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

ON THE SAFETY OF THE SEABORNE OIL TRADE

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Directive 95/21/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Directive 94/57/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers

(presented by the Commission)

**COMMUNICATION FROM THE COMMISSION
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TABLE OF CONTENTS

INTRODUCTION

I. BACKGROUND

A : SEABORNE OIL TRADE

1. Importance of oil transport
2. Oil tanker fleets
3. Tanker casualties

B : TANKER SAFETY

1. Developments in tanker safety
2. Weaknesses in the present system

II. PROPOSALS FOR ACTION

A : PROPOSALS FOR IMMEDIATE LEGISLATIVE MEASURES

1. Port State control
2. Classification societies
3. Single and double hull oil tankers

B : PROPOSALS FOR FUTURE MEASURES

1. Increased transparency
2. Surveillance of navigation
3. Enlargement of the European Union
4. Towards a European structure for Maritime Safety
5. Liability of the maritime players

C : VOLUNTARY AGREEMENT WITH INDUSTRY

CONCLUSION

ANNEXES

I-A Tanker accidents

I-B Double hull or equivalent design tankers

LEGISLATIVE PROPOSALS

I. Proposal for a Directive of the European Parliament and of the Council amending Directive 95/21/EC on port State control of shipping

II. Proposal for a Directive of the European Parliament and of the Council amending Directive 94/57/EC on classification societies

III. Proposal for a Regulation of the European Parliament and of the Council on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers

INTRODUCTION

1. On 12 December 1999 the 25-year old, Maltese-registered, single hull oil tanker Erika chartered by Total-Fina broke in two some 40 nautical miles off the southern tip of Brittany. More than 10 000 tonnes of the 30 000 tonnes of heavy fuel oil it was carrying were spilt. About 400 kilometres of coastline were polluted by the oil, causing serious damage to fauna, flora, fisheries and tourism, as well as potential public health consequences.

This was not the first accident of its kind in European Union waters. The wreck of the oil tankers Torrey Canyon, Olympic Bravery, Boehlen, Amoco Cadiz, Tanio, Aegean Sea and Braer in particular come to mind.

Some 70% of the European Union's oil imports are transported along the Brittany coast and through the English Channel, hence the fact that the same regions are hit again and again. If such an accident were to occur in the Mediterranean, the effects would be equally disastrous.

As the scale of reaction to the sinking of the Erika shows, public opinion is no longer prepared to tolerate such accidents. There have been calls for rigorous action at Community level, not least from the European Parliament¹ and the Council of Ministers.²

2. It has become clear that the normal framework for international action on maritime safety under the auspices of the International Maritime Organisation (IMO) falls short of what is needed to tackle the causes of such disasters effectively. The IMO suffers from a major handicap: the lack of proper means to verify how its regulations are applied throughout the world. As a result, IMO regulations are not applied everywhere with the same rigour. The evolution of maritime transport over the last few decades and in particular the emergence of "flags of convenience", some of which fail to live up to their obligations under the international conventions, is tending to aggravate this phenomenon.

It was for this reason that the European Council called on the Commission, following the 1978 Amoco Cadiz disaster, to come forward with proposals to control and reduce pollution caused by oil spills. An ambitious programme of proposals was presented which resulted, in the end, simply in a number of formal declarations or resolutions, encouraging Member States to ratify the IMO and ILO Conventions. One directive establishing minimum requirements for certain tankers was, however, adopted.

Once the "momentum" generated by a tanker accident subsided, Member States tended to avoid binding measures at Community level, more particularly since unanimity was required for decision-taking.

¹ European Parliament resolutions of 20 January 2000 and 2 March 2000.

² Council meeting on General Affairs, 24 January 2000.

3. It was not until the middle of the 1990s and the advent of qualified majority voting that the Council adopted the first building blocks of a common maritime safety policy including:
- organisation at Community level of stricter application of international conventions,
 - adoption of specific Community provisions where IMO standards are lacking or inadequate.

The Erika disaster demonstrates, firstly, the risk presented by old ships and, secondly, the need to tighten up the existing Community regulatory framework - which, incidentally, Member States are not applying properly, particularly as regards the number of inspections in ports - beyond the level of the IMO standards. This was also the tendency in the USA, where the regulatory framework was tightened up at federal level following the Exxon Valdez catastrophe.

The Commission therefore proposes a number of measures that could be taken immediately, and longer-term, more complex measures which will be the subject of a second series of proposals towards the end of the year.

4. With regard to the short-term regulatory measures, the Commission is presenting three sets of measures to the Parliament and the Council of Ministers with this communication:
- Firstly, more rigorous inspection of ships using Community ports, which should be reflected in tougher measures against ships that are manifestly sub-standard. **It is proposed to ban from all ports of the Union ships older than fifteen years that have been detained more than twice in the course of the two preceding years, on the basis of a "black list"** which the Commission will publish every six months. In addition, inspections of all ships will have to be stepped up in line with the age of the vessel and will systematically have to target one of the ballast tanks. Ships will be required to communicate certain information before entering ports to enable inspections to be properly prepared. Member States will have to undertake to inspect vessels more frequently and more thoroughly, notably by increased recruitment and training of inspectors, in order to avoid the creation of "ports of convenience".
 - Secondly, there must be **stricter monitoring of the classification societies** to which Member States delegate power to inspect the quality of ships. The Commission reserves the right to suspend or withdraw the societies' recognition by means of a simplified procedure, and the societies must be held fully liable in the event of negligence. **Good safety and pollution prevention performance** of the classification societies will become essential in order to obtain and maintain recognition at Community level. In addition, **more stringent quality criteria** must be met by the recognised organisations, including the obligation to follow certain **procedures when a ship changes class**, such as the transmission of the **complete history file** of the ship to the new classification society.
 - Finally, it is proposed to generalise **the ban on single hull oil tankers** according to a timetable similar to that applied by the USA (2005, 2010 and 2015, depending on tonnage).

The three proposals form a coherent whole and the first two apply not only to oil tankers, but to any ships transporting dangerous or pollutant substances. In particular, the information gathered in the course of inspections in each port and of surveys by the classification societies will be widely publicised, notably through the EQUASIS database, so that the condition of a vessel will systematically be known and individual liability will be clearly established in the event of an accident.

5. In a second stage, the Commission plans to make additional proposals in the following areas:

- **Systematic exchanges of information between all the actors in the maritime community by further developing the EQUASIS system in particular.** It is important in this context to ascertain which professions (shipowners, insurers, classification societies) are willing or otherwise to ensure maximum transparency.
- **Improved surveillance of navigation, particularly in those areas where oil tanker traffic is most dense.** In addition to the obligation to "report", as already provided for in a Commission proposal of December 1993 not yet adopted by the Council, the arrangements for monitoring the most hazardous ships outside territorial waters must be examined. These are issues on which Member States have always been reserved, on grounds of potential conflicts with the international law of the sea.
- **The possible establishment of a European structure for maritime safety** , whose prime task would be to monitor the organisation and effectiveness of national inspections in order to ensure greater uniformity.
- **Development of the liability of the various players in the seaborne oil trade.** The liability regime is currently governed by international conventions. The Commission intends, firstly, to seek to increase compensation available under collective compensation schemes of the IOPCF type and, secondly, to establish the principle of responsibility of the carrier and owner of the cargo.

6. Enhanced safety of maritime transport cannot be decreed. It will be achieved by developing often highly technical rules and reconciling the Union's obligations to protect its environment with its industrial interests - the capacity to renew its fleet - and international considerations. The European Union, the world's leading trading power, cannot discount the consequences of unilateral measures that might conflict with its activities in the rest of the world, given that most of the European fleet trades exclusively between non-Community ports.

Before proposing new Community legislation in the social field in particular (training of seafarers, etc.), the Commission wishes to draw attention in this communication to the fact that several of the existing measures have still not been correctly implemented. Some of the texts already adopted have either not been transposed or are not being properly applied, with the result that infringement proceedings are in progress in several cases.

Furthermore, while deploring the widespread recourse to flags of convenience, the Commission would also point out that most of the vessels controlled by European companies have been flagged out to third countries for tax reasons. Having said that, the Commission considers that it should be a condition of the accession negotiations

with Cyprus and Malta that these countries apply the existing Community legislation on maritime safety as soon as possible but not later than by the date of their accession.

7. In order to act as speedily as possible and to avoid further disasters like the Erika, the Commission proposes that the oil companies, without awaiting the adoption of the first package of directives, should undertake by **voluntary agreement** to refrain in future from chartering tankers older than 15 years (unless appropriate inspections show them to be in a satisfactory condition) and to take any other measures necessary to improve safety. The discussions on this voluntary agreement should also be reflected in improvements to the reform of the oil companies' liability arrangements.
8. The package of measures proposed is designed to improve prevention of accidents of the Erika type and in this way to enhance protection of the marine and coastal environment. The Commission would point out that measures to combat pollution are planned in the common position adopted by the Council on 16 December 1999 concerning the European Parliament and Council Decision setting up a Community framework for cooperation in the field of accidental or intentional marine pollution (2000-2006).
9. In addition to the measures proposed in this communication, the Commission considers that the proliferation of operational pollution by all types of ships and the risk of serious pollution by bunker oil in the event of accidents are also cause for concern. It therefore plans to examine preventive Community initiatives that could be taken in this respect.

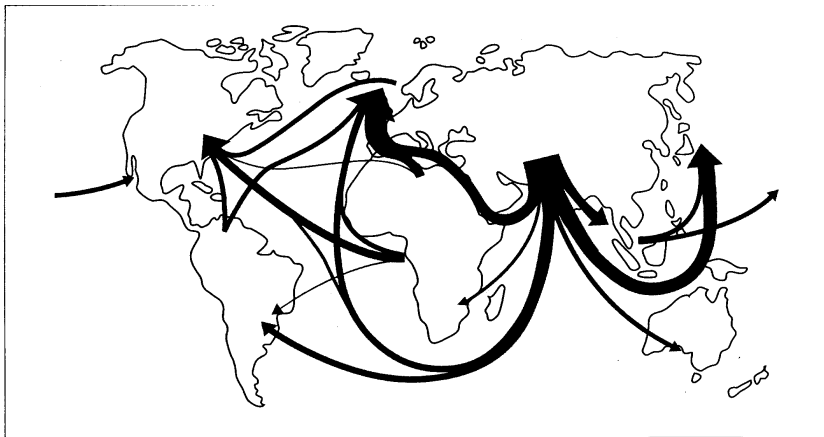
I: BACKGROUND

A: SEABORNE OIL TRADE

1. Importance of oil transport

(a) World oil movements

More oil than any other commodity is shipped globally. In 1998 the total crude oil and refined products transported by sea amounted to more than 2 000 million tonnes³ which in weight terms represented 40% of the total cargoes shipped by sea.



World Oil Trade

The principal sea routes for crude oil are from the main natural oil sources: Middle East/Gulf to Southeast Asia, Japan/South Korea, Europe and the USA; from North Africa to Europe and from the Caribbean to the USA.

The EU oil trade is the largest in the world, with crude oil imports representing about 27% of the total world trade while US imports amount to 25% of the world total. The oil trade is broadly divided into crude oil and refined products. In tonnage terms, crude oil amounts to around three quarters of the global trade (1 590 million tonnes), with products representing about one quarter (430 million tonnes).

90% of the total oil trade with the European Union (intra- and extra-EU) is seaborne. The remainder is shipped by pipeline, land transport and by inland waterways.

In the coming years a continuing increase in tanker trade can be expected due to an increase in the demand for petroleum products following the expected growth of economic markets.

(b) EU oil movements

The EU seaborne oil trade is particularly important. Oil demand in the EU is around 640 million tonnes, but approximately 800 million tonnes p.a. is transported to, from and between Community ports. This does not include domestic trade within individual States.

³ EUROSTAT and OECD/IEA statistics, Journal de la Marine Marchande.

Approximately 70% of tanker trade in the EU is concentrated off its Atlantic and northern coasts and the remaining 30% in the Mediterranean. Within these two zones, the split between crude oil and product trades is approximately 2/3 to 1/3.

There is also an additional volume of tanker traffic passing through EU waters but not calling at European ports, for example in the Mediterranean from the Middle East passing through the Strait of Gibraltar.

(c) EU seaborne trade patterns – crude oil

EU imports of crude oil are mainly from the Middle East and North Africa, while exports from the North Sea oil fields are mostly to North America.

Trade patterns are essentially governed by port and refinery locations, as the refineries receive all incoming crude oil and deliver the oil products. The largest EU oil ports are Rotterdam (which handles 100.8 million tonnes of crude oil p.a.), Marseilles (48.3 m tonnes), Le Havre (37.0 m tonnes), Trieste (35.7 m tonnes) and Wilhelmshaven (32.6 m tonnes).

The larger tankers dominate the crude oil trade. Oil to Europe from the Middle East is normally carried on Very Large Crude Carriers⁴ (VLCC) with a tonnage of +200 000 tonnes deadweight (tdwt)⁵ routed around Africa, or through the Suez Canal using “Suezmax” tankers of between 120-140 000 tdwt.

(d) EU seaborne trade patterns – oil products

The product trade is more complex, comprising EU imports and exports, intra-EU and domestic trades. The total product trade is about 205 million tonnes p.a.

Imports and exports to/from the EU total 135 million tonnes while trade within the EU amounts to 70 million tonnes. The oil product trade in the North Sea region is particularly intense. The type of tankers used are usually of a smaller size range (5-50 000 tdwt handysize product tankers.)

The number of product tankers operating within EU waters at any given time is difficult to quantify because it varies to such a large extent. However, a rough estimate is about 1 500 to 2 000 vessels, the majority being of a smaller size. This sector plays an essential role in the distribution of oil products in the EU.

The product tanker trade is further divided into so-called “black products” (bitumen, heavy fuel oil, etc.) and “white products” (kerosene, petrol, etc.). Many white products are of a highly flammable nature and are carried in modern, state-of-the-art tankers. Black oils pose a far smaller risk of fire and explosion and are regularly carried in older tankers nearing the end of their economic lives.

⁴ Or Ultra Large Crude Carrier (ULCC) of +300 000 tdwt.

⁵ Deadweight is the tonnes of cargo, fuel and stores carried on a ship.

Although it is true that black oils are intrinsically less hazardous, they can be much more polluting when spilled into the sea than white products or even crude oil, which to a large extent may disperse by evaporation.⁶

Erika was a 35 000 tonne product tanker engaged in the carriage of heavy fuel oil (black product cargo).

2. Oil Tanker fleets

The world fleet

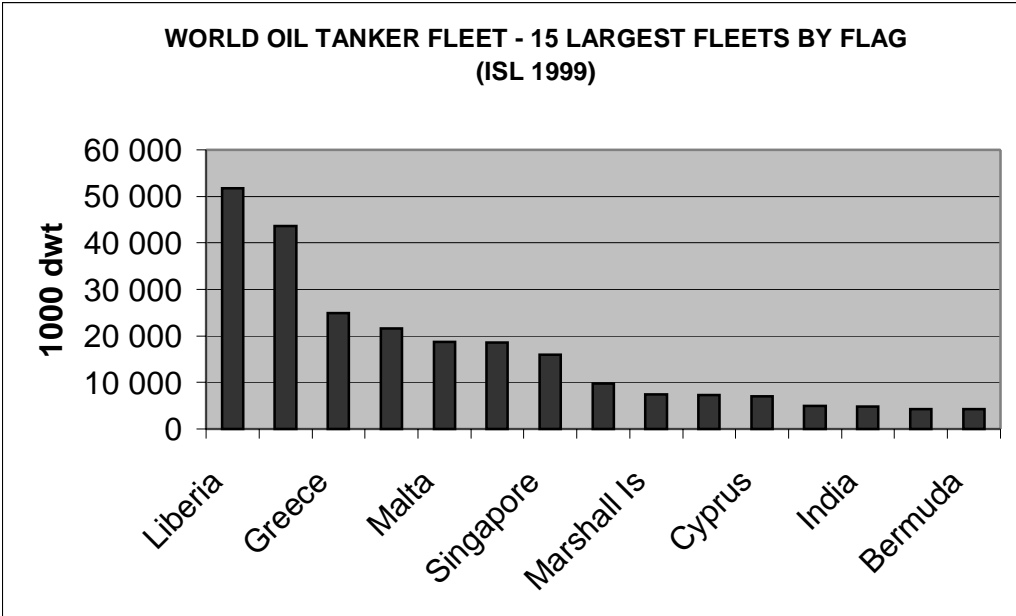
Having established the importance of the oil trades both at a global level and within the Community, it is necessary to look more closely at the actual tanker fleet.⁷

The world tanker fleet can be roughly divided into oil tankers (crude and products), chemical tankers and liquid gas tankers. In tonnage terms the oil tanker fleet is by far the greatest. Indeed, this sector is the largest of all shipping sectors and includes the world’s largest ships.

