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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

ON A SECOND SET OF COMMUNITY MEASURES ON MARITIME SAFETY FOLLOWING THE SINKING OF THE OIL TANKER ERIKA

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a Community monitoring, control and information system for maritime traffic

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European Maritime Safety Agency

(presented by the Commission)

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

ON A SECOND SET OF COMMUNITY MEASURES ON MARITIME SAFETY FOLLOWING THE SINKING OF THE OIL TANKER ERIKA

The sinking of the oil tanker Erika off the French coast in December 1999 spurred new developments in the establishment of Europe's maritime safety policy. Only some three months after the accident, on 21 March 2000, the Commission adopted a "Communication on the safety of the seaborne oil trade" together with a number of proposals for specific measures to prevent such accidents happening again.

The Biarritz European Council called for the speedy adoption of the first "Erika" package and urged the Commission to propose as soon as possible a second set of measures to supplement the three legislative proposals presented on 21 March 2000.

I- Recapitulation of the proposals under consideration by the Council and European Parliament

- A substantial amendment of the existing Directive on port State control in order to **step up inspections in ports**, as they are currently inadequate. The main points of the proposal concern the banning of sub-standard ships (including drawing up a black list of ships which may no longer enter European Union waters) and more stringent inspections of ships posing a risk, including oil tankers. These changes will require the number of inspection staff in Member States' ports to be increased.

- An amendment of the existing Directive on **classification societies,** to which Member States delegate a large part of their verification powers, with the general aim of supervising the activities of the societies more closely.

- A proposal for a regulation to generalise the **ban on single-hull tankers** according to a timetable similar to that set by the USA. This will enable double-hull tankers, which provide better protection against pollution in the event of accidents, to be introduced more quickly. Under this timetable, the use of double hulls will become obligatory for most categories of oil tankers in 2010.

The Commission drew the attention of the Transport Council at its meeting of 2 October to the importance of ensuring that a weakening of its proposal on port State control did not result in a halving of the number of hazardous ships that would be subject to more stringent mandatory inspection in EU ports if the Presidency compromise was adopted.

With regard to the proposed regulation on **double-hull oil tankers**, a joint approach within the International Maritime Organisation (IMO) found support in October 2000 for amending the international rules in force. The IMO plans to adopt measures similar to those advocated by the European Union in April 2001. The Council should therefore adopt a common position at its meeting of 21 December to ensure that Community legislation at all events enters into force before the IMO rules, which may take several years.

The Community institutions must speed up their work if the Nice European Council is to be able to ascertain agreement on the three texts at the end of the year. The Presidents of the

Council and of the European Parliament have again called for speedier adoption of these measures following the wreck of the chemical carrier Ievoli Sun on 31 October 2000.

II - A second set of measures to bring about a lasting improvement in the protection of European waters against the risk of accidents at sea and marine pollution.

1) Measures to improve the safety of shipping and prevent pollution from ships

The safety of shipping in European waters is of crucial importance: 90% of the European Union's trade with third countries is seaborne. The risk of accidents due to the concentration of traffic in the main European seaways is particularly high in areas where the traffic converges, such as the Dover Strait or the Strait of Gibraltar. Furthermore, the environmental consequences of an accident at sea, which can also occur outside areas of high traffic density (as in the Erika case), can be disastrous for the economy and the environment of the Member States concerned.

Even after the first package of measures is adopted, sub-standard ships may escape inspection in the European Union. Moreover, Directive 93/75/EEC laying down notification requirements for vessels carrying dangerous or polluting goods, as it stands, is inadequate for the purposes of identifying and closely monitoring ships, in particular those in transit off Europe's coasts. The European Union must therefore acquire the means to monitor and control more effectively the traffic off its coasts and to take more effective action in the event of critical situations arising at sea.

The proposal provides in particular for:

- improving the identification of ships heading for European ports and monitoring all ships in transit in areas of high traffic density or hazardous to shipping, and requiring ships sailing in Community waters to carry transponder systems so that they can be automatically identified and constantly monitored by the coastal authorities;

- extending the reporting requirements already provided for by Directive 93/75/EEC to other dangerous or polluting goods and in particular to bunker fuels carried on board, given the highly polluting nature of these products;

- simplifying and harmonising the procedures relating to the transmission and use of data on dangerous or polluting goods carried by ships, notably through the systematic use of electronic data interchange (EDI);

- requiring ships calling at Community ports to carry black boxes (or voyage data recorders), in order to facilitate the investigation of accidents, and thereby contribute to improving accident prevention policy. These black boxes will be made mandatory sooner and more extensively (cargo ships and ships on domestic voyages) than required by IMO standards;

- stepping up the development of common databases and the interconnection of the stations responsible for managing the information gathered under the Directive;

- ensuring closer monitoring of ships posing a particularly serious threat to maritime safety and the environment and requiring information about them to be circulated among Member States, to enable the latter to identify dangerous situations sooner and take any preventive action necessary in respect of such ships;

- enhancing the powers of intervention of Member States, as coastal States, where there is an accident hazard or threat of pollution off their coasts (territorial waters and the high seas). Member States will thus be able to order the re-routing of a ship posing a threat to their coasts, to instruct the ship's master to stop a pollution risk, to put an assessment team on board or to impose mandatory pilotage or towage of the ship;

- requiring Member States to take measures to receive ships in distress in ports of refuge, and prohibit ships from leaving ports in exceptional weather conditions involving a serious threat to safety or the environment.

2) Improving the liability and damage compensation schemes in force

Since the 1970s, the international community has drawn up international conventions under the auspices of the IMO laying down detailed rules on liability and compensation for damage in the event of pollution caused by tanker ships.

The Commission's proposal complements the existing international two-tier regime on liability and compensation for oil pollution damage by tankers by creating a European supplementary fund, the COPE Fund, to compensate victims of oil spills in European waters. The COPE Fund will only compensate victims whose claims have been considered justified, but who have nevertheless been unable to obtain full compensation under the international regime, owing to insufficient compensation limits. The current ceiling is EUR 200 million.

Compensation from the COPE fund would thus be based on the same principles and rules as the current international fund system, but subject to a ceiling which is deemed to be sufficient for any foreseeable disaster, i.e. EUR 1 000 million. The COPE Fund could also be used to speed up the payment of full compensation to the victims.

The COPE fund will be financed by European oil receivers. Any person in a Member State who receives more than 150 000 tonnes of crude oil and/or heavy fuel oil per year will have to pay its contribution to the COPE Fund, in a proportion which corresponds to the amounts of oil received.

The COPE Fund will only be activated once an accident that exceeds, or threatens to exceed, the maximum limit provided by the IOPC Fund has occurred in EU waters. If no such accident occurs, the COPE Fund will not require any contributions to be made.

The proposed regulation, in addition to the provisions on liability set out above, includes an article introducing financial penalties for grossly negligent behaviour by any person involved in the transport of oil by sea. This penalty will be imposed by Member States outside the scope of liability and compensation and will thus not be affected by any limitation of liability.

3) A European Maritime Safety Agency

In the space of a few years, a large body of legislation on maritime safety has been enacted. Member States must implement these rules effectively and uniformly, notably by approximating the procedures and practices applying to inspection in ports and technical checks on the condition of ships; they must also recruit a considerable number of inspectors, since the number of ships posing a risk actually checked, some 700 in 1999, should increase to 6 000 when the Commission proposals enter into force.

The creation of a European Maritime Safety Agency would provide the Commission and Member States with support in applying and monitoring compliance with Community law and in assessing the effectiveness of the measures in place. The Agency will have a staff of about 50, mainly with a background in the national maritime administrations and the industry.

In its proposal, the Commission sets out the following tasks for the Agency, the organisation and role of which are largely based on the Aviation Safety Agency:

- technical assistance in preparing proposals for amendments to the Community legislative texts, particularly in the light of changes in the international rules;
- on-the-spot inspections of the conditions under which port State control is carried out by Member States;
- organisation of appropriate training activities;
- collection of data and operation of databases on safety at sea that will, among other things, enable the Commission to draw up a "black list" of sub-standard shipping. All the information will be placed at the disposal of Member States' inspectors, who will thus immediately have at their fingertips all the data relating to a ship and so be able to detain it if necessary;
- tasks relating to the monitoring of shipping and the management of traffic data;
- assessment and auditing of the classification societies;
- participation in, or coordination of, activities relating to investigations following an accident at sea;
- provision of assistance to the EU candidate countries, in order to assess the manner in which their maritime administrations meet their obligations as flag States and port States.

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CONCLUSION

This set of measures supplementing the first package forms a coherent whole that should significantly enhance maritime safety in European Union waters and ports. The Commission would urge the European Parliament and the Council to adopt the three legislative proposals in this communication as soon as possible in order to enable specific action to be taken quickly.

EXPLANATORY MEMORANDUM

BACKGROUND, PURPOSE AND CONTENT

General background

1. Since it began in 1993,[1] Community maritime safety policy has resulted in the adoption of fifteen or so regulations or directives designed to improve the safety of ships, and their crews and passengers, and to do more to prevent pollution of the seas.

The *Erika* accident on 13 December 1999 showed that there is still a risk of accidents at sea along the European coastline, and also demonstrated how serious the consequences can be, particularly as regards coastal pollution. On 21 March 2000, three months after the accident, the Commission adopted a communication on the safety of the seaborne oil tanker trade, in which it set out a general strategy and made a number of proposals for specific measures to prevent the recurrence of accidents of this kind. The short-term measures proposed by the Commission in this communication were to be backed up by other measures to improve the protection of European waters against the risk of accidents and sea pollution in the longer term. It also set out medium-term measures on the safety of shipping, improving systems of liability and compensation for damage in the event of accidental pollution, and the establishment of a European maritime safety agency. These proposed measures were confirmed at the Biarritz European Council on 14 October 2000 on the basis of the Commission's report of 27 September 2000 on the Community's strategy for safety at sea.[2]

2. In Europe, and particularly along the Atlantic coastline, there have been a number of disastrous accidents involving oil tankers (*Torrey Canyon, Amoco Cadiz, Tanio, Braer* and *Aegean Sea*). Apart from the direct causes of these accidents, which are many and varied, bad weather and sea conditions, difficult coastlines and the dense traffic in certain sea areas can also increase risk considerably. In addition, cases of accidental pollution, and regular operational pollution, are common (particularly along the Atlantic coast) causing particular damage to the environment and the local economy, because of the particular abundance along the European coast of vulnerable biotopes and sea-based resources (fishing and tourism). In this respect, virtually the whole of Europe's coastline can be classed as a sensitive area which should be protected. The economic consequences of an accident caused by a single oil tanker, even a small one, can be catastrophic, as was shown by the *Erika* accident, the damage caused by which involves compensation payments estimated at more than EUR 300 million.

3. At both international and Community level, there is now a whole body of technical rules on the construction, stability and equipment of ships, the qualifications of crews and living and working conditions on board. Without these rules, the number of accidents at sea would be much higher. However, even the best safety rules in the world will never be able to reduce the risk of accidents in European waters to zero, especially as these rules are applied much more thoroughly by some countries than by others. The statistics established by the Paris Memorandum of Understanding on Port State Control of ships show that there are still many cases where inspections discover defects sufficiently serious to justify the detention of hundreds of ships a year. Thus, port State control is not sufficient on its own to solve the problem of open-registry ships. Moreover, port State control has one major shortcoming:

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[1] Communication from the Commission of 24 February 1993: *A common policy on safe seas*, COM(93) 66 final of 24.2.1993.

[2] COM (2000) 603 final of 27.9.2000.

inspections are carried out only when ships put into ports. Even though increasingly sophisticated methods of selection are being developed, like targeting coefficients, some ships still manage to slip through the net for a while at least. As a result, every day there are many ships plying the coasts of the Member States whose poor condition is an obvious threat to safety and the environment, while the threat remains undetected, or the riparian State is not even aware that the ship is passing through its waters.

Consequently, neither the safety rules which bind flag States, nor port State control are sufficient to protect a State against the risk of accident or pollution of its coastline. Accordingly, it is important for those Member States with a coastline to set up a system for monitoring and controlling maritime traffic along their coasts in order to protect their citizens, their economies and their environment against the disastrous effects of an accident at sea.

The international context

4. In recent years, there have been substantial changes, both legal and technological, regarding the monitoring and control of maritime traffic.

The United Nations Convention on the law of the sea of 10 December 1982 establishes the balance between the responsibilities of coastal States, flag States and port States, in a way which largely upholds the principle of the freedom of the seas, but gives coastal States many more legal powers than before. It is mainly in order to combat the risks of pollution that coastal States have been given wide powers regarding both their own territorial waters and their exclusive economic zone (if they have one).

5. Since then, there have been several changes to international law, particularly as a result of the various changes to the SOLAS Convention (International Convention on the Safety of Life at Sea). Chapter V of SOLAS, on safety of navigation, is currently being reworked. The new Chapter V will contain detailed provisions on, for example:

- ships' routing systems (new Regulation 10) designed to improve safety in sensitive areas where traffic is particularly heavy or difficult; systems may involve traffic separation schemes, no-go areas, deep water routes, etc;

- ship reporting systems (new Regulation 11) requiring ships transiting particular areas to notify the coastal authorities responsible and give them certain types of information;

- vessel traffic services (or VTS as they are usually called, see new Regulation 12), which provide ships travelling through sea areas where traffic density is high or where there are serious risks of accidents with shipping and weather information, and, where appropriate, with traffic assistance and routing services.

The regulations in the SOLAS Convention have been supplemented with resolutions on these various points describing in detail the principles of these services and systems and operational arrangements.

6. The last ten years or so have seen some important developments in the technologies relating to communications and the positioning and monitoring of ships, particularly with regard to satellite positioning, electronics and telematics. One of the most important innovations is certainly the appearance of automatic ship identification systems or transponders, which the IMO is expected to make compulsory on board ships of more than 300 tonnes beginning in 2002. One of the advantages of this technology, as used ship-to-land,

is that it is a passive technology that does not require active intervention on board ships, which makes the master's job much easier. Moreover, computerisation has considerably simplified and optimised the monitoring of ships by coastal stations, particularly as a result of improved processing of radar images, and also makes it much faster to transmit information electronically.

Developments in the European Community

7. Because of the volume of traffic and the high risks to shipping in European waters, the Member States have, for some 20 years now, been introducing ships' routing systems on the main routes used by traffic to and from European ports. These systems, which have been approved by the IMO, have helped to limit the risk of collision or other accidents along Europe's coastlines.

The development of compulsory reporting systems is more recent. Before the SOLAS Convention was amended in 1994, systems were based on the voluntary participation of ships in transit. Now, the IMO has approved a number of voluntary or mandatory reporting systems, particularly along the Atlantic coast and in the English Channel, areas which are particularly vulnerable or environmentally sensitive. In addition, the practice of port reporting is also widespread: ships notify ports of their ETA (generally several days in advance, so as to reserve a berth) and confirm 24 or 48 hours before they arrive in port.

Ship movements in most European ports and their approaches are controlled by port VTS, thus helping to improve the efficiency of port management and safety in and around port areas. The development of coastal VTS is designed to improve the monitoring of transit traffic in certain areas where justified by traffic density.

It should be stressed that often the various functions described above are performed by the same land-based authority. So, for example, one VTS may be receiving reports from ships while monitoring traffic passing through a traffic separation scheme in its area of cover, and will also be responsible for related services such as search and rescue at sea.

8. A number of points should be made regarding the situation at Community level.

Firstly, the Community already has a legislative framework:

- Directive 93/75/EEC (known as the "Hazmat Directive") was adopted in September 1993 to allow the national authorities responsible for tackling the consequences of an accident at sea to have the information they require. Accordingly, the masters or operators of ships carrying dangerous or polluting goods are required to provide certain information to the competent authorities designated by the Member States. These authorities must then pass on this information as required for safety reasons.

- The proposal for the Eurorep Directive was adopted in December 1993. It follows on from Directive 93/75/EEC, which established a notification system for vessels bound for or leaving Community ports and carrying dangerous or polluting goods. Its main purpose is to extend the notification requirements in Directive 93/75/EEC to ships passing through Community coastal waters. Although the proposal was approved by the European Parliament, discussions in the Council ran into a number of obstacles; it has been before the Council since 1994 but a common position has not yet been adopted.

- The Council Decision of 25 February 1992 on radionavigation systems for Europe makes provision for the development of navigation aids in European waters by extending the terrestrial Loran-C navigation systems. This maritime component contributes to European policy on navigation for all modes of transport, and particularly to the development of the Galileo satellite navigation network.

- A Council Directive of 21 December 1978 is designed to ensure that ships wishing to use pilotage services in the North Sea and English Channel can call on adequately qualified deep-sea pilots.

- Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network has as one of its objectives the establishment of a management and information system for maritime traffic, so as to guarantee a high level of safety and efficiency of shipping and environmental protection in shipping zones belonging to Community Member States. This instrument makes it possible to provide Community funding for various maritime traffic management or information projects (particularly VTS). In addition, other Community funds can contribute to the development of maritime traffic management and information infrastructure or installations (ERDF, Cohesion Funds).

As one of a number of measures designed to facilitate the implementation of Community legislation, the Commission initiated a memorandum of understanding between Member States on the establishment of an electronic data interchange network between the authorities in the Member States for the implementation of Directive 93/75/EEC (five Member States are already party to the agreement and three others should be joining shortly). The project is being funded out of trans-European transport network resources. One Phare project (Early Warning System - EWS - for the Baltic Sea), which was concluded in 1999, should result in a similar scheme involving several of the Baltic Sea States.

Results of implementation of Directive 93/75/EEC

9. The Hazmat Directive, Directive 93/75/EEC, has been in force since 1995. The Commission now has a fairly comprehensive view of its application from several sources of information: scrutinising national transposing legislation, information obtained directly from Member States, contact with the industry, and the results of specially commissioned studies.

The main conclusions are:

- The system established by the Directive is not very clear to the rest of the world and is often not fully understood by masters and shipowners, particularly those from outside the European Union;

- The requirement that the operator of a ship coming from a port located outside the Community must give notification of departure is not correctly applied, in many cases notification being given after the ship's departure and in some cases being addressed simply to the port of destination according to the local rules of that port (e.g. 48 or 24 hours in advance); similarly, it is often the case that notification from a port of departure inside the Community is given late;

- There are sometimes problems in transmitting information on the cargo, notably because the means of communication are inappropriate, e.g. fax machines for the transmission of large quantities of information;

- Since the Directive lays down no procedures or standard format for the transmission and exchange of data, this can prevent the proper and efficient working of the whole system;

- There is no clear definition of competent authorities, and as a result responsibilities are not clearly established; the problem applies particularly to ports, which are not mentioned in the Directive;

- The list of competent authorities is not updated regularly and is not easily available;

- In most cases, information notified under the Directive is merely stored by the recipients for use in the event of an accident, but otherwise remains unused; thus the information collected is not put to any good use.

The purpose of a new Community initiative

10. For the reasons mentioned above, the Commission considers that the instruments put in place to cope with accidents or pollution caused by substandard shipping in European waters are still inadequate.

In fact, the main aim of Directive 93/75/EEC is to reduce the possible environmental consequences of an accident at sea. Existing instruments for monitoring and managing traffic are of limited geographical scope and concentrate on the main areas of traffic convergence without properly covering events which could occur outside radar or radio range. The only really effective way the Community has of preventing a substandard ship (flying the flag of a non-member country) from sailing in European waters seems to be port State control. However, by definition this is an unreliable instrument (since it only covers part of the traffic) and does not reduce the potential hazard of (as yet) uninspected ships plying the coasts of Europe.

Another limitation is that there is not enough contact between the parties which have information on maritime traffic. Frequently, VTS, coastguards, port authorities, etc. have very detailed information on traffic, but this information is not usable because it has not been pooled or circulated efficiently.

In its report to the Biarritz European Summit, the Commission outlined the main principles of its new proposals on safety of shipping in European waters:

- "introducing a wider obligation to declare before entry into European waters,

- improving the procedures regarding the transmission and use of data concerning dangerous cargoes, more particularly by making systematic use of electronic data interchange (EDI),

- requiring ships sailing in Community waters to carry on board automatic identification systems (or transponders) in accordance with the timescale laid down by the IMO in order to ease their identification and monitoring by the relevant coastal authorities,

- boosting the development of common databases and the networking of centres responsible for managing the information received under the Directive in order to provide a more complete picture of the traffic, especially transit traffic, in European waters,

- ensuring closer monitoring of the ships presenting a particularly serious threat to safety at sea and the environment,

- enhancing the powers of intervention of the Member States, as coastal States, if there is an accident hazard or threats of pollution off their coasts."

11. These aims are too broad to be covered by a simple amendment to Directive 93/75/EEC. Accordingly, the Commission proposes a new instrument which incorporates the objectives of Directive 93/75/EEC but also covers much broader objectives: preventing accidental and operational pollution at sea, management and monitoring of maritime traffic, closer surveillance of ships deemed to pose a risk, wider scope for intervention at sea where there are threats to the environment and shipping safety, and facilitating search and rescue operations at sea.

Adoption of measures to improve the monitoring and safety of shipping in European waters

12. The Commission proposes to provide a Community legal basis for a number of practices or requirements applied by Member States in order to improve their efficiency and, where appropriate, to allow further application of a system of appropriate sanctions by the Member States in cases of infringements. In particular, it will be made compulsory:

- to give prior notification before entering European ports;

- to report to the mandatory reporting systems set up by Member States and approved by the IMO;

- to use the vessel traffic services and ships' routing systems approved by the IMO.

These measures should ensure that, whether or not they carry dangerous or polluting goods, all ships covered by the Directive which enter European waters or use European ports will be identified, will observe the traffic rules in force and will provide the coastal authorities with information that will be important in the event of an emergency at sea.

13. The content of information is based on minimal harmonisation: only certain essential items of information are included (identification of ship, position, destination, etc.), on the grounds that certain information (type of ship, tonnage, etc.) can easily be obtained from other sources like the EQUASIS database on Quality Shipping. Moreover, these minimum items of information are those generally required by the mandatory reporting systems already in place, with the exception of the following information which is included in the proposal.

- The number of persons on board. Directive 93/75/EEC required notification of the number of crew members on board. However, this information proved to be inappropriate and inadequate because: (a) it took no account of any non-crew members on board, (b) it applied only to ships carrying dangerous or polluting goods, and (c) being part of a cargo information management system it did not have any direct operational usefulness for the land-based authorities concerned (particularly the centres which coordinate sea search and rescue operations). In future, this information will be transmitted en route to the coastal stations which can make the best use of it.

- An address. This allows the operational authorities to contact those persons who have detailed knowledge of the cargo, which can be vital in the case of an accident

involving ships carrying dangerous or polluting goods, especially, for example, in the case of a ship in transit which is not heading for a Community port (in such cases no authority in any Member State has information on the cargo).

- Details of the type and quantity of bunker fuel. This is because the fuel carried in ship bunkers is a major potential source of pollution (some ships carry thousands of tonnes of fuel). If spilled, oil is particularly difficult to recover and can have serious toxic effects. Accordingly, it is important for coastal authorities to have this information so that they are in a better position to evaluate the possible consequences of an accident at sea.

14. The proposal is designed to improve efforts to prevent and understand the reasons for accidents at sea. In fact, in order to establish an effective policy for preventing accidents at sea, it is essential to have better knowledge of traffic flows and to be able to identify and monitor ships which constitute a safety or environmental hazard. This aim can be achieved more easily by introducing automatic identification systems, known as **transponders,** which make it possible to keep coastal shipping under continuous surveillance. Moreover, accurate analysis of the reasons for accidents at sea is essential in order to understand the factors which cause an accident and as a result to introduce further safety measures. In the past, enquiries have often been lengthy, complex and expensive. This situation should be greatly facilitated by the use of **black boxes**, based on those used in aircraft. These should also play a role in preventing accidents (particularly those due to human error) in that crews will know there is a black box on board and will be encouraged to exercise greater vigilance and a greater sense of responsibility when operating the ship. These various technological developments are currently being considered by the IMO, particularly in the context of changes to Chapter V of the SOLAS Convention, but the Commission takes the view that they should be introduced more rapidly and more extensively in the European Union, particularly for categories of ships not subject to international regulations.

First of all, the new SOLAS provisions on **transponders** must be made mandatory. In particular, they will be extended or applied more rapidly to ships not covered by the new SOLAS Regulation, i.e. basically ships of more than 300 gross tonnage not engaged in international voyages. This is in line with the approach already adopted by the Commission in other areas of maritime safety: the need to require that ships engaged in cabotage inside the Community comply with rules which are at least as strict as those which apply to ships on international voyages in order to ensure a uniform level of safety in European waters.

Secondly, the proposal makes it compulsory for ships to be fitted with **black boxes** (voyage data recorders - VDR), similar to those used in aircraft. Though these are not strictly navigation equipment, being designed to help with enquiries after accidents, their inclusion in Chapter V of the SOLAS Convention, currently being reworked, proves their importance in terms of general shipping safety. Directive 1999/35 made black boxes compulsory on board ro-ro ferries and high-speed passenger craft providing scheduled services to and from a port in a Member State. Given their importance in analysing the causes of accidents and improving shipping safety, the Commission considers it essential to make the new Regulation 20 on black boxes in Chapter V of the SOLAS Convention compulsory, even at this early stage, for all passenger ships and all other categories of ships, whether or not engaged in international voyages.

Introduction of a notification system for ships carrying dangerous or polluting goods

15. The proposal includes the basic provisions of Directive 93/75/EEC, but changes them to take account of experience with the Directive, and in the light of legal and technological developments at international level.

One of the basic difficulties of Directive 93/75/EEC is that of managing what may be huge amounts of information on cargoes efficiently and cheaply. One significant way of improving the present situation should therefore be first to improve procedures for circulating this information.

