



ON THE LAST

Justin Stares explains why the third package of European Union maritime safety legislation has been working its way through the Brussels institutions for five years but has only now reached the home stretch

QUIETLY, over the summer recess when many politicians were sunning themselves the south of France, the European Union's latest package of maritime legislation has been broken up.

There has been no announcement and no confirmation, but a look at the European parliament website proves that there are no longer seven proposed laws in the package, but five.

The website was updated after all the civil servants and Euro MPs had left Brussels for their six week-long holiday, though this is surely a coincidence.

The only real surprise has been that it has taken so long for the parliament and the European Commission to admit defeat on the civil liability for shipowners directive and its equally controversial companion, the directive on flag state control.

Those not familiar with EU horse-trading might ask "who cares?" when told the package is now only five laws strong. The downsizing might seem even less significant given the European Commission's denial. The package has not been broken up, Brussels officials claim; it is just that the laws are going forward at different speeds.

And what speed. After consultation upon consultation and a year-long delay to allow the (now departed) EU transport commissioner to familiarise himself with the dossiers, the package, nicknamed Erika 3 at the time though since renamed simply the "third package", was launched in 2005 amid little or no fanfare (your correspondent was one of four journalists in a press conference room designed for 500.)

Almost five years after leaving the drawing board, five of the seven are today within striking distance, perhaps less than six months, of the EU statute book, to which another six months at least will probably be added to allow for 'transposition' or implementation in the 27 EU member states.

Much of the recent delay has been due to discussions within the EU institutions over the fate of the 'package'. While the word no doubt means nothing to those outside the EU bubble, in Brussels it is a big deal.

Why? It's all about institutional power. Once the commission has launched a package such as this, the Strasbourg parliament and the Brussels-based council of ministers, which represents national governments, start to fight over it. The parliament's position is often close to that of the European Commission; both institutions believe almost universally in favour

of granting new powers to Brussels. Both have spoken in favour of an EU coastguard, for example, and both believe the European commission should talk for member states in forums such as the International Maritime Organization. While they may argue they are acting in the greater 'European cause' or protecting Europe's consumers, in geopolitical terms, these are grabs for power. Post-launch of a proposal, the commission's decision-making powers are reduced, so the parliament is relied upon to carry the torch.

While parliament and commission are 'federalist' institutions, the council of ministers on the other hand only has power to lose. Sovereignty transfers are one-way, towards the EU capital, and every directive which is passed eats away at the power which is still lying in the hands of governments.

The third package, for example, would create 'independent' authorities for ships in distress and accident investigations, taking from governments the power to meddle or dismiss. It would also give the European commission power to take governments to court (and ask for steep fines) if flag state control targets were not met. These might well be desirable advances, but transport ministries across the EU look at proposals such as these and first decide if the objective is worth the sovereignty loss.

With the memories of casualties such as the *Erika* and *Prestige* fast fading, the spotlight is off maritime

safety. Governments are tired of the constant train of new laws and have proven reluctant to agree to sovereignty transfers.

The flag state control directive, for example, despite its reported support from IMO, is seen as a pure ploy to give the commission a role where today it has none: in the enforcement of international conventions. Member states have also scaled back the ambitions of passenger liability proposals to such an extent that the commission now calls the regulation "an empty shell". The commission and the parliament would like to see the Athens Convention on passenger liability made legally binding and extended to domestic as well as international trades. The council of ministers, under sway from countries such as Italy and Greece, says international traffic only. The directive on shipowner liability is a case apart, as poor drafting has allowed member states to reject it as unworkable.

When the texts were analysed and the battle lines drawn, the power struggle between the parliament and the council began. Both institutions have power of veto over almost all legislation today. Until recently the parliament's powers were limited, but now, with a few exceptions (such as foreign policy) the parliament stands on an equal footing under what is known as the system of 'co-decision'.

The parliament backed its ally, the commission, and called for all seven maritime safety laws to come into force. The council, by a large majority, wanted not only to water down several, but to drop the flag state and shipowners' civil liability proposals entirely.