The world oil tanker fleet on 1 January 1999 comprised 7 030 ships⁸ totalling 289 million tdwt. This represented 38.5% of world merchant tonnage.

The average age of the world tanker fleet in 1999 was 18 years (compared to 16.7 years in 1995). Of the total 1999 fleet, 41% (2 939 ships) were built before 1979, i.e. are now over 20 years old. In tonnage terms these represent 36% of the total tanker tonnage.

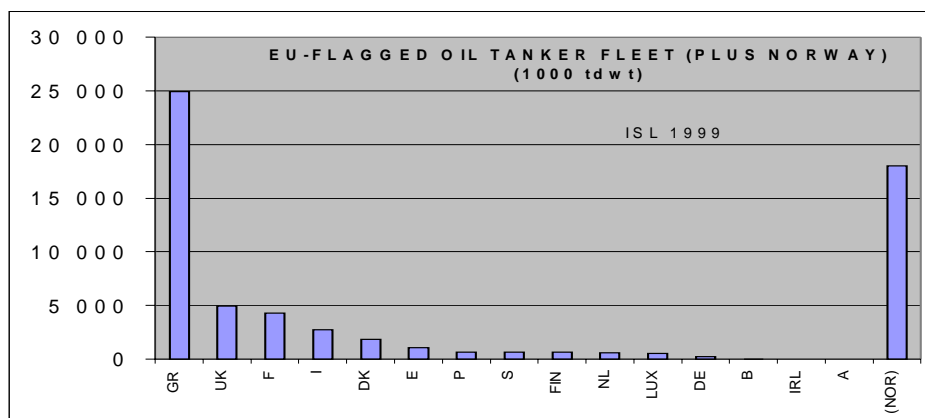
The world's 15 largest oil tanker fleets, representing 85% of the total tonnage, are shown in the following graph.



⁶ Accidental spills can result from ships other than tankers which often carry large quantities of heavy fuel as bunkers. This aspect is not addressed in this Communication; however it is an important risk which has already been flagged up within the IMO.

The European fleet

The EU registered oil tanker fleet of 855 tankers⁹ totalling 43.2 million tonnes dwt represents 14.9% of the world total. However it is estimated that companies established within the EU control¹⁰ about 35% of the world's oil tanker fleet. Flags frequently used by EU interests include Liberia, Panama, Cyprus, Malta and Bahamas.



The average age of the EU registered oil tanker fleet was 19.1 years in 1999 (18.9 in 1995), which is above the world average. More than 45% of the EU registered fleet is over 20 years old (in terms of numbers of vessels.)

Many EU flagged and controlled tankers are engaged in “cross-trades”, meaning that they trade between countries other than those in which they are registered, for example between the Middle East and Japan, and may seldom or never visit EU ports.

It should also be noted that the world's sixth largest tanker fleet is registered in Norway (18 million tonnes), which means that the EEA-flagged tanker fleet represents over 20% of the world total.

3. Tanker casualties

Between January 1992 and March 1999 a total of 593 merchant ships were lost (about 8 million tdwt). 77 of these losses were tankers which, although accounting for only 13% of the total number, represent 31% in terms of tonnage.

When compared to the share of tankers in the world fleet (18.2% in terms of numbers of ships and 38.5% in tonnage), it would appear that they have a relatively good safety record. Annex 1 contains a summary of major tanker casualties in EU waters. Although the majority of the accidents mentioned occurred off northern and western EU coasts, it must be stressed

⁷ Sources of data: Institute of Shipping Economics and Logistics (ISL) Bremen, Yearbook and various issues of FOCUS 1999, ISL Merchant Fleet Data Base (aggregates based on quarterly updates from LMIS); Institute of Shipping Analysis (ISA), Gothenburg; DG TREN Statistics Pocket Book.

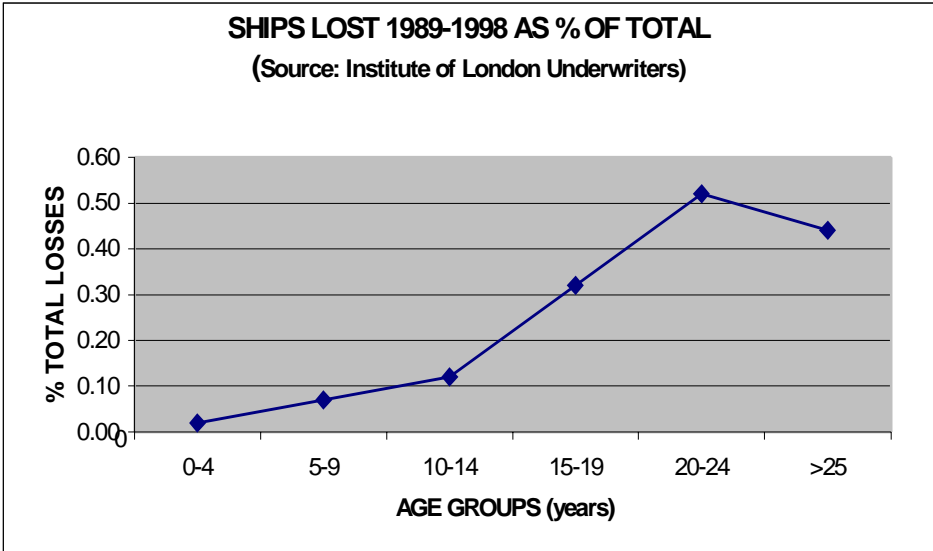
⁸ Ships of 300 gt and over.

⁹ Denmark includes: DOR, DIS, Faeroes and Greenland. France includes: Kerguelen, New Caledonia, French Polynesia, Martinique, Guadeloupe, St. Pierre et Miquelon, Mayotte, Reunion, Wallis and Fortuna Is, French Guyana. Netherlands includes Netherlands Antilles and Aruba. Portugal includes Madeira (and Macao). Spain includes Canary Is. UK includes Isle of Man, Channel Is., Br.Virgin Is., Montserrat, St.Helena, Turks & Caicos Is., Anguilla and Falkland Is.

¹⁰ Control: the country of domicile of the company owning the controlling interest in the fleet.

that tanker accidents in the Mediterranean have the potential to pose an exceptional risk to the environment and commerce. Accidents are often attributed to human error (e.g. faulty navigation or pilotage). Other causes are structural failure, fire and explosion.

There is a general correlation between age and accidents to ships. The following table shows the percentage of all ships lost between 1989 and 1998 according to age group:



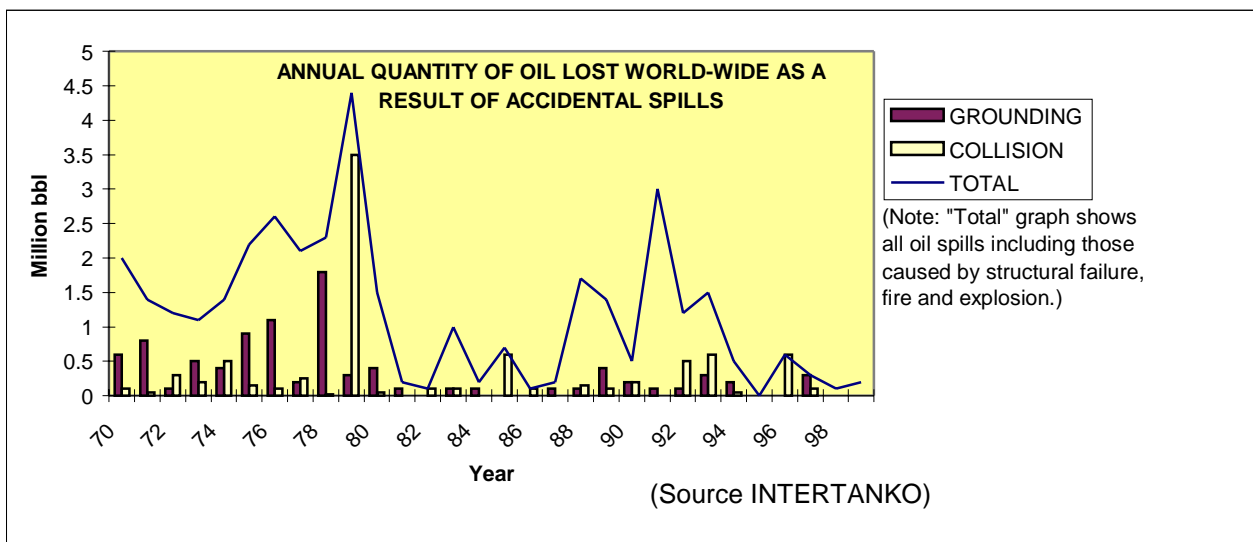
Moreover, figures in Annex 1 show that 60 out of the 77 tanker casualties between 1992 and 1999 were over 20 years of age. However, several of the tankers involved in major pollution incidents in Europe resulting from grounding were comparatively young.¹¹

Structural failure is the other major cause of major pollution accidents over which there is increasing concern.

There have been several instances of serious structural failure, the worst being the **Betelgeuse** explosion caused by the hull fracturing in Bantry Bay, Ireland, in 1979 which killed 50 people. The **Nakhodka** suffered a similar fate to **Erika** off Japan in 1997 when she broke in two while carrying heavy fuel oil, causing extensive pollution.

¹¹ Although this Communication addresses tanker casualties and the resulting pollution, it should be noted that the greatest source of tanker pollution is operational, such as cleaning of tanks and disposing of cargo residues. A number of measures have been taken by the IMO which have resulted in a reduction of this type of pollution, and the provision of adequate reception facilities in all tanker ports will result in further reductions. The proposed Directive on port reception facilities for ship-generated waste and cargo residues addresses this problem in Europe – Common position (EC) No 2/2000.

In these accidents, serious corrosion in ballast tanks was seen as a contributing factor. In the same month as the **Erika** disaster the Russian tanker **Volgoneft 248**, also carrying heavy fuel oil, ran aground in bad weather and broke up off Istanbul causing major pollution.



The measures taken to improve safety and lessen pollution as a result of these accidents has resulted in a significant decrease in both accidents and oil pollution. However, there is no room for complacency. Since the **Torrey Canyon** disaster the reaction of European citizens has sharply swung from being one of grudging acceptance that pollution is a price we have to pay for economic development, to one of intolerance and outrage. It has to be emphasised that no other type of marine disaster has ever resulted in damaging such huge areas of the marine environment and impacting on the lives and businesses of such a large number of people. **Consequently, while welcoming the improving trend in tanker safety, there is clearly more that can and must be done to try and eliminate accidents of this nature.**

B – TANKER SAFETY

1. Developments in tanker safety

Following a number of very serious oil spills caused by tanker accidents, various strict measures were taken at international level to improve safety standards. The impact of these measures is reflected in recent casualty statistics.

(a) IMO legislation

Following the **Torrey Canyon** disaster in 1967 the real environmental threat posed by the rapid growth in tanker traffic and ship size became apparent. It was clear that further measures were needed to prevent oil pollution from tankers and also to improve the system for compensation following such accidents.

The plan of action drawn up at IMO following **Torrey Canyon** resulted in a series of conventions covering the legal and operational problems exposed by the accident. As well as addressing accidental pollution, the important issue of operational pollution was also covered.

The International Convention for the Prevention of Pollution from Ships (MARPOL)¹² was adopted in 1973. The Convention aims to cover all vessel-sourced pollution, not only oil, but also chemicals, sewage, garbage and other harmful substances. The latest annex to be adopted covers air pollution from ships.

Among the measures adopted under MARPOL was Crude Oil Washing, which eliminated the need for washing cargo tanks with sea water. Inert gas systems were introduced on crude oil carriers to prevent ignition within cargo spaces. Another measure was the introduction of Segregated Ballast Tanks (SBTs). The measures were incorporated in the 1978 Protocol to the 1974 Convention for the Safety of Life at Sea (1978 SOLAS Protocol) and the 1978 Protocol to the 1973 MARPOL Convention.

More recently, following the **Exxon Valdez** accident in 1989, further requirements have been introduced in MARPOL to phase out single hull tankers and replace them by those with double hulls or equivalent design. (For further details see Part II, A.3)

(b) Measures taken within the EU

A number of measures have also been taken at Community level in the fields of safety and pollution as well as the inspection of ships. These to a great extent build on or complement international IMO legislation. The Directive on port State control¹³ covers the inspection of all ships and includes specific requirements relating to the inspection of tankers. Directive 94/57/EC establishes common rules and standards for ship inspection and classification societies and for the relevant activities of Administrations.¹⁴

The IMO Resolution relating to tonnage measurement of segregated ballast tanks (SBTs) is implemented in a Regulation¹⁵ which provides for ships with SBTs to receive a reduction in port dues.

Vessels carrying dangerous or polluting goods to and from EU ports are required to report details of their cargoes under Directive 93/75/EEC.¹⁶

The proposed Directive on port reception facilities for ship generated waste and cargo residues¹⁷ aims to ensure compliance with the provision under MARPOL that ports have to provide reception facilities.

(c) Operational measures

A number of important measures have been taken within the IMO framework which help to reduce the chance of vessels grounding or colliding whilst on passage. Traffic Separation Schemes (TSSs) have been adopted in areas of heavy traffic. These schemes provide one-way traffic lanes greatly reducing the chance of ships meeting head-on (e.g. Dover Strait). They also ensure that traffic is kept well away from the coast (e.g. Ushant). The introduction of TSSs has greatly reduced the incidence of collisions in areas where they have been established.

¹² The IMO International Convention for the Prevention of Pollution from Ships, 1973 as amended by the 1978 Protocol (MARPOL 73/78).

¹³ Council Directive 95/21/EC of 19 June 1995.

¹⁴ Council Directive 94/57/EC of 22 November 1994.

¹⁵ Council Regulation (EC) No 2978/94 of 21 November 1994.

¹⁶ Council Directive 93/75/EEC of 13 September 1993.

¹⁷ Common position (EC) No 2/2000.

Navigational equipment has become more reliable and accurate. Radars now have the ability automatically to plot other ships and the navigator can assess the collision threat far more easily. Precision navigation using satellite technology (GNSS) provides a continuous accurate plot of the ship's position. This greatly reduces the chance of grounding whilst on passage.

Further improvements in the technical field are being introduced. Accuracy of navigation will be further improved for example through the introduction of Electronic Chart and Information Systems (ECDIS) and the development of the GALILEO global navigation system. The fitting of transponders on ships (AIS) will enable ships to be identified from the shore and will also provide navigators with improved information to determine risk of collision with more precision. The accuracy of meteorological forecasting has improved and weather-routing of ships can result in reduced damage and economic savings.

(d) Training and the human element

In many accidents the "human element" has been a substantial contributory factor. Training and competence of crews was recognised as being an essential part of improving safety at sea and the adoption of the 1978 IMO Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 78) was adopted. Its limitations though were soon recognised and a rigorous overhaul of the Convention resulted in the revised STCW Convention which came into force in 1997.