To this end, the new provisions are designed to keep information on cargoes as close as possible to the source of that information (the concept of the "dormant" system), so that the information is used only in exceptional circumstances. The Commission proposes to make the procedure for notifying this information more flexible so that, depending on the Member State's preference, it could be notified either to a designated competent authority, as under the current Directive 93/75/EEC (i.e. for those Member States wishing to maintain the existing system), or to the port authority, which would be responsible for keeping the information available to the competent national authorities on a 24-hour basis in case it is needed. However, national authorities would only contact ports to obtain this information in the event of an accident. This procedure would allow those Member States which so wished to operate the system more efficiently and cheaply.

The proposal for a directive should also harmonise methods of transmitting information. Currently, operators may use any means at all to give notification. Cargo information is often transmitted by fax, particularly to smaller ports, which obliges the authorities concerned to store large volumes of paper documents on their premises.

Many of Europe's major ports, realising the economic disadvantages of these outdated procedures, have tackled the problem by requiring ships to notify data electronically, specifically by EDI. The Commission is proposing that all cargo data now be transmitted electronically (i.e. by computer and not by fax), thus ending the current practice of using paper, which undermines the efficiency of the system. It also proposes that, when EDI formats are used for electronic data transmission, use be made only of the appropriate EDIFACT formats listed in the annex to the directive, in order to avoid having divergent standards throughout the Community.

Moreover, the system of exemption laid down in Directive 93/75/EEC for scheduled services of a certain duration should be made more flexible. The requirement concerning the journey duration is not needed if the company concerned has put in place a system guaranteeing the rapid transmission of data on dangerous cargoes to the competent authority when necessary.

16. Finally, it should be pointed out that Article 8 of Directive 93/75/EEC on the obligations of pilots has not been included in the new directive because:

- in the light of experience of the application of the Directive, very few masters complete the check list for the pilot, partly because it is unreasonable to expect the master himself to list the defects of his own ship; moreover, stricter port State controls introduced by Directive 95/21/EC make this check list redundant;

- paragraph 2 of Article 8 is redundant because it is included in Article 13 of Directive 95/21/EC.

Action and monitoring in respect of dangerous ships

17. Directive 93/75/EEC contains provisions on the reporting by ships of accidents or incidents at sea and the subsequent measures to be taken by Member States. However, because of the definition of "ship" given in the Directive, these measures apply only to ships bound for or leaving a Community port and carrying dangerous or polluting goods.

The first objective of the Commission's proposal therefore is to extend these provisions to all ships, whether or not they are carrying dangerous or polluting goods and whether or not they call at a Community port.

The proposal defines the circumstances under which the master of a ship will be required to report an incident to the coastal authorities. These are the situations described in IMO Resolution A.851(20) on ship reporting, and the reporting of pollution or the discharge of packaged goods (by other ships) observed at sea. These reports will enable the coastal authorities rapidly to launch operations to combat pollution or to recover floating packages, which in practice are unfortunately frequently not discovered until they reach the shore.

18. In addition to the measures available to a Member State under international law to take action to reduce hazards to its shoreline or to related interests, other examples of possible measures are listed in an annex to the Directive (which is not a restrictive list):

- give official notice to the master of the ship to put an end to the threat to the environment or maritime safety,
- send an evaluation team aboard the ship to assess the degree of risk, help the master to remedy the situation and keep the competent coastal station informed thereof,
- instruct the master to put in at a port of refuge on the coast in the event of imminent peril, or
- cause the ship to be piloted or towed.

The United Nations Convention on the Law of the Sea as well as the 1969 Brussels Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties and its 1973 Protocol on Pollution by Substances other than Oil enable Member States whose coastlines or interests are threatened to take such measures in their territorial waters, their exclusive economic zone and in respect of incidents arising on the high seas.

19. Whatever the cause of an accident at sea (human error or technical failure), experience shows that bad weather and rough seas in a particular area seriously increase the risks. Maritime ports are therefore natural places of refuge. Accordingly, the proposal aims to make it easier to seek a port of refuge in the event of trouble at sea, and also to prevent the risk of accident by prohibiting ships from leaving ports of call in the Community if particularly bad weather and sea conditions increase the risk of an accident.

Most of the pollution disasters off Europe's coasts have occurred during severe storms at sea. The Commission considers that where weather and sea conditions are particularly bad (wind speed of more than 48 knots, i.e. force 10 on the Beaufort scale), the need to protect the environment against serious pollution hazards is a justifiable reason for not leaving the decision as to whether to leave port solely in the hands of the master of the ship. Ships carrying dangerous

or polluting goods should not be allowed to put to sea until weather and sea conditions improve to the point where they can leave port safely.

The decision to require a ship to seek a port of refuge is always difficult. It requires a realistic assessment of the risks involved, either in refusing port access in order to keep the danger of pollution or explosion away from the coast or in requiring a ship in a precarious condition to head for a port in order to keep the ship and its crew safe and to avoid sea pollution. Indeed, a port may be putting itself at considerable risk by accepting a ship in distress, endangering local inhabitants and the environment, especially as the areas concerned, particularly estuaries, are often areas which are environmentally very vulnerable. However, the present situation leaves transport operators in considerable doubt, and this should be rectified. Moreover, there is obviously a Community dimension to the problem, since ships refused access to one port may have an accident and pollute the coastline of a neighbouring State.

So there has to be a legal framework to accommodate ships in distress. The decision whether or not to accept a ship in distress must be taken on an *ad hoc* basis. However it must also be based on objective criteria, such as the capacity of the port, and must take account of special constraints and hazards connected with the configuration of the port area and the environmental sensitivity of the area. Accordingly, Member States should draw up plans for accommodating ships in distress, listing all the relevant information and providing those responsible for port operations with reliable information on which to base their decisions.

High-risk ships

20. Some ships can pose a particular hazard for the States along whose coastlines they travel, either because they are known to be in poor condition following an inspection under the port State control system, or because they are presumed to be in a bad condition, or because of dubious behaviour, or because of infringement of international or European law.

At present, international law severely limits the potential for interference by Member States with ships which are potentially hazardous (e.g. ships prohibited under Directive 95/21/EC or ships which have infringed a reporting obligation), but which nevertheless do not necessarily constitute a serious and immediate accident or coastal pollution hazard. International law does not authorise extreme measures such as the rerouting of the potentially hazardous ships referred to in the Directive, except in the event of an incident or accident at sea.

Despite the limitations of international law, it is nevertheless possible to take preventive measures with regard to these ships. They should be subject to closer surveillance in European waters, which implies better exchange of information between Member States along the shipping route. Closer monitoring would, for example, make it possible to detect more swiftly manoeuvres which were risky or which threatened the safety of shipping and to take the precautionary measures required, and to inform ports of call or the authorities of other Member States of the arrival of these ships. With this information, the Member States concerned could, before accepting high-risk ships into their ports, ask for additional information in order to check that international conventions were being complied with by the ship (copy of safety certificates), or, if necessary, to carry out on-board inspections under Directive 95/21/EC.

Improving implementation of the Directive

21. The shortcomings already mentioned regarding the implementation of Directive 93/75/EEC are because there are no proper means of enforcement. The only sanction

mentioned in the Directive is refusal of access as referred to in Article 5 for failure to provide notification after leaving the port of departure outside the Community. This sanction is not applied by the Member States, despite many instances of infringement of this Article, probably partly because of the severity of the penalty compared with the nature of the infringement. What is needed, then, is a system of financial penalties which would allow the ship to have access to the port and to conduct its commercial operations there, but at the same time would strongly deter the operator or master from committing the same offence again.

Furthermore, it is essential that Member States should, through random operational tests or simulation exercises, check that information systems put in place for the requirements of the Directive operate satisfactorily. This is particularly true for that part of the system which concerns the processing of information on dangerous cargoes. This information is supposed to be used only in exceptional circumstances in the event of an accident and it is obviously essential that data transmission procedures and tools function perfectly when this happens.

Finally, the Commission's proposal includes provisions designed to ensure that the international safety management (ISM) code has been correctly applied when there is an incident or accident at sea. In fact, the ISM code is critical for preventing accidents and pollution at sea, provided that it is seen by companies - and applied - as something more than a simple bureaucratic exercise designed merely to give formal recognition to an international requirement. Indeed, it is when an accident at sea occurs that it is possible to check whether the ISM code was anything other than a bureaucratic exercise for the company operating the ship, since the ISM code includes the obligation to establish procedures which can cope with emergency situations. One essential aspect is that, when an emergency occurs, it is possible at all times to maintain proper contact between the ship and the company, on the one hand, and between the company and operational authorities, on the other, in particular so that operational decisions can be taken under the best possible conditions both by the master and by the land-based authorities. The proposal for a directive includes this obligation for communication between the parties concerned and provides for follow up measures where it is established that the company's management system did not operate during an accident at sea. These follow up measures consist first of all of informing the State (or States) which issued the ISM certificate so that they can take the necessary steps. Moreover, in the case of a ship which was certified by a Member State, and if the fault is considered particularly serious, the Member State which issued the certificate must suspend certification until a thorough check has been made of the company's safety management system.

Further development of the Community monitoring, control and information system for maritime traffic

22. The ultimate aim of the Community information and monitoring system for maritime traffic is not to increase the number of various reporting requirements but rather to try to simplify and standardise procedures further, while giving the greatest added value to the information collected.

This proposal is only a preliminary stage in the establishment of the system. It will be necessary gradually to complete the geographical cover of the shipping management network and put in place exchanges of information between the various authorities and operators concerned. The Commission and the Member States will have to cooperate closely to identify and implement objectives.

23. The Commission has identified the main objectives for this second phase:

To give added value to the information collected on shipping movements by means of appropriate computer links between coastal stations (mainly VTS) and the port authorities in Member States. Indeed, various bodies or authorities have information which could be exchanged to the mutual benefit of all concerned. To give one example, an essential item of information required by port managers is a precise ETA: the more accurate this information is, the better the ship's port of call can be organised and the more efficiently the various port services can be planned (pilotage, boatage, maintenance or repair services, administrative services, etc.). At present, the information given is often vague (if it is given at all), despite the fact that the local authorities need to be informed in advance. A computer link between the port of destination and a traffic monitoring service along the ship's route would allow the port to keep updating the ETA and to organise the ship's call with maximum efficiency (in return, the traffic monitoring centre would have more accurate information on which to base predictions of ships passing through its area since it will know the exact time the ship leaves port). In some cases, these links already exist on a local level but they should be made universal in order to improve traffic safety and port management. Similarly, within the context of the trans-European transport network, it is important to develop computer links between the coastal authorities in order to transmit the information notified by ships to the stations located along the shipping routes used by these ships. If they meet the eligibility criteria, these projects could benefit from funding from the resources available for trans-European transport networks.

To complete the geographical cover of the European chain of mandatory reporting systems. Currently the main shipping routes used by ships heading for Europe, or in transit, are covered by ship reporting systems and VTS in the Channel-Atlantic area. However, some areas are still not properly covered: the Mediterranean (in particular eastern access to the Mediterranean), and northern access to the North Sea and the Baltic for ships from riparian States which are not members of the EU. It is important therefore for the Commission and the Member States concerned to take swift action to deal with this matter and to begin preparing measures to cover ships in transit through these areas, so that the IMO can be informed as soon as possible.

To put in place a permanent framework for extending the information system introduced by this directive and facilitating the management of information on maritime traffic. The proposal for a Regulation 2000/../EC on the establishment of a European Maritime Safety Agency includes specifically among the duties to be performed by the Agency the accomplishment of tasks related to the monitoring of shipping and maritime traffic, pursuant to Community legislation, in order to facilitate cooperation between the Member States and the Commission in this area. In order to meet this objective, the Agency could have the support of one or more European maritime information management centres. The project to establish a centralised system of information on maritime traffic in Jobourg in France, covering the Atlantic from Gibraltar to the entrance to the North Sea, and the precedent of EQUASIS, show that the concept of systems which combine various items of information and make them accessible to all the users concerned have a number of advantages (particularly economies of scale) over a decentralised system based on the regular exchange of information between the authorities concerned. These centres, which could operate within the context of centres already in place (VTS, MRCC, etc.) in the major sea areas of Europe (Mediterranean, Channel-Atlantic-North Sea, Baltic) would have the role of compiling certain information of common

interest (updated list of competent authorities, list of ships constituting a special hazard, etc.) in a public database and making it available. A framework for cooperation would have to be established between the Member States in order to define exactly what the centre's tasks and responsibilities might be.

SPECIAL CONSIDERATIONS

Article 1

This article specifies that the proposal establishes a Community monitoring and information system for maritime traffic with view to enhancing maritime safety, improving the efficiency of maritime traffic and preventing accidental and operational pollution by ships.

Article 2

This article specifies the scope of the proposal. All ships above a threshold of 300 gross tonnage are covered, whether or not they carry dangerous goods. A number of exclusions are provided for, these being for warships and ships providing a non-commercial public service, (as defined in Regulation 1 of Chapter V of the SOLAS Convention, currently undergoing revision), recreational craft (irrespective of their characteristics and whether or not used for commercial purposes) and fishing vessels. However, the largest fishing vessels, measuring more than 45m in length, are likely to pose a hazard to shipping, and so their inclusion within the scope of the proposal is justified. Ships' stores and equipment for use on board ships are excluded (as under Directive 93/75/EEC). However, bunker fuels must be notified under the Directive.

Article 3

This article sets out the definitions applicable for the purposes of the Directive.

Article 4

This article requires all ships covered by the Directive to give advance notification before entering port. The present arrival notification practices are therefore made mandatory throughout the European Union, which should help make them more effective.

Article 5

This article lays down the principle that ships entering the area of competence of an authority operating a reporting system must send that authority the minimum information required for them to be effectively monitored, as set out in Annex I-1. The article takes account of the present state of international law, in particular the SOLAS Convention, which provides that only IMO-approved reporting systems may be made mandatory for ships which are purely in transit (i.e. which are neither bound for nor sailing from Community ports).

Article 6

This article is intended to increase traffic safety by requiring ships to comply with the existing IMO-approved instruments for the routing of shipping, which cover sensitive areas, areas with a high traffic density and areas which are dangerous for shipping, and to use vessel traffic services (VTS). Ships must comply with any instructions they may be given by the authorities responsible for the systems on grounds of safety. Member States must ensure that these

authorities have the human and technical resources to carry out their tasks, and in particular that they comply with the IMO guidelines on the subject.

Article 7

This article specifies that any ship leaving or bound for Community ports must be equipped with transponders (or automatic identification systems) to enable them to be identified and monitored along the European coasts. This requirement takes over, anticipates and extends the requirements on the carrying of equipment introduced by the revised Chapter V of the SOLAS Convention (new Regulation 19-2) by including ships on domestic voyages which are not covered by SOLAS Regulation 19 (between 300 and 500 gross tonnage) or which are covered only from 1 July 2008. In order to enable ships fitted with automatic identification systems to be monitored in their waters, the Member States must provide their coastal stations with equipment to receive and process the data from the transponders.

Article 8

To facilitate enquiries into the causes of disasters at sea, the fitting of voyage data recorders ("black boxes") on board ships will make it possible to recover essential data about the movements and operation of the main installations on board. Article 8 supplements the requirements already laid down by Directive 1999/35/EC on regular ro-ro ferry and high-speed passenger craft services by adding the categories of passenger ships referred to in the new Regulation 20 in Chapter V of SOLAS, as well as other categories which are not covered by SOLAS (existing cargo ships, ships on domestic voyages). As far as the timetable is concerned, new ships built after 1 July 2002 will be subject to this requirement immediately, and existing passenger ships will have to be adapted by 1 January 2004 at the latest. As regards other ships (cargo ships), for which the proposed revision of the SOLAS Convention at the time of drafting this text provides for black boxes to be carried only by new ships, the Commission also proposes requiring existing ships to be adapted as from 2007 or 2008, depending on the ship's tonnage.

Article 9

This article, which is similar to a provision in Directive 93/75/EEC, details the obligations on the shipper so as to be able to guarantee that accurate information about the cargo is sent to the ship's master or operator, and that the information does indeed correspond to the dangerous or polluting goods which have been loaded.

Article 10

This article concerns the notification of information about the ship and its cargo to the competent authorities in the Community port of departure, or the Community port of destination in the case of ships arriving from ports outside the Community. It includes the requirements set out in Article 5 of Directive 93/75/EEC, but makes several amendments aimed at providing greater flexibility and further harmonisation:

- notification must no longer be given by the operator alone, but may also be given directly by the agent or by the ship's master in order to take account of the variety of situations encountered in practice;

- for ships arriving from ports located outside the Community, notification to the competent authorities of the port of destination in the Community is no longer regarded as a prior

condition for access to the port. However, failure to provide notification is subject to a system of financial penalties (in Article 22);

- ships which do not know their destination at the time of leaving a Community port are authorised to notify the information requested as soon as they learn exactly where they are bound for;

- in order to limit the information in circulation, in particular as regards the cargo, the Member States may authorise the port authorities to receive and to retain the information transmitted by the ship, provided the procedures laid down allow immediate and continuous access to the data by the competent authority;

- the mode of transmission must be by computer-to-computer link and, if EDI formats are used, they must comply with the EDIFACT standards listed in an Annex to the Directive;

- lastly, it is specified that ships which are purely in transit and which do not call at Community ports must nevertheless communicate information about the cargo they are carrying via the ship reporting systems set up along the European coasts.

Article 11

This article concerns exchanges of data between the Member States to enable information about the ship and its cargo to be transmitted and used for safety purposes. Member States must cooperate to ensure that their national information systems are interconnected and interoperable so that the information required can be exchanged electronically at any time. The Memorandum of Understanding which has been concluded between several Member States for the purpose of implementing the Hazmat Directive provides a framework of cooperation for achieving that objective.

Article 12

This article lays down the conditions under which Member States may allow exemptions from the normal notification procedures for scheduled services operating within the Community. The system of exemptions laid down by Directive 93/75/EEC has been made more flexible as the requirements concerning the length of the voyage have been deleted; however, the system set up by the company must guarantee that the information requested can be transmitted immediately, and Member States must check that the system operates satisfactorily.

Article 13

This article is intended to enable the Member States to take certain measures where ships which pose a potential hazard to shipping are in transit off their coasts. The article first of all defines which ships may be regarded as posing a risk and provides for an exchange of information between the Member States located along the route to be followed by the ship. The Member State concerned can then consider taking any action it sees fit, though this must be consistent with international law.

Article 14

This article extends the scope of similar provisions already existing in Directive 93/75/EEC to cover other categories of ship (which do not carry dangerous goods or are in transit). Furthermore, it sets out in detail the measures which a Member State can take to prevent incidents or accidents occurring at sea and the action which can be taken if they do occur.

Masters are therefore required to notify any problem relating to the safety of the ship and the safety of shipping or concerning the preventing of pollution, and will also be obliged to notify the coastal authorities of any slicks of pollutant materials or goods containers drifting at sea which would pose a hazard to the environment or to other ships.

Article 15

This article states that, when the weather is so bad as to pose a serious threat to their coasts, or the coasts of their neighbours within the Union, the Member States must take the necessary steps to prohibit ships from leaving port.

Article 16

This article requires Member States to take all necessary measures permitted under international law to tackle the risk of accident or pollution at sea off their coasts, and obliges the parties concerned (operator, cargo owner, master) to cooperate fully in order to minimise the consequences of the accident. Furthermore, as soon as such an incident or accident occurs, the master must contact the company, which must place itself at the disposal of the competent authorities.

Article 17

This article stipulates that the Member States must draw up emergency plans to simplify decision-making with regard to the provision of a port of refuge for ships in distress, and to make these plans available to interested parties. The Commission must also be kept informed about the action taken by the Member States with regard to drawing up such plans.

Article 18

Article 18 extends to all ships the provisions in Articles 9 and 10 of Directive 93/75/EEC (concerning the broadcasting of warnings to shipping and providing information to other Member States concerned); initially, these provisions applied only to ships carrying dangerous or polluting goods and bound for or leaving Community ports.

Article 19

This article states that the Member States must designate the competent authorities, port authorities and coastal stations responsible for the application of this Directive and must inform the shipping industry and the Commission in an appropriate manner.

Article 20

This article deals with the creation of a framework for cooperation between the Commission and the Member States for the future development of the Community monitoring and information system for maritime traffic. It therefore provides for the development of computer links between coastal stations and the port authorities, and between coastal stations themselves, in order to optimise the management of information on the movement of ships in Community waters. It also recapitulates the need to extend the cover provided by the system, which is still not comprehensive, so that any ship entering Community waters can be identified and monitored as fully as possible. To this end, it will be necessary for the Member States to cooperate on the submission of appropriate proposals to IMO. Lastly, efforts should be made to improve the management of information about shipping, which is one of the tasks of the European Maritime Safety Agency, in order to provide easier access to information of

common interest for States in the area concerned and to develop the necessary instruments for better traffic management in the area concerned.

Article 21

This article recalls that the principle of the confidentiality of commercial transactions must be observed when collecting and using the information notified under the Directive and that the information must be used for purposes of maritime safety and protection of the environment.

Article 22

This article sets out the measures required for satisfactory implementation of the Directive. Member States are thus required to carry out regular checks on the operation of the information systems set up for the purposes of the Directive and to provide in their national laws for financial penalties to act as a deterrent against infringement of the Directive's requirements regarding notification or the carrying of equipment. Particular emphasis is also placed on checking, where an incident at sea occurs, that the company's safety management system was in compliance with the requirements of the ISM Code. If any major instance of non-compliance is found, the ISM certificate should be withdrawn immediately.

Articles 23 and 24

These articles concern the establishment of a regulatory committee for the purposes of the Directive and define its scope.

Article 25

No comment.

Article 26

This article specifies that Directive 93/75/EEC, some of whose provisions are included in the present Directive, is to be repealed twenty-four months after the adoption of the Directive.

ANNEXES

Annex I

The first part of Annex I gives details of the operational information which must be transmitted to the competent coastal station. In accordance with IMO Resolution A.851(20), the information concerns the identification of the ship, its movements, the cargo and the number of people on board. The harmonisation is minimal since the Member States have the right to demand other information for the purposes of safety or the protection of the environment. However, the aim is also to minimise the amount of information which the master is required to give as the operational centres are able to obtain a host of information by consulting the EQUASIS database.

The second part of Annex I sets out the information which, in accordance with the new SOLAS Regulation 19, may be transmitted by automatic identification systems.

Lastly, it is recalled that any changes to the information notified, in particular any change to the ship's planned voyage, must be notified to the coastal authority.

Annex II

Annex II sets out the timetable according to which ships must carry automatic identification systems (AIS) and voyage data recorders (VDR) on the basis of the provisions of Chapter V of SOLAS, which is being revised and extended to cover other categories of ships and voyages which are not covered by the corresponding SOLAS Regulations.

Annex III

Annex III lists the information to be notified by the operator, agent or master of a ship bound for a Community port. This list corresponds to Annex I to Directive 93/75/EEC, except as regards certain items of information which have been deleted:

- Since the essential aim is the management of information about cargo, information such as the nationality of the ship and the length and draught is no longer necessary; such information can in any case be obtained from EQUASIS.

- Similarly, information relating to shipping (intended route) is already demanded for all ships under Title I. This information is of no use in the context of a cargo information management system and is not included in the formats for EDIFACT messages which are used for notifications to port.

- Indication of the number of crew members has been deleted for similar reasons, but also because there is no reason to require this information only in the case of ships carrying dangerous or polluting goods. This requirement is nevertheless included in the notification requirements set out in Title I of the Directive concerning the number of people on board.

- The information to be notified with regard to ships' times of arrival and departure has been made clearer. Directive 93/75/EEC was creating confusion: the estimated time of departure, required by point 6 in Annex I to Directive 93/75/EEC, was on some occasions being understood as either the time of departure from the Community port of departure or the time of departure from a port of departure outside the Community. The information required by the competent authority is the time of departure from a Community port or, for ships bound for a port in the Community but coming from a port outside the Community, the estimated times of arrival and departure in order to enable the intended length of stay to be determined.

Annex IV

Annex IV contains a list of the EDIFACT electronic messages which must be used for the transmission of information where the transmission is based on EDI protocols.

Annex V

Annex V sets out a (non-restrictive) list of measures available to Member States depending on their assessment of the local situation and in accordance with international law, to prevent or reduce the risks or consequences of an incident at sea. As with Directive 93/75/EEC, these are measures to restrict the movements of a ship or require it to adopt a specific itinerary, but also to oblige the master to take steps to put an end to the risks, to instruct him to put in at a port of refuge or agree to have his ship piloted or towed, or even to have an evaluation team placed on the ship if the facilities on board are from all evidence insufficient to remedy the situation.

2000/0325 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a Community monitoring, control and information system for maritime traffic

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,[3]

Having regard to the opinion of the Economic and Social Committee,[4]

Having regard to the opinion of the Committee of the Regions,[5]

Acting in accordance with the procedure indicated in Article 251 of the Treaty,[6]

Whereas:

(1) In its communication of 24 February 1993 on a common policy on safe seas, the Commission indicated that one objective at Community level was the introduction of a mandatory information system to give Member States rapid access to all important information relating to the movements of ships carrying dangerous or polluting materials and to the precise nature of their cargo.

(2) Directive 93/75/EEC[(4)] of 13 September 1993 introduced a system whereby the competent authorities receive information regarding ships bound for or leaving a Community port and carrying dangerous or polluting goods, and regarding incidents at sea. Article 13 of the Directive requires the Commission to produce new proposals for the introduction of a fuller reporting system for the Community, possibly covering ships transiting along the coasts of Member States.

(3) The Council Resolution of 8 June 1993[(5)] on a common policy on safe seas agreed that the main objectives of Community action included the adoption of a fuller information system.