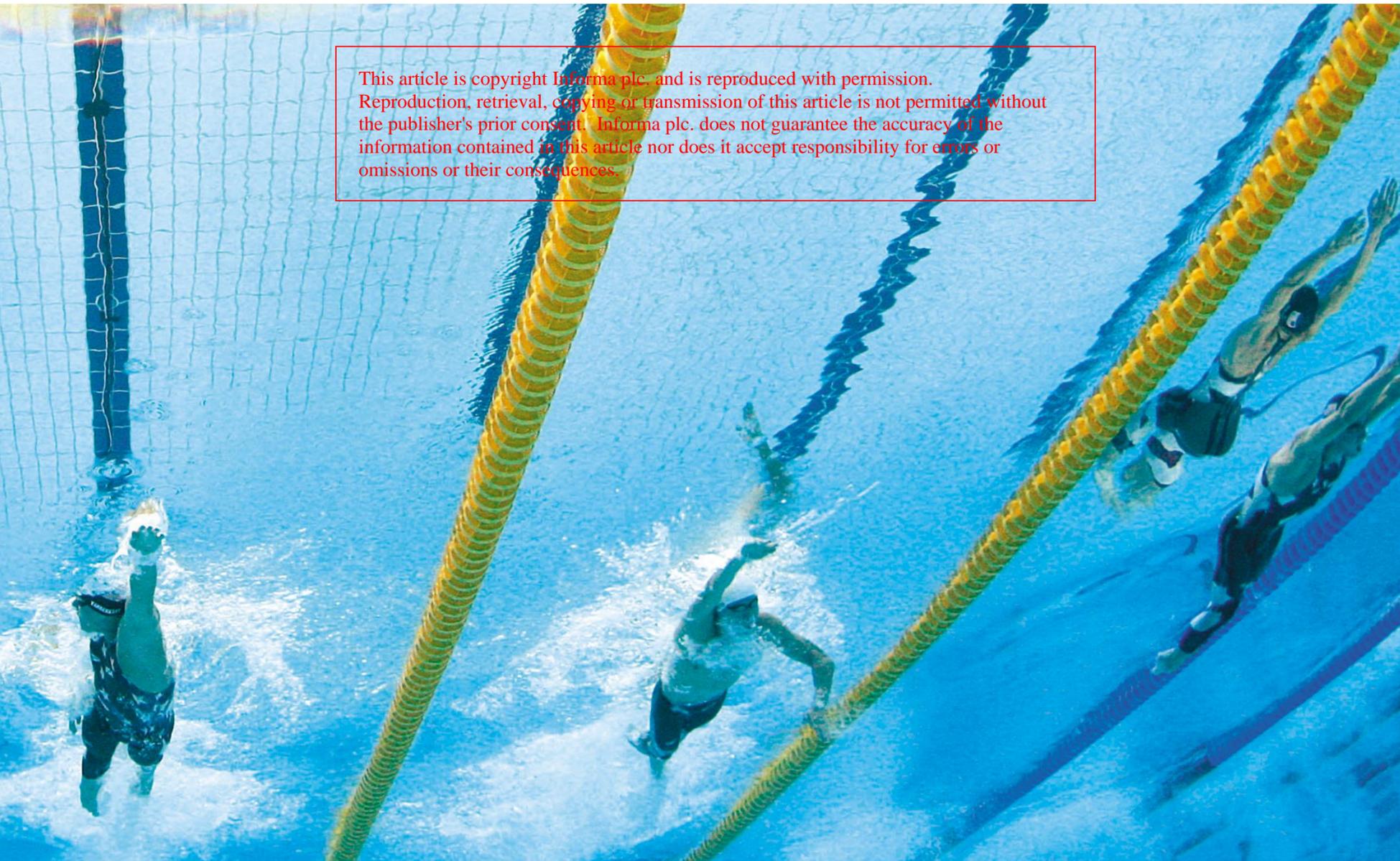
When these positions became clear, stalemate ensued. The parliament insisted all seven drafts be examined at the same time, as a 'package', while the council want the package split into workable and unworkable proposals.

