



**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 amended proposal for a Council Directive  
on marine equipment**

**COMMUNICATION FROM THE COMMISSION**  
**TO THE EUROPEAN PARLIAMENT**

**Subject:** Council common position on the amended proposal for a Council Directive on marine equipment

**1. History of the file**

Proposal transmitted to the Council on:	22.06.1995
Opinion of the European Parliament (first reading) delivered on:	29.11.1995
Amended proposal transmitted to the Council on:	13.02.1996
Common position adopted on:	18.06.1996
Opinion of the Economic and Social Committee delivered on:	31.01.1996

**2. Purpose of the Commission proposal**

The aim of the Commission proposal is to enhance safety at sea by improving the performances of the equipment on board ships. To reach this goal the proposal introduces a uniform and compulsory application of the international testing standards for marine equipment and requires notified bodies to fulfil common quality criteria in order to be designated to carry out the conformity assessment procedures for the national administrations. This proposal:

- ensures, through the above provisions, the enhancement of the safety performances of all the equipment throughout the Community, while reducing distortion of competition between ship operators;
- grants such equipment the right to be placed on board ships without supplementary tests or evaluations, thus reducing the administrative and procedural costs the manufacturers have to bear in order to have their equipment approved; this in turn enhances the free circulation of this equipment in the Community.

### **3. Comments on the common position**

#### **3.1 General observations on the common position**

In its first reading the European Parliament introduced twelve amendments to the Commission original proposal. The Commission accepted four of these amendments, some of them subject to redrafting, and consequently modified its original proposal. These amendments of the European Parliament are consistent with the aim of the original proposal and bring an added value to it.

The Commission could not accept the other amendments since it considered that they are based on technical misunderstandings, or weaken the provisions of the proposal, or duplicate equivalent provisions which already exist elsewhere.

The Council of Ministers adopted a common position on a text which contains the substance of some amendments proposed by the European Parliament and a number of additional ones.

#### **3.2 Outcome of the amendments of the European Parliament**

Amendment to the first recital:

- neither the Commission nor the Council could accept this amendment, since the same principle is already expressed in other recitals of the original proposal.

Amendment to Article 2, definition of "EU Ship":

- neither the Commission nor the Council could accept this amendment, since it would imply a more restricted field of application than the proposal of the Commission.

Amendment to Article 2, definition of "New Ship":

- the Commission and the Council accepted without reservation the amendment of the European Parliament, which constitutes a technical-legal improvement.

Amendment to Article 2, definition of "Testing Standards":

- the Commission could not accept this amendment since the reference to 'the European standards organisation or other specialized organisation, according to the type of equipment' is far too vague. The text of the common position, however, specifically refers to the European Committee for Standardisation (CEN) and to the European Committee for Electrotechnical Standardisation (CENELEC).

Amendment to Article 5, paragraph 3:

- neither the Commission nor the Council could accept this amendment, since it would mean in substance that, after the date of entry into force of the Directive, the equipment should be manufactured in accordance with the provisions of the Directive, notwithstanding the fact that the two years' period allowed to Member States to adopt their national laws has not passed yet. Furthermore, this amendment would eliminate the interim period after adoption of the national laws during which manufacturers can still sell the equipment they have in stock.

Amendment to Article 6:

- this amendment was not accepted either by the Commission or by the Council since it is contrary to the main principle of the proposal, that is making the International testing standards, and only them, compulsory in the Community. To accept to harmonise the implementation of the testing standards existing in the Member States would mean to change approach and allow Member States to continue to use their own standards, including those which are not at the required level.

Amendment to Article 9, paragraph 1 a (new):

- the substance of this amendment, which sets the principle that Member States have to undertake regular controls on the Notified Bodies, has been accepted both by the Commission and by the Council;

Amendment to Article 9, paragraph (1b) (new) and amendment to Article 9, paragraph 2:

- both the Commission and the Council have accepted the substance of the amendment which introduces the principle of independence of the Notified Bodies, but they have considered more appropriate to lay down this principle in Annex C to the proposal; for this reason the second amendment is redundant.