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3 OJ C , , p. .
4 OJ C , , p. .
5 OJ C , , p. .
6 OJ C , , p. .
(4) OJ L 247, 05.10.1993, p.19.

(5) OJ C 271, 07.10.1993, p.1.

(4) Setting up a Community monitoring, control and information system for maritime traffic will help to prevent accidents and pollution at sea and to minimise their impact on the environment, the economy and the health of local communities. The efficiency of maritime traffic, and in particular of the management of ships' calls into ports, also depends on ships giving sufficient advance notice of their arrival.

(5) Several mandatory ship reporting systems have been set up along Europe's coasts, in accordance with the relevant rules adopted by the International Maritime Organisation (IMO). It ought to be ensured that transiting ships comply with the reporting requirements in force under these systems. Reporting by these ships must at least include certain information advising the coastal authorities of the number of persons aboard, the cargo, and bunker fuels which might pose a serious risk of pollution in excess of a certain volume.

(6) Vessel traffic services and ships' routing systems have also been introduced and are playing an important part in the prevention of accidents and pollution in certain shipping areas which are congested or hazardous for shipping. It is necessary that ships use the services offered by vessel traffic services and that they follow the rules applicable to ships' routing systems approved by the IMO.

(7) Key technological progress has been made in the area of on-board equipment allowing automatic identification of ships (AIS systems) for enhanced ship monitoring, as well as voyage data recording (VDR systems or "black boxes") to facilitate investigations following accidents. Given its importance in the formulation of a policy to prevent shipping accidents, such equipment ought to be made compulsory on board ships making national or international voyages which call at Community ports.

(8) Accurate knowledge of dangerous or polluting goods being carried on board ships is essential to the preparation and effectiveness of operations to tackle pollution or the risk of pollution at sea. Ships leaving or bound for Member States must notify this information to the competent authorities or port authorities of those Member States. Ships not calling at a port located in the Community must provide the reporting systems operated by the coastal authorities of the Member States with information on the quantity and type of dangerous goods they are carrying.

(9) To streamline and accelerate the transmission and utilisation of what may be huge amounts of information on cargo, such information ought to be sent electronically to the competent authority or port authority concerned. Where EDI protocols are used, only those formats mentioned in the Directive should be employed so as to avoid an undesirable proliferation of incompatible standards. For the same reasons, exchanges of information between the competent authorities of the Member States should take place electronically.

(10) Where the companies concerned have, to the satisfaction of the Member States, introduced internal procedures to ensure that information required by the Directive is sent to the competent authority without delay, it must be possible to exempt scheduled services between the ports of one or more Member States from the reporting requirement for each voyage.

(11) Where a Member State considers that exceptionally poor weather and sea conditions are creating a serious threat for the environment, it stops all ships carrying dangerous or polluting goods from leaving port until the situation returns to normal. Within the

framework of its power of discretion, the Member State must consider such conditions to have been reached if a force of 10 or more on the Beaufort scale, and corresponding sea conditions, have been noted in the area concerned.

(12) Because of their behaviour or condition, some ships pose potential risks to the safety of shipping and the environment. Member States should pay particular attention to the monitoring of such ships, take the appropriate measures, consistent with international law, to prevent any worsening of the risk they pose, and send any relevant information they possess on these ships to the other Member States concerned.

(13) Member States need to guard against the threats to maritime safety, local communities and the environment created by certain situations at sea and by the presence of polluting slicks or packages floating at sea. To this end, masters of ships must report such occurrences to the coastal authorities, supplying all appropriate information.

(14) In the event of an incident or accident at sea, full and complete cooperation by the parties involved in the carriage contributes significantly to the effectiveness of operations by the competent authorities.

(15) Non-availability of a port of refuge may have serious consequences in the event of an accident at sea. Member States ought therefore to draw up plans whereby ships in distress may, if the situation so requires, be given refuge in their ports in the best conditions possible.

(16) The effectiveness of the Directive depends greatly on the Member States enforcing its implementation strictly. To this end, Member States must carry out appropriate checks to ensure that the communication links established to meet the requirements of the Directive are operating satisfactorily. Deterrent penalties must also be introduced to ensure that the parties concerned comply with the reporting and equipment carrying requirements laid down by the Directive.

(17) A framework for cooperation between the Member States and the Commission needs to be established to enhance the implementation of the monitoring, control and information system for maritime traffic, with proper communication links being established between the authorities and ports of the Member States. Moreover, the coverage of the ship identification and monitoring system needs to be supplemented in those shipping areas of the Community where it is insufficient. In addition, information management centres ought to be set up in the Community's maritime regions so as to facilitate the exchange or sharing of useful data in relation to traffic monitoring and the implementation of the Directive. The creation of the European Maritime Safety Agency by Regulation ../../EC will help achieve these objectives.

(18) With a view to the effective application of this Directive, the Commission needs to be assisted by a committee composed of representatives of the Member States. Since the measures needed to implement this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission,[7] they ought to be adopted in accordance with the regulatory procedure laid down in Article 5 of that Decision.

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[7] OJ L 184, 17.7.1999, p. 23.

(19) Certain provisions of this Directive may be amended by that procedure so as to take account of changes to international instruments and of experience gained in implementing this Directive.

(20) The provisions of Directive 93/75/EEC are significantly reinforced, extended and amended by the current Directive. Accordingly, Directive 93/75/EEC ought to be repealed.

(21) Given the principle of subsidiarity, a Directive of the European Parliament and of the Council is the appropriate legal instrument as it establishes a framework for the compulsory and uniform application by the Member States of the requirements and procedures laid down in this Directive, while leaving each of them free to choose the detailed implementing rules best suited to their national system,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to establish in the Community a monitoring, control and information system for maritime traffic with a view to enhancing the safety and efficiency of such traffic and preventing pollution by ships.

Article 2

Scope

This Directive applies to ships of 300 gross tonnage and upwards, except for:

a) warships, naval auxiliaries and other ships owned or operated by a Member State and used for non-commercial public service;

b) fishing vessels with a length of less than 45 metres and recreational craft;

c) ships' stores and equipment for use on board ships.

Article 3

Definitions

For the purpose of this Directive:

a) "operators" means the owners or managers of a ship;

b) "agent" means any person mandated or authorised to supply information on behalf of the operator of the ship;

c) "shipper" means any person by whom or in whose name or on whose behalf a contract of carriage of goods has been concluded with a carrier;

d) "company" means a company within the meaning of Regulation 1(2) of Chapter IX of the SOLAS Convention;

e) "ship" means any sea-going vessel or craft;

f) "dangerous goods" means:

- goods classified in the IMDG Code,
- dangerous liquid substances listed in Chapter 17 of the IBC Code,
- liquefied gases listed in Chapter 19 of the IGC Code,
- solids referred to in Appendix B of the BC Code.

Also included are goods for the carriage of which appropriate preconditions have been laid down in accordance with paragraph 1.1.3 of the IBC Code or paragraph 1.1.6 of the IGC Code;

g) "polluting goods" means:

- oils as defined in Annex 1 to the Marpol Convention,
- noxious liquid substances as defined in Annex 2 to the Marpol Convention,
- harmful substances as defined in Annex 3 to the Marpol Convention;

h) "haulage unit" means a vehicle for the road haulage of goods, a wagon for the carriage of goods by rail, a container, a road tank-vehicle, a rail tanker or a movable tank;

i) "relevant international instruments" means the following instruments, in the version in force at the time of adoption of this Directive:

- "Marpol" means the International Convention for the prevention of pollution from ships, 1973 and its 1978 Protocol;
- "SOLAS" means the International Convention for the Safety of Life at Sea, together with the protocols and amendments thereto;
- the International Convention on Tonnage Measurement of Ships, 1969;
- the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 and its 1973 Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil;
- "ISM Code" means the International Safety Management Code;
- "IMDG Code" means the International Maritime Dangerous Goods Code;
- "IBC Code" means the IMO International Code for the construction and equipment of ships carrying dangerous chemicals in bulk;

- "IGC Code" means the IMO International Code for the construction and equipment of ships carrying liquefied gases in bulk;

- "BC Code" means the IMO Code of Safe Practice for Solid Bulk Cargoes;

- "INF Code" means the IMO Code for the Safe Carriage of Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes in Flasks on board Ships;

- "IMO Resolution A.851(20)" means International Maritime Organisation Resolution 851(20) entitled "General principles for ship reporting systems and ship reporting requirements, including guidelines for reporting incidents involving dangerous goods, harmful substances and/or marine pollutants;

j) "address" means the name and the communication links whereby contact may, where necessary, be made with the operator, agent, port authority, competent authority or any other authorised person or body in possession of detailed information regarding the ship's cargo;

k) "competent authorities" means the authorities and organisations authorised by Member States to receive and pass on information reported pursuant to this Directive;

l) "port authorities" means the competent port authorities authorised by Member States to receive and pass on information reported pursuant to this Directive;

m) "coastal station" means any of the following, designated by Member States pursuant to this Directive: a vessel traffic service, a shore-based installation responsible for a mandatory reporting system approved by the IMO, or a body responsible for coordinating search and rescue operations or operations to tackle pollution at sea.

TITLE I – SHIP REPORTING AND MONITORING IN EUROPEAN WATERS

Article 4
Notification prior to entry into Community ports

Member States shall take the necessary measures to ensure that any ship bound for a port located in the Community announces its arrival to the port authority:

a) at least forty-eight hours before its arrival, if the port of call is known, or

b) as soon as the port of call is known, if this information is available less than forty-eight hours before its arrival, or

c) at the latest, at the time the ship leaves the previous port, if the journey time is less than forty-eight hours.

Article 5

Participation in mandatory reporting systems

1. Ships entering the area of competence of a coastal station operating a mandatory reporting system approved by the International Maritime Organisation must participate in the system in accordance with the applicable rules and procedures.

2. Ship reports shall include at least the information referred to in Annex I-1, without prejudice to additional information required by a Member State in accordance with IMO Resolution A.851(20).

Article 6

Ship routing in areas of high traffic density or which are dangerous for shipping

1. Ships entering the area of competence of a vessel traffic service, or ships' routing system approved by the IMO, placed under the responsibility of a Member State, must, in accordance with the applicable rules and procedures, use the services provided, where such exist, and comply with the measures applicable in the area and with any instructions they receive. Only in maritime areas located within the territorial waters of the Member State concerned may participation in a vessel traffic service be made compulsory for ships flying the flag of a third country.

2. Member States shall ensure that the vessel traffic services and ships' routing systems placed under their responsibility dispose of sufficient properly qualified staff and appropriate means of communication and ship monitoring and that they are operated in accordance with the relevant IMO guidelines.

Article 7

Automatic identification systems

1. Any ship calling at a Community port must, in accordance with the timetable set out in Annex II-1, be fitted with an automatic identification system which meets the performance standards drawn up by the IMO and is capable of transmitting the information referred to in Annex I-2.

2. Member States shall see that they furnish themselves, on a timescale compatible with the timetable set out in Annex II-1, with appropriate equipment and shore-based installations for receiving and utilising the information referred to in paragraph 1.

Article 8

Voyage data recorders (black boxes)

Ships calling at a port located in the Community must be fitted with a voyage data recorder (black box) in accordance with the detailed rules laid down in Annex II-2. Any exemptions granted to ro-ro ferries or high-speed passenger craft under Article 4(1)(d) of Council Directive 1999/35/EC[8] shall terminate on the date on which this Directive enters into force.

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[8] OJ L 138, 1.6.1999, p. 1.

The voyage data recorder must be able to store, in a secure and retrievable form, and make available to the Member State involved in an enquiry following a maritime accident, relevant information concerning the position, movement, physical status, and command and control of the ship concerned.

TITLE II – NOTIFICATION OF DANGEROUS OR POLLUTING GOODS ON BOARD SHIPS (HAZMAT)

Article 9

Obligations on the shipper

No dangerous or polluting goods may be offered for carriage or taken on board any ship in a port of a Member State unless a declaration has been delivered to the master or operator containing the correct technical names of the dangerous or polluting goods, the United Nations (UN) numbers where they exist, the hazard classes and the quantities of such goods and, if they are being carried in haulage units other than tanks, the identification numbers thereof.

It shall be the duty of the shipper to deliver to the master or operator the declaration required by this Directive and to ensure that the shipment offered for carriage is indeed the one declared in compliance with the first paragraph.

Article 10

Notification by ships carrying dangerous or polluting goods

1. The operator, agent or master of a ship carrying dangerous or polluting goods and leaving a port in a Member State shall, at the latest at the moment of departure, notify the information indicated in Annex III to the competent authority designated by that Member State.

2 The operator, agent or master of a ship carrying dangerous or polluting goods coming from a port located outside the Community and bound for a port located in the Community or an anchorage located in a Member State's territorial waters shall, at the latest upon departure from the loading port or as soon as the port of destination is known, if this information is unavailable at the moment of departure, notify the information indicated in Annex III to the competent authority of the Member State in which the first port of destination or anchorage is located.

3. Member States may put in place a procedure authorising the operator, agent or master of a ship referred to in the above paragraphs to notify the information listed in Annex III to the port authority of the port of departure or destination in the Community, as appropriate.

The procedure put in place must ensure that the competent authority has access to the information indicated in Annex III at all times should it be needed. To this end, the competent port authority shall retain the information listed in Annex III long enough for it to be usable in the event of an accident or incident at sea. The port authority shall take the necessary measures to provide this information electronically and without delay to the competent authority, 24 hours a day upon request.

4. The operator, agent, or master of the ship must communicate the cargo information indicated in point 5 of Annex III to the port authority or the competent authority electronically. Where EDI messages are used to transmit data, the EDIFACT message formats indicated in Annex IV must be used.

5. Ships carrying dangerous or polluting goods in transit through the territorial waters or exclusive economic zones of Member States and neither leaving nor bound for a Community port shall notify coastal stations operating a mandatory reporting system as referred to in Article 5(1) of the quantity and IMO class of dangerous goods they are carrying.

Article 11

Computerised exchange of data between Member States

Member States shall cooperate to ensure the interconnection and interoperability of the national systems used to manage the information indicated in Annex III.

Communication systems set up in application of the above paragraph must display the following features:

- data exchange must be electronic and enable messages notified in accordance with Article 10 to be received and processed;
- the system must allow information to be transmitted 24 hours a day;
- each Member State must be able, upon request, to send information on the ship and the dangerous or polluting cargo on board without delay to the competent authority of another Member State.

Article 12

Exemptions

1. Member States may exempt national scheduled services performed between ports located on their territory from the requirement laid down in Article 10 where the following conditions are met:

   - the company operating the scheduled services referred to above keeps and updates a list of the ships concerned and sends it to the competent authority concerned,
   - for each journey performed, the information listed in Annex III is kept available for the competent authority upon request. The company must establish an internal system to ensure that, upon request 24 hours a day and without delay, the said information can be sent to the competent authority electronically, in accordance with Article 10(2).

2. Member States shall periodically check that the conditions laid down in paragraph 1 are being met. Where at least one of these conditions is no longer being met, Member States shall immediately withdraw enjoyment of the exemption from the company concerned.

3. Member States shall communicate to the Commission a list of companies and ships granted exemption under this Article, as well as any updating of that list.

4. Where two or more Member States are concerned in an international scheduled service operated by a single company, they may collaborate in granting an exemption to the company concerned in accordance with the requirements laid down by this Article.

TITLE III - MONITORING OF HAZARDOUS SHIPS AND INTERVENTION IN THE EVENT OF INCIDENTS AND ACCIDENTS AT SEA

Article 13
Ships posing a potential hazard to shipping

1. Ships meeting the criteria set out below shall be considered to be ships posing a potential hazard to shipping or a threat to the environment within the meaning of this Directive:

   - ships which have been involved in accidents or incidents at sea as referred to in Article 14;
   - ships which have failed to comply with the reporting requirements imposed by this Directive;
   - ships which have failed to comply with the applicable rules in ships' routing systems and vessel traffic services placed under the responsibility of a Member State;
   - ships in respect of which there is proof or strong presumptive evidence of deliberate discharges of oil or other infringements of the Marpol Convention in waters under the jurisdiction of a Member State;
   - ships which have been refused access to Community ports or which have been the subject of a report or notification by a Member State in accordance with Annex I-1 to Directive 95/21/EC.

2. Coastal stations holding relevant information on the ships referred to in paragraph 1 shall communicate it to the coastal stations concerned in the other Member States located along the planned route of the ship.

3. Without prejudice to Article 15, Member States shall, in compliance with international law, take the appropriate measures regarding the ships referred to in paragraph 1 which they have identified or which have been reported to them by other Member States, with a view to preventing or reducing the risk to safety or the environment at sea. They shall carry out any checks or action they deem appropriate, in conditions compatible with Directive 95/21/EC, with a view to establishing any infringements of the provisions of this Directive or of the relevant rules of international conventions in force. Where appropriate, they shall inform the Member State which sent them the information pursuant to paragraph 2 of the results of the action they take.

Article 14

Reporting of incidents and accidents at sea

1. With a view to preventing or mitigating any significant threat to maritime safety, the safety of individuals or the environment, the master of any ship sailing in the territorial sea or exclusive economic zone of a Member State or the high seas off the coast of a Member State must immediately report to the coastal station responsible for that geographical area:

   - any incident or accident affecting the safety of the ship, such as collision, running aground, damage, malfunction or breakdown, flooding or shifting of cargo, any defects in the hull or structural failure,

   - any incident or accident which compromises shipping safety, such as failures likely to affect the ship's manoeuvrability or seaworthiness, or any defects affecting the propulsion system or steering gear, the power generation equipment, navigation equipment or communications equipment,

   - any situation liable to lead to pollution of the waters or shore of a Member State, such as the discharge or threat of discharge of polluting products into the sea, as well as any slicks of polluting materials and containers or packages seen drifting at sea.

2. The report message sent in application of paragraph 1 must include at least the ship's identity, its position, the port of departure, the port of destination, the address from which information may be obtained on the cargo where appropriate, the number of persons aboard, details of the incident and any relevant information referred to in IMO Resolution A.851(20).

Article 15

Measures in the event of exceptionally bad weather

Where a Member State considers, in the event of exceptionally bad weather and sea conditions, that there is a serious threat of pollution of its shipping areas or coastal zones, or of the shipping areas or coastal zones of other Member States, it must, using any appropriate administrative measures, prohibit ships liable to create such a threat from leaving ports located in the area or zone in question.

The ban on departure shall be lifted once it has been established that the ship may leave the port without posing a serious threat within the meaning of paragraph 1.

Article 16

Measures relating to incidents or accidents at sea

1. In the event of incidents or accidents at sea as referred to in Article 14, Member States shall take all appropriate measures, consistent with international law, to ensure the safety of shipping and of persons and to protect the marine environment.

   Annex V sets out a non-exhaustive list of measures available to Member States in application of this Article.

2. The operator, the master of the ship and, where appropriate, the owner of the cargo must cooperate fully with the competent national authorities, at the latter's request, with a view to minimising the consequences of an incident or accident at sea.

3. The master of a ship to which the provisions of the ISM Code are applicable shall inform the company of any accident or incident which occurs at sea. As soon as it has been informed of such a situation, the company must contact the competent coastal station and place itself at its disposal as necessary.

Article 17
Ports of refuge

Member States shall make the necessary arrangements to ensure that ports are available on their territory which are capable of accommodating ships in distress. To this end, having consulted the parties concerned, they shall draw up plans specifying, for each port concerned, the features of the area, the installations available, the operational and environmental constraints and the procedures linked to their possible use to accommodate ships in distress.

Plans for accommodating ships in distress shall be made available upon demand. Member States shall inform the Commission of the measures taken in application of the preceding paragraph.

Article 18
Informing the parties concerned

1. The competent coastal authority of the Member State concerned shall, as necessary, broadcast within the relevant areas any incident notified under Article 14(1) and information with regard to any ship which poses a threat to other shipping.

2 Competent authorities holding information notified in accordance with Articles 10 and 14 shall make adequate arrangements to provide such information at any time upon request for safety reasons by the competent authority of another Member State.

3. Any Member State whose competent authorities have been informed, pursuant to this Directive or in some other way, of facts which involve or increase the risk for another Member State of a hazard being posed to certain shipping areas and coastal zones, shall take whatever measures are appropriate to inform any interested State thereof as soon as possible and consult it regarding the action being envisaged. Where appropriate, Member States shall cooperate with a view to pooling the arrangements for joint action.

Each Member State shall make the necessary arrangements to use fully the reports which ships are required to transmit to them pursuant to Article 14.

TITLE IV - ACCOMPANYING MEASURES

Article 19

Designation and publication of a list of competent bodies

1. Each Member State shall designate the competent authorities, port authorities and coastal stations to which the notifications required by this Directive must be made.

2. Each Member State shall ensure that the shipping industry is properly informed and regularly updated, notably via nautical publications, regarding the authorities and stations designated pursuant to paragraph 1, including where appropriate the geographical area for which they are competent, and the procedures laid down for notifying the information required by the Directive.

3. Member States shall send the Commission a list of the bodies they designate pursuant to paragraph 1, as well as any updatings thereof.

Article 20

Cooperation between the Member States and the Commission

1. The Member States and the Commission shall cooperate on attaining the following objectives:

a) making optimum use of the information notified pursuant to this Directive, notably by developing appropriate telematic links between coastal stations and port authorities with a view to exchanging data relating to ships' movements, their estimated times of arrival in ports and their cargo;

b) developing and enhancing the effectiveness of telematic links between the coastal stations of the Member States with a view to obtaining a clearer picture of traffic, improving the monitoring of ships in transit along European coasts, and harmonising and, as far as possible, streamlining the reports required from ships en route;

c) extending the cover of the European monitoring, control and information system for maritime traffic with a view to enhanced identification and monitoring of ships sailing in European waters. To this end, the Member States and the Commission shall work together to put in place mandatory reporting systems, mandatory vessel traffic services and, where necessary, appropriate ships' routing systems, with a view to submitting them to the IMO for approval.

2. The European Maritime Safety Agency created by Regulation ../../EC shall help attain the following objectives:

- facilitating cooperation between the Member States and the Commission to attain the objectives set out in paragraph 1;

- promoting cooperation between riparian States in the shipping areas concerned in the fields covered by this Directive;

- seeing that the shipping industry is better informed of the requirements and procedures stipulated by this Directive;

- collecting and making available to the interested parties the list of competent bodies designated pursuant to Article 19, the relevant data regarding companies granted an exemption under Article 12 and ships posing a potential hazard to shipping referred to in Article 13 and any appropriate information for implementing this Directive;

- developing and operating any information system necessary for attaining the objectives referred to in the indents above;

- with a view *inter alia* to ensuring optimum traffic conditions in areas of high traffic density or which are hazardous for shipping, establishing regional centres to manage the information gathered and utilised pursuant to this Directive.

Article 21

Confidentiality of information

Member States shall take the necessary measures to ensure the confidentiality of information sent to them pursuant to this Directive, and must use such information only for the purposes of maritime safety and preventing pollution by ships.

Article 22

Monitoring the implementation of the Directive and penalties

1. Member States shall, by means of regular checks and unannounced checks, check the functioning of the telematic systems set up to meet the requirements of the Directive, and in particular their capacity to meet the requirements of receiving or sending without delay, 24 hours a day, information notified pursuant to Articles 10 and 12.

2. Member States shall provide in their national law for financial penalties to be imposed on operators, agents, shippers, owners of cargo and masters of ships in the event of infringements of the provisions of this Directive.

   The financial penalties referred to in the subparagraph above must be set at a level high enough to deter the person from committing or persisting in an infringement.

3. Without prejudice to the other measures needed to apply the Directive, the financial penalty arrangements introduced by Member States must apply *inter alia* to the following infringements of the Directive:

   - failure to make prior announcement of entry into port as required by Article 4;

   - failure to report to a mandatory reporting system as required by Article 5;

   - violation of the applicable rules in a ships' routing system or failure to comply with instructions given by a ves el traffic service designated by a Member State as required by Article 6;

   - absence or malfunction of the shipborne automatic identification system or of the voyage data recorder referred to in Articles 7 and 8 respectively;

- failure to declare or incorrect declaration by the shipper under Article 9;
- violation of the notification requirements laid down in Articles 10 and 12;
- failure to report an incident, accident or situation at sea as required by Article 14;
- departure from a port in violation of Article 15;
- failure to cooperate with the national authorities to minimise the consequences of an accident at sea in accordance with Article 16.

4. Member States shall, without delay, inform the flag State and any other State concerned of measures taken in respect of ships not flying their flag pursuant to Articles 13 and 16 and to paragraph 2 of this Article.

5. Where a Member State finds, on the occasion of an accident or incident at sea referred to in Article 16, that the company has not been able to establish and maintain a link with the ship or with the operational authorities concerned, it shall so inform the State which issued the ISM certification, or on whose behalf it was issued.

Where the seriousness of the failure shows the existence of a major incidence of non-compliance in the functioning of the company's safety management system, the Member State which issued the certificate of compliance or safety management certificate to the ship shall immediately withdraw the ISM certification from the company concerned.

FINAL PROVISIONS

Article 23
Amendment procedure

The procedure laid down in Article 24 may be implemented in order:

- for the purposes of this Directive, to apply subsequent amendments which have entered into force in respect of the relevant international instruments referred to in Article 2(i),
- to amend the requirements and procedures laid down in the annexes in the light of experience gained with this Directive.

Article 24
Regulatory committee

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by a representative of the Commission.

2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 8 thereof.

3. The period provided for in Article 5(6) of Decision 1999/468/EC is set at three months.

Article 25

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2002 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.

Article 26

Council Directive 93/75/EEC is hereby repealed twenty-four months after the adoption of this Directive.

