

# CRIME SCENE DO NOT CR

# CSI:EU

## The Brussels directive has been killed off and the main suspect is understandably shy about admitting its role, writes Justin Stares in Brussels

**T**HE European Union directive on civil liability for shipowners is lying bleeding on the floor. It is gasping for breath after being stabbed numerous times and is not expected to pull through.

There is little hope for its supporters, at least until the next maritime disaster. The draft has been murdered, and the question is: who perpetrated the crime?

On a superficial level, and thanks to the internet, the finger can initially be pointed at transport ministers from across the continent. At least 20 of the 27 present in the April Council of Ministers meeting, which was broadcast live, told the Slovenian EU presidency that they did not want this directive, that is was unnecessary and that it was too complex.

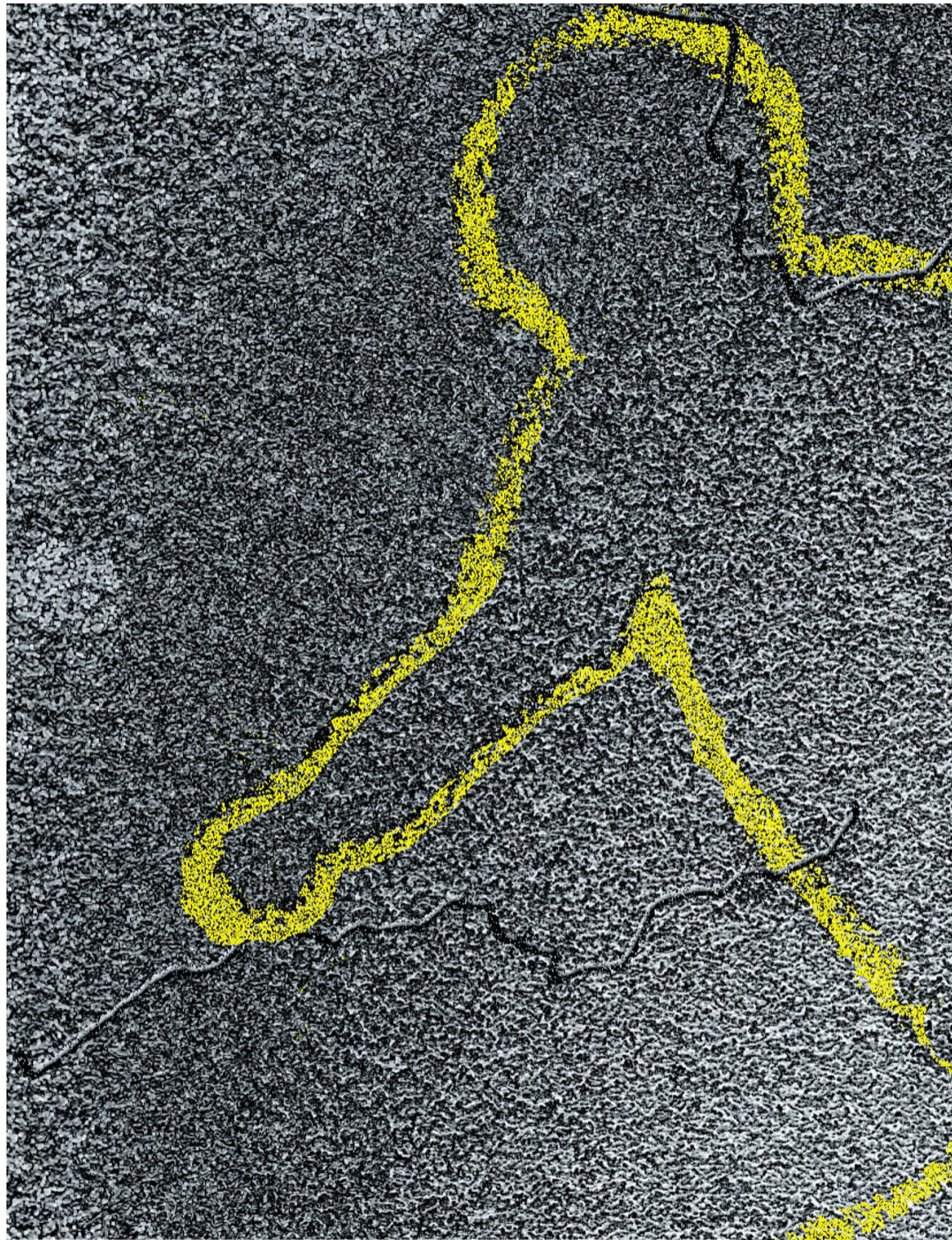
The presidency was forced to admit that the directive did not have the required "qualified majority" to proceed and would therefore be left on the backburner. It will be up to the French, who take over from the Slovenians in July, to decide whether it is worth resuscitating the flailing corpse.