Amendment to Article 14, paragraph 2:

- the Commission and the Council have accepted the substance of this amendment, that is the fact that discrimination has to be avoided for equipment produced in other States, and not only other Member States, when carrying out trials of the equipment, as referred to in the first paragraph of Article 14.

Amendment to Annex B, module B, paragraph 2:

- the Commission did not accept this amendment since the procedures for the type-examination of the products referred to in the proposal are those applied in all the Community measures to prevent parallel applications and the Commission intends to have a common Community approach in this field; however, in order to make it clear that the manufacturer, at a second stage, has the possibility to lodge his application for EC type-examination with another notified body if the first one is not in a position to issue it, the second indent of the same paragraph has been modified in the text of the common position by adding the word "simultaneously".

Amendment to Annex C, paragraph 1:

- the Commission and the Council have considered that the principle expressed in the amendment of the European Parliament is already taken up in substance in Annex C, indent 5 (text of the common position), and therefore they have not accepted this amendment.

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 the text for reasons of consistency.

Article 1, Article 2 (definition of "Community ship")

The reference to the fact that the safety certificates can be issued by a Member State or by an organisation on its behalf has been added in the text of the common position. Since this amendment is coherent with the international and Community law in this field, the Commission could accept it.

Article 2

The definition of "radiocommunication equipment" has been inserted in the text; this definition is necessary since the text of the common position often refers to this equipment.

The definition of "ship" has been improved by the Council, also by explicitly saying that the Directive will not apply to warships.

The Council considered that the term "EU Ship" would have created confusion when translated in all languages and therefore it preferred to adopt the term "Community ship". The text of the common position has been amended accordingly wherever reference to "EU ship" existed in the original proposal. Furthermore, it has been made clear that the directive will not apply in those cases where a Member State issues certificates upon request of a non-Member State.

As mentioned above, the reference to CEN and CENELEC has been introduced in the definition of "testing standards".

The Commission could accept all these amendments proposed by the Council since they are technically correct and improve the text.

Article 3

In paragraph 1, point b), second indent, the Council put the text of the common position in line with the international law by saying that these provisions of the directive will not apply if the international Conventions permit otherwise.

In paragraph 3 a specific reference to the Council directive 89/686/EEC has been inserted by the Council, next to the reference to the Council directive 89/336/EEC. Since the Council directive 89/686/EEC deals with personal protective equipment, the Commission considered it appropriate to mention it in this paragraph. A derogation from the provisions of the same paragraph has been introduced by the Council for the radiocommunication equipment. The Commission accepted to insert this derogation since the radiocommunication equipment, by its own nature, could affect telecommunication services other than shipping ones if the provisions already existing for this type of equipment would be not applied also to maritime equipment.

Article 3 (paragraph 2), Article 4, Article 5 (paragraphs 1 and 3), Article 7 (paragraph 1), Article 9 (paragraph 1), Article 10 (paragraph 3), Article 11 (paragraph 1 and 2), Article 13 (paragraph 1), Article 15 (paragraph 1, point b), Article 16 (paragraph 3), Article 17 (transferred to Article 19)

The Commission accepted the technical-editorial improvements proposed by the Council and designed, in most cases, to put the language of the directive in line throughout the text.

#### Article 5, paragraph 2

The Council specified the procedure to be followed when alternative standards are referred to Annex A.1 to the Directive for a piece of equipment. The Commission considers that this is a fundamental clarification.

#### Article 6

The Council has slightly modified the first paragraph to make it clear that the fact that the equipment bears the mark allows it to freely circulate in the Community and to be put on board. This principle was already implicitly present in the original proposal. A new paragraph 2, referring to the issue of a radio license, has been inserted by the Council. It simply recalls a provision existing at international level and it is therefore acceptable by the Commission.

#### Article 7

The Council has amended this article in order to introduce a new procedure to give the mandate to the standardisation bodies. The new text is coherent with the principle expressed in the original proposal that the standards have to be laid down at international level, but it is technically more correct since it takes into consideration the procedures existing at Community level for mandating the standardisation organisations. For this reason the Commission could accept to amend this article.

#### Article 8

Two new paragraphs have been added by the Council: the first one introduces a provision according to which the equipment falling within this article shall be given a certificate by the Member States. The second paragraph foresees that the radiocommunication equipment on board a ship transferred from a non-Member State does not unduly affect the requirements of the radio frequency spectrum. The Commission had no objections to both these new paragraphs; on the contrary they bring an added value to the provisions of this article and to safety in general.