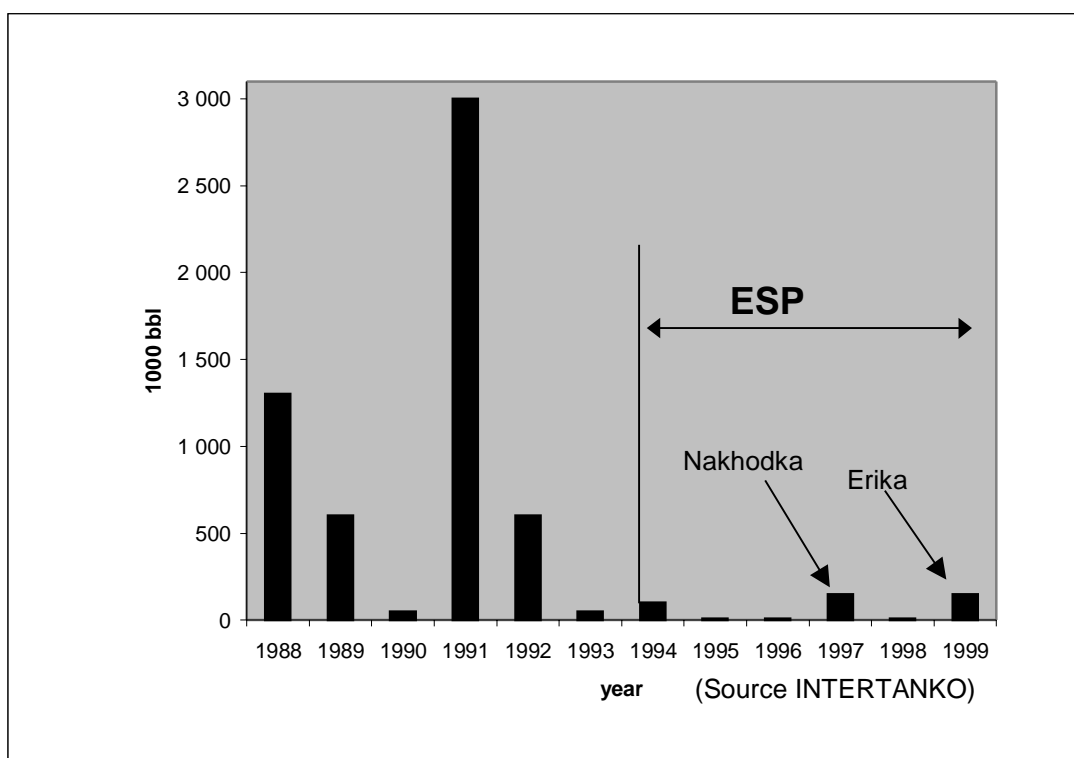
Development of technical training aids such as simulators has helped to improve the effectiveness of training schemes for seafarers.

A series of ILO regulations concerning the working and living conditions on board ships has also been adopted. The most recent, covering the regulation of working hours on board, addresses the issue of fatigue, which is seen as an increasingly important contributory factor in marine accidents. The Commission will continue to follow with great interest the proceedings of the International Labour Office with a view to enable the expeditious conclusion of the negotiations on the abandoning, the dead and the harm to seafarers.

Another important instrument, the International Safety Management Code (ISM), became mandatory from 1998. The ISM Code provides for safe practices in ship operations, a safe working environment and requires safeguards against identified risks. It also provides for continuous improvement in management skills of personnel, especially in safety and response to emergencies.

(e) Structural improvements

Close monitoring of ships' structures and the stresses on hulls has led to reductions of losses due to structural failure. Improved stress monitoring equipment and accurate loading computers have helped ensure that stresses are kept within allowable limits. As a further check on the condition of ageing tankers, MARPOL requires (from 1993) an Enhanced Survey Programme (ESP) of inspections to be carried out for crude oil tankers above 20 000 tonnes and product carriers over 30 000 tonnes. This requires a much more rigorous inspection of a tanker's hull than was previously the case. IMO Guidelines specify the detail of such surveys, which become more stringent as the ship's age increases. The scope was later expanded so that from 1996 onwards, the ESP provisions have applied to all tankers over 500 tonnes. ESP has had a significant effect in reducing losses and incidents causing pollution. This is clearly shown in the following graph



Oil spills – Annual quantities of oil lost as a result of structural failures, fires and explosions

(f) New tanker designs¹⁸

Tankers constructed since 1996 are required under MARPOL to be built with double hulls or equivalent designs and single-hulled tankers will be phased out. Double-hulled ships will greatly reduce the chances of pollution in cases of low-impact collisions or grounding in

¹⁸ The Key Action within the Fifth Framework Programme on "Land transport and marine technologies" will target improvements in efficiency, safety and environmental aspects of ships.

particular. The maintenance of structural integrity, especially in the ballast spaces of these ships, will be essential. The use of modern effective coatings and corrosion protection systems in ballast spaces will help prevent the rapid deterioration which was evident in older tanker designs. It will be essential to monitor the integrity of the coating and systems closely as these new designs of ship age.

| Tanker fleet on 1.1.2000 – proportion of Double-Hull vessels (source INTERTANKO) | | | |
|---|-----------------------|--------------------|----------------------|
| Size segment (tdwt.) | No. of tankers | Double Hull | % Double Hull |
| < 5 000 | 2249 | 32 | 1.4% |
| 5 – 20 000 | 1155 | 296 | 25.6% |
| 20 – 80 000 | 1538 | 424 | 27.5% |
| 80 – 200 000 | 975 | 417 | 42.8% |
| > 200 000 | 493 | 164 | 33.3% |
| TOTAL | 6410 | 1333 | 20.8% |

2. Weaknesses in the present system

(a) Ownership and chartering practices

All the technical improvements achieved cannot hide the fact that there are certain trends in the market which give serious grounds for concern. Oil companies have largely disposed of their tanker fleets. Many small independent tanker owners have entered the market. Oil companies now control only a quarter of the world fleet while independent tanker owners control three quarters.

In addition there is a trend towards “atomisation” amongst independent tanker owners. By splitting their fleet into single-ship companies, often in the form of “brass-plate” companies registered in offshore locations, owners can reduce their financial risk. It is often difficult to determine who are the financial interests concealed by these structures and who are the true decision makers responsible for the safe operation of the ships.

Charterers also show a somewhat similar trend. The major oil production companies are in competition with oil trading companies, which can be subdivided into globally operating big players and niche operators. New oil-trading companies regularly emerge, while others disappear or merge. The oil trading and charter market is highly competitive. Finding the cheapest tanker capacity available on the market is an essential part of the business. The volatile character of the market is also reflected in a shift away from long-term contracts between charterers and carriers towards short-term charters (the so-called “spot market”), as is illustrated in the following table.

| | 1974 | 1999 |
|---|-------------|-------------|
| Fleet controlled by oil companies | 40% | 25% |
| Long-term charter between oil company and carrier | 50% | 25% |
| Short-term charter/spot market | 10% | 50% |

(Source: INTERTANKO)

Price competition on the spot market is fierce. Market observations show that there is no significant difference between freight rates for young and old tankers, with prices apparently often dictated by the cheapest, oldest tonnage available. In such a market it is therefore difficult to make quality pay, resulting in small, low-cost operators gaining market share at the expense of companies with long-standing reputations. This entails a risk for safety.

(b) Rule enforcement

The economic reality described above calls for strengthened inspection regimes to ensure that safety will not be compromised and used as a means to compete unfairly with operators applying high quality standards.

Primary responsibility for ensuring ships comply with international standards lies with the flag State (with which the ship is registered.) Regrettably, not all flag States are seen to carry out this task to a sufficient level of responsibility. Although flag States are bound by the regulations contained in the international conventions to which they are parties, the IMO does not possess the policing powers to ensure that they abide by them. This enables less scrupulous operators to register their ships under flags which they know will not require full compliance with international rules. It is for this reason that port States have established a line of defence against sub-standard shipping through inspections carried out under port State control regimes (PSC). Under PSC, a proportion of the ships calling at a State's ports are inspected to ensure compliance with international safety, pollution and manning standards. PSC does not specifically focus on structural matters. As PSC is carried out during port calls, normally involving loading or discharging operations, the ability to inspect cargo and ballast spaces is limited, and inspection of the underwater hull structure is practically impossible.

Ship's structures are inspected and monitored by classification societies. These are highly specialised private organisations with extensive experience in the shipping sector, employing hundreds and in some cases thousands of technical staff and supported by powerful research and computer centres. The classification societies assess the condition of a ship against technical standards set by each society in order to issue the certificate of class. In addition, they are often authorised to act on behalf of flag States to verify the ship's compliance with safety and environmental requirements laid down in the international conventions and issue the relevant statutory certificates.

In recent years, the increasingly commercial character of classification societies has led to strong competition by societies in attracting clients. At the same time there has been a worrying trend towards a proliferation of societies of varying standards and an increasing tendency for owners to switch class ("class-hopping").

To ensure the structural integrity of the tanker fleet, it is absolutely essential that classification societies apply the highest possible standards in carrying out their tasks. Although the ten members of the International Association of Classification Societies (IACS) aim to set appropriate standards and ensure that they are maintained, there are still serious doubts as to whether enough is being done throughout the entire class system to achieve the necessary levels of quality. Many in the industry consider that not all IACS members meet the requisite high standards. There seem to be variations both between performance of individual IACS members and also within classification societies, where differing standards are reported depending upon the flag administration and/or the client.

The Commission shares the concerns often expressed in various sectors of the maritime industry that the performance of classification societies does not always meet the standards required.

(c) Industry response

The Community recognises that action is already being taken by industry to address the problems highlighted by the **Erika** accident. In particular, IACS has perceived the urgent need to improve the detection and monitoring of the structures of ageing ships, particularly regarding degradation of steelwork in ballast tanks.

IACS, at a special meeting of its board in Hamburg on 16 February, examined the specific question of oil tanker safety in depth and announced a number of measures. These include an improvement in class surveys for tankers over 15 years old. Class records, including thickness measurement reports, will be maintained in computerised format and transferred to the society taking over a ship's classification. Specific measures include annual checks on ballast tanks adjacent to heated cargo tanks and an enhanced intermediate survey regime. Transparency will improve through increased sharing of information. The proper implementation of the measures adopted by the IACS members will be closely monitored by the Commission and the Member States in the framework of the inspections of the classification societies recognised on the basis of Council Directive 94/57/EC.

The oil industry has also reacted to the accident. Working in the framework of the Oil Companies International Marine Forum (OCIMF) the industry is discussing how the effectiveness of the private inspection schemes used by members of OCIMF can be enhanced. Most major oil companies have their own in-house inspection schemes. The commercial department will only charter tankers which have been inspected by their technical department. The inspection procedures and reports are harmonised to a certain extent and the data maintained in a common OCIMF database (SIRE), which covers some 4 000 tankers and annually produces some 10 000 tanker inspection reports. As a first step, OCIMF has agreed that the private inspection reports stored in the SIRE database will be made available to PSC inspectors in the framework of the EQUASIS project (see II-B-1), which should help to optimise available PSC resources more efficiently.

The need for action...

Erika was a 25 year old product tanker with segregated ballast tanks carrying heavy fuel oil. Her statutory certification was in order and she had successfully completed a five year survey the year before the accident. An enhanced port State control inspection had been carried out in May and no deficiencies were found. She had undergone the charterer's inspection and had been found suitable for her trade. How, therefore, is it possible that the ship could have broken in two and caused such an environmental catastrophe?

Erika therefore poses a serious challenge to all concerned in the tanker industry. It clearly shows that action is necessary to look beyond the mere verification of certification and the conducting of superficial inspections if we are to prevent a repetition of such tanker accidents. Responsibility for ensuring that tankers meet the required safety and environmental standards lies with the owner and flag State. It is clear, though, that some States and owners are less conscientious than others. There is, moreover, a marked lack of transparency in this complex industry, often resulting in the identity of those persons responsible for an individual tanker being obscured behind the doors of "brass plate" companies in offshore locations. Because of this, there is a clear need for port States and responsible industry bodies to take a stronger line, particularly with respect to older tankers, to ensure that structural defects and sub-standard tonnage are identified well before they pose a threat to the environment. The fact that the average age of the world and EU tanker fleet is relatively high and still increasing is also of great concern. This trend has to be reversed by the introduction of newer, more environmentally friendly, tonnage.

What is needed all-in-all is a package of measures which will bring about a change in culture in the tanker industry. There should be stronger incentives for quality-minded carriers, charterers, classification societies and other key bodies. At the same time, the net should be tightened around those who seek short-term personal economic gain at the expense of safety and the marine environment.

2 : PROPOSALS FOR ACTION

In drafting its proposals, the Commission adopted an approach designed in particular to:

- make inspection procedures and practices more uniform;
- increase "cross-fertilisation" between Community instruments, in particular the directives on port State control and classification societies;
- increase the sanctions for ships potentially posing a major environment hazard, while rewarding operators of ships of a more environment-friendly quality or design;
- endeavour to eliminate the confusion created by the proliferation of different controls and inspections: each party (shipowner, charterer, flag State, classification society and port State control authority) should respect the limits of its own role and powers;
- engage the liability of all the actors in the industry involved in the operation of sub-standard ships;
- combat the lack of transparency in maritime transport by introducing stricter obligations to publish information relating to inspections and ship detentions and by developing the EQUASIS database on the quality of ships;
- improve the monitoring of correct application of Community legislation by providing the Commission with the necessary resources to accomplish this task.

The Commission proposes two types of measure:

- As a first step, the Commission is presenting regulatory measures. Three proposals for legal acts are annexed to this communication. They concern the amendment of the Port State Control Directive (Directive 95/21/EC), the amendment of the Classification Societies Directive (Directive 94/57/EC) and a Regulation on the accelerated phasing-in of double hull or equivalent design standards (Part A).
- The second part of the communication sets out the broad lines of future action concerning the transparency of information on the quality of ships, the surveillance of navigation, the possibility of setting up a European structure for maritime safety and above all action to ensure the liability of the various players in the shipping community (Part B).

A - PROPOSALS FOR IMMEDIATE LEGISLATIVE MEASURES

1. Port State control

Port State control of ships developed as a reaction to the lax or negligent behaviour of some ship operators or flag States that showed little concern for compliance with the IMO safety regulations. It is based on the principle of verification of compliance with these international regulations by inspecting ships calling at ports.

In Europe¹⁹ an administrative agreement, the Paris Memorandum of Understanding (MOU), was concluded in 1982 in order to establish harmonised inspection procedures. In 1995, the Council adopted Directive 95/21/EC which makes the MOU mandatory and significantly strengthens its provisions. This Directive constitutes the main pillar of Community action in its battle against ships that fall short of international safety standards. In parallel with the legislative initiative, training for inspectors is important in order to achieve harmonised implementation of inspection practices in ports. The Commission has financed the development of an advanced training course and plans on this basis to organise courses in 2000 and 2001 for inspectors from the various national maritime administrations of the MOU member countries.

The Port State Control Directive has been amended on several occasions to increase the uniformity and efficiency of procedures. However, the Erika accident revealed certain shortcomings in the way port State control works, particularly as regards the inspection of ships that statistically present greater risks, by virtue either of their age or the pollutant nature of their cargo. It is also clear in the Commission's view that the current lack of transparency of the shipping community and the lack of synergy between the actors (port inspectors, classification societies, etc.) considerably reduce the efficiency of port State control.

The Commission therefore attaches to this Communication a first legislative proposal to amend Directive 95/21/EC on the basis of the following principles:

a) Tougher measures against manifestly sub-standard ships

- Banning of ships over 15 years old that have been detained more than twice in the preceding two years and figure on the "black list" of flags with an above-average number of detentions. This measure has the character of a sanction against "recidivist" shipowners and Flag States that have given proof of persistently neglecting the follow-up of ships flying their flag. The Commission will publish the list of banned ships every six months.
- Systematic inspection in ports of ships whose "target factor" is particularly high.²⁰

¹⁹ The region covered by the Paris MOU actually extends far beyond the borders of the European Union, as it includes countries such as Canada, Russia and Croatia.