Article 27

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 28

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX I

Information notified by the ships referred to in Title I

1. Information referred to in Article 5

- A - Ship identification (name, call sign, IMO identification number or MMSI number)
- C or D: Position
- G - Port of departure
- I - Port of destination and estimated time of arrival
- P – Cargo and, if dangerous goods present on board, quantity and IMO class
- W - Total number of persons on board
- X - Various information:

- Address for the communication of cargo information,

- Characteristics and estimated volume of bunker fuel, for ships carrying more than 5 000 tonnes of bunker fuel.

2. Information referred to in Article 7

- Ship identification (name, call sign, IMO identification number or MMSI number)
- Ship type
- Position, course, speed and navigational status
- Port of departure, port of destination and estimated time of arrival
- Presence on board of dangerous goods: yes/no
- If yes, address for the communication of cargo information

3. In the event of a change to the information notified pursuant to this Annex, the master of the ship must forthwith inform the coastal authority concerned thereof.

ANNEX II

Prescriptions applicable to on-board equipment

I - Automatic identification systems (AIS)

1. Ships built on or after 1 July 2002

Passenger ships, irrespective of size, and all ships of 300 gross tonnage and upwards built on or after 1 July 2002 which call at a port located in the Community are subject to the carrying requirement laid down in Article 7.

2. Ships built prior to 1 July 2002

Ships built prior to 1 July 2002 which call at a port located in the Community are subject to the carrying requirement laid down in Article 7 according to the following timetable:

- passenger ships: not later than 1 July 2003;
- tankers: not later than the first survey for safety equipment after 1 July 2003;
- ships, other than passenger ships and tankers, of 50 000 gross tonnage and upwards: not later than 1 July 2004;
- ships, other than passenger ships and tankers, of 10 000 gross tonnage and upwards but less than 50 000 gross tonnage: not later than 1 July 2005;
- ships, other than passenger ships and tankers, of 3 000 gross tonnage and upwards but less than 10 000 gross tonnage: not later than 1 July 2006;
- ships, other than passenger ships and tankers, of 300 gross tonnage and upwards but less than 3 000 gross tonnage: not later than 1 July 2007.

II – Voyage data recorder ("black box")

Ships in the following classes must, inasmuch as they call at a port located in the Community, be fitted with a voyage data recorder (black box) meeting the performance standards of IMO Resolution A.861(20) and the testing standards set by Standard No 61996 of the International Electronics Commission (IEC):

- passenger ships built on or after 1 July 2002, not later than the date on which this Directive enters into force,
- ships, other than passenger ships, of 3 000 gross tonnage and upwards, built on or after 1 July 2002, not later than the date on which this Directive enters into force
- passenger ships built before 1 July 2002, not later than 1 January 2004,
- cargo ships of 20 000 gross tonnage and upwards, not later than 1 January 2007,

– cargo ships of between 3 000 and 20 000 gross tonnage, not later than 1 January 2008.

ANNEX III

Information to be notified pursuant to Article 10

1 Ship identification (name, call sign and, where appropriate, IMO identification number)

2 Port of destination

3 Time of departure of a ship leaving a port in a Member State (Article 10(1))

4 Estimated time of arrival at the port of destination or pilot station, as required by the competent authority, and estimated time of departure from that port (Article 10(2))

5 The correct technical names of the dangerous or polluting goods, the United Nations (UN) numbers where they exist, the IMO hazard classes in accordance with the IMDG, IBC and IGC Codes and, where appropriate, the class of the ship as defined by the INF Code, the quantities of such goods and their location on board and, if they are being carried in haulage units other than tanks, the identification numbers thereof

6 Confirmation that a list or manifest or appropriate loading plan giving details of the dangerous or polluting goods carried and of their location on the ship is on board

7 Address from which details of the cargo may be obtained

ANNEX IV
EDIFACT electronic messages

The EDIFACT messages referred to in Article 10(4) are as follows:

- MOTREQ ("Vessel Data Request"): message sent where information is required concerning both a specific ship and the dangerous or polluting goods on board;
- APERAK ("Application Acknowledgement"): message indicating that data relating to the ship concerned are available and will be sent, or that they are not available;
- VESDEP ("Vessel Movement Data"): message giving detailed information regarding the voyage of the ship concerned;
- IFTDGN ("Hazardous Cargo Data"): message specifying the nature of the dangerous or polluting cargo being carried;
- BAPLIE ("Bayplan"): message supplying information on the location of goods on board the ship.

ANNEX V

Measures available to Member States in the event of a threat to maritime safety and the protection of the environment (pursuant to Article 16(1))

Where, following an incident or circumstance of the type described in Article 14 affecting a ship falling within the scope of this Directive, the competent authority of the Member State concerned deems, within the framework of international law, that it is necessary to avert, lessen or remove a serious and imminent threat to its coastline or related interests, the safety of other ships and their crews and passengers or of persons on shore or to protect the marine environment, that authority may, *inter alia*:

- restrict the movements of the ship or direct it to follow a specific course. This requirement does not affect the master's responsibility for the safe handling of his ship,
- give official notice to the master of the ship to put an end to the threat to the environment or maritime safety,
- send an evaluation team aboard the ship to assess the degree of risk, help the master to remedy the situation and keep the competent coastal station informed thereof,
- instruct the master to put in at a port of refuge in the event of imminent peril, or cause the ship to be piloted or towed.

FINANCIAL STATEMENT

1. TITLE OF OPERATION

Proposal for a Directive of the European Parliament and of the Council establishing a Community monitoring, control and information system for maritime traffic

2. BUDGET HEADING INVOLVED

Part A (see paragraph 10)

Part B (see paragraph 7) - Article B2-702: Preparation, evaluation and promotion of transport safety

3. LEGAL BASIS

Safety of maritime transport: Article 80(2) of the Treaty

4. DESCRIPTION OF OPERATION

4.1 General objective

To set up a monitoring, control and information system for maritime traffic in order to improve both prevention and intervention in the event of an accident or the threat of pollution to the coasts of the Member States

4.2 Period covered and arrangements for renewal or extension

Indefinite

5. CLASSIFICATION OF EXPENDITURE OR REVENUE

5.1 Non-compulsory expenditure

5.2 Differentiated appropriations

5.3 Type of revenue involved: none

6. TYPE OF EXPENDITURE OR REVENUE

Operating and administrative expenditure on monitoring and enforcing the application of the Directive.

The proposed measure's impact on the Community budget will be minor, basically involving the organisation of meetings with shipping experts from the Member States. In addition, in accordance with the objectives set out in Article 20(2), the European Maritime Safety Agency ought in principle to take on, and finance, a number of tasks relating to the implementation of the Directive. To ascertain the financial impact of setting up this structure, reference should

therefore be made to the Financial Statement annexed to the proposal for a Regulation of the European Parliament and of the Council establishing a European Maritime Safety Agency. In this context, the bulk of the expenditure should pass through the budget of the European Maritime Safety Agency.

In addition, the meetings with shipping industry experts may entail some operational expenditure. The appropriations provided for such expenditure are specified in Table 7.2 and will be covered by budget line B2-702.

7. FINANCIAL IMPACT

7.1 Method of calculating total cost of operation (relationship between individual and total costs)

The total cost is calculated by adding together the individual costs on a yearly basis, starting with the year "n" in which the proposed Regulation will enter into force (see Table 7.2).

These individual costs consist of an annual sum of EUR 5 000 for organising a one-day meeting of shipping industry experts once a year. Expenditure is also envisaged for publishing information and promoting the European system, notably to make the shipping industry aware of the requirements and procedures laid down by the Directive. EUR 10 000 could thus be committed in the first year of implementation, with an updating possibly being considered after five years (EUR 5 000).

7.2 Operational expenditure on studies, experts, etc., included in Part B of the Budget

CA in EUR million (current prices)

	Year n	n+1	n+2	n+3	n+4	n+5 and subs. yrs	Total
– Expert meetings[9]		0.005	0.005	0.005	0.005	0.005	0.025
– Information and publications		0.010				0.005	0.015
Total		0.015	0.005	0.005	0.005	0.010	0.040

[9] Expenditure meeting the criteria referred to in the Commission's communication of 22.4.1992 (SEC(92) 769).

7.3 Indicative schedule of commitment/payment appropriations

EUR million

	Year n	n+1	n+2	n+3	n+4	n+5 and subs. yrs	Total
Commitment appropriations		0.015	0.005	0.005	0.005	0.010	0.40
Payment appropriations							
Year n n+1 n+2 n+3 n+4 n+5 and subsequent years		0.015	0.005	0.005	0.005	0.005	0.015 0.005 0.005 0.005 0.010
Total		0.015	0.005	0.005	0.005	0.005	0.040

8. FRAUD PREVENTION MEASURES

Monitoring compliance with the procedures for inviting Member State experts to meetings of the committee.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1 Specific and quantified objectives; target population

- Specific objectives: links with general objective

Setting up a framework for cooperation between the Member States and the Commission, involving organisation of meetings with shipping experts, *inter alia* to prepare for extending the coverage of the European monitoring, control and information system for maritime traffic.

- Target population: distinguish as applicable for each objective; indicate the end-beneficiaries of the Community's financial contribution and the intermediaries involved.

Not applicable.

9.2 Grounds for the operation

- Need for Community financial contribution, with particular reference to the principle of subsidiarity.

There is no provision for financial aid from the Community. However, it may be that some Member States, in pursuit of the Directive's objectives, put forward projects relating to infrastructure or equipment to manage maritime traffic, with a view to obtaining financial support from the Community. For the record, various projects of this type have already received Community funding

via the funds set up for implementation of the trans-European transport networks, the Cohesion Funds and the ERDF.

- Choice of ways and means

* advantages over possible alternatives (comparative advantages)

Not applicable.

* explanatory reference to similar Community or national operations

Not applicable.

* spin-off and multiplier effects expected

Not applicable.

- Main factors of uncertainty which could affect the specific results of the operation

No appreciable factors of uncertainty.

9.3 Monitoring and evaluation of the operation

- Performance indicators selected

* output indicators (measuring activities used)

The main resources required will be provided by the Commission and the European Maritime Safety Agency.

* impact indicators (measuring performance against objectives)

The main impact indicators are the proposals drawn up jointly by the Commission and the Member States to supplement and extend the information and monitoring system. In accordance with the international rules in force, these proposals should be submitted for approval to the International Maritime Organisation.

One function of the European Maritime Safety Agency will also be to monitor and evaluate the effectiveness of the Directive's implementation.

- Details and frequency of planned evaluations

The frequency of evaluation depends on the European Maritime Safety Agency's activities.

- Assessment of the results obtained (where an existing operation is continued or renewed)

Information gained from contacts between the Commission and experts from the Member States, and from the Agency's activity reports, will be used to assess the need to update and amend the Directive.

10. ADMINISTRATIVE EXPENDITURE (PART A OF SECTION III OF THE BUDGET)

10.1 Effect on the number of posts

The proposal's impact on Part A of the Budget is generally limited. Regular monitoring of the Directive's implementation will be required, including preparation of and participation in various meetings and coordination activities with the Member States. Aside from that, a large proportion of the management tasks should be taken on by the European Maritime Safety Agency.

Type of post		Staff to be assigned to managing the operation		of which		Duration
		permanent posts	temporary posts	using existing resources in the DG or service concerned	with recourse to additional resources	
Officials or temporary agents	A B C	0.5 - -	0.5 - -	1.0 - -	- - -	Indefinite -
Other resources		-	-	-	-	-
Total		0.5	0.5	1.0	-	Indefinite

10.3 Increase in other administrative expenditure as a result of the operation, in particular expenditure on meetings of committees and groups of experts

EUR

Budget line (No and heading)	Amounts	Method of calculation
A 7031 (compulsory committees)	€ 9 750	The regulatory committee set up for the purposes of this Directive should on average meet for one day once a year to discuss particular issues relating to implementation of the Directive's provisions. Reimbursement of the travel costs of Government experts required to attend this meeting is estimated at an average of EUR 650 per expert (to be multiplied by 15).
Total	€ 9 750	

THE AFOREMENTIONED EXPENDITURE UNDER TITLE A7 OF THE BUDGET WILL BE COVERED BY APPROPRIATIONS FROM THE OVERALL ALLOCATION FOR DG TREN.

EXPLANATORY MEMORANDUM

GENERAL INTRODUCTION

1 Present situation and problems

The compensation of victims of an accidental oil spill caused by oil tankers forms an important aspect of the overall regulatory framework for marine oil pollution and is consequently an issue of major importance for the European Commission. As was pointed out in its Communication on the safety of seaborne oil trade of 21 March 2000 (COM(2000) 142 final), the Commission considers that the existing international liability and compensation regime, while having served its purpose relatively well over the last decades, entails a number of shortcomings. The most pressing one is the inadequacy of the current limits for liability and compensation. Some recent accidents, most notably the sinking and consequential oil spill of the *Erika* in December 1999, have clearly shown the insufficiency of the existing limits, having the consequence that victims of an oil spill may not be fully compensated and also contributing to significant delays in the payment of compensation. For this reason, the Commission has decided to act particularly quickly in order to create a mechanism for raising the limits of compensation in order to ensure that future oil spills in Europe will be adequately compensated. The other shortcomings need to be rectified as well, but it is considered that they could be addressed over a slightly longer period of time. Outside the scope of liability and compensation, the Commission also proposes to introduce a sanction of a penal nature for established grossly negligent behaviour on behalf of any person involved in the transport of oil at sea.

2 Background

The transport of oil by sea is an intrinsically hazardous activity, which entails considerable risks for the marine environment. The full scale of the environmental threats posed by the rapid growth in tanker traffic and ship size became apparent in March 1967 when the 120 000 tonne deadweight Liberian-flagged tanker *Torrey Canyon* ran aground on the Seven Stones' reef off Land's End, UK. This resulted in 119 000 tonnes of crude oil being spilled causing severe pollution along the coasts of southwest England and northern France.

This disaster prompted the international community to elaborate, through the International Maritime Organization, a number of instruments aimed at improved safety of oil tankers and increased protection of the marine environment, including two conventions laying down detailed rules of liability and compensation for pollution damage caused by oil tankers.

The 1969 International Convention on Civil Liability for Oil Pollution (CLC) and the 1971 International Convention setting up the Oil Pollution Compensation Fund (Fund Convention) entered into force in 1975 and 1978 respectively. The two conventions established a two-tier liability system, which builds upon a strict but limited liability for the registered shipowner and a Fund, financed by oil receivers, which provides supplementary compensation to victims of oil pollution damage who cannot obtain full compensation for the damage from the shipowner.

This regime has been revised in substance only once, in the early 1980's. That revision resulted in the 1984 Protocols to the two conventions which never entered into force, due to lack of sufficient ratification by oil receiving States. In the early 1990's, a new effort was made to bring the modifications into force. The resulting 1992 Protocols retained the

substance of the 1984 amendments, but modified the entry into force requirements. These Protocols to the CLC and Fund Conventions entered into force in 1996. All EU Member States with a coastline are now parties to the two 1992 Protocols, except Portugal which is still in the process of finalising the ratification procedures.

The USA does not participate in this international liability and compensation regime. The *Exxon Valdez* accident in Alaska in 1989 brought discussions of a potential US accession to the system to an end. Instead, the US decided to create, within the framework of the 1990 Oil Pollution Act, a separate federal liability regime, with the possibility for individual states to introduce more stringent legislation.

3 Summary of the 1992 international liability and compensation system

The 1992 regime covers pollution damage caused by spills of persistent oil from tankers in the coastal waters (up to 200 miles from the coastline) of the participating States. The loss and damage covered by the regime includes property and, to some extent, economic losses and costs of environmental restoration as well as preventive measures, including clean-up costs.

The first liability tier, the liability of the registered shipowner, is governed by the CLC. The shipowner's liability is strict and thus not depending on fault or negligence on his part. The owner is normally allowed to limit his liability to an amount which is linked to the tonnage of the ship, presently maximum EUR 90 million for the biggest ships, in the case of the *Erika* only around EUR 13 million. The shipowner loses the right to limit his liability only if it is proved that the pollution damage "resulted from his personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result". The CLC also requires shipowners to maintain liability insurance and gives claimants the right of direct action against the insurer up to the limits of the shipowner's liability. Through the 'channelling' of the liability to the registered shipowner only, many other parties, including notably the ship's manager, operator and the charterer, are explicitly protected from liability claims, unless their negligence amounts to the same as that of shipowners' loss of right to limit their liability, quoted above.

The CLC regime is supplemented by the International Oil Pollution Compensation Fund (the IOPC Fund), which was established through the Fund Convention in order to compensate victims when the shipowner's liability is insufficient to cover the damage. Recourse to the IOPC Fund may take place in three cases. The most common is where the damage exceeds the shipowner's maximum liability. The second case is where the shipowner can invoke any of the defences allowed in the CLC[10]. The last case is where the shipowner (and his insurer) are financially incapable of meeting their obligations. The maximum compensation by the IOPC Fund is around EUR 200 million. The IOPC Fund is financed by contributions from companies or other entities receiving oil carried by sea. In the event of an oil spill, thus, all oil receivers world-wide which are established in the States parties to the Fund Convention will contribute to the compensation as well as to the administrative expenses of the Fund, wherever the pollution damage has occurred. The IOPC Fund will not pay compensation if

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[10] According to Article III.2 of the CLC the shipowner is exempted from liability if he proves that the damage:
(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or
(b) was wholly caused by an act or omission done with intent to cause damage by a third party, or
(c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

the pollution damage resulted from an act of war or was caused by a spill from a warship. It also has to be proved that the oil originated from a tanker.

Victims of oil spills may present their claims directly against the IOPC Fund and, to the extent claims are justified and meet the relevant criteria, the Fund will compensate the claimant directly. If the total of approved claims exceeds the maximum limit of the IOPC Fund all claims will be reduced proportionately. Claimants may also decide to pursue their claims before the courts of the State where the damage occurred. Since it was first established in 1978, the IOPC Fund has dealt with some 100 cases, most of which have been within the limits of compensation and thus fully compensated according to the Fund's own assessment as to the validity of claims.

4 Assessment of the international liability and compensation regime

4.1 Assessment criteria

In its Communication on the safety of the seaborne oil trade, the Commission established three criteria against which the adequacy of a compensation system needs to be assessed.

(1) It should provide prompt compensation to victims without having to rely on extensive and lengthy judicial procedures.

(2) The maximum compensation limit should be set at a sufficiently high level to cover claims from any foreseeable disaster occurring as a result of an oil tanker accident.

(3) The regime should contribute to discouraging tanker operators and cargo interests from transporting oil in anything other than tankers of an impeccable quality.

Following the Erika accident, the Commission was bound to examine the existing international system, provided by the CLC and Fund conventions, in the light of these criteria. The Commission's assessment is that the international system satisfies some of these concerns but not all of them.

4.2 Procedures of compensation

Regarding the promptness of compensation and the general functionality of the system, the Commission recognises that the existing international oil pollution liability and compensation system provides some important benefits, some of which are instrumental in ensuring the prompt compensation for incidents potentially involving a number of parties under different legal jurisdictions. The way the system is built, claimants generally have no difficulty in identifying the liable party nor need they prove fault or negligence on behalf of the shipowner in order to obtain compensation. Questions relating to the nationality of the ship or its owner and the owner's financial situation are similarly unconnected to the availability of compensation within the limits, thanks to the requirements of compulsory insurance and the right of direct action against the insurer. Such features contribute to a more expeditious settlement of claims and to facilitating the general administration of the system.

As regards the financing of the Fund too, a relatively straightforward mechanism for the contribution of cargo interests has been laid down. The expenses of the IOPC Fund are collectively shared between the main receivers of crude oil and/or heavy fuel oil in the participating States in a proportion corresponding to the quantities of oil received by each receiving company. The quantities of received oil are reported by the Governments of the States parties to the IOPC Fund, which invoices the oil receivers directly, based upon an

estimate of the expenses for the forthcoming year. Governments are not responsible for these payments, unless they have voluntarily accepted such responsibility. In general, this system has worked satisfactorily and it has normally been possible to collect the required means within a reasonable period of time. There is, however, still a problem with some States which fail to notify the quantities of received oil, leading to difficulties for the IOPC Fund to collect the contributions from oil receivers in those States.

Bearing in mind the considerable inventiveness involved in the development of the international liability and compensation regime for oil spills, it has, generally speaking, proved to be workable. The vast majority of some 100 cases of oil spill compensation cases which have been dealt with by the IOPC Fund have been satisfactorily resolved in the sense that the procedures of assessing and paying the claims have been relatively smooth. Claimants have normally chosen to settle their claims directly with the Fund, outside courts, which indicates that there is a considerable degree of acceptance as regards the assessment of claims made by the IOPC Fund.

By no means all cases have been swift and straightforward, however. Most, if not all, oil spills that threaten to exceed the maximum compensation limit have encountered significant delays in the payment of compensation, because of uncertainty as to the final cost of the oil spill. If it appears that the total of valid claims may exceed the maximum amount of compensation available, it will result in a 'prorating' of approved claims, that is, claimants will receive only a certain percentage of their compensation until all potential claims emanating from the incident have been submitted and assessed, which normally will take several years. In addition, major oil spills and subsequent dissatisfaction with the compensation procedures tend to increase the role of national courts in the settlement process, which often lead to further complexities and delays. Consequently, compensation procedures in major oil spills have normally been both complex and slow. A number of high-profile European oil spills in the 1990's, such as *Aegean Sea* (Spain, 1992), *Braer* (UK 1993), *Sea Empress* (UK, 1996) have encountered such problems and claimants who have suffered damage from those spills still do not know if and when they will receive full compensation. There are no indications that the *Erika* oil spill will be different in this respect.

The Commission considers that such long delays in the payment of compensation are unacceptable. It does, however, acknowledge the strong correlation between the length of proceedings and the risk of reaching the limit for the maximum available compensation amount. Given the consequences of nearing the maximum limit outlined above, the Commission takes the view that the unacceptably long delays in payment of compensation are primarily due to insufficient limits of compensation rather than deficiencies inherent in the compensation procedures as such. Some other elements in the system, which may contribute to delayed payments or otherwise complicate the compensation of victims, are currently being examined by a working group within the IOPC Fund[11]. The Commission takes part in this work and hopes that it will produce some additional measures improving the prospects of fair and prompt compensation of victims. In conclusion, therefore, the Commission considers that the existing international compensation system, notwithstanding some important exceptions, satisfies the first criterion relating to the adequacy of the procedures for compensating victims of an oil spill.

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[11] The items which have been taken up for discussion in this respect include the question of priority treatment of certain claims and a more general review of the procedures on submission and handling of claims.

4.3 Adequacy of limits

The inadequacy of compensation limits is, in the view of the Commission, the most important shortcoming of the international system. Inadequate limits have the consequence that victims of an expensive oil spill may not receive full compensation even if the validity of their claims has been established. This is questionable from a point of view of principle. In addition, as explained above, inadequate limits almost inevitably contribute to uncertainty and delays in the settlement of claims. In effect, therefore, insufficient limits have the consequence that a victim of a major oil spill is likely to be compensated later and less than a person having suffered similar damage from a smaller oil spill. The Commission considers this to be difficult to justify.

Out of some 100 oil spills dealt with by the IOPC Fund so far, some ten have raised more serious doubts as to the sufficiency of the limits and/or the promptness of settling claims. This may not seem much, in particular when bearing in mind that a large proportion of the world's tanker oil spills do not trigger IOPC Fund action at all, as they are settled with the shipowner under the CLC Convention if the totality of claims does not exceed the limit of the shipowner's liability. It is also true that most of the problematic cases have occurred under the 'old' regime before the entry into force of the 1992 Protocols which more than doubled the available maximum amount of compensation.

Such statistics are largely irrelevant, however, if one, like the Commission, takes the view that all oil spills shall be adequately and promptly compensated. It is not acceptable that citizens and other victims who have suffered at times dramatic consequences of a major oil spill are not fully compensated. The maximum limits should therefore cover any foreseeable disaster. The distance between that goal and the present situation is evidenced by the fact that both major oil spills (*Nakhodka*, Japan, 1997 and *Erika*, France, 1999) that have occurred since the 1992 regime took effect have cast serious doubts as to the sufficiency of the new limits, despite rather limited amounts of fuel oil released at both occasions[12]. Claims of the *Erika* accident are likely to exceed that amount considerably, meaning that its victims will have to rely on voluntary undertakings by the Government and the oil company concerned in order to obtain even the most essential compensation. The Commission finds it difficult to see how such compensation limits could meet the criteria of being satisfactory.

The insufficiency of the existing limits may not be surprising when one considers that those limits were developed in the early 1980's and thus took effect in Europe some 12-20 years later, depending on the time of ratification by the Member States. Following the *Erika* accident, the process has already started whereby the existing limits of the CLC and Fund Conventions will be increased, according to a specific simplified amendment procedure envisaged in the Conventions. The maximum increase under this procedure depends on a number of factors and will not at present facilitate an increase of more than some 50% of the current limits. The first decisions to approve this increase were taken in October 2000 and the amendments will, if finally adopted, be applicable at the earliest on 1 November 2003.

The Commission considers that a 50% increase of the existing limits, providing a total of some EUR 300 million, which will come into effect in three years' time, is insufficient to guarantee adequate protection for victims of a potential major oil spill in Europe. As already stated, it considers that any foreseeable pollution disaster should be fully covered by the

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[12] The *Nakhodka* incident resulted in the release of some 6,200 tonnes of medium fuel oil while the spill of the *Erika* is estimated to be around 19,000 tonnes of heavy fuel oil.

compensation system, not only for today but also for some time in the future. The proposed increase would seemingly not even cover the total claims of the *Erika* accident.