Ministers do not actually have the right to reject a text, so this opposition was as good as a 'no' vote. They were each only given a few sentences with which to express their country's position, and many seemed well briefed. But how much did they really understand? Beyond their protests that international conventions were enough to ensure victims of spills receive compensation, it is a fair bet ministers had not actually read the text they were commenting on.

If you grab one next time you see one at a conference, would he or she be able to name any of the maritime conventions his or her country has still not ratified? How many would be able to argue convincing either in favour or against limiting shipowner liability? Not many, probably, and the reason, perhaps justifiably, is that they rely on their underlings.

It was no coincidence that the International Group of P&I Clubs gave a presentation to transport attaches in Brussels in January. The group, which retains lobbyists in Brussels in addition to its own in-house specialists, knew that if the attaches were on board, they had a good chance of drumming up enough opposition. These Brussels diplomats never get the limelight but are crucial to the development of government policy on any proposed legislation. When you combine a viciously complex text like the civil liability directive, which seeks to remove shipowner liability limits for certain ships, with the EU's arcane decision-making procedure, they are often among the only people who understand what is actually going on.

The International Group is not keen to take credit for the directive's downfall. Shipowners also positioned themselves as opponents, International Group executive officer Andrew Bardot points out. But according to Euro MP Gilles Savary, the French co-ordinator or 'rapporteur' for the directive, it was the International Group which brought it down. He said he



was "impressed by the power" of the insurance industry and the P&I industry in particular, meaning the International Group. Successful lobbying had reduced support for the directive to "almost zero", he said. Along with another proposal on flag state rules, it would now "probably get stuck [in the council] until the next maritime disaster, when I will be there to remind everybody who it was who opposed them".

He added: "It is a real shame because this was legislation thought through with a clear head and not demagoguery, not passionate legislation following a disaster."

The downing of the civil liability directive is a good example of EU lobbying. It is all the more impressive given that two of the three main Brussels institutions, the European commission and the European Parliament, were vehemently in favour of the proposal. Commission officials argued that the ship guarantee system they were proposing was not dissimilar to that already in place in the US (and, they claimed, Japan).

The Strasbourg parliament, Mr Savary pointed out, had voted "massively in favour" of the draft.

The third institution, the council of ministers, was therefore the last hope for opponents.

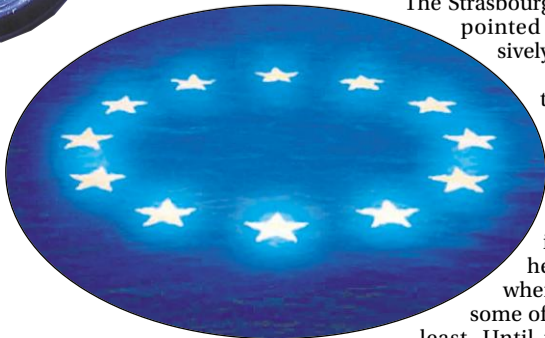
This is where national governments are represented, and where industry voices are heard loudest. It is also where secret deals are done, some of them murky, to say the least. Until recently it sat entirely

behind closed doors, though since about two years ago certain sessions are open to the public and are broadcast via the council's web page. Even now, you need to be familiar with EU procedure, and have a high boredom threshold, to have any clue as to what is actually happening.

If you are part of a well-connected industry, your concerns can soon become those of your government, which will take them to the council. Take the classification society directive, for example. When Paris attempted to derail a European commission attempt to introduce compulsory mutual recognition of marine equipment, a proposal which could cost European industry dearly, was it acting in the interests of the French people or those of Paris-based classification society giant Bureau Veritas? We may speculate, but we will never know.

