

EU Civil Liability directive returns

Justin Stares - Thursday 29 November 2007

PORTUGAL is to hold a discussion of the controversial European Union civil liability directive among member states before the end of the year, according to diplomatic sources in Brussels.

Lisbon, holder of Europe's six-month rotating presidency, has announced the debate will be organised after the council of transport ministers' meeting, which takes place today and tomorrow.

Launched by the European Commission back in 2005, the proposal is expected to reach ministerial level in 2008 under the Slovenian presidency, possibly at the Council of Ministers meeting in early April.

The directive has encountered so much resistance that successive presidencies have avoided it until now. But Portugal and Slovenia have ceded to pressure from both the commission and the European Parliament, which view the proposal as crucial to maritime safety.

Given opposition in both national capitals and the maritime industries, Slovenia, at the helm of the EU for the first time, will struggle to make progress. A diplomat said: "The majority of member states are not positive."

The proposed law aims to encourage ratification of the Limitation of Liability for Maritime Claims convention by removing liability ceilings for ships flying the flags of countries which have not ratified the convention. Masters will also be legally obliged to report in to coastal states when they enter EU waters, giving details of their insurance cover.

Critics say it contravenes the right of innocent passage, will create an unnecessary two-tier liability regime and will play havoc with the reinsurance market.

The directive has been amended by the European Parliament, which has attempted to define "fault", adding to industry anxiety and creating a proposal which is so complex few people claim to be able to predict its impact with certainty. It is seen as part of a European Commission assault on the tradition of limited liability in the maritime industries, reflected in other proposed laws — a tradition the commission and parliament consider to be unjustified.

Portugal has also agreed to push another controversial directive, on flag state control, through the EU machine. The proposal aims to make International Maritime Organisation standards obligatory and therefore enforceable in the EU. While reportedly approved by the IMO, national governments see this as an attempt by Brussels to grab sovereignty. The "vast majority" are said to oppose the proposal, and Slovenia will again have to engage in some creative diplomacy if it wants to make any progress.

The two measures are part of a seven-strong package of maritime safety laws. Substantial progress on the other five proposals is expected to be confirmed by the council of ministers this week, though the package is not expected to pass without being broken up.

Some predict that the controversial elements, already on ice for the past two-and-a-half years, will get stuck in the Council of Ministers for a decade. Others say the commission will be forced to amend or withdraw them at the end of the current mandate.

Article from Lloyd's List:

www.lloydslist.com/art/1196093850871

Published: 29/11/2007 GMT

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