The sufficiency of the limit also needs to be evaluated in the context of the type of damage that is covered by the regime. If the range of damage to be covered is extended, the amounts will obviously have to be raised accordingly. Since, as explained below, it is the view of the Commission that compensation of environmental damage should be extended, it follows that a significant rise in the overall limits is further justified.

It is considered that an overall ceiling of EUR 1,000 million would provide the necessary safeguard of coverage for any foreseeable disaster. This limit is more consistent with the ceiling of the Oil Spill Liability Trust Fund established under federal laws in the United States and with existing insurance practices as regards shipowners' third party liability cover for oil pollution, which may come into play if the limitation under the CLC is not applicable.

To conclude, the existing maximum limits of the CLC and Fund Conventions fall well short of being adequate. In order to ensure decent compensation for European citizens following an oil spill, and greater correspondence to the compensation of the US Oil Spill Liability Trust Fund, the maximum amount should be set at EUR 1,000 million. The argument that such accidents are likely to happen rarely cannot, in the view of the Commission, provide a justification for setting limits under the costs of entirely conceivable oil pollution incidents and thereby seriously compromising the adequate compensation of victims.

4.4 Responsibilities and liabilities

4.4.1 General

For any liability and compensation system to be considered adequate, it needs not only to provide adequate compensation, but should also reflect a fair balance between the responsibilities of the players concerned and their exposure to liability. In addition, a liability system should, where possible, contribute to discouraging the stakeholders from deliberately taking risks which could be devastating for the protection of lives and the environment.

The Commission considers that the international regime for liability and compensation of oil pollution damage entails a number of shortcomings in this regard. The way the liability system is construed it produces few incentives for the players to ensure that oil is only carried on board tankers of an impeccable quality. As illustrated by the fact that ships in an appalling condition continue to be employed for transportation of oil in Europe and elsewhere, neither carriers nor cargo interests have sufficient disincentives to give up their intolerable practice of deliberately providing and using low-quality tonnage for transport of oil at sea.

More particularly, those shortcomings include the following features, all of which are at odds with more recent environmental liability developments at international and Community level:

4.4.2 The threshold for losing limitation right

The right of shipowners to limit their liability is practically unbreakable. As already indicated, the owner of a ship does not lose the right to limit, unless it is proven that the damage "resulted from his personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result". Negligence or even gross negligence on behalf of the owner does not meet these criteria and it is evident that in

most circumstances it would be very difficult to breach this threshold. While it is true that the quoted phrase has its equivalents in some other maritime liability conventions, the Commission fails to see the justification for copying such an unassailable test for the loss of the limitation right into the oil pollution liability regime. It considers that the extraordinary risks involved in the transport of oil by sea need to be reflected in a greater exposure of the shipowner to unlimited liability.

The problems of nearly unbreakable rights are further aggravated by the methods by which the shipowner's liability is established. It is solely calculated on the basis of the size of the ship, ignoring factors such as the nature of cargo carried and the amount of oil spilled. The owner of the *Erika*, for instance, could thus count on a right to limit his liability to some EUR 13 million, with a very limited risk of losing this right due to any potential conduct on his part, whether before or during the incident.

In many environmental liability regimes developed in the 1990's the trend has been to abolish limitations of liability. This is equally true for the evolving Community environmental liability regime, as outlined in the Commission's White Paper on Environmental Liability (COM(2000) 66 final). Normally, however, such unlimited liability rules are not coupled with compulsory insurance requirements. That may not be a problem for land-based sources of pollution, as the identification of and jurisdiction over the liable person normally will not generate difficulties. In the case of maritime pollution the situation is different, as the polluter may be of any nationality and otherwise difficult to trace. Compulsory insurance and a right of direct action against the insurer are therefore instrumental if the protection of victims is to be ensured. However, a potentially unlimited liability does not necessarily mean that the whole liability needs to be covered by insurance. It is perfectly possible to envisage a system, in which the insurance requirement is restricted to the limits of the strict liability, whereas the fault-based unlimited liability is borne by the owner himself. A case in point in this regard is the newly adopted Liability Protocol to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal[13]. It is further worth noting that even within the international oil spill compensation system itself, a significantly lower threshold for loss of right to limitation, that of 'actual fault or privity' on behalf of the owner, was applied until 1996 through the 1969 CLC Convention. As far as is known, this wording did not cause any major complications in the international oil pollution liability regime throughout its 25 years of operation.

The Commission therefore considers that the current threshold for loss of limitation rights should be lowered in order to bring it into line with other comparable regimes. At least proof of gross negligence on behalf of the shipowner should trigger unlimited liability. Such a measure would relate the exposure to liability more closely to the conduct of the shipowner and would thus produce both preventive and punitive effects.

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[13] The 1999 Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal provides for strict liability up to certain minimum limits, which shall be covered by insurance. Article 5 of the Protocol provides that without prejudice to the strict liability "any person shall be liable for damage caused or contributed to by his lack of compliance with the provisions implementing the Convention or by his wrongful intentional, reckless or negligent acts or omissions." Article 12(2) goes on by providing that "there shall be no financial limit on liability under Article 5".

4.4.3 Protection of other parties than the registered shipowner

The liability for oil pollution damage is channelled to the registered shipowner only. The channelling of liability to one specified person has some advantages in providing clarity as to the liable party, thus facilitating the identification of the person to whom claims for compensation should be made. Channelling of liability is also a device for avoiding multiple insurance and hence contributes to higher theoretical levels of the liability to be insured. However, the type of channelling which is provided under the CLC goes some steps further by explicitly prohibiting claims against a number of other players (including notably, operators, managers, charterers), who may well exercise as much control over the transport as the registered owner of the ship. These persons are protected from any compensation claims unless the damage "resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result" (which is the same test as that relating to the shipowner's loss of the right to limit his liability). Such protection of a number of key players implies that those persons can act within an almost assured protection from compensation claims following an oil pollution incident.

The Commission considers that such protection of key players is counterproductive with regard to its efforts of creating a sense of responsibility in all parts of the maritime industry. Therefore, it is of the opinion that the prohibition of claiming compensation from a number of key players involved in the transport of oil at sea should be removed from the CLC Convention and that, to the extent protection of certain players is considered to be necessary for the functioning of the system, the threshold should at least be lowered to the same as that advocated for the shipowner above. As to the practicalities of such a measure, it can be noted that here, too, the regime that applied until 1996, when the 1992 protocols entered into force, provided for a much less rigorous channelling by only excluding the servants or agents of the shipowner, and even for them only insofar as the damage was not due to their own fault or privity.

4.4.4 Environmental damage

The type of damage covered by the existing CLC/IOPC Fund regime is mostly centred on damage to or loss of property and economic losses. As regards environmental damage, it covers preventive measures, which includes clean-up costs, and "reasonable measures of reinstatement undertaken or to be undertaken". The loss to the environment as such is thus not subject to compensation, the principal reason being the difficulty involved in assessing and quantifying this type of damage.

The Commission acknowledges that there are problems involved in covering damage to the environment *per se* and considers that the assessment of such damage should be quantifiable, verifiable and predictable in order to avoid a wide variety of interpretations between the various parties to the regime. However, consistency with compensation of environmental damage from other sources of pollution is equally important. From a Community perspective it is not justifiable that compensation of environmental damage varies widely depending on whether the pollutant was an oil tanker, another ship or a factory on shore[14]. In the context of the forthcoming proposal for a Directive on environmental liability, the Commission is presently undertaking a study on the evaluation of environmental damage, which could

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[14] In the Commission's White Paper on environmental liability, the Commission indicated its intention to cover 'damage to biodiversity' in a future instrument. This type of damage would relate to significant damage in EC-protected natural resources in the Natura 2000 areas. In this context a system for valuing natural resources is considered necessary (paragraph 4.5.1 of COM (2000) 66 final).

provide useful input for the assessment of damage in that Directive. Without prejudice to any future proposal to be made in the context of a general Community-wide environmental liability regime, the Commission considers that the existing coverage of reinstatement costs could be expanded to include at least costs for assessing the environmental damage of the incident as well as costs for the introduction of components of the environment equivalent to those that have been damaged, as an alternative in case reinstatement of the polluted environment is not considered feasible[15]. The Commission's position will be reconsidered in light of the forthcoming proposal concerning a Community-wide environmental liability regime.

4.5 Conclusion

The assessment above leads the Commission to conclude that the international liability and compensation regime satisfies the first assessment criterion while entailing important shortcomings as to the two others. The importance of the shortcomings is further heightened by the fact that the international regime explicitly prohibits any additional compensation claims to be made outside the convention regime. This means that it would be very difficult for the Community to impose additional individual liabilities on shipowners or any of the protected parties without being in conflict with the international conventions. In case such individual liabilities were introduced at Community level, Member States would thus have to denounce the conventions before being in a position to implement any such Community rules.

The Commission recognises that an international liability and compensation regime provides important benefits, both in terms of uniformity and straightforwardness and in terms of sharing the costs for oil spills, wherever they occur, among oil receivers world-wide. It therefore concludes that introducing measures that would necessitate the denunciation of the international regime by the Member States would be counterproductive at this stage. As outlined in its Report for the Biarritz European Council (COM (2000) 603 finai), the Commission takes the view that considerable efforts need to be put in amending the conventions along the lines outlined above, while addressing the insufficiency of the existing limits as an immediate priority at Community level.

5. Proposed action

A series of measures are needed in order to improve the existing liability and compensation regime. Some of them require Community measures, while others may be addressed within the international framework.

5.1 Creating a supplementary compensation fund in Europe

Raising the compensation limits of the existing system is the most pressing concern, as it is the one most directly concerned with the adequate compensation of victims of an oil spill. In order to remedy this, the Commission proposes to complement the existing international two-tier regime through the creation of a European supplementary 'third-tier' fund, which would compensate internationally valid

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[15] Along these lines, Article 2.8 of the 1993 Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment defines 'measures of reinstatement' in the following way: "any reasonable measures aiming to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. Internal law may indicate who will be entitled to take such measures."

claims relating to oil spills in European waters which exceed the limit of the IOPC Fund.

The Fund for Compensation for Oil Pollution in European waters (the COPE Fund) will thus 'top up' the financial means of the IOPC Fund in cases where claims that are deemed to be valid under the latter regime cannot be fully compensated due to insufficient resources. Compensation by the COPE fund would be based on the same principles and rules as the current IOPC Fund system, but subject to a ceiling which is deemed to be sufficient for any foreseeable disaster, i.e. EUR 1,000 million.

The COPE fund will be financed by European oil receivers according to procedures similar to those of contributions to the IOPC Fund. Thus, the combined financial means of the contributions by European oil receivers will be available to cover pollution damage in any Member State. The COPE Fund is intended to provide a guarantee for European citizens that they will be adequately compensated, until the levels of the international regime are set at a sufficiently high level. Apart from providing a five-fold increase of available compensation, the funds of the COPE Fund may also be used for accelerating the full compensation of victims of a European oil spill. With the help of these means claims may be compensated in full as soon as their eligibility has been confirmed, without awaiting the outcome of the time-consuming process of establishing the final costs of the accident and the resulting prorating problem in the international regime, described in section 4.2. In this way victims may receive their full compensation at an earlier stage, while the financial settlement at the end of the case, once the total costs are known, would be settled bilaterally between the IOPC Fund and the COPE Fund. By its nature the COPE Fund would only be activated once a spill that exceeds, or threatens to exceed, the international maximum limits has occurred in EU waters.

5.2 Addressing the other shortcomings in the international system through the IMO

In order to achieve a closer link between exposure to liability and the conduct of the various parties concerned, the Commission considers that a thorough overhaul of the existing regime should be undertaken in parallel.

The rectification of the shortcomings described in section 4 can, in the judgement of the Commission, be addressed within the international community and, indeed, the first steps in this direction have already been taken. The Commission considers that this work should ultimately result in amendments to the existing legal instruments introducing significantly higher limitation amounts as well as advancement regarding the shortcomings indicated in section 4.4 above, while still safeguarding the 'user-friendliness' of the system with regard to claimants seeking compensation.

The Commission therefore requests the Council to advance this matter as soon as possible with a view to achieving a thorough review of the international liability and compensation regime. More particularly, the Community shall submit a request to the International Maritime Organization or the IOPC Fund, as appropriate, with a view to achieving the following amendments to the Liability Convention:

- The liability of the shipowner shall be unlimited if it is proved that the pollution damage resulted from gross negligence on his part;

- The prohibition of compensation claims for pollution damage against the charterer, manager and operator of the ship shall be removed from Article III.4(c) of the Liability Convention;

- Compensation of damage caused to the environment should be reviewed and widened in light of comparable compensation regimes established under Community law.

Apart from the measures to improve the existing international oil pollution liability regime, an advancement regarding the regime for liability and compensation for hazardous and noxious substances is necessary. An international convention on this subject was adopted in 1996 but has not been ratified by any Member State and is not in force[16]. The sinking of the chemical tanker *Ievoli Sun* off the Channel Islands on 31 October 2000, was the latest incident to highlight the highly unsatisfactory regulatory situation regarding the liability and compensation of hazardous substances other than oil. This issue needs to be addressed as a matter of priority at international and European level.

If efforts to achieve the appropriate improvements to the international liability and compensation rules fail, the Commission will make a proposal for adopting Community legislation introducing a Europe-wide maritime pollution liability and compensation regime.

5.3 Ensuring, through the Member States legislation that grossly negligent conduct is subject to penalties

The Commission recognises that liability rules as such have limits as regards their effects on the individual responsibility of the players involved in oil pollution incidents. This is particularly so if the liabilities are insurable, which is normally the case.

To complement the measures in the area of liability and compensation described above, the Commission therefore proposes, as announced in paragraph 5.b.iv) in its Communication on the safety of the seaborne oil trade (COM(2000) 142 final), to include in this Regulation an article on financial penalties or sanctions for established grossly negligent behaviour on behalf of any person involved in the transport of oil at sea. This measure is of a penal nature and hence not related to the compensation of damage. Rather it is intended to ensure a Community-wide application of a deterrent sanction for those involved in the transport of oil by sea.

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[16] The following States have signed the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea: Canada, Denmark, Finland, Germany, the Netherlands, Norway, Sweden and the United Kingdom. Only the Russian Federation has ratified it.

JUSTIFICATION FOR A REGULATION

The Treaty provides for the establishment of a common transport policy and the measures envisaged to implement such a policy include measures to improve safety and environmental protection in maritime transport. The adequate compensation of victims of maritime oil spills and the introduction of sanctions for gross negligence in the transport of oil at sea form an integral part of such measures.

While there are international conventions regulating liability and compensation of oil spills, to which all relevant Member States are parties, or will be parties in the near future, recent accidents, most notably the sinking of the *Erika* in 1999, have highlighted the insufficiency of those mechanisms to ensure that the victims are adequately compensated.

The Regulation involves the setting up of a Fund for Compensation of Oil Pollution in European waters (the COPE Fund). Only Member States which have a maritime coastline and ports will be directly concerned by the fund. Austria and Luxembourg would only be indirectly and remotely concerned by this part of the proposal.

Given that a relatively well-functioning international system for compensating oil spills already exists, the most efficient solution to raise the compensation limits is to build upon and complement the international system, thereby avoiding duplication of work and excessive administration. The COPE Fund is therefore largely based upon procedures and assessment carried out within the international system. It is inferred that a certain exchange of information between the proposed European Fund and the existing International Oil Pollution Compensation Fund, either on a more permanent or on a case by case basis, will be necessary for the effective functioning of the system.

An oil spill can cause potentially enormous damage. In accidents where the international compensation limits are exceeded, victims will not, as far as the existing international regime is concerned, be fully compensated. Community-wide action in this field will greatly improve the possibilities to fully compensate victims of a European oil spill by creating a Fund to which oil receivers in all Member States concerned contribute. The available amount of maximum compensation will be raised from the current EUR 200 million to EUR 1,000 million. In addition, the costs of oil spills in European Union waters would be spread among all EU coastal States.

The concrete added value of the proposed measure is thus a five-fold increase of the compensation amount available for compensation compared to existing amounts, a much stronger guarantee that adequate compensation actually will be available and a sharing of the risk of oil spills between all coastal Member States. Another benefit is that the additional funding can be used for expediting the compensation of victims of European oil spills in the International Oil Pollution Compensation Fund, by providing advance payments as soon as the claims have been assessed and approved by the IOPC Fund.

The creation of a compensation fund for oil spills requires a regulatory measure. The parties liable to contribute to the fund, i.e. European oil receivers, are unlikely to contribute with potentially large sums unless they are legally required to do so. In addition, requirements on contribution to, and compensation payments of, the fund are not enforceable in a unified and harmonised way unless they are identical for each Member State and each entity involved. Harmonised rules are therefore instrumental for ensuring uniform implementation of the obligations. Hence it is necessary to ensure uniform application of these provisions in the form of a Regulation.

CONTENT OF THE REGULATION

The proposed Regulation complements the existing international two-tier regime on liability and compensation for oil pollution damage by tankers, provided by the CLC and Fund Conventions, by creating a European supplementary fund, the COPE Fund, to compensate victims of oil spills in European waters. The COPE Fund will only compensate victims whose claims have been considered justified, but who still have been unable to obtain full compensation by the international regime, due to insufficient limits of compensation.

Compensation from the COPE fund would thus be based on the same principles and rules as the current international fund system, but subject to a ceiling which is deemed to be sufficient for any foreseeable disaster, i.e. EUR 1,000 million.

The COPE fund will be financed by European oil receivers. Any person in a Member State who receives more than 150.000 tonnes of crude oil and/or heavy fuel oil per year will have to pay its contribution to the COPE Fund, in a proportion which corresponds to the amounts of oil received. In this way, the oil industry, and indirectly perhaps the consumers of oil products, rather than the taxpayers, would bear the costs of expensive oil spills in Europe.

The COPE Fund will only be activated once an accident that exceeds, or threatens to exceed, the maximum limit provided by the IOPC Fund has occurred in EU waters. If no such accident occurs, the COPE Fund will not require any contributions to be made.

The Commission will represent the COPE Fund. Any major decision relating to the operation of the COPE Fund will be taken by the Commission, assisted by a COPE Fund Committee, which is a management committee under Article 4 of Council Decision 1999/468/EC.

The proposed Regulation finally includes an article introducing financial penalties for grossly negligent behaviour on behalf of any person involved in the transport of oil at sea.

SPECIAL CONSIDERATIONS

Article 1

The purpose of the Regulation is to ensure adequate compensation of pollution damage in EU waters resulting from the incidents involving oil tankers. The bulk of the Regulation consequently addresses what the Commission considers to be the most immediate concern in the current international oil pollution liability and compensation regime, i.e. the insufficiency of the compensation limits. Other shortcomings of the system will be addressed through other means, at least initially, within the international framework. A separate purpose of the Regulation is the establishment of a financial penalty for intentional or grossly negligent acts or omissions leading to oil pollution incidents, as laid down in Article 10.

Article 2

This article defines the geographical scope of application of the Regulation. It covers pollution damage in an area of up to 200 nautical miles from the coastline. The scope corresponds to that applicable in the international regime, which is essential given the very close link between the Regulation and that regime.

Article 3

Article 3 contains the definitions of the key concepts of the Regulation, which in essence duplicate the most relevant definitions of the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 as amended by the 1992 Protocol thereto.

Some of these definitions are arguably unnecessary, given that the close link between the proposed measure and the international compensation system is laid down elsewhere in the Regulation. For reasons of legal clarity, however, the international definitions relating to the responsibilities of the main involved parties have been replicated in Article 3.

Article 4

Article 4 establishes the COPE Fund and sets out its main responsibilities.

Article 5

This article regulates the circumstances as to when and how the COPE Fund shall pay compensation and is thus one of the key articles of the Regulation.

In paragraph 1 and 2 the close link to the International Oil Pollution Compensation (IOPC) Fund is established. In essence this link means that compensation by the COPE Fund will only come into question once victims of a tanker spill in European waters have had their claims approved by the IOPC Fund, but have been unable to recover their full compensation because the totality of valid claims exceed the amount of compensation available under the Fund Convention.

Paragraph 3 ensures that any decision to pay compensation through the COPE Fund is approved by the Commission, assisted by the COPE Fund Committee. If the Commission is unable to approve claims, no compensation will be paid.

Normally, however, it is envisaged that claimants who meet the criteria of paragraphs 1 and 2 will be compensated by the COPE Fund. The main exception is provided by paragraph 4, which allows the Commission a certain discretion as to the extent to which expenses by those most directly involved in the accident will be compensated. This is a mechanism to ensure that a link between the actual conduct of those involved and their right to compensation is established. On the other hand, it is considered important to preserve tne possibility to compensate claims by the persons most involved in the incident. Otherwise shipowners, cargo owners and other crucial parties, who normally are well placed to act immediately after an incident, would be discouraged from contributing to the mitigation of damage.

Paragraph 5 sets the maximum compensation limit of the COPE Fund at EUR 1,000 million, including the share paid through the CLC and Fund Conventions. This is deemed sufficient to cover the full compensation of any foreseeable accident involving an oil tanker and it corresponds to the current maximum level of compensation provided by the Oil Spill Liability Trust Fund in the USA.

Paragraph 6 provides that in the – highly unlikely – event that this maximum of EUR 1,000 million is exceeded, compensation shall be 'pro-rated'. In practice this would mean that each claimant would receive only a given percentage of its established claims. The percentage would be the same for all claimants.

Article 6

Article 6 deals with the income side of the COPE Fund. Contributions to the COPE Fund will only be collected following an incident in EU waters, which is so grave that it exceeds or threatens to exceed the maximum compensation limits of the IOPC Fund.

Confirming existing practices for contribution to the IOPC Fund, which have proved to be workable, the Regulation establishes a symmetry between the persons liable to contribute to the IOPC Fund and those liable to contribute to the COPE Fund. The contribution system is based on the amount of oil received by each receiver and the contribution to the COPE Funds is thus proportionate to the quantities of oil received. Contributions are paid directly by the oil receivers to the Commission.

There is a relatively short time limit as to the collection of contributions, which is justified in view of the importance to have the necessary funding available as soon as possible after the accident has occurred and the assessment of claims for that accident has been undertaken by the IOPC Fund.

In order to ensure that money is not illegitimately collected by the COPE Fund, paragraph 9 provides that any potential surplus which has been levied for a particular incident and has not been used for the compensation for damage in relation to that incident or any immediately related purpose, shall be returned to the contributors.

Paragraph 10 provides that Member States which do not fulfil their obligations as regards the COPE Fund shall be liable to compensate the COPE Fund for any loss caused thereby.

Article 7

The right of subrogation by the COPE Fund is laid down in Article 7. This provision provides for the possibility of the COPE Fund recovering at least parts of its expenses through recourse action against various parties involved in the incident, to the extent such action is not prohibited in the international conventions.

Article 8

Article 8 provides that the representation of the COPE Fund will be taken on by the Commission. It imposes a number of specific tasks for the Commission in this respect which are necessary for carrying out the functions of the Fund.

Article 9

The COPE Fund Committee will assist the Commission in operating the Fund, in the sense that the main decisions relating to the operation of the COPE Fund will be made by the Commission in accordance with established comitology procedures. The COPE Fund Committee is a management committee under Article 4 of Council Decision 1999/468/EC[17]. The article fixes the period for the Council to act to one month, given the need for urgent decisions by the COPE Fund Committee.

Article 10

Article 10 provides for financial penalties or sanctions for established grossly negligent conduct on behalf of any person involved in the transport of oil at sea. This measure is of a penal nature and hence not related to the compensation of damage. By covering any incident involving oil pollution at sea, this article, unlike the rest of the Regulation, covers oil pollution from any ship, whether or not an oil tanker. The exact nature of the sanctions to be employed for this purpose (criminal, administrative, 'punitive damages' etc.) is left unspecified in order to allow Member States to apply the type of sanctions which best fits their legal system.

Article 11

No comments.

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[17] Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.07.1999, p. 23.

2000/0326 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 80(2) and 175(1) thereof,

Having regard to the proposal from the Commission[18],

Having regard to the opinion of the Economic and Social Committee[19],

Having regard to the opinion of the Committee of the Regions[20],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[21],

Whereas:

(1) There is a need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from tankers in European waters.

(2) The international regime for liability and compensation of oil pollution damage from ships, as established by the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 as amended by the 1992 Protocol thereto, provide some important guarantees in this respect.

(3) The maximum compensation afforded by the international regime is deemed insufficient to fully cover the costs of foreseeable oil tanker incidents in Europe.

(4) A first step to improve the protection of victims in case of an oil spill in Europe is to considerably raise the maximum amount of compensation available for such spills. This can be done by complementing the international regime through the establishment of a European Fund which compensates claimants who have been unable to obtain full compensation under the international compensation regime, because the totality of valid claims exceed the amount of compensation available under the Fund Convention.

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18 OJ C , , p. .
19 OJ C , , p. .
20 OJ C , , p. .
21 OJ C , , p. .

(5) A European oil pollution compensation fund needs to be based on the same rules, principles and procedures as those of the IOPC Fund in order to avoid uncertainty for victims seeking compensation and in order to avoid ineffectiveness or duplication of work carried out within the IOPC Fund.

(6) In view of the principle that the polluter should pay, the costs of oil spills should be borne by the industry involved in the carriage of oil by sea.

(7) Harmonised Community measures to provide additional compensation for European oil spills will share the costs of such oil spills between all coastal Member States.

(8) A Community-wide compensation Fund (COPE Fund) which builds upon the existing international regime is the most efficient way to attain these objectives.

(9) The COPE Fund shall have the possibility to reclaim its expenses from parties involved in the oil pollution incidents, to the extent that this is permissible under international law.

(10) Since the measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[22], they should be adopted by use of the management procedure provided for under Article 4 of that Decision.