²⁰ The "target factor" works on the following principle: a certain number of points is allocated to ships on the basis of various criteria, such as age, flag, previous detentions, etc. Ships with the highest number of points must be inspected as a priority. This tool permits the targeting of vessels posing a high risk and the harmonisation of procedures for selection of the ships to be inspected, thereby reducing the risk of divergent practices depending on the port.

b) Increased inspection of oil tankers and other vessels posing a risk

- The optional provisions in the existing Directive concerning potentially hazardous ships²¹ will become mandatory: these ships will henceforth be subject to mandatory expanded inspection every year on entering a Community port. An advance notification obligation prior to entry into ports has been introduced to facilitate the preparation of inspections.
- The measures for oil tankers are even tougher: they will be subject to the expanded inspection regime from the age of 15 onwards, rather than 20 and 25 as in the current Directive. In addition, inspectors will have to examine at least one of the ballast tanks in order to detect any corrosion problems.

c) Increased information obligations

- Greater efficiency: inspectors will have more information on the ships to be inspected via mandatory consultation of the EQUASIS database on ship quality. In addition, inspectors will be required to state in their reports the nature of the inspections carried out: this will help to avoid the same inspection being repeated by the inspector in the next port of call.
- "Cross-fertilisation": the flag State and the classification society will be informed of the results of inspections, enabling them to intervene more rapidly in the case of a deterioration in the condition of a ship.
- Greater transparency: additional items have been added to the list of information to be published on inspections and detention, in particular the name of the charterer.

d) Improved monitoring of the application of the Directive

Member States will be required to provide detailed information to the Commission to enable it to evaluate better the effectiveness of the Directive and to verify Member States' compliance with its provisions. This will make it easier to detect cases where the Directive is incorrectly applied and to institute infringement proceedings on the basis of Article 226 of the EC Treaty.

| |
|------------------------------------|
| 2. Classification societies |
|------------------------------------|

Classification societies²² are key players in the maritime safety field. It would be difficult to imagine a shipping world without the technical expertise provided by these organisations. However, largely due to the commercial pressure exercised on the classification societies, and to the growing number of organisations operating in the field without having sufficient expertise and professionalism, the confidence of the shipping community in these organisations has declined in the recent decades.

²¹ Ships presenting a risk, according to an Annex to the Directive, are oil tankers, gas and chemical tankers and bulk carriers above a certain age, and passenger ships.

²² See I-B, Paragraph 2 (b).

A first response to these problems was provided at Community level by the adoption, in 1994, of Council Directive 94/57/EC, which introduced a system for Community-wide recognition of classification societies. This Directive addressed the overall issue of the quality of the classification societies to be authorised to work on behalf of the maritime administrations of the Member States. The qualitative criteria of the Annex to the Directive aimed to ensure that only highly reliable and professionally competent bodies be authorised to work on behalf of the EU Member States. The overall provisions of this legal instrument were designed to ensure that the relevant safety requirements were applied in a harmonised and scrupulous manner on board ships. Furthermore, the Directive introduced obligations to control classification societies working on behalf of the Member States, both to ensure that the recognised organisations continued to meet the provisions of the Directive and to assess their quality performance.

This Directive represented one of the first steps on the road to the establishment of a Community policy on maritime safety. Its transposition into the national laws of the Member States constituted a long and complicated process, with twelve infringement procedures launched by the Commission for failure to comply with the transposition time-limit laid down in the Directive and with the last Member State transposing the Directive only in 1998. The Commission also launched a number of infringement procedures – some of which are still pending – for non-compliance, mainly related to the establishment of the working relationships between the maritime administrations and the organisations authorised to work on their behalf.

The Directive suffered, on a number of issues, from some shortcomings that appeared following its implementation. The procedure for the recognition of the classification societies, for example, was completely left to individual Member States without *ex ante* harmonised and centralised control of the fulfilment of the criteria of the Directive by the organisation wishing to be recognised. The same lack of harmonised and centralised approach applied to the periodic *ex post* controls of the recognised organisations. The safety and pollution prevention performance record of the organisations – measured in respect of all their classed ships, irrespective of the flag they fly – was not regarded as a *conditio sine qua non* to recognise the classification societies or to maintain their recognition.

The lessons learned from the practical implementation of the Directive have led to the identification of a number of areas where the provisions of the Directive can be further strengthened. Hence the proposed amendments, which are described in detail in the second legislative proposal attached to this Communication.

The main content of the proposed amendments is the following:

- The granting and the withdrawal of the recognition of the classification societies are decided by the Commission on the basis of the Comitology procedure. The periodic inspections of the recognised organisations are carried out by the Commission together with the Member State proposing the recognition.
- A new sanction for the recognised organisation is introduced: the suspension of recognition for one year, which leads to the withdrawal of the recognition if the shortcomings causing the suspension are not removed.
- A good record of safety and pollution prevention performance of the recognised organisations – measured in respect of all the ships they have in class, irrespective of the flag they fly – becomes a *conditio sine qua non* to grant and maintain the recognition.

- The conditions of the financial liability of the recognised organisation carrying out statutory tasks on behalf of the Member States are harmonised at Community level. The financial liability is unlimited or can be limited to different levels in accordance with the seriousness of the negligent act of the classification society.
- More stringent qualitative criteria have to be met by the recognised organisations, including the need to respect certain procedures when ships change class and the need to communicate more information about the ships they have in class to the port State control authorities. In order to ensure in particular that the gaining organisation has a full picture of the condition of a ship when it changes class, the complete file on the history of the vessel must be transferred by the losing society to the gaining society.
- The obligations of the Member States as flag States are reinforced in the field of maritime safety.

3 Single and double hull oil tankers

a) Current situation and problem

Most of the oil tankers currently in service are of the "single hull" design. In such ships, the oil is separated from seawater only by the bottom and side plating. If the hull is damaged following a collision or grounding, there is a risk that the cargo tanks will discharge their contents into the sea and cause major pollution. An effective means of avoiding this risk is to surround the cargo tanks with a second inner plate at a sufficient distance from the outer shell. Such a "double hull" design protects the cargo tanks from damage and thus reduces the pollution risk.

Following the 1989 Exxon Valdez accident the USA, dissatisfied with the ineffectiveness of the international standards on the prevention of pollution from ships, in 1990 adopted the Oil Pollution Act (OPA 90).

Under this law, they unilaterally imposed double hull requirements for both new and existing oil tankers in the form of age limits (between 23 and 30 years from 2005) and deadlines (2010 and 2015) for the phasing-out of single hull tankers.

The IMO, faced with this unilateral measure by the USA, was forced to follow suit and in 1992 established double-hull standards in the International Convention on the Prevention of Pollution from Ships (MARPOL). This Convention requires all oil tankers delivered after July 1996 to have a double hull. Hence no single hull oil tankers have been built since that date.

Single hull oil tankers from 20 000 deadweight tonnes, delivered before 6 July 1996, are required by the Convention to comply with the double hull requirements from the age of 25 or 30, depending on whether or not they have segregated ballast tanks.²³

²³ The objective of segregated ballast tanks is to reduce the risks of operational pollution by ensuring that ballast water never comes into contact with oil. In addition, they are sited in a protective location to minimise the impact of grounding or collision.

Consequently, three categories of single hull oil tankers must be distinguished:

- Category 1: Single hull oil tankers **without protective ballast tanks** around the cargo tanks. This category will finally be phased out between 2007 and 2012 with the implementation of the double hull requirements.
- Category 2: Single hull oil tankers in which the **cargo tank area is partly protected by segregated ballast tanks**. Phasing out of this category through the implementation of the double hull requirements will only be completed in 2026 (instead of 2010 and 2015 as in OPA 90).
- Category 3: Single hull oil tankers below the "**MARPOL**" **size limits** that are not affected by the double hull requirements.

Given that it is practically impossible to convert a single hull oil tanker to a double hull construction and as the age limits specified are close to the end of a ship's commercial life, both the American system and the MARPOL Convention lead to the phasing out of single hull oil tankers.

However, because of the differences between the American and the international system, single hull tankers banned from American waters because of their age will begin, from 2005 onwards, to operate in other regions of the world, including the European Union, and lead to an increased risk of pollution in those areas.

b) Proposed Community response

The situation described is of concern to the Commission, since the statistics show increasing accident rates for older ships. An appropriate Community response is necessary and must take effect before 2005, a key date from which single hull tankers banned from American waters will begin to operate in European waters.

The Commission therefore proposes speeding up in the Community the replacement of single hull tankers by oil tankers complying with double hull or equivalent safety standards.

This system must be aligned to the age limits and end-dates provided for in OPA 90, in order to prevent oil tankers banned from US waters from shifting their trades to Europe. The proposal will also reverse the ageing trend in the tanker fleet: new, double hull tonnage will replace the old single hull ships, thus ensuring better protection overall against the risk of accidental pollution.

The attached Commission proposal for a regulation provides for the following timetable for the gradual phasing out of single hull oil tankers:

| | USA (OPA 90) | International (MARPOL) | EU (PROPOSAL) |
|---|-------------------------|-----------------------------------|--------------------------|
| <u>Category 1:</u> Single hull oil tankers, MARPOL size, without tanks in protective locations | 2010 | 2007/2012 | 2005 |
| <u>Category 2:</u> Single hull oil tankers; MARPOL size, with partial protection of the cargo tank area | 2010/2015 | 2026 | 2010 |
| <u>Category 3:</u> Single hull oil tankers below the MARPOL size limit | 2015 | No deadline | 2015 |

The proposal for a regulation concerns all single hull oil tankers of 600 tonnes deadweight and above flying the flag of a Member State, and is a condition of entry into Member States' ports, regardless of the flag the ship is flying.

Finally, to encourage the use of double hull tankers, the Commission is proposing a system of financial incentives in the form of a reduction in port and pilotage dues. Conversely, the use of single hull oil tankers will be discouraged by the increase in these dues in line with ship age.

The Commission is aware of the economic and social impact this proposal will have on the industry, and intends to examine it more in depth. Nevertheless, it is important to give an impetus to the ongoing phasing-out of single hull tankers, by proposing to apply in the European Community a phasing-out calendar similar with the American one and by strongly supporting any endeavours aimed at achieving this accelerated calendar at international level as well (IMO).

The Commission is conscious of the fact that the accelerated phasing-out of single hull tankers by new double hull tonnage will have some impact on the price of oil products. An assessment study on the Oil Pollution Act published by the USA National Research Council in 1998, concluded that the impact of OPA90 on the cost of the oil products was estimated to be approximately 10 US cents per barrel or about one tenth of the cost of transportation, which in itself only represents between 5 to 10% of the total product cost. The final impact on the price of the oil products will thus be less than 1%. Compared to the costs for cleaning up the consequences of a major oil spill arising from accidents such as that of the ERIKA, which order of magnitude is estimated to be around 200 million EURO, the Commission esteems that this additional cost does not outweigh the benefits if with the measures proposed the re-occurrence of such accidents in Community waters can be prevented. It considers therefore that this is a reasonable price to be paid to ensure an effective reduction in the risks of pollution.

The Commission further wants that the signal given to the Industry be clear and quick, to avoid uncertainty and unnecessarily delayed decisions to invest in new double hull tonnage. It is recognised between the major shipbuilding associations

that for the foreseeable future there is sufficient excess building capacity to cope with the increased demand for new double hull tankers that will emerge from this proposal.

B: PROPOSALS FOR FUTURE MEASURES

Apart from the immediate legislative follow-up measures presented above, a number of other actions will be proposed by the Commission within the foreseeable future. These proposals will cover a variety of matters, including improvements to the existing regime of compensating damage caused by oil spills, measures to achieve increased transparency of safety-related information in shipping, the setting-up of a European structure for maritime safety and improved coastal control of sea traffic in European waters. An outline of the envisaged measures is given below.

1. Increased transparency

The lack of availability of information on matters of relevance to ship safety is a serious concern for the Commission. While a great amount of information on ships is being collected by various bodies, it is scattered in many different places and often difficult to access, even for the maritime industry at large. The Commission considers that all sectors of the maritime industry have a responsibility to exercise care in the safety and quality of ships with which they are dealing. Furthermore, information on the basic details of ships, their safety management and operation, inspections performed, etc. should not be reserved only for those most directly involved. The current lack of transparency in shipping is therefore unacceptable and does not serve the interests of either the industry itself or the wider public.

In order to remedy the transparency problem in shipping, the Commission, in co-operation with the maritime administration of France, has initiated the creation of a new ship safety database, EQUASIS, which will collect information relating to the safety and quality performance of ships and their operators and make it easily accessible on the Internet (www.EQUASIS.org). EQUASIS will be an important tool for anybody with an interest in or responsibility for maritime safety, most notably for charterers determined to select ships of high quality and for port State control inspectors. A first version of the EQUASIS database will become operational in May 2000, but the development and enlargement of the system will no doubt continue after that.

In its first stage, EQUASIS will contain details of the type, flag, age and ownership on all merchant ships of the world. Inspection information from the port State control regions of Europe, Asia-Pacific and the USA will also be available. In addition, it will contain some basic data on the classification and insurance of the ships. Negotiations are underway to widen this data with further information from industry inspection schemes, flag States and more detailed classification data. All data in EQUASIS will be factual in nature and the database will not make any judgement or ranking of ships. Its purpose is to allow each user to form its own opinion on the quality and safety of the ship, based on the information provided.

The Commission and France have been involved in the development of this database since 1998. More recently, the maritime administrations of Japan, Spain, Singapore, the United Kingdom, the United States Coast Guard and the International Maritime Organisation have

indicated their preparedness to participate in the supervision of the system. The daily management of EQUASIS will be carried out by a Management Unit to be created by the French Maritime Administration.

A number of important industry bodies, including shipowners, charterers, insurers and classification societies, have already agreed to provide information to the system and to participate in the EQUASIS Editorial Board, which is the advisory body for information providers improving the information provided through EQUASIS. The first orientation meeting of the Editorial Board was held in Brussels on 15 February 2000.

The Commission will make continuous efforts to improve the EQUASIS database. EQUASIS will within the foreseeable future become a comprehensive database, where all sectors of the maritime industry, whether public or private, easily can access a wide range of detailed safety-related information on the world's entire merchant fleet. The quality and extent of information will be such that no charterer, insurer, financier, etc. of a sub-standard ship will be able to claim not to have known about its poor condition. In order to achieve this aim, particular efforts need to be placed on increasing the contribution to EQUASIS by flag and port State control authorities as well as by classification societies.

2. Surveillance of navigation

Following the Erika accident, proposals were made for improving the surveillance of potentially dangerous ships navigating off Europe's coastline. It was stressed in particular that the inspections carried out in the framework of port State control of ships are not always an adequate solution, as particularly dangerous ships may sail along the coast of one or more Member States before the problem is detected in port.

Radical measures have also been proposed, such as inspecting ships outside territorial waters, or even restricting or prohibiting navigation by certain particularly dangerous ships in Member States' exclusive economic zone. However, imposing restrictions or bans on shipping outside territorial waters and *a fortiori* outside the exclusive economic zone, poses problems not only of compatibility with international law of the EC but also of the practical feasibility of monitoring compliance with these measures.

By contrast, the Commission considers it the perfectly legitimate right of a State, particularly one that is a frequent victim of shipping accidents, to be better informed of and monitor more closely the passage off its coastline of ships transporting pollutant substances, or presenting a major hazard in any other respect.²⁴ It is also essential to have advance knowledge of the cargo in the event of an accident involving a ship transporting pollutant substances, in order to be able to intervene effectively against a risk of pollution or a pollution incident.

There is already a Community legal framework obliging ships transporting pollutant and dangerous substances to report to the competent authorities of the Member States: Directive 93/75/EEC. However, this measure concerns only ships bound for or leaving Community

²⁴ For example, where it can be concluded from the information received, e.g. inspections carried out in ports in other regions of the world, that a ship presents a major hazard to safety and the marine environment before it even enters the port of a Member State. Another example would be a ship authorised to sail to a repair yard after having been detained, where the authority concerned wishes to monitor its behaviour.

ports. A proposal for a directive, known as Eurorep,²⁵ was adopted in December 1993 with a view to extending the reporting obligations of Directive 93/75/EEC to ships in transit off the Community coast. Despite having been welcomed by the European Parliament, the Council failed to reach agreement on this proposal.