#### Article 10

The Council has entrusted the Commission with the task of keeping and updating a list of the approved equipment and applications withdrawn or refused (new paragraph 4). The Commission has accepted to carry out this task.

#### Article 12

The Council has considered it necessary to specify that the sample checks the Member States are allowed to carry out at their own expense on the equipment are others than those foreseen in the modules listed in Annex B. In paragraph 2, the Council has introduced the provision that the flag administration can require the inspection/testing reports concerning the equipment from those, in the Community, who keep such documentation. Both these provisions are in line with the standard procedures for type-approval; for this reason the Commission could accept them.

#### Article 14

A new provision has been inserted by the Council in paragraph 1 in order to clarify that the radiocommunication equipment falling within the scope of this paragraph must not unduly affect the requirements of the radio frequency spectrum. As this article refers to equipment which does not comply with the conformity assessment procedures, the Council has foreseen in paragraph 6 (new) that if a ship with such equipment on board is transferred to another Member State, the receiving flag Member State may verify that it is at least as effective as the equipment which complies with the conformity assessment procedures. The Commission had no objections to both these new provisions which bring an added value to the text of the proposal.

#### Article 15

Paragraph 1, point b) (new), specifies that the permission allowed by a Member State to carry on board a ship equipment which does not comply with the conformity assessment procedures, for reasons of testing or evaluating the equipment, must be limited in time. In paragraph 2, once again, the Council introduced the provision that the radiocommunication equipment falling within the scope of this article must not unduly affect the requirements of the radio frequency spectrum. Both the provisions are in line with the purpose of the proposal, safety, and therefore acceptable by the Commission.

#### Article 16

When describing the procedure to be followed in case a piece of equipment has to be replaced in a port outside the Community, the Council considered it more appropriate to state that, if there is not a recognised organisation equivalent to a notified body, the documentation accompanying the equipment should be issued by a State Member of IMO which is Party to the relevant conventions. The Commission considered this provision a valid improvement and accepted it, as well the usual provision concerning the radiocommunication equipment (new paragraph 4).

#### Article 18

The Council wanted to insert the provision that the directive may be amended through the committee procedure in order to add in the future the possibility of using the modules B+C and H for the equipment listed in Annex A.1, modules that the experts have considered not to be usable for the time being, as well as the reference to other standardisation organisations in the text of the directive. The Commission had no objections to these two technical amendments.

#### Annex A

A few technical amendments have been introduced in Annex A. Since the task of examining and improving the Annex is a purely technical matter, the Commission and the Council will make a declaration that the Committee referred to in the directive should start this task immediately after the adoption of the directive. A foreword has been introduced by the Council to make it sure that all the provisions designed for a piece of equipment, existing in the relevant conventions and other than those specified in the Annex, have to be applied

to such equipment during the type examination.

#### Annex B

A few technical improvements, necessary to simplify access to the documentation, have been introduced by the Council (for example Module B, paragraph 7 and 8). As the notified body has to be located in the Community, the second part of paragraph 9 in Module B as well as the second part of paragraph 3 in Module C have been deleted. The Commission had no objections to accept these amendments which adapt the Community standard procedures for examination of products to this Directive.

#### Annex C

The Council has correctly specified, in line with the Community legislation in this field, that the notified bodies must fulfil the requirements of the relevant EN 45000 series and not necessarily all of them, and that the notified body must be established within the Community. The Commission had no problems with these new provisions.

#### 3.4 Problems of commitology when adopting the common position

For the purpose of conferring implementing powers to the Commission the initial proposal provided for a procedure I Committee, which was supported by the European Parliament. However, the Council adopted a III (a) Committee procedure. Having regard to the safety aspects of the present proposal and the precedents set by other Directives adopted in the field of safety at sea, the Commission has agreed to this request.

#### 4. **Conclusions**

The Commission believes that the text of the common position is to its satisfaction and will be able to achieve its aim. By accepting the substance of some of the amendments of the European Parliament in its first reading, the text of the proposal has been improved.