(11) Since the adequate compensation of victims of oil spills does not necessarily provide sufficient disincentives for individual operators in the seaborne oil trade to act diligently, a separate provision is needed providing for financial penalties to be imposed on any person who has contributed to an incident by his wrongful intentional or grossly negligent acts or omissions.

(12) A Regulation of the European Parliament and the Council is, in view of the subsidiarity principle, the most appropriate legal instrument as it is binding in its entirety and directly applicable in all Member States and therefore minimises the risk of divergent application of this instrument in Member States.

(13) A revision of the existing international oil pollution liability and compensation regime should be undertaken in parallel to the measures contained in this Regulation in order to achieve a closer link between the responsibilities and actions of the players involved in the transport of oil by sea and their exposure to liability. More particularly, the liability of the shipowner should be unlimited if it is proved that the pollution damage resulted from gross negligence on his part, the liability regime should not explicitly protect a number of other key players involved in the transport of oil at sea and the compensation of damage caused to the environment as such should be reviewed and widened in light of comparable compensation regimes established under Community law.

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22 OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS REGULATION:

Article 1
Objective

The purpose of this regulation is to ensure adequate compensation of pollution damage in EU waters resulting from the transport of oil by sea, by complementing the existing international liability and compensation regime at Community level, and to introduce a financial penalty to be imposed on any person who has been found to have contributed to an oil pollution incident by his wrongful intentional or grossly negligent acts or omissions.

Article 2
Scope

This Regulation shall apply:

1. to pollution damage caused:

   (a) in the territory, including the territorial sea, of a Member State, and

   (b) in the exclusive economic zone of a Member State, established in accordance with international law, or, if a Member State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

2. to preventive measures, wherever taken, to prevent or minimize such damage.

Article 3
Definitions

For the purpose of this Regulation, the following definitions shall apply:

1. "Liability Convention" shall mean the International Convention on Civil Liability for Oil Pollution Damage, 1992.

2. "Fund Convention" shall mean the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 as amended by the 1992 Protocol thereto.

3. "Oil" shall mean means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

4. "Contributing Oil" shall mean crude oil and fuel oil as defined in points (a) and (b) below:

   (a) "Crude Oil" shall mean any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed

(sometimes referred to as "topped crudes") or to which certain distillate fractions have been added (sometimes referred to as "spiked" or "reconstituted" crudes).

(b) "Fuel Oil" shall mean heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D 396-69)", or heavier.

5. "Ton", in relation to oil, shall mean a metric ton.

6. "Terminal installation" shall mean any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.

7. "Incident" shall mean any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence.

8. "Person" shall mean any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

9. "IOPC Fund" shall mean the fund established by the Fund Convention.

Article 4

Establishment of a Fund for Compensation for Oil Pollution in European waters

A fund for Compensation for Oil Pollution in European waters (hereinafter 'the COPE Fund') is hereby established with the following aims:

(a) to provide compensation for pollution damage to the extent that the protection afforded by the Liability Convention and the Fund Convention is inadequate; and

(b) to give effect to the related tasks set out in this Regulation.

Article 5

Compensation

1. The COPE Fund shall pay compensation to any person who is entitled to compensation for pollution damage under the Fund Convention but who has been unable to obtain full and adequate compensation under that Convention, because the totality of valid claims exceed the amount of compensation available under the Fund Convention.

2. The assessment as to whether a person is entitled to compensation under the Fund Convention shall be determined under the terms of the Fund Convention and carried out in accordance with the procedures foreseen therein.

3. No compensation shall be paid by the COPE Fund until the relevant assessment referred to in paragraph 2 is approved by the Commission, acting in accordance with Article 9 paragraph 2.

4. Notwithstanding paragraphs 1 and 2, the Commission may decide not to pay compensation to the shipowner, manager or operator of the ship involved in the incident or to their representatives. Similarly, the Commission may decide not to compensate any person in a contractual relationship with the carrier in respect of the carriage during which the incident occurred or any other person directly or indirectly involved in that carriage. The Commission, acting in accordance with Article 9 paragraph 2, shall establish which claimants, if any, fall under these categories and shall decide accordingly.

5. The aggregate amount of compensation payable by the COPE Fund shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention and the Fund Convention for pollution damage within the scope of application of this regulation shall not exceed EUR 1,000 million.

6. Where the amount of established claims exceeds the aggregate amount of compensation payable under paragraph 5, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this regulation shall be the same for all claimants.

Article 6
Contributions by oil receivers

1. Any person who receives contributing oil in total annual quantities exceeding 150,000 tons carried by sea to ports or terminal installations in the territory of a Member State and is liable to contribute to the IOPC Fund shall be liable to contribute to the COPE Fund.

2. Contributions shall only be collected following an incident falling under the scope of this regulation which exceeds or threatens to exceed the maximum compensation limits of the IOPC Fund. The total amount of contributions to be levied for each such incident shall be decided by the Commission in accordance with Article 9, paragraph 2. On the basis of that decision, the Commission shall calculate for each person referred to in paragraph 1 the amount of his contribution, on the basis of a fixed sum for each ton of contributing oil received by such persons.

3. The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Member States in the relevant year.

4. Member States shall ensure that any person who receives contributing oil within its territory in such quantities that he is liable to contribute to the COPE Fund appears on a list to be established and kept up to date by the Commission in accordance with the subsequent provisions of this article.

5. Each Member State shall communicate to the Commission the name and address of any person who in respect of that State is liable to contribute to the COPE Fund

pursuant to this article, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year.

6. For the purposes of ascertaining who are, at any given time, the persons liable to contribute to the COPE Fund and of establishing, where applicable, the quantities of oil to be taken into account for any such person when determining the amount of his contribution, the list shall be prima facie evidence of the facts stated therein.

7. The contributions shall be made to the Commission and the collection shall be fully completed no later than one year after the decision to levy the contributions has been made by the Commission.

8. The contributions referred to in this article shall be used solely for the purpose of compensating pollution damage as referred to in Article 5.

9. Any potential surplus of contributions which have been levied for a particular incident and have not been used for the compensation for damage in relation to that incident or any immediately related purpose, shall be returned to the person who made the contribution, no later than 6 months after the completion of the compensation proceedings of that incident.

10. Where a Member State does not fulfil its obligations relating to the COPE Fund and this results in a financial loss for the COPE Fund, that Member State shall be liable to compensate the COPE Fund for such loss.

Article 7
Subrogation

The COPE Fund shall, in respect of any amount of compensation paid by it in accordance with Article 5, acquire by subrogation the rights that the person so compensated may enjoy under the Liability Convention or the Fund Convention.

Article 8
Representation and management of the COPE Fund

1. The Commission shall be the representative of the COPE Fund. In this respect, it shall perform the tasks presented by this Regulation or otherwise necessary for the proper operation and functioning of the COPE Fund.

2. The following decisions relating to the operation of the COPE Fund shall be made by the Commission, acting in accordance with the procedure in Article 9 paragraph 2:

   a. fixing the contributions to be levied in accordance with Article 6;

   b. approving the settlement of claims in accordance with Article 5.3 and taking decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article 5.6;

   c. taking decisions in respect of payment to claimants referred to in Article 5.4; and

d. determining the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims are compensated as promptly as possible.

Article 9
Committee

1. The Commission shall be assisted by a COPE Fund Committee composed of representatives of the Member States and chaired by the representative of the Commission.

2. Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Articles 7 and 8 thereof.

   The period provided for in Article 4 paragraph 3 shall be one month.

Article 10
Penalties

1. Member States shall lay down a system for financial penalties to be imposed on any person who has been found by a court of law to have contributed by his wrongful intentional or grossly negligent acts or omissions to an incident causing or threatening to cause oil pollution in an area referred to in Article 2, paragraph 1.

2. The penalties awarded in accordance with paragraph 1 shall not affect the civil liabilities of the parties concerned as referred to in this Regulation or elsewhere and shall be unrelated to the damage caused by the incident. They shall be set at a level high enough to dissuade the person from committing or persisting in an infringement.

3. Penalties referred to in paragraph 1 shall not be insurable.

4. There shall be a right for the defendant to appeal against penalties referred to in paragraph 1.

Article 11
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*. It shall be applicable on [12 months after its entry into force date].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

FINANCIAL STATEMENT

1. TITLE OF OPERATION

Proposal for a Regulation of the European Parliament and of the Council on the establishment of a fund for the compensation of oil pollution in European waters and related measures

2. BUDGET HEADING(S) INVOLVED

B2-702: Preparation, evaluation and promotion of transport safety

3. LEGAL BASIS

Safety in maritime transport and environmental protection: Article 80(2) and 175(1) of the Treaty.

4. DESCRIPTION OF OPERATION

4.1 General objective

Providing adequate compensation for victims of pollution damage caused by oil tankers in European waters and creating a deterrent financial penalty for persons involved in the provision and use of substandard ships.

4.2 Period covered and arrangements for renewal

Indefinite

5. CLASSIFICATION OF EXPENDITURE OR REVENUE

5.1 Non-compulsory expenditure

5.2 Differentiated appropriations

5.3 Type of revenue involved: Earmarked revenue (contributions to the COPE Fund)

6. TYPE OF EXPENDITURE OR REVENUE

Operational and administrative expenses for the follow-up and monitoring of the implementation of the Regulation.

The main part of the operational expenditure (payment of compensation to victims of European oil spills) and revenue (contributions by oil receivers) of the COPE Fund, will pass through the budget as earmarked revenue. The operation of the COPE Fund is designed in such a way that the revenues will be equal to the expenditure.

In addition, some expenses may follow from meetings with experts of the industry involved and the carrying out a study on the impact, implementation and design of a potential European oil pollution liability and compensation regime.

7. FINANCIAL IMPACT

7.1 Method of calculating total cost of operation (relation between individual and total costs)

The individual costs consist of a yearly returning amount of 5.000 € for organising, on average, once a year a 1-day meeting with experts of the industry involved. In addition, the Commission services intend to contract a study on the impact, implementation and design of a potential European oil pollution liability and compensation regime. The cost for such a study is estimated to be 100.000 €.

7.2 Operational expenditure for studies, experts etc. included in Part B of the budget

Commitment appropriations EUR million (at current prices)

	Year n	n+1	n+2	n+3	n+4	n+5 and subs. Years	Total
– Studies		0,1					0,1
– Meetings of experts[23]		0,005	0,005	0,005	0,005	0,005	0,025
– Information and publications							
Total		0,105	0,005	0,005	0,005	0,005	0,125

[23] Costs satisfying the criteria in the Commission communication of 22.4.1992 (SEC(92) 769).

7.3 Schedule of commitment and payment appropriations

EUR million

	year n	N+1	n+2	n+3	n+4	n+5 and subs. years	Total
Commitment appropriations		0,105	0,005	0,005	0,005	0,005	0,125
Payment appropriations							
year n							
n+1		0,105					0,105
n+2			0,005				0,005
n+3				0,005			0,005
n+4					0,005		0,005
n+5						0,005	0,005
and subs. Years							
Total		0,105	0,005	0,005	0,005	0,005	0,125

8. FRAUD PREVENTION MEASURES

Control of adherence to the procedures for inviting Member States' experts to the COPE Fund Committee meetings.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1 Specific and quantified objectives; target population

Establishment of a Fund for Compensation for Oil Pollution in European waters (the COPE Fund) to ensure adequate compensation for victims of pollution damage caused by oil tankers in European waters.

Establishment of a system for financial penalties to be imposed on any person who has been found by a court of law to have contributed by his wrongful intentional or grossly negligent acts or omissions to an incident causing or threatening to cause oil pollution in European waters.

No Community financial contribution is provided for in this proposal.

The COPE Fund will be financed by oil receivers in Europe. The beneficiaries of this Fund are victims who have suffered damage following a European oil spill, but have been unable to obtain full compensation by the international liability and compensation regime, due to insufficient limits of compensation. Any contributions which have been collected and have not been used for this purpose will be returned to the oil receivers.

9.2 Grounds for the operation

The advantage of establishing an oil pollution compensation fund at Community level is a five-fold increase of the compensation amount available for compensation compared to existing amounts, a strong guarantee that

adequate compensation actually will be available and a sharing of the risk of oil spills between all coastal Member States.

The advantage of building upon procedures and practices of the existing international compensation regime is that a parallel organisation duplicating the work of the international bodies can be avoided.

The spin-off and multiplier effects expected are that the Community framework could be recognised world-wide and serve as a trigger for action at international level to increase the levels of compensation within the international liability and compensation regime for oil pollution established by the International Maritime Organization.

The main factor of uncertainty is the rate at which accidents that will trigger compensation by the COPE Fund will occur (i.e. accidents causing damage in EU waters, in which the costs of total claims exceed the maximum compensation available under the international system, i.e. EUR 200 million). Such accidents are not likely to happen frequently, as only few accident have threatened to exceed the maximum limits have occurred during the 22 years of operation of the IOPC Fund. In addition, the maximum limits were more than doubled in 1996 when the 1992 Protocols to the CLC and Fund Conventions took effect. Furthermore, recent steps have been taken to increase the available maximum international compensation by another 50% from EUR 200 million to EUR 300 million. In light of experience, only one tanker incident so far, the *Erika* in December 1999, would have triggered the COPE Fund, had it been in place. On the other hand, the type and quantity of oil released in the *Erika* were not exceptional and the repetition of a similar accident is entirely conceivable.

9.3 Monitoring and evaluation of the operation

The key impact indicator as regards the COPE Fund, is the frequency by which it is activated and the extent to which it can provide adequate compensation to victims of oil spill. Reporting by Member States will be considered when measuring the performance of Member States in employing penalties for gross negligence on behalf of any person involved in the transport of oil by sea.

The frequency at which evaluations are needed depends on the activities of the COPE Fund. Only after an accident triggering COPE Fund action has been settled will there be a need for evaluation.

As regards the penalties for persons involved in accidents in European waters, however, more frequent evaluations are needed. They will consist of regular reporting by Member States of the implementation of Article 10 of the Regulation.

10. ADMINISTRATIVE EXPENDITURE (SECTION III, PART A OF THE BUDGET)

10.1 Effect on the number of posts

The impact of this proposal on Part A of the budget is generally speaking limited. Once an oil spill triggering the COPE Fund occurs, however, even the Commission staff will be considerably affected, through various tasks involved in representing the Fund, preparing meetings of the COPE Fund Committee, fact-finding, co-ordination with the IOPC Fund etc. Given that such peaks in activity are likely to occur

relatively rarely, the overall impact on the number of post, nevertheless, remains limited.

Type of post		Staff to be assigned to managing the operation		Source		Duration
		Permanent posts	Temporary posts	Existing resources in the DG or department concerned	Additional resources	
Officials or temporary staff	A B C	0,5 - -	0,5 - -	1,0 - -	- - -	Indefinite - -
Other resources		-	-	-	-	-
Total		0,5	0,5	1,0	-	Indefinite

10.2 Overall financial impact of additional human resources

EUR 108.000 per year

10.3 Increase in other administrative expenditure as a result of the operation

EUR

Budget heading	Amounts	Method of calculation
A 7031 (obligatory committees)	9.750€	The combined management and regulatory Committee established for the purpose of this Regulation (the COPE Fund Committee) is expected to meet on average once in a year for 1 day to discuss particular issues related to the implementation of its provisions. Reimbursement of travel expenses for governmental experts to attend this meeting is estimated at an average of 650€/expert x 15.
Total	9.750€	

The above expenditure set out under heading A 7 will be covered by credits within DG TREN global envelope.

IMPACT ASSESSMENT FORM
THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

TITLE OF PROPOSAL

Proposal for a Regulation of the European Parliament and of the Council on the establishment of a fund for the compensation of oil pollution in European waters and related measures

DOCUMENT REFERENCE NUMBER

COM(....).....final of

THE PROPOSAL

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

The Treaty provides for the establishment of a common transport policy and the measures envisaged to implement such a policy include measures to improve safety and environmental protection in maritime transport. The adequate compensation of victims of maritime oil spills and the introduction of financial penalties for gross negligence in the transport of oil at sea form an integral part of such measures.

While there are international conventions regulating liability and compensation of oil spills, to which all relevant Member States are parties, or will be parties in the near future, recent accidents, most notably the sinking of the *Erika* in 1999, have highlighted the insufficiency of those mechanisms to ensure that the victims are adequately compensated.

The Regulation involves the setting up of a Fund for Compensation for Oil Pollution in European waters (the COPE Fund). Given that a relatively well-functioning international system for compensating oil spills already exists, the most efficient solution to raise the compensation limits is to build upon and complement the international system, thereby avoiding duplication of work and excessive administration. The COPE Fund is therefore largely based upon procedures and assessment carried out within the international system.

An oil spill can cause potentially enormous damage. In accidents where the international compensation limits are exceeded, victims will not, as far as the existing international regime is concerned, be fully compensated. Community-wide action in this field will greatly improve the possibilities to fully compensate victims of a European oil spill by creating a Fund to which oil receivers in all Member States concerned contribute. The available amount of maximum compensation will be raised from the current EUR 200 million to EUR 1,000 million. In addition, the costs of oil spills in European Union waters would be spread among all EU coastal States. The concrete added value of the proposed measure is thus a five-fold increase of the compensation amount available for compensation compared to existing amounts, a much stronger guarantee that adequate compensation actually will be available and a sharing of the risk of oil spills between all coastal Member States. A more indirect benefit is that the guarantee of available additional funding is likely to expedite the compensation of

European oil spills in the International Oil Pollution Compensation Fund, even for spills that do not reach the overall maximum compensation provided by that fund.

The creation of a compensation fund for oil spills requires regulation. The parties liable to contribute to the fund, i.e. European oil receivers, are unlikely to contribute with potentially large sums unless they are legally required to do so. In addition, requirements on contribution to, and compensation payments of, the fund are not enforceable in a unified and harmonised way unless they are identical for each Member State and each entity involved. Harmonised rules are therefore instrumental for ensuring uniform implementation of the obligations. Hence it is necessary to ensure uniform application of these provisions in the form of a Regulation.

Finally, the proposal includes an article stipulating that Member States shall impose financial penalties for grossly negligent behaviour on behalf of any person involved in the transport of oil at sea. Such a measure by its nature requires regulation and a Community-wide provision is the best way to achieve the harmonised use of such penalties throughout the Community.

THE IMPACT ON BUSINESS

2. Who will be affected by the proposal?

- which sectors of business
- which sizes of business (what is the concentration of small and medium-sized firms)
- are there particular geographical areas of the Community where these businesses are found

The business sectors most affected by this proposal are companies which are established in the Community and receive more than 150.000 tonnes of heavy fuel oil and/or crude oil by sea transport. Building upon procedures which already exist at an international level, these receivers will pay the contributions to the COPE Fund.

Thus, the nature of the contributions to the COPE Fund implies that the effects are concentrated on large oil importers and traders while small and medium-sized enterprises would be concerned only to the extent they exceed these thresholds. Similarly, only businesses established in Member States with oil ports and terminals would be directly concerned.

The other objective of the proposal, the establishment of a Community-based financial penalties for grossly negligent conduct on behalf of any person involved in the transport of oil at sea may involve a wider spectrum of players in the maritime world. Shipowners, cargo owners, charterers, classification societies, managers and operators may all be liable to pay such penalties, but only once their gross negligence has been established by a court of law.

3. What will business have to do to comply with the proposal?

The proposal will have no impact on business unless a major oil disaster happens in European waters, or unless businesses are found by a court to have engaged in grossly negligent behaviour.

If a major oil spill occurs, oil receivers will have to pay their contributions to the COPE Fund. The level of the contributions will be set by the Commission, assisted by the COPE Fund Committee, and the oil receivers will be invoiced directly by the COPE Fund on the basis of information on contributing oil provided by Member States.

4. What economic effects is the proposal likely to have?

- on employment
- on investment and the creation of new businesses
- on the competitiveness of businesses

Given that the contributions to the COPE Fund are based on annual quantities of heavy fuel oil and/or crude oil received, the amount of contribution required will vary greatly between Member States and individual companies. The largest receivers will make the largest contributions while smaller companies will pay less according to their share of the overall quantity of oil received in the Member State concerned.

A worst case scenario would be the occurrence of an oil spill accident in European waters, which would cause damage for EUR 1,000 million or more. If such an accident happened before the current maximum limits of the IOPC Fund are raised from EUR 200 million to EUR 300 million, the share to be borne by the COPE Fund would be the maximum of EUR 800 million.

The economic impact of such an accident on the oil receivers may be outlined in the following way. The total amount required by the COPE Fund (EUR 800 million) is to be shared among importers of 623 million tonnes of contributing oil (see table below). This would involve an additional cost of EUR 1,28 per ton received oil (which corresponds EUR 0.18 per barrel). As far as the oil price is concerned, it would signify a temporary 0,5% increase to current oil prices (if calculated at EUR 35 per barrel). Considering the number of factors involved in the determination of fuel prices, this is unlikely to have any effect as far as fuel price is concerned.

That said, the financial effect on individual receivers may be more substantial. Figures on the amount of oil received by individual companies are not available. However, general figures on contributing oil received in the EU/EEA Member States provide an indication of the proportion of the total contributions to the COPE Fund that have to be made by companies established in those Member States. The following figures for 1999 are based on the most recent information on the (corresponding) provisions of contributing oil to the IOPC Fund.

Member State (incl. EEA)	**Tonnes of Contributing Oil**	**% of Total**
Italy	138 million	22.15%
The Netherlands	101 million	16.21%
France	95 million	15.25%
United Kingdom	74 million	11.88%
Spain	61 million	9.79%
Germany	37 million	5.94%
Norway	34 million	5.46%
Sweden	20 million	3.21%
Greece	18 million	2.89%
Portugal	17 million	2.73%

Finland	11 million	1.77%
Belgium	7 million	1.12%
Denmark	5 million	0.80%
Ireland	5 million	0.80%
Iceland	0	0.00%
Total	623 million	100%

The likelihood of the worst-case scenario accident, outlined above, is not great, however, in light of the costs of oil spills so far. Out of some 100 oil spills dealt with by the IOPC during its 25 years of operation, only one, the *Erika*, has seriously exceeded the current maximum compensation limit of EUR 200 million, and even the total costs of *Erika* will probably be below EUR 400 million. In addition, the Regulation provides for the possibility for the COPE Fund, and the contributors, recovering at least part of the compensation paid.

The COPE Fund will have no financial impact on oil receivers until an oil spill that exceeds the international compensation limits occurs in European waters. Given the limited probability of accidents triggering the COPE Fund in combination with the potentially very costly consequences of such accidents, it is conceivable that European oil receivers will decide to allocate their risk by means of insurance. In that case, the proposal would also have some effects on the European insurance sector.

Apart from the effects described above, the proposal is unlikely to have significant effects on employment or investment, given that the proposal builds upon structures and procedures that already exist within the framework of the international oil pollution compensation regime.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?

Since, as explained above, the contributions to the COPE Fund is depending on the quantities of received oil, the result will automatically be that larger receivers contribute more while smaller oil receivers have a more limited financial burden. Companies which receive less than 150.000 tonnes of contributing oil per year will not pay any contribution at all.

CONSULTATION

6. List the organisations which have been consulted about the proposal and outline their main views.

- European Shippers' Council (ESC)
- Federation of European Private Port Operators (FEPORT)
- European Sea Ports Organisation (ESPO)
- European Community Shipowners' Association (ECSA)
- European Transport Workers' Federation (ETF)
- Comité européen des assurances (CEA)
- International Association of Classification Societies (IACS)
- International Group of Protection & Indemnity Clubs
- International Association of Independent Tanker Owners (Intertanko)
- Oil Companies International Marine Forum (OCIMF)

- International Chamber of Shipping (ICS)
- International Underwriters Association (IUA)
- International Union of Marine Insurers (IUMI)
- International Tanker Owners' Pollution Federation Limited (ITOPF)

Industry and professional organisations have been consulted on the main objectives and principles of the proposal. In general the industry and professional organisations, whilst appreciating the need for taking measures to improve the compensation of victims of oil spills, question the need for a regional measure in this area. Most of these organisations, however, support the approach to build upon the existing international system instead of building a completely new system, which would imply European denunciation of the CLC and Fund Conventions.

In particular, shipowners (ICS, Intertanko & ECSA), the P&I Clubs and oil companies (OCIMF) have a clear preference for placing the debate concerning the improvement of the liability and compensation regime for oil spill victims in the IMO. They refer to the good record of the existing regime and its balance between shipowners and cargo interests and, in light of this, question the need for Community measures in this area.

The European Shippers' Council agrees with the Commission's analysis of the shortcomings of the international system, but considers that the creation of a third tier Fund fails to respond to this analysis. The European Transport Workers' Federation supports the Commission's approach.

More specifically, on the creation of the COPE Fund, there seems to be agreement that this is one of the few measures which can be done at EU level while still building on and preserving the existing international liability and compensation system.

OCIMF and ESC, however, object against placing the whole burden of the 'guarantee' Fund solely on oil receivers, which in their view are not responsible for accidents.

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The EU maritime safety and pollution prevention policy consists of a large number of legal measures which cover the key aspects of the IMO Conventions in force. The main objective is to ensure the efficient and uniform application of the international rules within the European Union. The policy embraces a wide variety of fields, from classification societies to Port State Control, from passenger ships to marine equipment and port reception facilities. With the establishment of an EU maritime safety and pollution prevention policy, some of the Member States' national competencies in these fields have been transferred to the Community level.

In order to be effective, such legislation must be applied in a proper and uniform manner throughout the Community. It is indeed the rigorous implementation of the existing rules which may enhance safety at sea and pollution prevention in the Community waters, and its harmonised application which may ensure a level playing field, reduce the distortion of competition resulting from the economic advantages enjoyed by non-complying ships and reward the serious maritime players.