The Commission intends to produce new proposals on the safety of maritime transport as soon as possible. The following factors will be taken into account in this context:

a) The international legal context has evolved considerably since 1993. In March 1998 the European Community ratified the United Nations Convention on the Law of the Sea. In addition, a new Regulation was introduced in the SOLAS Convention (Regulation V/8-1) giving coastal States the possibility of establishing mandatory reporting systems applicable to all ships, including ships in transit.

b) The IMO has approved several mandatory reporting systems along the European coastline, e.g. in the Strait of Gibraltar, off Cape Finisterre, Ushant and in the Strait of Dover. There is therefore in practice a "potential" chain of coastal reporting systems extending from the Strait of Gibraltar up to the entrance to the North Sea. These systems also ensure the surveillance of ships navigating in their particular area.

c) There have been several significant developments in the field of communication technologies:

- The most important is undoubtedly the advent of automatic ship identification systems or transponders. The IMO has approved the specifications and drawn up a provisional timetable providing for the mandatory installation of such systems on board all ships above 300 tons with effect from 2002.
- Another notable development is the growing use of telematics networks for data transmission. It is worth pointing out in this connection that the Commission has initiated a memorandum of understanding between several Member States concerning the introduction of an electronic data exchange network (EDI) between Member States' administrations for the implementation of Directive 93/75/EEC (at present five Member States plus Norway are party to this agreement and others may join shortly).

d) *Construction of the global navigation and positioning infrastructure* is now a European Union priority through the GALILEO project. This initiative will lead to a reliable and highly accurate service (3 metres on the high seas and 1 metre in port areas), which should serve as a reference for positioning systems applicable to ships in or near Community waters. Together with ECDIS²⁶, GALILEO offers a unique level of service in contributing to improved conditions of navigability and safety. The system, based on a satellite array, will also permit the relay of distress signals as provided for by the GMDSS concept.²⁷ The Commission also plans to use satellite images to detect polluting ships. The shipping

²⁵ (COM(93) 647 final)

²⁶ ECDIS or Electronic Chart Display and Information System, which gives a continuous plot of the ship in its nautical environment, including its immediate position, on an on-board computer.

²⁷ GMDSS or Global Maritime Distress and Safety System consists of a radio communication system designed primarily for rapid alert of the shore-based search and rescue authorities and any ships in the vicinity in the event of an emergency.

community is closely involved in the design of the GALILEO services and will thus be able to identify other possible applications for the system.

All of these elements will lead the Commission to propose a general overhaul of the reporting system as described in Directive 93/75/EEC and in the proposed Eurorep Directive.²⁸ The new proposal should help render more efficient and simplify the monitoring of ships in Community waters, in conditions compatible with the international law of the sea.

3. The enlargement process

The Luxembourg European Council decided in December 1997 to start negotiations with six candidate countries for accession to the European Union: Cyprus, Hungary, Poland, Estonia, Czech Republic and Slovenia. The Helsinki European Council increased in December 1999 this number by deciding to start negotiations with Romania, Slovakia, Lithuania, Bulgaria and Malta. In addition the Helsinki European Council recognised the application of Turkey.

From the point of view of maritime safety, the accession negotiations present a challenge. If the 13 candidate countries were to join the European Union today, the average number of ships detained flying the European flag would increase to 13.26% compared with 5.73% in 1998. This high percentage is due to the very sub-standard performance of ships flying the flag of certain applicant countries, notably Malta and Cyprus, which have the fourth and fifth largest fleets in the world.

Such a fall in the level of safety of EU shipping is unacceptable and cannot be justified by enlargement. It is therefore essential that the candidate countries undertake to apply the international and European maritime safety standards scrupulously as soon as possible but not later than by the date of their accession.

The Commission has already notified them of its serious concerns in this area and has entered into specific discussions to help them remedy this situation. More particularly, the Commission has focussed on the transposition by Cyprus of the existing Community legislation. In its consolidated report on enlargement to the Helsinki European Council, the Commission stated that Cyprus and Malta will have to make substantial efforts to reach the level of the other Member States. Specific measures to this effect have already been adopted by the Cypriot authorities, and the Commission is currently verifying their application. Other measures will have to follow.

In view of the insufficient safety standards of the fleets of most candidate countries and the particular need to strengthen both their flag State Administrations and their port State control systems, the EU has identified alignment of legislation on "maritime safety" as a short-term priority in the revised 1999 Accession Partnerships for most acceding countries, including Cyprus and Malta.

Improving the performance of the candidate countries as flag States is of crucial importance to the Commission in the context of the accession negotiations. The Commission will provide

²⁸ Another issue related to marine accidents is the availability of ports of refuge for ships which get into difficulties. There is often a reluctance by local authorities to admit a vessel which is perceived to be unsafe or a pollution threat, while sending it further out to sea could increase the danger or result in more widespread pollution. This is another problem which could be addressed in this context.

these countries with all the necessary aid and expertise, but will not cease to insist that they must apply all the relevant Community legislation at the date of their accession.

4. Towards a European structure for Maritime Safety

As a result of the questions raised about the effectiveness of safety inspections in Community ports following the Erika accident, a great deal of support was voiced for creating a European coastguard or a European Maritime Safety Agency.

Such a debate would have been unthinkable ten years ago. The situation today has evolved considerably. Some of the Member States' national competencies in the field of maritime safety have been transferred to the Community level. The body of Community legislation covers the key aspects of the IMO Conventions in force, its main objective being to ensure efficient and uniform application of the international safety rules in the European Union.

A European structure, whatever form it takes²⁹, should be limited to supporting the action of Member States and the Commission in applying and monitoring Community legislation and in evaluating the effectiveness of the measures in place. To this end, such a structure should have the task of collecting and analysing factual or statistical information without being empowered to take decisions. It could be entrusted with *ad hoc* evaluations or audit missions (e.g. assessing classification societies on the basis of the criteria in the Annex to Directive 94/57/EC). 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.

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.

The administrative structures involved in maritime safety differ considerably from one Member State to another: some are civil, others 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. Unlike certain countries such as the USA, which have a unitary structure and thus the ability to impose uniform procedures and verify compliance, the European Union has to work with the diverse administrative traditions of its Member States.

The Commission therefore believes that the establishment of a European structure for Maritime Safety should be considered, which could be entrusted with the following tasks:

- assessment and audit of classification societies,
- on-the-spot inspection of the conditions under which Member States carry out port State control of ships,

²⁹ Any decision on this issue shall be made in the light of the outcome of the general debate on the externalisation of Commission tasks.

- contribution to European training courses for port State control inspectors or flag State inspectors,
- fact-finding missions in the applicant countries, in order to assess the manner in which their maritime administrations comply with their obligations as flag States and port States,
- information gathering and processing of statistics,
- operation of Commission databases (e.g.: database on inspection of passenger ships under Directive 1999/35/EC).

All of these tasks should be performed exclusively by personnel highly qualified in the area of maritime safety who have both comprehensive technical knowledge and are fully familiar with European and international maritime safety and pollution prevention regulations. In the longer term, the possibility should be examined of assigning broader tasks to this structure, e.g. relating to the control of shipping, because of the possibilities offered by the new positioning technologies.

5. Liability of the maritime players

a) The civil liability system in force for damage caused by oil pollution

The existing maritime liability regime has developed over centuries and is consequently a complex one. It consists of a patchwork of international conventions relating to specific types of liability and a variety of rules on limitation of liability, insurance and jurisdiction, often governed by national laws which depend on whether - and if so, what version of - the conventions have been ratified by the States concerned. Generally speaking, the regime emphasises the responsibility of the shipowner, as opposed to that of the other players involved (such as the ship operator, manager, cargo owner, charterer, intermediaries or the classification society). On the other hand, shipowners have a right to limit their financial liability at a maximum amount, which normally is relatively low.

In the case of oil pollution, however, the international liability system is tailor-made for the purpose and comparatively straightforward. All EU coastal States are either parties to, or in the process of ratifying, the 1992 Protocols to the International Convention on Civil Liability for Oil Pollution (CLC) and the International Convention setting up the Oil Pollution Compensation Fund (Fund Convention). These two conventions establish a two-tier liability system, which cover pollution damage, including preventive measures and to a limited extent environmental damage *per se* for accidents occurring in the coastal waters (up to 200 miles) of the States.

The first tier consists of the liability of the shipowner, which 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 80 million for the biggest ships, in the case of 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 have liability insurance and gives claimants the right of direct action against the insurer.

The CLC regime is supplemented by the International Oil Pollution Compensation Fund (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. The Fund is financed by contributions from companies receiving oil and recourse to the 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 (few) defences allowed in the CLC. The last case is where the shipowner is financially incapable of meeting his obligations. The maximum compensation by the Fund is around EUR 185 million.

Victims of oil spills may present their claims directly against the 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 Fund all claims will be reduced proportionately. If the claimant and the Fund cannot reach agreement, the claimant can pursue his claim against the Fund before the courts of the State where the damage occurred. Since it was first established in 1978, the Oil Pollution Compensation Fund has dealt with some 90 cases, most of which have been settled directly with the Fund, outside courts.

Generally speaking, this dual regime has proved to be workable. Particularly when compared to other areas of pollution liability which are currently unregulated (such as accidents involving hazardous and noxious substances other than oil, or bunker oil from ships other than oil tankers), the regime is very advanced. Therefore the Commission believes that the existing oil pollution compensation regime should provide the basis for future measures. A general environmental liability regime, as outlined in the recent Commission White Paper on environmental liability,³⁰ is the appropriate tool for developing areas of liability which are not yet harmonised at a European level. However, liability and compensation for oil pollution from ships is already subject to a uniform world-wide regime. The existing system provides the legislative framework and the internationally recognised concepts upon which European measures could and should build.

b) Measures proposed to improve the existing regime

At least the following three criteria have to be examined when considering whether a liability and compensation system is fully satisfactory:

- (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 admissible claims from any potential disaster occurring as a result of an oil tanker accident.

³⁰ COM(2000) 66 final, 9 February 2000.

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

The Commission considers that on the first point the mechanism provided by the CLC and Fund Convention is satisfactory. Generally speaking, claims have been handled promptly and without lengthy legal battles.

On the second point action is needed. As long as the maximum limits are not high enough to cover any potential disaster, victims of an oil disaster with very extensive damage will receive less compensation than victims of a smaller-scale accident. This is questionable from a point of view of principle and some recent oil spills have indicated that even comparatively small amounts of oil may raise doubts as to the sufficiency of the current limit.

On the third point, the existing system also fails. The right of the shipowner to limit his liability is at present practically unbreakable. Cargo interests, on their part, have no individual responsibility at all. The fact that ships of an appalling condition continue to be employed for transportation of oil shows that charterers do not have sufficient disincentives to give up their intolerable practice of deliberately selecting low-quality tonnage.

For these reasons the Commission proposes the following actions.

i) Strengthening the international regime

As a first step, the immediate raising of the limits of both the CLC and the Fund conventions is important. Provided that the necessary majority is achieved, the limits can be increased through the simplified tacit acceptance procedure which was introduced in the 1992 Protocols.³¹ This measure would considerably raise (by some 50%) the compensation available and would share the financial burden between shipowners and oil receivers.

In the meantime, the need for a more fundamental revision of the CLC and Fund conventions shall be examined. In particular, it has to be questioned whether the current threshold for loss of limitation right for the shipowner is acceptable. Another question that needs to be given serious consideration is whether the current definition of pollution damage should be extended.

The Commission urges the Member States to do their utmost to support any effort to improve the existing oil pollution liability regime at an international level.

ii) A European third tier Fund

The Commission is aware that the international procedures that have to be followed to achieve concrete results are lengthy and that there is no guarantee of success. Therefore, it takes the view that complementary action at a European level is needed in order to ensure adequate compensation for victims of an oil spill occurring in European waters.

³¹ Article 15 of the 1992 Protocol to the CLC and Article 33 of the 1992 Protocol to the Fund Convention. Any amendment made under these articles will enter into force at the earliest 36 months after its adoption by the IMO Legal Committee.

Adequate compensation of victims of a European oil spill can be ensured through the creation of a European third liability tier, which would compensate internationally eligible claims relating to oil spills in European waters exceeding the maximum limitation limits. Liability under such a European third tier could 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 potential disaster and financed by European oil importers, in the same way as they contribute to the IOPC Fund. It is considered that an overall ceiling of EUR 1 billion would provide the necessary safeguard of coverage for any potential disaster. This limit corresponds both to the ceiling of the oil spill compensation fund established under federal laws in the United States and to existing insurance practices as regards shipowners' third party liability cover for oil pollution.

An international agreement between the EU/EEA Member States on the additional contributions for the European Fund would seem the appropriate way forward.

iii) Liability for damage

The Commission will also consider the introduction of rules, at EU level, under which any party who has caused or contributed to oil pollution damage, should be made strictly liable for the damage caused; this can concern parties both on the carriers and the chartering side, to the extent that they are exercising control of the shipment concerned. This would enhance the implementation of the polluter pays principle and thus be in line with the Commission's White Paper on Environmental Liability of 9 February 2000 (COM(2000) 66 final).

iv) Sanctions for gross negligence

The Commission finally considers that any party who has caused or contributed to the oil pollution incident by grossly negligent behaviour should be subject to a deterrent sanction.

Such a fault-based sanction could apply to shipowners as well as charterers and other cargo interests. Making the sanctions payable to the State where the pollution occurred would seem appropriate in this context, as the national government normally is the party responsible for clean-up and rescue operations. Such sanctions could further be subject to a number of common principles, depending on, *inter alia*, the response and co-operation by the responsible party after the accident, and could thus contribute to significant preventive effects.

The Commission accordingly considers that it should be examined, having regard to the principles of the Treaty, how such a fault-based sanction regime could be put in place in the Community. A Community legal instrument laying down the common principles for the implementation of appropriate sanction mechanisms at Member State level would seem to be a way forward.

C : VOLUNTARY AGREEMENT WITH INDUSTRY

Without awaiting the entry into force of the legal measures proposed above and without awaiting the results of the measures to be undertaken in the second phase, the Commission proposes, in support of its "Quality Shipping" initiative, to discuss with the oil companies possible terms of a voluntary agreement. Such an agreement would establish certain principles according to which the oil companies would agree to operate, such as:

- not to transport oil in vessels above 15 years of age, unless their safety has been proven through adequate inspection;
- to exercise more transparency relating to their ship chartering practices;
- to contribute to the third layer European compensation Fund for the benefit of victims of oil spills;
- to improve the effectiveness of their private inspection schemes; and
- to define their responsibilities in chartering oil tankers.

The Commission will report on the outcome of such discussions to the Council meeting of Transport Ministers in October 2000.

CONCLUSION

The Commission proposes to the European Parliament and the Council that they:

- adopt the three proposals for legislative measures attached to this communication as soon as possible,
- approve the main guidelines described in the second set of measures,
- take note that the Commission will enter into discussions with a view to conclusion of voluntary agreements with the oil industry, and report on the outcome.

ANNEX 1 A

TANKER ACCIDENTS

This Annex firstly provides details of the **Erika** accident and then gives a short account of significant tanker accidents in EU waters and some others which are seen as relevant to the case of **Erika**.

A. ERIKA disaster - summary of events

1. The accident

Erika sailed from Dunkerque on 10 December 1999 loaded with approximately

30 000 tonnes of heavy fuel oil, bound for Livorno in Italy. The ship was chartered by the Total-Fina oil company. On the afternoon of 11 December, when approaching the Ushant traffic Separation Scheme, the ship developed a large starboard list, thought to be because of leakage of cargo into a ballast tank. The Captain transmitted a distress message, which was subsequently cancelled after transferring ballast to correct the list. The ship altered course for the oil port of Donges (France), as a port of refuge.

By the evening of 11 December cracks had begun to appear on the main deck above no.2 ballast tank, and the list had worsened. In deteriorating weather attempts were once again made by the crew to correct the list by transferring ballast and cargo.

In the early hours of 12 December a second distress message was sent informing that some hull plating had washed away. The French authorities immediately initiated a search and rescue operation. By 0645 the helicopter evacuation of the crew had begun. Shortly after 0800 the hull fractured in the way of No. 2 ballast tank and broke in two in a position 40 nautical miles south of Pointe de Penmarc'h. The whole crew was safely rescued.

Salvage tugs began the operation of towing the two hull sections further away from the coast. However both sections sank on 13 December.

2. Details of the ship:

Erika was a 37 000 tonne deadweight single-hulled tanker built in Japan in 1975, registered in Malta since 1993 and classed with the Italian Classification Society RINA, having transferred from Bureau Veritas in June 1998. The ship was owned by the Tevere Shipping Company of Malta. The tanker was converted in 1997 by designating Segregated Ballast tanks.