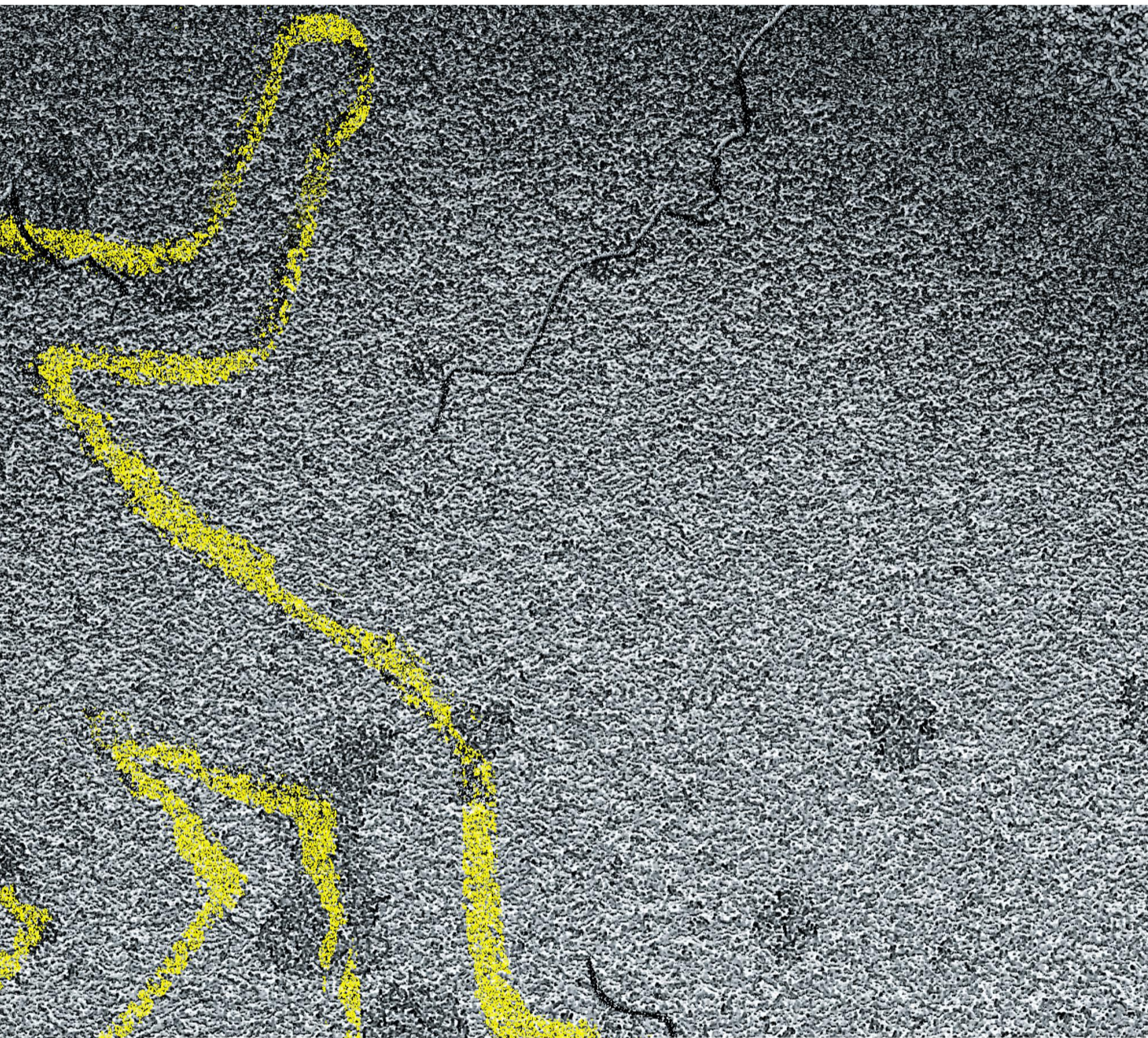
It is no coincidence that the biggest supporters of the maritime industries in the council are Greece, Malta and Cyprus, where proportionately speaking the industries pack the biggest punch (Germany, the UK and Denmark, among others, are also sym-

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## WHO KILLED THE CIVIL LIABILITY DIRECTIVE?



thetic). But as the class industry discovered, the support of one government is not enough. Paris' objections were over-ruled by the council's "qualified majority" voting system.

If you want to bring down a directive, you need the support of more than half of the 27 countries (or more than two thirds, depending on the voting weights of the countries concerned). This is where the P&I lobbying campaign succeeded.

It is understandable that the International Group now wants to play down its role. The Group is, it points out, in favour of the majority of the seven maritime safety laws, known as the third maritime package, now working their way through the Brussels machine.