In the Community, the task of ensuring the proper and convergent implementation of existing legislation is rendered more difficult by the fact that, unlike certain countries such as the USA which have a unitary structure and thus the ability to impose uniform procedures and to verify compliance, the European Union has to work with the diverse administrative traditions of its Member States. The administrative structures involved in maritime safety differ considerably from one Member State to another: some are civil, others are military and they perform very different tasks, from ship inspection as port State or flag State to fisheries protection, customs, combating drug trafficking or immigration controls.

It is for the reasons mentioned above that the Commission started to reflect on the different possibilities to enhance the current system. In its Communication of 21 March 2000 on the safety of the seaborne oil trade[24], the Commission has already tackled this problem and suggested the possibility of creating a European Maritime Safety Agency. The Commission also explained that, in its opinion, it would be somewhat unrealistic, or at least very premature, to envisage setting up an integrated European operational structure or coastguard that would take over the role of the national maritime administrations. On the contrary, the Agency should support the actions of Member States and the Commission in applying Community legislation, monitoring its implementation and evaluating the effectiveness of the measures in force. The Agency should not be empowered to take decisions since it would be up to the Member States, and in particular the Commission in its capacity as executor or guardian of Community legislation, to perform the necessary follow-up.

The Commission reiterated this principle in its report for the Biarritz European Council on the Community's strategy for safety at sea[25]. In this document it is stated that, in order to help the Commission ensure that the efficient, harmonious

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[24] COM(2000) 142 final of 21.3.2000
[25] COM(2000) 603 final of 27.9.2000

implementation of the existing rules is monitored and checked within the European Union, the Commission is contemplating the creation of a specific structure which might take the form of a European Agency for Maritime Safety.

By means of the present Regulation, the Commission proposes the establishment of a European Maritime Safety Agency. The text of the proposal is the result of a long period of analysis and consultation during which the Commission had the possibility to clarify better what the role of the Agency might be. In addition to the primary objective of ensuring the proper implementation of existing legislation, the Commission considers that the Agency should play a major role in organising appropriate training activities on port and flag State related issues. Indeed, harmonising the training of the Member States' surveyors will help to ensure a uniform EU maritime safety system.

Furthermore, the Commission considers that the Agency can assist the Commission's services in carrying out the large number of time-consuming technical tasks imposed on it by the existing legislation. This will permit the Commission's services to concentrate on policy matters. Finally, another fundamental area of activity for the Agency is that related to the collection, recording and assessment of statistical data in the maritime safety field and on accidental or deliberate pollution at sea, the systematic exploitation of existing databases and, where appropriate, the development of supplementary databases. The data provided by the Agency will enable the Commission and the Member States to take the necessary measures to enhance safety at sea and to evaluate the effectiveness of the measures in place.

It is expected that the Agency will create a solid partnership with and between the Member States in so far as questions of general interest are concerned, that it will take full advantage of the Union's best scientific capabilities and that it will facilitate a quicker Community response and decision-making capacity. The structure of the proposed Agency respects the prerogatives of the Community institutions having the legislative power: the Agency will not interfere in this field. The Commission's prerogatives in terms of budgetary implementation and right of initiative are also respected. In addition to the work already undertaken in order to demonstrate the need for and decide in favour of creating the EMSA, the Commission will carry out, in parallel with the Institutions' discussions on this proposal, further work regarding a cost-benefit analysis.

2. THE COMMUNITY EMSA

2.1. The objective

The objective of the Regulation is to establish a European Maritime Safety Agency, with a view to ensuring a high, uniform and effective level of maritime safety and pollution prevention in the Community. The achievement of these objectives requires the creation of a specialised agency: the EU maritime community needs an efficient body that is able to provide the Member States and the Commission with the necessary technical and scientific support and a high level of expertise to properly apply the Community legislation in the field of maritime safety, monitor its implementation and evaluate the effectiveness of the measures in place. The existing legislation has a highly technical content. Its implementation, as well as its practical monitoring, should be performed by personnel that are highly qualified in the area of

maritime safety, having both a comprehensive technical knowledge and being fully familiar with European and international maritime safety and pollution prevention regulations.

2.2. The Agency

2.2.1. The tasks

The Agency will be established as part of the Community system. It will represent the technical body providing the Community with the necessary means to act effectively to enhance overall maritime safety and pollution prevention standards. The Agency shall assist the Commission in the continuous process of updating Community legislation in the field of maritime safety and shall provide the necessary support to ensure the convergent and effective implementation of such legislation throughout the Community. In particular, the Agency shall be active in helping to strengthen the overall Community Port State Control regime and in helping to monitor those classification societies recognised at Community level. A wider description of the Agency's tasks is contained in the "Comments on articles" section below.

2.2.2. Functioning

a) Management bodies

The good functioning of the Agency requires that its Executive Director be left with a high degree of independence and flexibility as to the organisation of the internal functioning of the Agency. Therefore, the Executive Director is entrusted to take all necessary steps to ensure the proper accomplishment of the working programme of the Agency and, in particular, to decide on the implementation of the inspections of the classification societies as well as on the visits to the Member States. Furthermore, the Executive Director will also be responsible for the preparation and execution of the budget and the work programme of the Agency, and for all questions related to personnel.

In order to provide the Executive Director with the necessary legitimacy, it is preferred that he is appointed by the Administrative Board on a proposal from the Commission.

An Administrative Board consisting of representatives nominated by the Commission, the Council and the European Parliament as well as industry representatives, will be in charge of all administrative issues. It will adopt the work programme of the Agency, after approval from the Commission, and its budget at the beginning of the financial year and adapt it to the contributions and fees received. The Administrative Board will also establish procedures on how the Executive Director may take decisions and will exercise disciplinary authority over the high officials of the Agency. Decisions, other than those related to staff issues, which are made by the Executive Director and by the Administrative Board will be subject to appeal by the Commission.

b) Personnel

For carrying out the tasks described above, the Agency needs to have a sufficient number of high-quality staff. The agency staff is to assist the Commission in

ensuring that the Community legislation in the field of maritime safety and pollution prevention is kept up to date, as well as to ensure that it is applied in a uniform and effective manner. Qualified personnel shall also participate in the organisation of appropriate training activities for the Member States and for those States applying for accession. The number of staff the Agency might require is estimated at around 55 persons.

The personnel of the Agency will be subject to the Staff Regulations applicable to Officials of the European Communities and the Conditions of Employment of Other Servants. It is envisaged that only a small number of these will be seconded from the Community institutions on a temporary basis. The other personnel will be recruited on the basis of experience and merit. Without prejudice to the need to ensure a stable qualified staff in sufficient number, they will be hired on the basis of temporary renewable contracts so as to ensure a continuous renewal of personnel that are abreast of technological developments.

c) Budget

The Agency needs a budget allocation large enough to hire its personnel as described above, to carry out its tasks and to ensure its smooth and efficient functioning. For the first year this annual budget can be estimated at approximately € 2,625,000, increasing to approximately circa € 7,600,000 when the Agency is fully operational.

The Agency's budget will be mainly financed by a subsidy from the Community. The Agency may charge some fees for its publications or for the training activities. However, the amount of these fees will remain minor in respect of the total budget of the Agency.

The Agency must put in place an appropriate set of rules and controls. The Administrative Board will be entitled to adopt the necessary measures, but the Agency will ultimately be subject to the supervision of the Court of Auditors.

d) Language

The language regime should allow the Agency to work in an efficient and swift manner. The Administrative Board of the Agency is entrusted to take a decision on the language regime of the Agency.

e) Location

The Agency will need to be located in a convenient location that will also enable it to develop working relations with the appropriate Community institutions. Taking into account such requirements and after an evaluation of applications received, the Commission will propose to the competent authorities one or several locations. On the basis of such proposal, the competent authorities will have to define a location at the latest six months after the adoption of this Regulation.

f) Transparency

The Agency will adopt its rules regarding transparency and access to documents in compliance with the decisions of the European Parliament and the Council, in the context of Article 255 of the EC Treaty.

3. THE CHOICE OF THE LEGAL BASIS

The legal basis of the proposed Regulation is Article 80 paragraph 2, which is consistent with the objective of the proposal and with all the legislation adopted so far in the maritime field, particularly where safety and environmental protection are concerned.

4. JUSTIFICATION OF THE PROPOSED MEASURE

What are the objectives of the planned action in relation to the obligations of the Community and what is the Community dimension of the problem (for instance how many Member States are involved and what solution has been adopted until now)?

The Treaty provides for the establishment of a common transport policy. The measures envisaged to implement such a policy include measures to improve safety in maritime transport as foreseen in Article 80 (2).

To this end, the main objective of the planned action is to establish a European Maritime Safety Agency. At present, a large number of maritime safety legislative measures are in place in the Community. In order to ensure that this legislation is effective and that safety at sea and marine pollution prevention are enhanced throughout the Community, it is necessary to ensure that such legislation is applied in a uniform manner. The Agency is designed to assist in achieving this objective.

All Member States, both the coastal States and the land-locked ones, are concerned by the enhancement of maritime safety and pollution prevention standards. Indeed higher standards do not exclusively mean cleaner seas and coasts, but also safer navigation and a reduced risk of the loss of ships, cargo and human lives.

So far, all Member States have acted independently in applying the existing Community legislation, with the Commission monitoring the proper transposition of Community legislation into the national legal systems. The Community dimension of the problem requires a more uniform approach from a practical point of view.

Is the envisaged action solely the responsibility of the Community or is the responsibility shared with the Member States?

The Agency will deal with matters of Community competence since it will assist in the implementation of Community legislation.

What is the most efficient solution taking into account the resources of the Community and the Member States?

Taking into consideration the features of the Community maritime safety policy and the need to ensure its uniform application, an action at Community level is the only possible way to guarantee the same level of safety and marine pollution prevention throughout the Union.

What is the concrete added value of the action envisaged by the Community and what would be the cost of inaction?

The Agency will greatly contribute to the proper application of Community legislation across the Union, to developing and disseminating "best practices" among the Member States and to enhancing the overall Community maritime safety and pollution prevention system. This in turn will reduce the risk of maritime accidents, of marine pollution and of the loss of human lives at sea.

Furthermore, a proper and uniform implementation of the existing legislation will ensure a level playing field, reduce the distortion of competition resulting from the economic advantages enjoyed by non-complying ships and will reward the serious maritime players.

It is very difficult to quantify the cost of inaction. Quantifying it would mean, first of all, providing an answer to the question of how many accidents the Agency will prevent. However, it can be stated that if the Agency succeeded in preventing even one major accident - such as the sinking of the ERIKA which caused damages valued at 400 million euros - it will have more than merited its cost.

What forms of actions are available to the Community? (recommendation, financial assistance, regulation, mutual recognition).

Given the objective of the measure, a Regulation is the only possible tool to achieve it. Uniformity and efficiency in the application of Community maritime safety and pollution prevention legislation would not be achieved by a less constraining legislative instrument. A Regulation is the legislative instrument generally used to establish an Agency in the Community.

Is uniform legislation necessary or would a Directive, setting the general objectives and leaving the execution to the Member States, suffice?

As stated in the previous point, the choice of type of legislation is dictated by the very objective of the measure.

5. COMMENTS ON ARTICLES

Chapter I – Objectives and tasks

Article 1

This article specifies that the need to establish a European Maritime Safety Agency is due to the fact that it is necessary to ensure a high, uniform and effective level of maritime safety and pollution prevention in the Community. Furthermore, this article clarifies that the Agency must represent a technical and scientific support for the Member States and for the Commission to properly apply Community legislation in the field of maritime safety, monitor its implementation and evaluate the effectiveness of the measures in place.

Article 2

1. This is the core article defining the tasks which the Agency has to carry out in order to fully achieve the objectives set out in the previous article.

a) The tasks of the Agency shall consist of monitoring the continuous development of international maritime safety legislation and of carrying out an in-depth analysis of research projects carried out in the field of maritime safety and protection of the marine environment. On the basis of these two activities, or on the basis of its own expertise, the Agency shall draw the attention of the Commission to the possibility of updating Community legislation, - taking into account the need to ensure that such legislation remains effective.

b) In order to monitor the overall functioning of the Community Port State Control regime, the Agency shall carry out visits to the Member States aimed at examining the way in which Member States implement their PSC obligations. These visits will be extremely useful to develop "best practices" and later on to disseminate them throughout the Community. On the basis of the experience gained, both by the visits to the Member States and through the overall monitoring of the Community PSC regime, the Agency will suggest to the Commission possible improvements to the regime. The Agency will also put its experience at the disposal of the Commission and participate in the workings of the technical bodies of the Paris Memorandum of Understanding on Port State Control.

Ensuring a high level of performance of the classification societies recognised at Community level implies two tasks: carrying out inspections of such organisations, to monitor their fulfilment of the provisions of Council Directive 94/57/EC, and helping to continuously monitor their safety and pollution prevention performance. With both tasks, the Agency shall provide support to the Commission and the Member States.

The Agency shall assist the Commission and the Member States in ensuring the proper implementation of all the remaining Community maritime safety legislation, particularly in the fields of safety of passenger ships and marine equipment, and including Community legislation applicable to crews.

c) The availability of objective, reliable and comparable information and data on maritime safety and pollution is the key element enabling the Commission and the Member States to take the necessary steps to enhance the existing measures and to evaluate their effectiveness. A number of databases already exist in this field, others will have to be developed. The Agency shall organise a coherent work programme, including the cross fertilisation of existing databases, in order to provide the Community with the information and data mentioned above, whilst avoiding any duplication of existing activities. On the basis of the data collected, the Agency will assist the Commission in the publication, every six months, of information relating to ships that have been refused access to Community ports in application of the provisions of the Directive on Port State Control. On that basis, the Agency will also assist the Commission and the Member States in their activities to improve the identification and pursuit of ships which make unlawful discharges.

d) The Agency shall assist the Commission and the Member States in the field of the surveillance of navigation and maritime traffic. In this respect the Agency shall facilitate co-operation between the Member States and the Commission as provided for in the Community legislation on the European maritime traffic reporting system.

e) The Council of Transport Ministers of 26 June 2000 requested the Commission to consider developing, when appropriate, a European database on accidents and

incidents at sea, as an important tool to prevent future accidents and for devising new initiatives based on formal safety assessments. The Agency is entrusted with this task, as well as designing a common methodology for investigating maritime accidents within the Community. On the basis of the experience gained, the Agency will offer its support to the Member States in the activities concerning the investigations related to serious maritime casualties in EU waters. Another important activity of the Agency in this field shall be that of analysing existing accident investigation reports in order to learn how to avoid similar events in the future and to disseminate the results of its analysis.

f) The Agency has an active role in the convergent and effective implementation of Community maritime safety legislation throughout the Community. It shall organise appropriate training activities on port and flag State related issues, since training is considered to be the first element towards a harmonised Community system.

g) The Agency shall provide technical assistance for those States applying for accession with respect to their implementation of Community legislation in the field of maritime safety. In this context, the Agency shall contribute to explaining the systems in place in the Community for the implementation of the maritime safety legislation and disseminate the Community's "best practices". However, the Agency is not supposed to carry out practical activities in the States applying for accession, such as providing personnel to carry out tasks aimed at restructuring the existing maritime administrations of these countries, but shall simply provide theoretical support. Finally, the Agency shall organise appropriate training activities for these States.

2. In order to ensure that the technical and scientific knowledge of the Agency is put at the disposal of the Community, for the control of the implementation of Community legislation by Member States and whenever it is needed for activities not specifically foreseen in its work programme, the Agency is requested to carry out any specific task only at the request of the Commission. The Agency cannot be entrusted with any tasks at the request of a Member State.

Article 3

In order to achieve the objectives of the Regulation and to accomplish its tasks in the best possible way, the Agency shall carry out visits to the Member States. These visits will focus on the implementation of the Member State's Port State Control obligations but also on other aspects linked to the implementation of the Community maritime safety and pollution prevention legislation. These visits will help the Agency to understand the functioning of the maritime administrations of the Member States, to highlight possible shortcomings of the Community system as well as "best practices" implemented by the Member States. On the basis of the experience gained, the Agency will be able to suggest possible improvements to the overall system and, in a second stage, to disseminate the "best practices". The Commission will analyse the reports produced by the Agency following each visit in order to decide whether any follow-up measures are necessary.

Article 4

Since the Agency is entrusted to develop and exploit databases and since certain data may be of a personal nature, it is important to specify that the information collected within the framework of the application of this Regulation by the Commission and the Agency shall be subject to Directive 95/46/EC of the Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data[26].

Chapter II: Internal structure and functioning

Article 5

This article specifies that the Agency is an independent body of the Community. The competent authorities will have to decide its location at the latest six months after the adoption of the Regulation, on the basis of a proposal from the Commission. Furthermore, it is specified that the Agency, following a specific request from the Commission, may decide to establish regional centres in some Member States in order to carry out tasks linked to the surveillance of navigation and maritime traffic, and particularly to ensure the best traffic conditions in sensitive zones, as foreseen in the Community legislation on the European maritime traffic reporting system.

Article 6

The Staff Regulations of the Community institutions will also apply to the staff of the Agency. It is envisaged that only a small number of these will be seconded from the Community institutions on a temporary basis. The other personnel will be recruited on the basis of experience and merit from national administrations or from industry on a temporary basis.

Article 7

This provision stipulates that, like the European Communities, the Agency should also benefit from the same privileges and immunities as set out in the Protocol on the Privileges and Immunities of the European Communities.

Article 8

The regime of contractual and non-contractual liability of the Agency corresponds to the regime applicable to the Community by virtue of Article 288 of the Treaty.

Article 9

The Administrative Board of the Agency is entrusted to take a decision on the language regime of the Agency. The language regime should allow the Agency to work in an efficient and swift manner.

Article 10

This article lays down the powers of the Administrative Board, which forms part of the management bodies of the Agency. It has a supervisory function in appointing the Executive Director, in adopting the annual report, the work programme – after

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[26] OJ L 281, 23.11.1995.

approval by the Commission - and in taking budgetary decisions. Moreover, it shall ensure that the Agency works with the necessary transparency and neutrality and shall adopt, therefore, procedures on how the Executive Director may take decisions.

Article 11

This provision specifies that the Administrative Board will be composed of four representatives of the Commission, four representatives of the Council, four representatives nominated by the European Parliament and four representatives from the industry nominated by the Commission.

Article 12

This article specifies that the Administrative Board will elect its Chairman and Deputy Chairman from among its members.

Article 13

This article provides for ordinary, as well as extraordinary, meetings of the Administrative Board, which must be attended by the Executive Director, and may be attended by outside observers. The Executive Director shall not have the right to vote.

Article 14

A two third majority will be required for decisions of the Administrative Board, with each member having one vote.

Article 15

This provision sets out the functions and powers of the Executive Director, who shall not accept any instructions from any government or any other organisation. However, he will have to follow up any instruction or request for assistance formulated by the Commission in relation to the tasks set out in Article 2. The Executive Director is also the manager of the Agency and is therefore responsible for the preparation and execution of the budget and of the working programme, as well as for all questions related to personnel.

Article 16

The Executive Director, together with one or more Heads of Unit, are appointed by the Administrative Board which exercises disciplinary authority on them. The appointment of the Executive Director is made for a limited, renewable period.

Article 17

Member States and natural or legal persons shall have the possibility to appeal against any act of the Agency which is of direct and individual concern to them. Therefore any act carried out by the Executive Director and by the Administrative Board may be referred to the Commission in order to examine the legality of that act.

Article 18

This article stipulates that the Agency shall be open to the participation of European countries, which have entered into agreements with the European Community whereby they have adopted and are applying the Community law in the field covered by this regulation.

Chapter III - Financial Requirements

Article 19

The Agency's budget will be mainly financed by a subsidy from the Community. Services that it provides (such as publications, training or others) may be paid for in the form of fees.

The Agency requires a sufficient budget allocation to hire its personnel, as described above, to carry out its tasks and to ensure it functions smoothly and efficiently.

The Executive–Director will establish a preliminary draft budget to be adopted by the Board and then forwarded to the Commission, which will in turn process it in accordance with standard budgetary procedures. Article 279 of the EC Treaty applies.

Article 20

This article specifies that the Executive Director will be responsible for the implementation of the budget. Financial control will be ensured by the Financial Controller of the Commission. The Court of Auditors will examine the Agency accounts and publish an annual report. The discharge of the Agency budget will be given by the Administrative Board to the Executive Director on the recommendation of the European Parliament.

Article 21

This article provides that within five years from the date the Agency has taken up its responsibilities, the Agency in collaboration with the Commission shall carry out an independent evaluation on the implementation of this Regulation. On the basis of the findings of this evaluation, the Administrative Board will issue recommendations regarding changes to this regulation, the Agency and its working practices to the Commission.

Article 22

This article specifies that, for the purpose of guiding the Agency in preparing and implementing the budget, a Financial regulation will be adopted by the Administrative Board following the agreement of the Commission and the opinion of the Court of Auditors.

Chapter IV - Final Provisions

Article 23

This article specifies that, while the Regulation enters into force according to Article 24, the Agency will only be operational 12 months later. This will provide sufficient time for its establishment.

Article 24

This article lays down the date when the Regulation enters into force.

6. FINAL CONSIDERATIONS

A financial statement is attached to this proposal. An impact assessment form has not been attached since the proposal does not affect businesses.

2000/0327 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European Maritime Safety Agency

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission[27],

Having regard to the opinion of the Economic and Social Committee[28],

Having regard to the opinion of the Committee of the Regions[29],

Acting in accordance with the procedure referred to in Article 251 of the Treaty[30],

Whereas:

(1) A large number of legislative measures have been adopted in the Community in order to enhance safety and prevent pollution in maritime transport. In order to be effective, such legislation must be applied in a proper and uniform manner throughout the Community. This will ensure a level playing field, reduce the distortion of competition resulting from the economic advantages enjoyed by non-complying ships and will reward the serious maritime players.

(2) Certain tasks currently done at Community or national level could be executed by a specialised expert body. Indeed, there is a need for technical and scientific support and a high level of stable expertise to properly apply the Community legislation in the fields of maritime safety and pollution prevention, to monitor its implementation and to evaluate the effectiveness of the measures in place; there is a need therefore, within the Community's existing institutional structure and balance of powers, to establish a European Maritime Safety Agency.

(3) In general terms, the Agency shall represent the technical body providing the Community with the necessary means to act effectively to enhance overall maritime safety and pollution prevention -rules. The Agency shall assist the Commission in the continuous process of updating Community legislation in the field of maritime safety and shall provide the necessary support to ensure the convergent and effective

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27 OJ C , , p. .
28 OJ C , , p. .
29 OJ C , , p. .
30 OJ C , , p. .

implementation of such legislation throughout the Community. In particular, the Agency shall be active in helping to strengthen the overall Community Port State Control regime and in helping to monitor those classification societies recognised at Community level.

(4) For the proper achievement of the purposes for which the Agency is established, it is appropriate that the Agency carries out a number of other important tasks aimed at enhancing maritime safety and pollution prevention in the Community waters. The Agency shall organise appropriate training activities on Port State Control and Flag State related issues. It shall provide the Commission and the Member States with objective, reliable and comparable information and data on maritime safety and on pollution prevention to enable them to take any necessary initiatives to enhance the measures in place and to evaluate their effectiveness. It shall facilitate co-operation between the Member States and the Commission as provided for in the Community legislation on the European maritime traffic reporting system. It shall co-operate with the Commission and the Member States in the activities concerning the investigations related to serious maritime accidents in EU waters. It shall put the Community maritime safety know-how at the disposal of the States applying for accession and will be open to their participation.

(5) The Agency will favour the establishment of better co-operation between the Member States and will develop and disseminate best practices in the Community. This in turn will contribute to enhancing the overall maritime safety system in the Community as well as reducing the risk of maritime accidents, marine pollution and the loss of human lives at sea.

(6) In order to properly carry out the tasks entrusted to the Agency, it is appropriate that its officials carry out visits to the Member States in order to monitor the overall functioning of the Community maritime safety and pollution prevention system.

(7) For the contractual liability of the Agency, which is governed by the law applicable to the contract concluded by the Agency, the Court of Justice of the European Communities shall have jurisdiction to give judgement pursuant to any arbitration clause contained in the contract. The Court of Justice shall also have jurisdiction in disputes relating to compensation for any damage arising from the non-contractual liability of the Agency.

(8) In order to effectively control the functions of the Agency, the Member States, the Commission and the European Parliament shall be represented on an Administrative Board entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency, approve its work programme and to appoint the Executive Director.

(9) The good functioning of the Agency requires that its Executive Director be left with a high degree of independence and flexibility as to the organisation of the internal functioning of the Agency; to this end, the Executive Director shall take all necessary steps to ensure the proper accomplishment of the working programme of the Agency, shall prepare each year a draft general report to be submitted to the Administrative Board, shall draw up estimates of the revenues and expenditure of the Agency and shall implement the budget.

(10) In order to guarantee the full autonomy and independence of the Agency, it is considered necessary to grant it an autonomous budget whose revenue comes essentially from a contribution from the Community.

HAVE ADOPTED THIS REGULATION:

CHAPTER I: OBJECTIVES AND TASKS

Article 1
Aims

1. This Regulation establishes a European Maritime Safety Agency (the "Agency") for the purpose of ensuring a high, uniform and effective level of maritime safety and pollution prevention within the Community.

2. The Agency shall provide the Member States and the Commission with the technical and scientific assistance needed and with a high level of expertise in order to help them to apply Community legislation in the field of maritime safety properly, to monitor its implementation and to evaluate the effectiveness of the measures in place.

