it into Article 11 in order to allow modification through the "comitologie" of all Codes and Conventions referred to in Article 2. The same proposed amendment has also been adopted by the European Parliament (see paragraph 3.2 above).

- the Council has proposed a modification of the new indent added to Article 11 by the Commission's proposal, stating instead that the Directive may be amended through "comitologie" procedure in order to:

"- amend the annexes in line with the relevant subsequent amendments to international conventions, codes and resolutions on safety at sea and the protection of the marine environment which have entered into force, without broadening the scope of the Directive."

Considering that this amendment aims at giving a more accurate legal definition to what was described as "relevant developments in international law" in the Commission's original proposal, the Commission could accept it. The Commission also accepted the addition of the words "without broadening the scope of the Directive" to this indent. Indeed, the objective of the Commission's proposal is not to use "comitologie" procedures with a view to bring amendments which would go beyond the scope of Directive 93/75/EEC, but on the contrary to facilitate subsequent technical amendments of the annexes in the light of amendments to international legislation not referred to in Article 2 of directive 93/75/EEC.

Article 2, paragraph 1.

The Council proposed 30 June 1998 instead of 31 December 1997 as the date for the adoption of national legislation implementing the Directive.

Considering the need to allow sufficient time to Member States for incorporating the Directive into their national, the Commission could accept this proposal.

Annex I

- The Council has added to the cargo information in Paragraph 8, the mention, where appropriate, of the class of the vessel as defined by the INF Code. This amendment is fully supported by the Commission; since the initial proposal of the Commission makes a reference to the INF Code only in Article 2 of Directive 93/75/EEC (list of Codes and Conventions), and was not further reflected in any operational provision of the Directive. With this amendment, the operator of a ship carrying radioactive materials would have to notify also to the competent authority of the Member State the INF class of the vessel, thus improving the information available to the authorities in case of an emergency.

- Amendment 9 of the European Parliament was accepted by the Council as the availability of information on the number of crew on board was considered to be important for authorities in charge of emergency response in the case of an accident or incident at sea involving a ship carrying hazardous materials (See new paragraph 10 to Annex I).

Annex II

A number of new information have been introduced by the Council in the check-list which has to be made available to the pilot by the master of the ship in accordance with Article 8 of the Directive.

The objectives are: editorial improvements, replacement of existing wording by the precise terminology used by IMO, and above all, addition of new information in the light of progress in international legislation (in particular new SOLAS provision).

4. Conclusion

The Commission is of the opinion that the text of the common position is acceptable, since it respects the basic principles of the original and provides added value by the addition of new information, in particular in the Annexes to Directive 93/75/EEC.