"In view of Savary's 'I told you so' threat, I would like to get across the message which we have continually put across in all our meetings with him and others regarding our full support for those elements of the third maritime safety package which are properly directed towards addressing a ship safety/standards issues and for State's adoption of the international lia-

bility conventions," Mr Bardot said. "The problem with the civil liability directive is just that there was no evidence or reasoning from the commission that this would in any way contribute to improving ship standards and safety ... and there is no question but that it would impose a very heavy administrative burden on [member] states in relation to financial guarantee requirements."

Mr Bardot continued: "[Mr Savary] makes the point that when the next maritime disaster occurs he will be there to remind everybody who it was that opposed the directive which points a rather large finger at the Group. It is of course a matter of pure speculation as to what will cause the next major maritime disaster in European waters but in response to the rapporteur's 'I told you so' prediction, all we can say is that if /when the incident arises and the charge is levelled we will certainly be seeking an explanation as to how it is asserted that the civil liability directive provisions which we have opposed would have prevented the incident."

It is rarely in the interests of anyone to be cast as a 'bad guy' or 'anti-European' by the Brussels authorities. If you are in business, you might get them once, but they can get back at you many times. While there is no suggestion that the issues are in any way connected, the commission has the power to strike the International Group with an administrative thunder-



bolt by merely opening an investigation into the exemption its pooling arrangement enjoys from EU competition law, an exemption which expires next year. Officially, no decision has been made, and when pressed the commission has admitted to the International Group that it is not currently examining any complaints in this field.

To suggest that Eurocrats might be tempted to be vindictive would be outrageous, but you can't be too careful, can you?

### Transport texts on a road to nowhere

THE Civil Liability Directive is part of a package of seven maritime safety laws officially proposed by the European Commission back in 2005. In reality, they date back further by at least a year, as publication was delayed to allow the new Brussels transport commissioner, Jacques Barrot, to become familiar with their content, writes Justin Stares.

Four years down the line, not one of the seven has yet become law and two of them look set to get stuck in the Brussels law-making machine indefinitely.

Given that Mr Barrot looks set to switch from the transport portfolio to justice to cover for Italy's departing commissioner, Franco Frattini, he will have spent his entire time in the European Union capital working on texts which have never made it to the statute books.

Even by Brussels standards, progress has been remarkably slow. When Portugal took over the rotating EU presidency last year it sat on the whole package for six months — very little happened at all — in an attempt to allow the two more controversial proposals (the other one is on flag state control) to catch up with the five which had made progress.

This notion of keeping the package together makes very little sense to anyone outside Brussels, though it is all part of a never-ending power game between the institutions, the European Parliament and the EU Council of Ministers in particular. The parliament, which is very much in favour of all seven proposals, pushed the council and the commission to address all seven texts together so that none were spun off and forgotten about. This ploy seems to have come to nothing as the five less controversial texts will now go back to the parliament for a second reading and, barring new controversy, will become law possibly this year. After that there will be a lengthy period during which national capitals are supposed to implement or 'transpose' these EU laws into national laws. If they don't do it right, they will be threatened by the commission and possibly taken to the European Court of Justice in Luxembourg. This would take several years more.

By this time the world will have moved on and it will be time for a new bunch of EU maritime safety laws.

There is a third directive in the package which is also in difficulty: on vessel traffic monitoring. The parliament wants the law to insist upon the creation of truly independent maritime authorities to decide what to do with ships in distress, while the council does not want to create bodies out of its control. If both sides' positions get entrenched, as seems likely, there will be a tie-breaking mechanism known as conciliation, during which they will huddle behind closed doors and attempt to find a compromise.

Anything could happen here, as we saw when the first port services directive went to conciliation. Representatives from the two institutions agreed but the proposal was then voted down in the parliament assembly. The seven-strong package was originally known as Erika 3; it is the third set of laws since the notorious spill. It is now more commonly referred to as just the third maritime package, even if many in Brussels sometimes still forget the name change. It has been so long since the *Erika* disaster that EU law-makers have decided there is no point harping back.

Given the snail's pace of Brussels legislation, having your name attached to any proposal can be a bit of a curse, as that name will be on politicians' tongues for years. The way things are going, and given that the council of ministers does not have the power to reject proposals outright, some elements of the third package could be left spinning in Brussels for decades.

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