Article 2
Tasks

1. In order to ensure that the objectives set out in Article 1 are met in the appropriate manner, the Agency shall perform the following tasks:

a) It shall assist the Commission in the process of updating Community legislation in the field of maritime safety, in particular in line with the development of international legislation in that field. That task shall include the analysis of research projects carried out in the field of maritime safety and the protection of the marine environment.

b) It shall assist the Commission in the effective implementation of Community legislation on maritime safety throughout the Community. In particular, the Agency shall:

1) monitor the overall functioning of the Community port State control regime, including visits to the Member States, and suggest to the Commission any possible improvements in that field;

2) provide the Commission with the technical assistance necessary to take part in the work of the technical bodies of the Paris Memorandum of Understanding on Port State Control;

3) assist the Commission in the following areas:

- the performance of inspections of the classification societies which are recognised, or are due to be recognised, at Community level on the basis of Council Directive 94/57/EC;

- without prejudice to Directive 94/57/EC, the continuous monitoring of safety and pollution prevention performance by the classification societies which are recognised, or are due to be recognised, on the basis of Council Directive 94/57/EC;

- the continuous monitoring of the proper implementation of Community legislation on the safety of passenger ships, in particular Council Directives 98/18/EC and 99/35/EC;

- the continuous monitoring of the proper implementation of Council Directive 96/98/EC on marine equipment;

- the performance of any other task assigned to the Commission by Community legislation on maritime safety, including Community legislation applicable to ships' crews.

c) It shall provide the Commission and the Member States with objective, reliable and comparable information and data on maritime safety to enable them to take the necessary steps to improve maritime safety and to evaluate the effectiveness of existing measures. Such tasks shall include the collection, recording and evaluation of technical data in the fields of maritime safety and maritime traffic, as well as in the field of marine pollution, both accidental and deliberate, the systematic exploitation of existing databases, including their cross-fertilisation, and, where appropriate, the development of additional databases. On the basis of the data collected, the Agency shall assist the Commission in the publication, every six months, of information relating to ships that have been refused access to Community ports pursuant to the Directive on port State control. On that basis, the Agency will also assist the Commission and the Member States in their activities to improve the identification and pursuit of ships making unlawful discharges.

d) It shall carry out tasks relating to the surveillance of navigation and maritime traffic, as laid down in Directive 2001/xx/EC on the introduction of a Community monitoring and information system for maritime traffic, in order to facilitate cooperation between the Member States and the Commission in this field.

e) It shall develop, in cooperation with the Commission and the Member States, a common methodology for investigating maritime accidents within the Community, support the Member States in activities concerning investigations related to serious maritime accidents in waters under the sovereignty of the Member States, and carry out an analysis of existing accident investigation reports.

f) It shall organise appropriate training activities in fields which are the responsibility of the port State and flag State.

g) It shall provide technical assistance to States applying for accession as regards the implementation of Community legislation in the field of maritime safety. That task shall include the organisation of appropriate training activities.

2. With regard to performance of the tasks referred to in paragraphs (a), (b), (d) and (g), the Agency shall only act at the request of the Commission. The Agency may perform other specific tasks if circumstances so demand, but exclusively at the request of the Commission.

Article 3
Visits to the Member States

1. In order to perform the tasks entrusted to it, the Agency shall carry out visits to the Member States. The national authorities of the Member States shall facilitate the work of the Agency's staff in order to ensure that such visits proceed smoothly. The Agency's officials are entitled:

   a) to examine files, data, reports and any other relevant documents concerning the implementation of safety at sea and the prevention of pollution at sea;

   b) to make copies of all or part of such files, data, reports and other documents;

   c) to ask for oral explanations on the spot;

   d) to have access to any premises, land or means of transport.

2. The Agency shall inform the Member State concerned of the planned visit, the names of the delegated officials, and the date on which the visit starts. The Agency officials delegated to carry out such visits shall exercise their powers on presentation of a decision from the Executive Director of the Agency specifying the purpose and the aims of their mission.

3. At the end of each visit, the Agency shall draw up a report and send it to the Commission.

Article 4
Dissemination and protection of information

1. The information collected in the framework of the application of this Regulation by the Commission and the Agency shall be subject to Directive 95/46/EC of the Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data[31].

2. The officials and other servants of the Agency shall be required, even after their duties have ceased, not to disclose any information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

CHAPTER II: INTERNAL STRUCTURE AND FUNCTIONING

Article 5
Legal status, location, regional centres

1. The Agency shall be a body of the Community. It shall have legal personality.

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[31] OJ L 281, 23.11.1995.

2. The location of the Agency shall be decided by the competent authorities, at the latest six months after the adoption of this Regulation, on a proposal from the Commission.

3. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. At the request of the Commission, the Agency may decide, with the agreement of the Member States concerned, to establish the regional centres necessary in order to carry out tasks related to the monitoring of navigation and maritime traffic, as provided for in Directive 2001/xx/EC on the introduction of a Community monitoring and information system for maritime traffic.

4. The Agency shall be represented by its Executive Director.

Article 6
Staff

1. The Agency's staff shall be subject to the rules and regulations applicable to officials and other servants of the European Communities. The Administrative Board, in agreement with the Commission, shall adopt the necessary detailed rules of application.

2. Without prejudice to Article 16, the powers conferred on the appointing authority by the Staff Regulations and the Conditions of Employment of Other Servants shall be exercised by the Agency in respect of its own staff.

3. The Agency's staff shall consist of Community officials seconded by the institutions and assigned to the Agency as temporary staff and other servants recruited by the Agency.

Article 7
Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency and to its staff.

Article 8
Liability

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

2. The Court of Justice of the European Communities shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by the Agency.

3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.

4. The Court of Justice shall have jurisdiction in disputes relating to the compensation for damage referred to in paragraph 3.

5. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

Article 9
Languages

1. The Agency's language regime shall be agreed by the Administrative Board.

2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre of the Bodies of the Union.

Article 10
Creation and powers of the Administrative Board

1. The Agency shall have an Administrative Board.

2. The Administrative Board shall:

a) appoint the Executive Director in application of Article 16;

b) adopt, before 31 March each year, the general report of the Agency for the previous year and forward it to the Commission, the Council and the European Parliament;

c) adopt, before 30 October each year, and after approval by the Commission, the work programme of the Agency for the coming year and forward it to the Commission, the Council and the European Parliament;

d) adopt the final budget of the Agency before the beginning of the financial year, adjusting it, where necessary, according to the Community contribution and any other revenue of the Agency;

e) establish procedures for decision-making by the Executive Director;

f) perform its duties in relation to the Agency's budget pursuant to Articles 19, 20 and 22;

g) exercise disciplinary authority over the Executive Director and the Heads of Unit referred to in Article 15(3).

Article 11
Composition of the Administrative Board

The Administrative Board shall be composed of four representatives of the Commission, four representatives of the Council, four representatives of the European Parliament and four representatives of the professional sectors most concerned nominated by the Commission, and

their alternates. The duration of the term of office shall be five years. The term of office may be renewed once.

Article 12
Chairmanship of the Administrative Board

1. The Administrative Board shall elect a Chairman and a Deputy Chairman from among its members. The Deputy Chairman shall automatically take the place of the Chairman if he is prevented from attending to his duties.

2. The terms of office of the Chairman and Deputy Chairman shall be three years and shall expire when they cease to be members of the Administrative Board. The terms of office shall be renewable once.

Article 13
Meetings

1. The meetings of the Administrative Board shall be convened by its Chairman.

2. The Executive Director of the Agency shall take part in the deliberations. He shall not have the right to vote.

3. The Administrative Board shall hold an ordinary meeting once a year. In addition, it shall meet on the initiative of the Chairman or at the request of the Commission or of one-third of the Member States.

4. The Administrative Board may invite observers to attend its meetings.

Article 14
Voting

1. The Administrative Board shall take its decisions by a two-thirds majority.

2. Each member shall have one vote.

Article 15
Duties and powers of the Executive Director

1. The Agency shall be managed by its Executive Director, who shall neither seek nor take instructions from any Government or from any other body. However, he must carry out any instruction or request for assistance from the Commission relating to the tasks set out in Article 2.

2. The Executive Director shall have the following duties and powers:

   a) The Executive Director shall prepare the work programme and submit it to the Administrative Board after having received the approval of the Commission. He shall take the necessary steps for its implementation. He shall respond to any requests for assistance from the Commission.

b) The Executive Director shall decide to carry out the visits provided for in Article 3, following the prior agreement of the Commission.

c) The Executive Director shall take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation.

d) The Executive Director shall organise an effective monitoring system in order to be able to compare the Agency's achievements with its operational objectives. On this basis the Executive Director shall prepare a draft general report each year and submit it to the Administrative Board. He shall establish regular evaluation procedures that meet recognised professional standards.

e) The Executive Director shall exercise in respect of the staff the powers laid down in Article 6(2).

f) The Executive Director shall draw up estimates of the Agency's revenue and expenditure, in accordance with Article 19, and shall implement the budget pursuant to Article 20.

3. The Executive Director may be assisted by one or more Heads of Unit. If the Executive Director is absent or indisposed, one of the Heads of Unit shall take his place.

Article 16
Internal appointment

1. The Executive Director of the Agency shall be appointed by the Administrative Board on a proposal from the Commission. Power to dismiss the Executive Director shall lie with the Administrative Board, acting on a proposal from the Commission.

2. The term of office of the Executive Director shall be five years. This term of office is renewable once.

Article 17
Verification of lawfulness

1. Any Member State, any member of the Administrative Board and any third party directly and individually concerned may refer any act undertaken by the Agency to the Commission in order to have its lawfulness verified. Referral to the Commission shall be made within a period of fifteen days starting on the day on which the contested act came to the knowledge of the person concerned. The Commission shall take a decision within a period of one month. The failure of the Commission to take a decision within that period shall mean that the appeal has been turned down.

2. The provisions of paragraph 1 above shall not apply to staff matters.

Article 18
Participation of third countries

1. The Agency shall be open to the participation of European countries, which have entered into agreements with the European Community whereby they have adopted and are applying the Community law in the field covered by this Regulation.

2. Under the relevant provisions of these agreements, arrangements will be developed which shall, inter alia, specify the nature and the extent of the detailed rules for the participation by these countries in the work of the Agency including provisions on financial contributions and staff.

CHAPTER III: FINANCIAL REQUIREMENTS

Article 19
Budget

1. The Agency's revenues shall consist of:

   - a contribution from the Community;

   - charges for publications, training and/or any other services provided by the Agency.

2. The Agency's expenditure shall include staff, administrative, infrastructure and operational expenses.

3. The Executive Director shall draw up an estimate of the Agency's revenues and expenditure for the following financial year and shall forward it to the Administrative Board together with an establishment plan.

4. Revenue and expenditure shall be in balance.

5. The Administrative Board shall, by 31 March at the latest, adopt the draft budget and forward it to the Commission, which on that basis shall enter the relevant estimates in the preliminary draft general budget of the European Communities which it puts before the Council and the European Parliament in accordance with Article 272 of the Treaty.

6. The Administrative Board shall adopt the Agency's budget, adjusting it where necessary to the Community subsidy.

Article 20
Implementation and control of the budget

1. The Executive Director shall implement the Agency's budget.

2. Control of commitment, payment of all expenditure and control of the existence and recovery of all Agency revenue shall be carried out by the Financial Controller of the Commission.

3. By 31 March each year at the latest, the Executive Director shall submit to the Commission, the Administrative Board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous year.

The Court of Auditors shall examine these accounts in accordance with Article 248 of the Treaty. They shall publish a report on the Agency's activities each year.

4. The European Parliament shall, on a recommendation from the Administrative Board, give a discharge to the Executive Director of the Agency in respect of the implementation of the budget.

Article 21
Evaluation

1. Within five years from the date of the Agency having taken up its responsibilities, the Agency in collaboration with the Commission shall carry out an independent evaluation on the implementation of this Regulation.

2. The evaluation will assess the impact this Regulation, the Agency and its working practices will have had in establishing a high level of maritime safety. The Administrative Board issues specific terms of reference in agreement with the Commission.

3. The Administrative Board shall receive the evaluation findings and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission. Both the evaluation findings and recommendations shall be made public.

Article 22
Financial provisions

The Administrative Board, after receiving the agreement of the Commission and the opinion of the Court of Auditors, shall adopt the Agency's Financial Regulation, which shall in particular specify the procedure to be used for drawing up and implementing the Agency's budget, in accordance with Article 142 of the Financial Regulation applicable to the general budget of the European Union.

CHAPTER IV: FINAL PROVISIONS

Article 23
Start of the Agency's activities

The Agency shall be operational within twelve months of the entry into force of this Regulation.

Article 24
Entry into force

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

FINANCIAL STATEMENT

1. TITLE OF OPERATION

Proposal for a Regulation of the European Parliament and of the Council establishing a European Maritime Safety Agency.

2. BUDGET HEADINGS(S) INVOLVED

A new budget heading B2- will be created under Title B2-7 "Transport".

3. LEGAL BASIS

EC Treaty: Article 80(2).

4. DESCRIPTION OF OPERATION

4.1 General objective

The European Maritime Safety Agency will be created in order to establish a high, uniform and effective level of maritime safety within the Community.

4.2 Period covered and arrangements for renewal

The action will have an unlimited duration (annual contribution).

5. CLASSIFICATION OF EXPENDITURE OR REVENUE

5.1 Non-compulsory expenditure

5.2 Differentiated appropriations

6. TYPE OF EXPENDITURE OR REVENUE

Community contribution to balance the expenditure and revenues of the Agency (see below).

7. FINANCIAL IMPACT

7.1 Method of calculating total cost of operation (relationship between individual and total costs)

1) Development of the Agency

The structure and organisation, as presented in the draft Regulation, are based on the request of all stakeholders for the rapid establishment of an efficient organisation to deal with the aspects of maritime safety provided for in this Regulation.

The Agency will be set up in three stages

The first six months of the first year will be the first phase and will be a transitional period during which the Agency will perform only administrative tasks, such as the renting of offices, the recruitment of the first group of qualified staff, and the installation of the equipment needed. On the initiative of the Executive Director, it will also draw up appropriate Rules of Procedure to enable it to fulfil its tasks.

During the second year, which will be the second phase, the Agency will be required to be able to start to meet the aims and fulfil the tasks provided for in this Regulation.

During the third year, which will be the third phase, the Agency will be required to be able to meet all its aims and fulfil all its tasks.

The Agency will therefore have to be fully operational in thirty months and be performing all its tasks in 2005.

2) Estimate of costs (the presentation below applies to the Agency when it is fully operational in 2005):

a) Human resources

i) Full-time staff

The Agency's staff will be made up of Community officials seconded by the institutions and assigned to the Agency as temporary staff and other servants recruited by the Agency.

Without prejudice to the need to provide the Agency with the services of qualified staff in sufficient numbers and on a durable basis, staff will be hired on temporary renewable contracts so as to ensure a continuous replenishment with staff who are abreast of the latest regulatory, legal and technological developments in the field of maritime safety.

(It is envisaged that a small number of staff will be seconded to the Agency by the Commission in order to ensure close ties between the two organisations).

The necessary number of staff is estimated at 55[32] (see table below). This evaluation is based on a comparison with other similar organisations, the proposal for the Aviation Safety Agency and the specific tasks which will be entrusted to the Maritime Safety Agency.

The total annual expenditure for full-time staff is evaluated at EUR 5.9 million, based on an average Commission staff cost of EUR 0.108 million, including buildings and related administrative expenditure (postal charges, telecommunications, IT, etc.)

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[32] Most of the staff will be recruited as temporary staff in accordance with the rules of the Staff Regulations applicable to the Commission.

TABLE: Estimate of human resources - Breakdown by areas of activity and category

	TOTAL	A	B	C	D
Administration[33]	14	3	4	5	2
- Management (this item includes the Director and 2 secretaries).	3	1	0	2	
- Human and financial resources	8	1	3	2	2
- Information	3	1	1	1	
The Agency's tasks:	41[34]	24	10	7	
- Updating of Community legislation in the field of maritime safety, in line with the development of international legislation. Analysis of progress in research on maritime safety.	7	4	2	1	
- Tasks relating to port State control and training activities in this field.	7	4	2	1	
- Tasks relating to the inspection of classification societies.	5	3	1	1	
- Assisting the Commission in the performance of its tasks relating to legislation on maritime safety.	9	6	2	1	
- Collection of information in the field of maritime safety and exploitation of databases.	5	2	2	1	
- Development of a common methodology for investigations into accidents at sea and the coordination of investigations.	4	2	1	1	
- Assistance to candidate countries for accession.	2	1		1	
- Environment: Analysis of research on the maritime environment, technical assistance from the Commission concerning Community and international legislation in this field.	2	2			
TOTAL	55	27	14	12	2

b) Equipment costs[35]

The amount of moveable property to be acquired and the associated costs will be high during the setting up of the Agency (the first year), but will progressively decrease. The sum of EUR 260 000 is provided for the first year and EUR 100 000 for the following two years, i.e. a total of EUR 360 000. In 2005 and thereafter, the equipment costs will be EUR 80 000.

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33 Including the Director of the Agency and 2 secretaries.

34 Including 2 Heads of Unit.

35 The estimates given are based on those in the EASA proposal and calculated with reference to the human resources and specific tasks of the Maritime Safety Agency.

c) Operational costs

These costs cover conferences, studies, translations and publications. The operational costs can be broken down as follows:

- Translation: The annual costs are estimated at EUR 50 000, at a unit cost of EUR 79 per page, i.e. an approximate volume of 600 pages (annual report, possible studies, records of meetings, information brochures).

- Publication: The Agency will publish its general report, information documents and technical dossiers in paper form and on the Internet. Production costs are evaluated at EUR 120 000.

- Development of databases: The Agency will have to set up databases to compile a certain amount of data on maritime safety. Apart from purchases of PCs, which are covered by the equipment costs, it will be necessary, at a first estimate, to develop three databases which will require the creation of a computer infrastructure and the development of applications. The cost of a server and a database management system can be estimated at EUR 100 000. The cost of developing an application can vary considerably, but in DG TREN it is at present between EUR 100 000 and 200 000. Against this backdrop, the budget needed for the development of databases is initially estimated at EUR 500 000.

- Studies: The monitoring and evaluation of research in the field of maritime safety are among the Agency's tasks. These tasks will require technical studies in some cases. A sum of EUR 500 000 seems to be a reasonable estimate in view of the tasks to be performed and the high technical level involved.

- Workshops and conferences: The development of regulations in the field of maritime safety and the setting up of training workshops may require the organisation of seminars and conferences. The total expenditure which will be incurred for these meetings is estimated at EUR 150 000.

Total expenditure on operational costs amounts to EUR 1 300 000[36].

d) Mission expenses

The tasks performed by the Agency, in particular the visits to the port States, the inspection of classification societies, the adjustment of the legislation of third countries which are candidates for accession and the contacts between the Agency and the Commission will necessitate travel both within and beyond the EU (travel and accommodation expenses). The budget for mission expenses is estimated at EUR 250 000[37].

3) Revenues

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36 In the table "Itemised breakdown of costs" below, the total operational costs and equipment costs are broken down according to the number of persons involved in each type of activity.

37 These estimates have been made on the basis of real average mission expenses (travel and accommodation) recorded by DG TREN, both within the EU and beyond, and the estimated number of missions for each of the Agency's tasks. The above estimates do not take account of the effects of the future location of the Agency.

The Agency's revenues consist of the contribution from the Community budget and the fees as provided for in Article 17 of the Regulation establishing a European Maritime Safety Agency.

Community contribution:

The Community contribution will cover the aims and tasks assigned to the Agency by the Community, as set out in Articles 1 and 2 of the Regulation establishing a European Maritime Safety Agency.

7.2 Itemised breakdown of costs

a) by type of activity (in euros)

Activity	Full-time staff	Equipment costs	Travel costs	Operational costs	Total
Administration **(14 persons)**	1 510 000	20 364	70 000	330 904	1 932 000
Updating of Community legislation, analysis of progress on research in maritime safety. **(7 persons)**	756 000	10 180	12 500	165 000	943 680
Tasks relating to port State control and training activities in this field. **(7 persons)**	756 000	10 180	45 000	165 000	976 180
Tasks relating to the monitoring of classification societies. **(5 persons)**	540 000	7272	60 000	120 000	728 000
Commission assistance for tasks relating to maritime safety. **(9 persons)**	972 000	13 100	12 500	212 000	1 209 600
Collection of information on maritime safety and maritime traffic, exploitation of databases. **(5 persons)**	540 000	7272	12 500	120 000	680 000

Common methodology and coordination of investigations into maritime accidents. **(4 persons)**	432 000	5820	12 500	95 000	545 320
Assistance for candidate countries (2 persons)	216 000	2300	25 000	48 000	292 000
Environment (2 persons)	216 000	2300	12 500	48 000	278 800
Total	5 940 000	80 000	250 000	1 300 000	**7 584 780 (rounded off to 7 600 000)**

b) by type of expenditure

Commitment appropriations in EUR (at current prices)

Item	2002	2003 / 2004	2005 and beyond
Staff costs	1 980 000	4 000 000	5 940 000
Equipment	260 000	100 000	80 000
Operational costs	325 000	800 000	1 300 000
Travel expenses	60 000	180 000	250 000
Total costs	2 625 000	5 080 000	**7 600 000**
Contribution from EU budget[38]	2 625 000	5 080 000	7 600 000

7.4 Schedule of commitment and payment appropriations

The Community contribution will be paid annually in one instalment.

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38 Any revenues the Agency receives from training activities and publications must be taken into account as regards the contribution from the EU budget. However, these revenues will be a very small amount compared with the Agency's total budget and at this stage they cannot be estimated accurately.

8. FRAUD PREVENTION MEASURES

Specific control measures envisaged:

8.1 For the Agency

The Executive Directive will implement the Agency's budget. He will each year submit to the Commission, the Administration Board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous financial year. In addition, the Commission's Internal Audit Service will assist in the management of the Agency's financial operations by controlling risks, monitoring compliance by providing an independent opinion on the quality of management and control systems and making recommendations in order to improve the efficiency and the effectiveness of operations and to ensure economy in the use of the Agency's resources.

The Agency will adopt its Financial Regulation, after having received the agreement of the Commission and the Court of Auditors. The Agency will put in place an internal audit system similar to that introduced by the Commission in the framework of its own restructuring.

8.2 Cooperation with OLAF

The staff subject to the Commission's Staff Regulations will cooperate with OLAF to combat fraud.

8.3 For the Court of Auditors

The Court of Auditors will examine the accounts in accordance with Article 248 of the Treaty and publish an annual report on the Agency's activities.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1 Specific quantifiable objectives; target population

The specific objectives of the Agency, as described in the draft Regulation, are to ensure a high, uniform and effective level of maritime safety and pollution prevention in the Community. Furthermore, the Agency will provide the Member States and the Commission with technical and scientific support and with a high level of expertise in order to ensure the convergent and effective implementation of Community legislation in the field of maritime safety, to monitor its implementation and to evaluate the effectiveness of the measures in place.

The tasks to be performed by the Agency will impact on the safety of people and goods moving by means of maritime transport in EU waters, and their environment.

They will also impact on the staff and organisations involved in maritime safety by reducing distortion of competition due to the economic advantages enjoyed by ships which fail to comply with current regulations and will reward the serious maritime players.

9.2 Grounds for the operation

For several years, the Commission has been adopting a large number of legislative measures to increase safety and prevent pollution in maritime transport.

The sinking of the oil tanker *Erika* in December 1999, which polluted about 400 km of coastline, considerably stirred up public opinion in Europe. From all evidence, the string of such accidents, their effects on the environment and the apparent inability to stop them have considerably reduced the public's willingness to tolerate them.

The European Parliament and the General Affairs Council have asked the Commission to tighten up maritime safety rules sharply at the Community level.

With a view to a global maritime safety strategy, the Commission, at the request of the European Parliament, is proposing the setting up of a Maritime Safety Agency to underpin the Commission's and the Member States' action in applying and monitoring Community legislation and evaluating the effectiveness of the measures in place.

The Agency will assist the Commission in the updating of Community legislation on maritime safety, in particular in line with the development of international legislation in this field.

The Agency will monitor the overall functioning of the Community system of port State control and will help the Commission to carry out inspections of the classification societies recognised at Community level. It will also organise training activities in the field of port and flag state control.

It will provide the Commission and the Member States with reliable, objective and comparable information and data on maritime safety to enable them to take the necessary steps to improve safety at sea and to evaluate the effectiveness of the measures in force.

In cooperation with the Commission and the Member States, it will design a common methodology for investigating maritime accidents within the Community, support the Member States in activities relating to investigations of serious maritime accidents occurring in Community waters and analyse existing investigation reports on accidents.

Lastly, the creation of a European Maritime Safety Agency will promote the establishment of a partnership between the Member States and help to encourage the use of best practices within the Community.

These objectives will help to strengthen the overall maritime safety regime in the Community by reducing the risks of accidents at sea, marine pollution and the loss of human life at sea.

9.3 Monitoring and evaluation of the operation

The monitoring and evaluation of the Agency will be carried out on the basis of the annual report adopted by the Administrative Board of the Agency for the previous year and the work programme for the coming year, which will both be forwarded to the Member States, the Commission, the Council and the European Parliament

(Article 10 of the draft Regulation). The Agency's performance will be subject to regular in-depth evaluations in accordance with Community practices and standards.

10. ADMINISTRATIVE EXPENDITURE (SECTION III, PART A, OF THE BUDGET)

The setting up of the Agency should not create any additional costs for the Commission. The work currently done by the Commission will be replaced by monitoring and follow-up of the Agency's activities.

10.1 Effect on the number of posts

Not applicable.

10.2 Overall financial impact of additional human resources

Not applicable.

10.3 Increase in other administrative expenditure as a result of the operation, in particular expenditure on meetings of committees and groups of experts

Not applicable.

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DOCUMENTS

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117