During her 25-year life the ship had changed name seven times and had been classed by four different Classification societies. She had flown the flags of Liberia and Japan before becoming registered in Malta.

The SIRENAC database of the Paris Memorandum of Understanding on port State control shows that **Erika** was subjected to four inspections since November 1997. Although revealing certain deficiencies no major structural problems were noted.

In 1998 the ship underwent a special survey by RINA in Montenegro, where 100 tonnes of steel was renewed in the ship's tanks. In November 1999 (just before the accident,) a RINA surveyor recommended that thickness measurements be carried out on longitudinal stiffeners in the ballast tanks. The ship was permitted to sail on condition that the checks were completed in January 2000.

3. Preliminary conclusions

The preliminary report of the French accident investigation³² concluded that the ship suffered major structural failure, initially causing cargo to leak between cargo and ballast tanks requiring transfer of weight on board to correct the resulting list. Later, in deteriorating weather conditions, the hull completely fractured in the way on no.2 ballast tank resulting in the ship breaking in two.

4. Consequences of the accident

On being informed of the break-up and sinking of **Erika** and the ensuing pollution threat, the European Commission immediately activated its emergency team and offered the French authorities the services of the Community Oil Pollution Task Force experts, costs being borne by the Commission. The Commission provided a liaison officer between the French authorities and assisting foreign vessels. The estimated initial spill was 10000 tonnes of heavy fuel situated about 60 km off the French coast (South Brittany).

The two halves of the vessel lie in about 120 metres of water and are thought to contain about 15 000 tonnes of oil. Since the sinking more oil has been reported as leaking from the wreck. Since the accident Total Fina SA, the owner of the cargo, has entered into an agreement with the French Government to take action to prevent further escape of oil from the two halves and directly finance all related inspections and, if feasible, oil removal operations from the wreck.

The cost of the total damage caused by the accident is not yet known, however a number of claims have already been received by the Claims Handling Office established in Lorient by the vessel underwriters (Steamship Mutual Underwriting Association (Bermuda) Ltd.) and the IOPC 1992 Fund.³³

³² NAUFRAGE DU PETROLIER "ERIKA" published by Ministère de l'Équipement des Transports et du Logement, 13.01.2000

³³ See chapter 2 paragraph 5 for details of liability and compensation regimes.

B. Other tanker accidents

Between January 1992 and March 1999 the world total losses, all ship types, was reported to be 593 merchant vessels of 8.0 million tdwt.

| Ship type | 0-4 years | | 5-9 years | | 10-14 years | | 15-19 years | | 20-24 years | | 25+ | | TOTAL | |
|---------------|-----------|----------|-----------|----------|-------------|----------|-------------|----------|-------------|----------|----------|----------|----------|----------|
| | N° ships | 1000 dwt | N° ships | 1000 dwt | N° ships | 1000 dwt | N° ships | 1000 dwt | N° ships | 1000 dwt | N° ships | 1000 dwt | N° ships | 1000 dwt |
| Tankers (all) | - | - | 2 | 280 | 2 | 42 | 13 | 985 | 35 | 1032 | 25 | 188 | 77 | 2527 |
| All ships | 10 | 100 | 11 | 343 | 50 | 611 | 114 | 2083 | 202 | 3424 | 206 | 1477 | 593 | 8037 |

Tanker losses compared to total ship losses (over 500 gt.)

During the same period the world total of reported tanker (all categories) losses amounted to 77 vessels with 2.5 million tdwt. Tankers account for only 13% of the number of ships of total losses. However in terms of tonnage lost the impact is bigger as accidents involving tankers account for 31% in deadweight terms of the world total tonnage lost.

Since the **Torrey Canyon** ran aground on the Seven Stones' Reef off Lands End in 1967 there have been a number of major tanker accidents in EU waters resulting in severe oil pollution. All these except one involved large tankers carrying crude oil. The one exception, **Erika**, was carrying heavy fuel oil.

CAUSES

Tanker accidents falling into three main categories:

- Grounding, because of navigational or pilotage errors (Sea Empress, Torrey Canyon, Aegean Sea)
- Grounding because of mechanical failure, (Amoco Cadiz, Braer)
- Fire and explosion caused during on-board operations, (Haven)
- Collision with another vessel, followed by fire / explosion. (British Trent)
- Collision with another vessel, resulting in pollution. (No fire.)
- Structural failure. (Betelgeuse, Mimosa, Erika).

| MAJOR TANKER ACCIDENTS IN EU WATERS CAUSING POLLUTION | | | | | | | |
|---|------|------------------|------|---------|----------------------------|------------|--|
| NAME | DATE | PLACE | FLAG | DWT.(t) | SPILL ³⁴ (T) | TYPE | CAUSE |
| TORREY CANYON | 1967 | Off Lands End | LIB | 120000 | 119000 | Crude | Navigational error- Grounded |
| URQUIOLA | 1976 | La Coruña | SPA | 110000 | 100000 | Crude | Navigational error – Grounded |
| AMOCO CADIZ | 1978 | Off Brittany | LIB | 220000 | 223000 | Crude | Steering gear failure- Grounded |
| BETELGEUSE | 1979 | Bantry Bay (IRE) | FRA | 115000 | 44000 | Crude | Hull failure while discharging cargo. Corroded ballast tanks |
| HAVEN | 1991 | Off Genoa | CYP | 232163 | 144000 | Crude | Fire & explosion |
| AEGEAN SEA | 1992 | La Coruña | GR | 114000 | 74000 | Crude | Grounded & explosion Human error |
| BRAER | 1993 | Shetland Is. | LIB | 84700 | 85000 | Crude | Engine failure- grounded Crew competence |
| SEA EMPRESS | 1996 | Milford Haven | LIB | 147000 | 72000 | Crude | Navigation error- Grounded |
| ERIKA | 1999 | Off Brittany | MAL | 37000 | 10000+ | Heavy Fuel | Broke in two – sank. |

³⁴ Source of pollution figures: ITOPF

Major tanker accidents causing pollution in EU waters

TORREY CANYON

Torrey Canyon was a 120 000 tonne deadweight Liberian-flagged tanker which ran aground on the Seven Stones' reef between Land's End and the Isles of Scilly on 18 March 1967. This resulted in 119 000 tonnes of crude oil being spilled causing severe pollution along the coasts of south west England and northern France. The cause of the grounding was primarily human error in the form of bad navigation. The accident led to the establishment of much more stringent regulations specifically for tankers in the form of the IMO International Convention for the Prevention of Pollution from Ships (MARPOL).

URQUIOLA

On 12 May 1976 the tanker **Urquiola** struck a submerged object when entering La Coruña. As the cargo was leaking from the ship it was ordered out of the harbour because of the danger of fire and explosion. While being assisted out of the harbour it grounded again causing further damage. The ship exploded two hours later killing the captain. A total of 100 000 tonnes of oil was spilled. The initial cause of the accident was a navigational error, which was compounded during the attempt to tow the ship away from the port.

BETELGEUSE

On 8 January 1979 the French tanker **Betelgeuse**, owned by Total, exploded while discharging crude oil in Bantry Bay, Ireland. The official enquiry concluded that the cause of the explosion was hull fracture caused by stressing the hull during cargo operations. A major contributing factor was serious steel wastage due to corrosion in the ballast tanks. The owners were censured for deciding not to renew badly corroded longitudinal stiffeners at her second special survey. The ship was classed with Bureau Veritas.

AMOCO CADIZ

On 17 March 1978 the Liberian-flagged **Amoco Cadiz** ran aground on the north-west coast of Brittany and lost its entire cargo of 223 000 tonnes of crude oil. The tanker had lost its ability to steer in heavy weather and ran aground while attempts were being made to take it in tow. The ship subsequently broke up in heavy weather. Again the human element was a major factor as well as technical failure. Amendments to the regulations on steering gear have since been adopted.

HAVEN

On 11 April 1991 the Cyprus-flagged 232 163 tonne tanker **Haven**, part-loaded with crude oil exploded off Genoa reportedly during pumping operations. The explosion caused the ship to break into three parts and resulted in a major fire and about 74 000 tonnes of crude oil spilled, much of which was consumed in the fire. Lives were lost in the accident.

AEGEAN SEA

On 3 December 1992 the 114 000 tonne Greek-flagged ore-bulk-oil (OBO) carrier **Aegean Sea**, carrying 80 000 tonnes of crude oil, grounded on rocks in bad weather while entering La Coruña, Spain. The pilot was just about to board the ship when she grounded. The impact

fractured the hull spilling about 74 000 tonnes of oil which subsequently caught fire and the ship exploded. Being an OBO ship **Aegean Sea** had a double hull. The cause of the accident was again human error caused by faulty navigation in bad weather conditions.

BRAER

The Liberian-flagged **Braer** was en-route from Norway to Montreal in January 1993 when her engine failed 10 miles south of the Shetland Islands, UK. The reason for the breakdown was water contamination of the fuel, caused by seawater entering air vents to fuel tanks, which had fractured on deck because of improperly secured spare steel piping. The vessel ran aground on Shetland in bad weather on 5 January losing her entire cargo of 84 700 tonnes of crude oil. Attempts to take the tanker in tow before she grounded were unsuccessful.

SEA EMPRESS

The Liberian-flagged **Sea Empress** also ran aground at the entrance to Milford Haven on 15 February 1996 while under pilotage. She was carrying 131 000 tonnes of crude oil. She was a single-hulled three-year old ship. Severe hull damage resulted in about 72 000 tonnes of oil being spilled causing serious pollution to the South Wales coastline.

The cause of the accident was primarily navigational errors made while piloting the ship into the harbour, combined with a lack of information on the prevailing tidal streams and currents. The enquiry also highlighted shortfalls in the management of the port and the aftermath of the grounding.

Other significant tanker accidents

EXXON VALDEZ

The *Exxon Valdez* ran aground in Prince William Sound, Alaska, on 24 March 1989.

37 000 tonnes of crude oil were spilled. Although not the largest of oil spills it is considered to be one of the most environmentally damaging spills because of the nature of the area. The principal cause of the grounding was attributed to faulty navigation. This accident led to the 1990 US Oil Pollution Act (OPA 90) which imposed far stricter requirements on tankers operating in US waters.

BRITISH TRENT

On 3 June 1993 the 25 147 tonne Bermudan-registered product tanker **British Trent** collided off the Belgian coast with the Panamanian-flagged bulk carrier **Western Winner** in thick fog. The tanker caught fire and her cargo of unleaded petrol exploded. Most of the spilled cargo was consumed by fire and lives were lost. No pollution resulted. The collision was caused by navigational errors in reduced visibility.

BORGA

Borga was a new tanker constructed with a double hull. On 29 October 1995 she ran aground whilst under pilotage entering Milford Haven (UK). She was loaded with 112 180 tonnes of crude oil. Although the ship suffered hull damage there was no pollution and after discharging 8 500 tonnes into a lightering ship she was refloated.

The prime cause of the accident was a navigational error while the ship was turning in a narrow channel.

This incident has been cited to underline the argument that double-hulled tankers present a reduced pollution threat, although it has to be remembered that *Aegean Sea* was also a double hulled ship, but caught fire and exploded after grounding.

MIMOSA

On 11 January 1995 the 300 000 tonne deadweight Liberian flagged ULCC **Mimosa** suffered serious structural failure whilst on loaded passage off Scotland. A large section of the hull shell plating fell off in moderate weather leaving a large hole in the fore peak ballast tank.

The 18-year-old ship was classed with DNV and had passed the charterer's vetting procedures. The cargo was eventually off-loaded to another tanker and the ship proceeded to Portugal for repairs. No pollution resulted.

NAKHODKA

In January 1997 the 20 471 tonne deadweight Russian tanker **Nakhodka** broke up off the Japanese coast in heavy weather. She was carrying a cargo of heavy fuel oil which caused Japan's worst oil pollution incident. The enquiry found that the cause was poor hull maintenance and old age, with the hull steelwork severely wasted. The accident led to Japan proposing that IMO should bring forward the dates for phasing out single hulled tankers. Recently at IMO Japan has remarked upon the similarity between this incident and **Erika**.

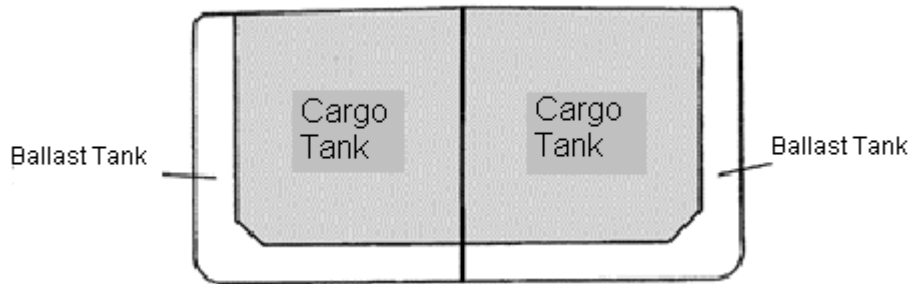
VOLGONEFT 248

On 29 December 1999 the Russian tanker **Volgoneft 248** ran aground in bad weather and broke up off Istanbul spilling 1 300 tonnes of heavy fuel. The ship was 25 years old and was apparently limited to seasonal trading in light weather.

ANNEXE 1-B

Double hull or equivalent design tankers

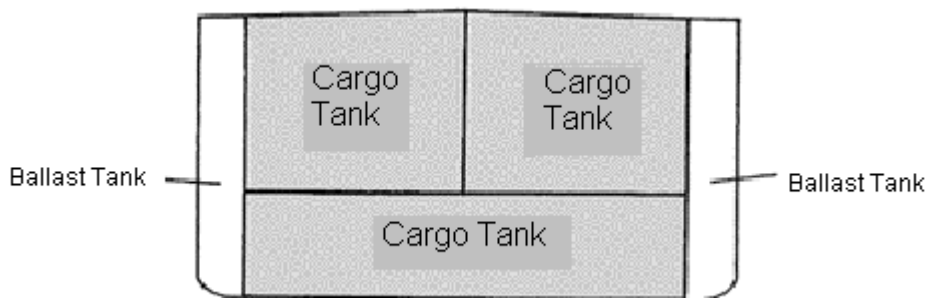
There are many tanker design concepts, which have been proposed to reduce the risk of pollution in the event of an accident. International attention is increasingly focused on three main types: the Double Hull tanker, the Mid-deck tanker and the Coulombi Egg tanker. A typical cross-section for each of these types is shown below.



The Double Hull Tanker

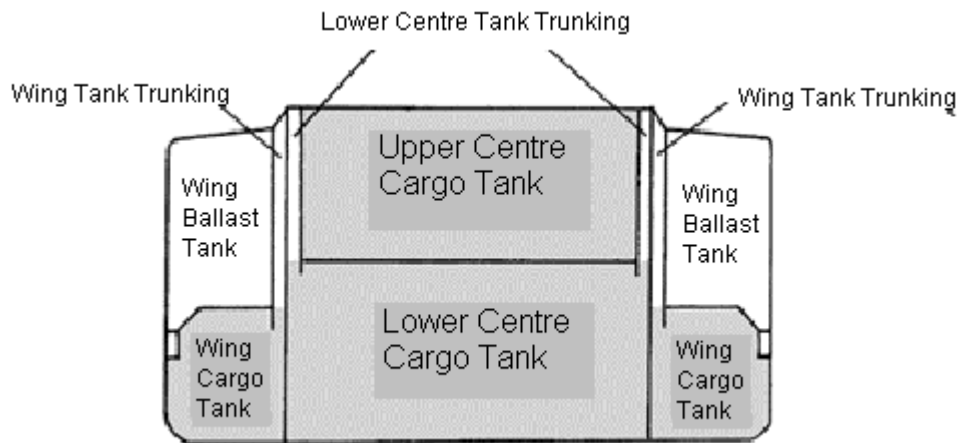
This type of vessel derives its defence against oil spillage, in the event of grounding or collision, by surrounding the entire cargo tank length by a 2 or 3 metre wide void space which separates the cargo tanks from the outer skin of the vessel. In order for an oil spillage to occur the damage has to rupture two skins.