This put the EU presidency under pressure. The presidency, which rotates every six months, defines the Brussels agenda and sends texts from one institution to another after they have been dealt with. The presidency is supposed to be neutral and facilitate agreement. Both the commission and the parliament urged successive presidencies not to split the maritime safety package.

Portugal, which held the presidency in the second half of 2007, clearly did not know what to do, and so did nothing. The texts were dealt with in council meetings and the differing positions were obvious, but so as not to offend anyone, the presidency did not

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LAP?



“The designation of an independent authority for the accommodation of vessels in distress has always been something to which parliament has attached great importance”

Dirk Sterckx

This seemed to leave the door open to a fudge, with the foreseen authorities defined as “capable” or perhaps “empowered”.

But that has since changed. “The designation of an independent competent authority for the accommodation of vessels in distress has always been something to which parliament has attached great importance,” Mr Sterckx wrote in his assessment of the status quo, published last month.

“The successive disasters and near-disasters show that much time has often been wasted because it was not clear who was responsible for what or because those competent to take a decision had to call on the expertise of a team which often had to be set up on an ad hoc basis.”

The council of ministers’ position, which takes out the word ‘independent’, is “vague and would result in practically no improvement”, he said.

If the council does not give in when behind-closed-doors discussions begin next month, this less conciliatory stance indicates the two institutions will have to go into a tie-breaking mechanism appropriately named ‘conciliation’ which involved yet more secret talks with a restricted number from each side. They will attempt to thrash out a deal which then needs to be ratified. If it is not, the directive will fail, though this is unlikely. Another directive on accident investigation also involves discussion of an “independent” authority.

The splitting of the package was round one, and the council won. The tussle over independent authorities is round two, with the parliament looking for revenge. Fortunately, we are unlikely to see a round three, unless that is, member states fail to implement the laws. This would result in warnings from the commission and court cases which would hold things up for a few more years still.

send them to be translated into Europe’s myriad languages — an essential step. If the texts had been translated and sent to the parliament, as has now happened, time limits would apply and package would have been split ‘de facto’.

It was the subsequent Slovenian presidency that finally bit the bullet, progressing with work on the five less controversial texts and leaving the other two in limbo. They could well stay stuck there for years, perhaps a decade, before being withdrawn — killing off a proposal takes even longer than getting it into law.

So the package has been split, and for once the council, or rather national governments, won their battle to restrict the transfer of sovereignty to Brussels.

What now? Well, it is not over yet. While there is general agreement on the five that remain, there are still one or two points of contention between the institutions.

Independent authorities for deciding on places of refuge for ships in distress divides national capitals and Euro MPs. For this directive, officially on “vessel traffic management”, to become law, a compromise will have to be found. The lead parliamentarian or ‘rapporteur’ in this case is Dirk Sterckx, a Belgian with plenty of experience of the maritime industries. A year ago, Mr Sterckx sounded conciliatory, commenting that “nothing and no-one is truly independent”.



The EU’s third package of maritime safety laws, their contents and where they stand in the law-making machine

- 1) Vessel traffic monitoring: before the parliament for second reading. Controversy over ‘independent’ authorities for distressed ships threatens to take text to conciliation.
- 2) Accident investigation: before parliament for second reading. Restrictions imposed by council, including limits on independent authorities, have not proven controversial enough to threaten a second reading agreement until now.
- 3) Port state control: before parliament for second reading. Two sides divided on technicalities such as inspection rates. Agreement expected.
- 4) Ship inspection surveys: before parliament for second reading. Parliament and council have agreed new restrictions and system of fines for class societies, as well as mutual recognition of

- marine equipment certificates. Agreement expected.
- 5) Liability of passengers: before parliament for second reading. Seeks to make Athens convention legally binding. Institutions split over whether law should also apply to domestic or cabotage traffic, though compromise is expected.
- 6) Civil liability for shipowners: stuck, indefinitely, in the council of ministers. Would impose system of guarantees on owners. Unpopular in industry and among majority of member states.
- 7) Flag state control: stuck, indefinitely, in the council of ministers. Bid to make flag state conventions legally binding in EU seen by most members states as a power grab by the European Commission and European parliament.