The Mid-deck Tanker



As an alternative to the double hull design, tankers may incorporate the "mid-deck" concept under which the pressure within the cargo tank does not exceed the external hydrostatic water pressure. Tankers built to this design have double sides along the entire cargo tank length providing a 4 to 5 metres wide void space which separates the cargo tanks from the outer side skin of the vessel. They have no double bottom and the cargo is in direct contact with the bottom shell. However, the cargo tanks are split horizontally by an oil-tight deck. The height of the oil-tight horizontal deck is chosen so that in the event of bottom damage the external water pressure should exceed the head of oil in the lower cargo tanks thus forcing the oil to be retained within the vessel.

The Coulombi Egg design



At first sight this configuration appears to be a variant of the mid-deck tanker but it differs in three important respects from that type. Firstly the width of the wing tanks is about 50% greater, secondly the wing tanks are divided horizontally into upper and lower tanks with the lower wing tanks dedicated to cargo, and thirdly the upper wing tanks are not only dedicated segregated ballast tanks but also perform the function of "rescue tanks". The Coulombi Egg tanker has an emergency cargo transfer system which allows oil from damaged cargo tanks to be directed into the sound empty upper wing tanks, thus minimising the oil lost to the sea in the event of a collision or grounding. The system utilises the fact that the external pressure from the sea due to the vessel's laden draught will be greater than that due to the head of oil in the damaged cargo tanks, thus the oil in the damaged cargo tanks will be forced into the "rescue tanks".

Note: The United States does not consider the Coulombi Egg tanker design as equivalent to the double hull design and tankers meeting the Coulombi Egg design will not be allowed in United States ports.

LEGISLATIVE PROPOSALS

LEGISLATIVE PROPOSAL I

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Directive 95/21/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)

EXPLANATORY MEMORANDUM

The wreck of the Erika focused attention on several weaknesses in the current system of port State control. None of the many inspections of the Erika over the last few years in the framework of port State control, by the classification societies or by the oil companies' private inspection systems had detected the shortcomings judged to be at the origin of this accident.

Since Directive 95/21/EC was adopted, substantial efforts have been made - particularly under the auspices of the Paris Memorandum of Understanding on Port State Control - to improve the uniformity and efficiency of inspection procedures. However, important disparities still remain within the Community and ships that pose a high risk to the environment are not inspected with sufficient rigour when they call at European ports.

The reasons that have led the Commission to propose amending the Directive include the following:

- several Member States are still failing to comply with the 25% threshold laid down in the Directive for inspections of individual ships;
- the target factor system developed in the framework of the Paris MOU and made mandatory by the Directive is not being applied in a satisfactory manner;
- examination of the reports on the inspections carried out before the sinking of the Erika seem to show that the expanded inspections conducted in application of the Directive were not always performed with the necessary rigour. Furthermore, it has not been possible from this examination to verify the extent to which the guidelines in Annex V were followed and what checks were made.

The Commission therefore proposes a number of measures designed to improve and strengthen the inspection regime laid down in the Port State Control Directive.

The following amendments are proposed:

1. Banning manifestly sub-standard ships from European waters

The Commission considers it unacceptable that certain ships with a history of posing a manifest danger to maritime safety and the marine environment continue to sail in Community waters. The general public can only interpret this as demonstrating the ineffectiveness of the on-board inspection of ships performed by the port States.

It considers that a clear and strong message must be sent to the ships' operators and to all those - in particular the flag States or the classification societies - who, by their behaviour or inaction, contribute to the considerable risks to safety and the marine environment.

The Commission therefore proposes banning such ships from the European Union. This concerns ships in the risk categories referred to in Article 7 and Annex V to the Directive.³⁵ Ships of this category that are old (more than 15 years), that may be considered as "past offenders" (detained more than twice over the last two years), and that fly the flag of a State

³⁵ Annex V to the Directive provides for a system of expanded inspection for certain categories of ship (oil tankers, gas and chemical tankers and bulk carriers above a certain age, and passenger ships).

on the "black list" of detentions established by the Paris MOU should no longer be admitted to Community ports.

The Commission has drawn up guidelines for the application of this measure, setting out the procedures to be followed in imposing a ban and also providing the possibility to lift the ban if it can be shown that the ship is no longer a safety or environmental hazard. The Commission will publish the list of banned ships every six months.

2. Obligation to inspect ships posing a high risk to maritime safety and the marine environment

Directive 95/21/EC, as it stands, does not stipulate an obligation to inspect a ship. Whatever the potential hazard posed by a ship, the decision to inspect is always initially based on a prior selection made by a port State inspector on the basis of his professional judgement. The target factor introduced by an amendment to the Directive on 19 June 1998 is an important step towards harmonising the selection criteria. Nevertheless, the Commission considers that the inspector's margin of discretion in selecting the ships to be inspected should in certain cases be considerably reduced in the interests of achieving truly uniform and efficient practices.

The Commission therefore proposes making inspection obligatory in the following cases:

(a) – If the target factor exceeds a certain limit

The targeting system established by the Directive and the Paris MOU is not working entirely satisfactorily. Ships with the highest target factor are not in practice systematically assigned the highest priority.

The Commission proposes including in Article 5 a specific obligation to inspect systematically any ships whose target factor exceeds 50, according to the procedure laid down in the Paris MOU, each time they call at a port of the European Union. The figure of 50 corresponds to ships posing a high risk. However, according to the estimates made in the context of the Paris MOU based on the number of ships inspected in 1999, the percentage of ships affected is likely to be less than 2.5% of the vessels recorded in the Sirenac database of the Paris MOU.³⁶

(b) – If the ships concerned are classed in a category justifying expanded inspection

The provisions of the Directive relating to the expanded inspection regime for "high risk" ships gives inspectors too wide a margin of discretion to decide which ships to inspect and what is to be included in the inspection. Furthermore, recent events have shown that the structural defects affecting certain types of ships and oil tankers in particular may lead to accidents with dramatic consequences for the environment. Without questioning the basic responsibility of the classification societies to detect such faults, it is important that the port State authorities equip themselves with the means to assess the satisfactory structural condition of a ship (particularly as regards corrosion of the tanks).

The Commission therefore proposes changing the expanded inspection regime for ships referred to in Article 7 and in Annex V to the Directive as follows:

³⁶ Sirenac, operated by the *Centre Administratif des Affaires Maritimes* in Saint-Malo (France), is a database of information relating to inspections carried out by the member countries of the Paris MOU.

- Article 7 is amended to establish a clear obligation to inspect the ships in question. Consequently, whenever one of these ships calls at a port of the European Union after a period of 12 months, it must without exemption be subjected to an expanded inspection. The existing rule, according to which the ship may in the intervening period be subject to a normal inspection or a more detailed inspection, is maintained. However, the 25% threshold stipulated in Annex V is applicable to expanded inspections carried out in the framework of Article 7 (and to any other inspections provided for by the Directive).
- The optional guidelines in the Directive are made mandatory: the inspection must at least cover the general or specific checks for the categories of ship concerned. However, the proposal allows the possibility of not carrying out certain checks if they are not practically feasible (e.g. inspection of the tanks on a loaded oil tanker) or if they are likely to create particular hazards (e.g. explosion) for the ship, its crew or the port.
- With regard to oil tankers (item 2 of the current Annex V-B), structural matters are addressed only in the form of a check of the survey report. The Commission believes it is essential that the structural inspection should encompass more than a check of the documents on board and be based on a direct, visual examination by the inspector of the structural condition of the ship. However, as cargo tanks are not normally accessible during a port call, the inspector must carry out a visual examination of at least one of the ballast tanks in order to gain a general impression of its possible degree of corrosion. If the ship does not have segregated ballast tanks, the inspector should attempt to carry out such an assessment on the basis of any tank or empty space normally accessible.
- An advance notification obligation is introduced (new section B of Annex V) to facilitate the subsequent conduct of the inspection once the ship enters port. In principle, an expanded inspection must be prepared in advance. The shipowner or ship's master will be obliged to communicate certain operational information (e.g. duration of the call, state of the ballast and cargo tanks, operations planned during the call, etc.) directly to the inspector 48 hours before arrival at the port (or from the port of departure).
- Specifically with regard to oil tankers, the age from which expanded inspections have to be carried out will be reduced to 15 years (currently 20 or 25 years depending on the type of tanker in accordance with the progressive phase-out dates laid down in Regulation 13G of the MARPOL Convention). The vessels concerned are single hull tankers, whether or not they have segregated ballast tanks.

3. Follow-up to the result of inspections

The follow-up of inspections between ports is not ideal. Above all, it is extremely difficult to ascertain, from the information in the Sirenac system, which parts of the ship inspected were checked in the previous port or ports. As a result, there is a risk that the inspection authority in a given port will inspect again the parts of the ship that have already been checked in the

previous port. In order to avoid the possibility of such duplications and to optimise the overall cost-effectiveness ratio of the port State control system, the Commission proposes making it obligatory to state which parts of the ship have been inspected in the inspection report (a copy of which is kept on board and must be examined by the inspector of the following inspection port).

4. Informing the flag State and the classification societies

Under Directive 95/21/EC as it stands, the flag State and the classification societies are informed only of the detention of a ship by the port State inspection authorities. However, information on completion of each inspection would be extremely useful in permitting more efficient monitoring of the evolution (and possible deterioration) of the condition of a ship by the administration of the flag State, or by the classification society acting on its behalf. Consequently, the Commission proposes amending Article 8 of the Directive to stipulate the transmission of a copy of the inspection report to the flag State and to the classification society concerned.

5. Verification of the financial guarantee covering pollution risk

As the Erika accident has shown, oil tankers can cause considerable damage in the event of an oil spill, so that appropriate cover of these risks is extremely important. The 1969 International Convention on Civil Liability for Oil Pollution Damage, and the 1992 Protocol relating thereto, stipulates that the owner of a ship registered in a State party to the Convention and carrying more than 2 000 tonnes of oil in bulk must take out an insurance or other financial guarantee to cover its liability for pollution damage. The Commission proposes adding these documents to the list of certificates in Annex II to the Directive to be verified by the inspectors. Their absence should be taken as justifying a more detailed inspection of the ship and constitutes a ground for detention.

6. Transparency of information on the ships inspected or detained in accordance with the Directive

The aim of Article 15 is to publish certain information on the ships detained in the ports of the European Union and in this way to punish operators who bear part of the responsibility for failure to comply with safety standards. The existing Directive provides for publishing the name of the ship's operator and the classification society. However, other players are implicated in the phenomenon of sub-standard shipping, in particular the cargo owners deciding to charter a particular ship: shipowners of "convenience" exist because there are charterers who care little about the quality of the ships they charter.

The other objective is to give those who take the decisions (charterers, insurers, etc.) and the European public a fuller and more user-friendly picture of the inspections carried out in Community ports. To this end, it is important that additional information on more detailed inspections should be made available both by the port State authorities (expanded inspections within the meaning of Article 7) and by the classification societies (special surveys). There is also a need for information to be made available regarding the follow-up by the port State authorities or the classification societies to a detention ordered under the Directive.

Consequently, publication of the following information is proposed:

- the identity of the charterer and the type of charter (voyage or time charter). This obligation will concern only ships carrying bulk liquid or solid cargo. In the case of packaged goods, identification of the many lots concerned would pose major practical problems;
- information on the most recent expanded inspection performed in the context of port State control, and the most recent "special survey" carried out by a classification society;
- list of measures taken following a detention (deadlines set for repairs, etc.), whether by the port authorities or by the classification societies.

7. Monitoring application of the Directive and assessing the performance of Member States

Article 17 of Directive 95/21/EC stipulates that Member States must provide certain information on the number of inspectors allocated to port State control and the number of individual ships entering their ports in a representative calendar year.

This information enables the Commission to verify the compliance with the 25% threshold for inspections laid down in Article 5(1), but is not enough to enable it to carry out a detailed examination of the proper application of the Directive's provisions, which is its duty under the Treaty, and to initiate, where necessary, infringement proceedings against defaulting Member States. Consequently, possible lax practices in certain Community ports are not detected and the risks of varying safety standards and distortion of competition between ports persist.

The Commission therefore proposes increasing the frequency for transmission of this data (annually rather than every three years as at present) and adding new items to the list of information to be transmitted to the Commission. A new Annex to the Directive is added, requiring Member States to provide detailed information to the Commission on the movements of ships in ports, classified according to various criteria (age, flag, size, etc.).

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Directive 95/21/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)

(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,³⁷

Having regard to the opinion of the Economic and Social Committee,³⁸

Having regard to the opinion of the Committee of the Regions,³⁹

Acting in accordance with the procedure laid down in Article 251 of the Treaty,⁴⁰

Whereas:

- (1) Directive 95/21/EC establishes a system of port State control of shipping in the European Community based on uniform inspection and detention procedures.
- (2) It is necessary to take account of the changes that have been made to the International Maritime Organisation (IMO) conventions, protocols, codes and resolutions and of developments in the framework of the Paris Memorandum of Understanding (MOU).
- (3) Some ships pose a manifest risk to maritime safety and the marine environment because of their age, flag and history. They should therefore be refused access to Community ports, unless it can be demonstrated that they can be operated safely in Community waters. Guidelines must be established setting out the procedures applicable in the event of imposition of an access ban and of the lifting of such a ban. The list of ships refused access to Community ports must be published and displayed by the Sirenac information system.
- (4) Ships with a high target factor present a particularly serious accident or pollution risk, justifying the need to inspect them at every Community port of call.

³⁷ OJ C , , p. .

³⁸ OJ C , , p. .

³⁹ OJ C , , p. .

⁴⁰ OJ C , , p. .

- (5) The categories of ships listed in Annex V also present a major accident or pollution hazard when they reach a certain age. The broad discretionary power of the inspection authority as to whether to select such ships for expanded inspection prevents the achievement of uniform practices within the Community. It is therefore necessary to make inspection of these ships mandatory.
- (6) The content of the expanded inspections for which guidelines have been laid down in Annex V, section B is likely to vary considerably at the discretion of the inspection authority. These guidelines must therefore be made mandatory. However, there must be provision for making an exception when the conduct of an inspection of such ships, in particular in view of the state of the ships' cargo tanks or of operational constraints relating to loading or unloading activities, is impossible or would involve excessive risks for the safety of the ship and its crew and for the safety of the port area.
- (7) Structural defects in a ship are likely to increase the risk of an accident at sea. In the case of a ship carrying a bulk cargo of oil, such accidents can have disastrous consequences for the environment. The inspection authority should carry out a visual examination of the accessible parts of the ship in order to detect any serious corrosion and take whatever follow-up action may be necessary, in particular vis-à-vis the classification societies responsible for the structural quality of ships.
- (8) Expanded inspection based on mandatory verification of certain aspects of the ship takes a considerable amount of time and organisation. The task of preparing the inspection should be facilitated, which in turn will improve its effectiveness. To this end, the master or operator of any ship entering a Community port must notify certain information of an operational nature.
- (9) Given the risks of major pollution caused by oil tankers and in view of the fact that the great majority of deficiencies leading to detention concern ships older than 15 years, the expanded inspection regime should be applied to oil tankers from the age of fifteen.
- (10) The growing importance of port State control in the battle against sub-standard practices is resulting in an overall increase in inspectors' tasks. A particular effort should therefore be made to avoid redundant inspections and to improve the information available to inspectors on the content of inspections performed in previous ports. Consequently, the inspection report produced by the inspector on completion of an inspection, a more detailed inspection or an expanded inspection must also state which parts of the ship have already been inspected. The inspector at the following port of call will thus be able to take this information into account and, where appropriate, decide to refrain from inspecting a part of the ship if no deficiency was detected during the previous inspection.
- (11) The administration of the flag State of a ship inspected or the classification society concerned must be informed of the result of inspection in order to ensure more effective monitoring of the development and, where appropriate, the deterioration in the state of the ship in order to take the necessary remedial action while there is still time.
- (12) Accidental pollution by oil is likely to cause considerable damage to the environment and the economy of the region concerned. It is therefore necessary to verify whether oil tankers calling at European Union ports have appropriate cover for such risks.

Whenever an oil tanker carrying more than 2 000 tonnes of oil in bulk is inspected, the inspector must check the presence on board of an insurance or other financial guarantee covering pollution damage, in conformity with the 1969 International Convention on Civil Liability for Oil Pollution Damage, as amended by its 1992 Protocol.

- (13) The transparency of information relating to ships inspected and detained is a key element of any policy designed to deter the use of ships that fall short of the safety standards. It is necessary in this context to include the identity of the ship's charterer in the list of information published. The public must also be given fuller and clearer information on the inspections and detentions carried out in European Union ports. This concerns in particular information on the more extensive inspections performed on board ships, both by the port State authorities and by the classification societies, and an explanation of the measures taken by the port State authorities or the classification societies concerned following a detention order under the Directive.
- (14) The detection of cases where the Directive has not been properly applied or of lax practices in certain Community ports is essential in order to avoid the risk of varying levels of safety and distortion of competition between ports and regions of the European Union. The Commission must therefore have more detailed information, particularly on the movements of ships in ports, in order to be able to carry out a detailed examination of the conditions under which the Directive is being applied. Such information must be provided to the Commission on an annual basis to enable it to intervene more rapidly whenever anomalies are found in the application of the Directive.
- (15) The provisions of Directive 95/21/EC concerning the committee procedure must be amended to take account of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.⁴¹
- (16) As the measures required to implement this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC, they should be adopted according to the regulatory procedure laid down in Article 5 of that Decision,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Council Directive 95/21/EC is hereby amended as follows:

- 1) The title is replaced by the following:

"Directive 95/21/EC of the European Parliament and of the Council of 19 June 1995 on port State control of shipping".

⁴¹ OJ L 184, 17.07.1999, p. 23.

2) Article 2 is amended as follows:

a) point 1 is amended as follows:

(i) the following subparagraph is added:

« - the International Convention on Civil Liability for Oil Pollution Damage, 1969, and the 1992 Protocol relating thereto.»

(ii) the date 1 July 1999 is replaced by the date 1 July 2000;

b) in point 2, the date 1 July 1999 is replaced by the date 1 July 2000.

3) Article 5 is amended as follows:

a) paragraph (1) is replaced by the following:

"1. The total number of inspections of the ships referred to in Article 5(2), Article 6 and Article 7 to be carried out annually by the competent authority of each Member State shall correspond to at least 25% of the number of individual ships which entered its ports during the past calendar year.";

b) paragraph (2) is replaced by the following:

"2. The competent authority shall ensure that an inspection in accordance with Article 6 is carried out on any ship not subject to an expanded inspection with a target factor greater than 50 in the Sirenac information system.

In selecting other ships for inspection, the competent authorities shall determine the order of priority as follows:

- absolute priority shall be given to the ships listed in Annex I, Part I, irrespective of their target factor;
- the ships listed in Annex I, Part II shall be selected in decreasing order, depending on the order of priority resulting from the value of their target factor."

4) Article 7 is replaced by the following:

"Article 7

Mandatory expanded inspection of certain ships

1. Member States shall ensure that the ships classed in one of the categories of Annex V, section A are subject to an expanded inspection in the first port visited after a period of twelve months since the last expanded inspection carried out in a port of a Member State. However, these ships may be subject to the inspection provided for in Article 6(1) and (2) in the period between two expanded inspections.
2. The operator or the master of a ship referred to in the preceding paragraph shall communicate all the information listed in Annex V, section B, to the competent

authority of the Member State concerned at least 2 working days before the expected time of arrival in a port of a Member State, or before leaving the port of departure if the voyage is expected to take fewer than 2 working days.

Any ship failing to communicate the above information to the competent authority concerned shall be subject to an inspection in conformity with Article 6 on arrival at its port of destination.

3. Annex V, section C shall contain mandatory guidelines on expanded inspection."

- 5) The following Article 7a is inserted:

"Article 7a

Access refusal measures concerning certain ships subject to expanded inspection

1. Member States shall ensure that ships older than 15 years classed in one of the categories of Annex V, section A are refused access to all Community ports, except in the situations described in Article 11(6), if these ships:
 - have been detained more than twice in the course of the preceding 24 months in a port of a Member State, and
 - fly the flag of a State listed in the table (rolling three-year average) of above-average detentions and delays, published in the annual report of the MOU.

The refusal of access shall become applicable immediately the ship has been authorised to leave the port where it has been the subject of a third detention.

2. For the purposes of applying paragraph (1), Member States shall comply with the procedures laid down in Annex V, section D.
3. The Commission shall publish every six months the information relating to ships that have been refused access to Community ports in application of this Article."

- 6) Article 8 is replaced by the following text:

"Article 8

Inspection report

1. On completion of an inspection, a more detailed inspection or an expanded inspection, the inspector shall draw up a report containing at least the information listed in Annex X, giving the results of the inspection, the parts or elements of the ship that have been inspected in the case of a more detailed or an expanded inspection, the details of any decisions taken by the inspector and of the corrective action to be taken by the master, owner or operator.

2. A copy of the inspection report shall be provided to the ship's master, the flag State administration and the organisation responsible for ship surveys and for the issue of class certificates or certificates issued on behalf of the flag State in accordance with the international conventions. In the case of deficiencies warranting the detention of a ship, the document to be given to the master in accordance with paragraph 1 shall include information about the future publication of the detention order in accordance with the provisions of this Directive."
- 7) In Article 9(5) the words "or recognised organisations responsible for the issue of the ship's certificates shall also be notified where relevant" are replaced by the words "or recognised organisations responsible for the issue of class certificates or certificates issued on behalf of the flag State in accordance with the international conventions shall also be notified where relevant."
- 8) In Article 10(1) the words "or refusal of access" are inserted after the words "against a detention decision".
- 9) Article 14(2) is amended as follows:
- a) the words "Sirenac E" are replaced by the word "Sirenac",
 - b) the following subparagraph is added:

"For the purposes of carrying out the inspections referred to in Articles 6 and 7, inspectors shall consult the public and private databases relating to ship inspection accessible through the EQUASIS information system, as soon as it becomes operational".
- 10) Article 15(2) is replaced by the following:
- "2. The information listed in Annex VIII, Parts I and II, and the information on changes, suspensions and withdrawals of class referred to in Article 15(3) of Directive 94/57/EC, shall be available in the Sirenac system. It shall be made public through the EQUASIS information system, when the latter becomes operational, as soon as possible after the inspection has been completed or the detention has been lifted."
- 11) Articles 17 and 18 are replaced by the following:
- "Article 17*
- Data to monitor implementation**
- Member States shall provide the Commission with the information listed in Annex X at the intervals stated in that Annex."
- "Article 18*
- Regulatory Committee**
1. The Commission shall be assisted by the Committee set up pursuant to Article 12 of Directive 93/75/EEC.

2. Where reference is made to this provision, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in conformity with the provisions of Article 8 of the Decision.
 3. The period stipulated in Article 5(6) of Decision 1999/468/EC shall be three months."
- 12) Article 19(a) is replaced by the following:
- "a) adapt the obligations referred to in Article 5, except the figure of 25% referred to in paragraph 1 thereof, in Articles 6, 7, 8, 15 and 17, and in the Annexes to which these Articles refer, on the basis of the experience gained from the implementation of this Directive and taking into account developments in the MOU;"
- 13) Annex I, Part II is replaced by the text in Annex I to this Directive.
- 14) In Annex II, the following item 35 is added:
- "35. International insurance certificate or any other financial guarantee relating to the cover of pollution damage (for oil tankers covered by the International Convention on Civil Liability for Oil Pollution Damage, 1969, and the 1992 Protocol relating thereto)."
- 15) In Annex III, item 1, the words "II-8 and II-11" are replaced by the words "and II-8."
- 16) Annex V is replaced by the text in Annex II to this Directive.
- 17) Annex VI is amended as follows:
- a) In item 3.1 the words "The lack of valid certificates" are replaced by the words "The lack of valid certificates and documents".
 - b) The following is added to item 3.2:

"15. Failure to carry out the enhanced survey programme in accordance with IMO resolution A.744(18)."
 - c) The following is added to item 3.6:

"5. Survey report file missing or not in conformity with Regulation 13G(3)(b) of the MARPOL Convention."
- 18) Annex VIII is replaced by the text in Annex III to this Directive.
- 19) Annexes IX and X are added, the text of which is in Annex IV to this Directive.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than . They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX I

Annex I, Part II is replaced by the following:

II. Overall targeting factor

The following ships shall be considered as priority for inspection.

1. Ships visiting a port of a Member State for the first time or after an absence of twelve months or more. In applying these criteria Member States shall also take into account those inspections which have been carried out by members of the MOU. In the absence of appropriate data for this purpose, Member States shall rely upon the available Sirenac data and inspect those ships which have not been registered in the Sirenac following the entry into force of that database on 1 January 1993.

2. Ships not inspected by any Member State within the previous six months.

3. Ships whose statutory certificates on the ship's construction and equipment, issued in accordance with the conventions, and the classification certificates, have been issued by organisations which are not recognised under the terms of Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations.

4. Ships flying the flag of a State appearing in the three-year rolling average table of above-average detentions and delays published in the annual report of the MOU.

5. Ships which have been permitted to leave the port of a Member State on certain conditions, such as:

(a) deficiencies to be rectified before departure;

(b) deficiencies to be rectified at the next port;

(c) deficiencies to be rectified within 14 days;

(d) deficiencies for which other conditions have been specified.

If appropriate action has been taken and all deficiencies have been rectified, this is taken into account.

6. Ships for which deficiencies have been recorded during a previous inspection, according to the number of deficiencies.

7. Ships which have been detained in a previous port.

8. Ships flying the flag of a country which has not ratified all relevant international conventions referred to in Article 2 of this Directive.

9. Ships flying the flag of a country with a deficiency ratio above average.

10. Ships flying the flag of a country with class deficiency above average.

11. Ships above 13 years old.

In determining the order of priority for the inspection of the ships listed above, the competent authority shall take into account the overall target factor displayed on the Sirenac information system, according to Annex I, Section 1 of the MOU. A higher target factor is indicative of a higher priority. The overall target factor is the sum of the applicable target factor values as defined within the framework of the MOU. Items 5, 6 and 7 shall only apply to inspections carried out in the last 12 months. The overall target factor shall not be less than the sum of the values established for items 3, 4, 8, 9, 10 and 11.

If, within three months from the introduction in the framework of the MOU of new target factor values, the Commission is of the view that these values are inappropriate, it may decide, in accordance with the procedure laid down in Article 19 of Directive 95/21/EC, that these values shall not apply for the purposes of this Directive."

ANNEX II

Annex V is replaced by the following:

"ANNEX V

A. CATEGORIES OF SHIPS SUBJECT TO EXPANDED INSPECTION (as referred to in Article 7(1))

1. Gas and chemical tankers older than 10 years of age, as determined on the basis of the date of construction indicated in the ship's safety certificates.
2. Bulk carriers older than 12 years of age, as determined on the basis of the date of construction indicated in the ship's safety certificates.
3. Single hull oil tankers older than 15 years of age, as determined on the basis of the date of construction indicated in the ship's safety certificates.
4. Passenger ships older than 15 years of age other than the passenger ships referred to in Article 2(a) and (b) of Directive 1999/35/EC.

B. INFORMATION TO BE NOTIFIED TO THE COMPETENT AUTHORITY (as referred to in Article 7(2))

- A. name,
- B. flag,
- C. IMO identification number, if any,
- D. deadweight tonnage,
- E. date of construction of the ship,
- F. for tankers:
 - F.a. configuration: single hull, single hull with SBT, double hull,
 - F.b. condition of the cargo and ballast tanks: full, empty, inerted,
 - F.c. volume and nature of the cargo,
- G. probable time of arrival at the port of destination or pilot station, as required by the competent authority,
- H. planned duration of the call,
- I. planned operations at the port of destination (loading, unloading, other),
- J. date and place of the last inspection carried out in the framework of port State control.

C. PROCEDURES RELATING TO EXPANDED INSPECTION OF CERTAIN CATEGORIES OF SHIPS (as referred to in Article 7(3))

Subject to their practical feasibility or any constraints relating to the safety of persons, the ship or the port, the following items at least must be part of an expanded inspection. Inspectors must be aware that it may jeopardise the safe execution of certain on-board operations, e.g. cargo handling, if tests having a direct effect thereon are required to be carried out during such operations.

1. SHIPS IN GENERAL (Categories in section A)

- Black-out and start of emergency generator,
- Inspection of emergency lighting,
- Operation of emergency fire-pump with two fire hoses connected to the fire main-line,
- Operation of bilge pumps,
- Closing of watertight doors,
- Lowering of one lifeboat to the water,
- Test of remote emergency stop for, e.g., boilers, ventilation and fuel pumps,
- Testing of steering gear including auxiliary steering gear,
- Inspection of emergency source of power to radio installations,
- Inspection and, to the extent possible, test of engine room separator.

2. GAS AND CHEMICAL TANKERS

In addition to the items listed under section 1, the following items are to be considered as part of the expanded inspection for gas and chemical tankers:

- Cargo tank monitoring and safety devices relating to temperature, pressure and ullage,
- Oxygen analysing and explosimeter devices, including their calibration. Availability of chemical detection equipment (bellows) with an appropriate number of suitable gas detection tubes for the specific cargo being carried,
- Cabin escape sets giving suitable respiratory and eye protection for every person on board (if required by the products listed on the International Certificate of Fitness or Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk or Liquefied Gases in Bulk, as applicable),
- Check that the product being carried is listed in the International Certificate of Fitness or Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk or Liquefied Gases in Bulk, as applicable,

- The fixed fire-fighting installations on deck, whether they be foam or dry chemical or other as required by the product carried.

3. BULK CARRIERS

In addition to the items listed under section 1, the following items are to be considered as part of the expanded inspection for bulk carriers:

- Possible corrosion of deck machinery mountings,
- Possible deformation and/or corrosion of hatch covers,
- Possible cracks or local corrosion in transverse bulkheads,
- Access to cargo holds,
- Assessment of the safety of the structure on the basis of the reports of structural surveys, the condition evaluation reports, the thickness measurement reports and the descriptive document referred to by IMO resolution A.744(18).

4. OIL TANKERS

In addition to the items listed under section 1, the following items are to be considered as part of an expanded inspection of oil tankers:

- Fixed deck foam system,
- Fire-fighting equipment in general,
- Inspection of fire dampers in engine room, pump room and accommodation,
- Control of pressure of inert gas and oxygen content thereof,
- Examination of the appearance of and any signs of corrosion of at least one of the ballast tanks,
- Assessment of the safety of the structure on the basis of the reports of structural surveys, the condition evaluation reports, the thickness measurement reports and the descriptive document referred to by IMO resolution A.744(18).

5. PASSENGER SHIPS NOT COVERED BY DIRECTIVE 1999/35/EC

In addition to the items listed under section C 1, the following items may also be considered as part of the expanded inspection for passenger ships:

- Testing of fire detection and alarm system,
- Testing of proper closing of fire doors,
- Test of public address system,
- Fire drill where, as a minimum, all sets of firemen's outfits must be demonstrated and part of the catering crew take part,

- Demonstration that key crew members are acquainted with the damage control plan.

If deemed appropriate, the inspection may be continued while the ship is on passage to or from the port in the Member State, with the consent of the ship's master or the operator. Inspectors must not obstruct the operation of the ship, nor must they induce situations that, in the master's judgement, could endanger the safety of the passengers, the crew and the ship.

D. MANDATORY GUIDELINES RELATING TO REFUSAL OF ACCESS TO COMMUNITY PORTS (as referred to in Article 7a(2))

1. If the conditions described in Article 7a are met, the competent authority of the port in which the ship is detained for the third time must inform the captain and the owner or the operator of the ship in writing of the access refusal order served on the ship.

The competent authority must also inform the flag State administration, the classification society concerned, the other Member States, the European Commission, the *Centre Administratif des Affaires Maritimes* and the MOU Secretariat.

The access refusal order will take effect as soon as the ship has been authorised to leave the port after remediation of the deficiencies leading to the detention.

2. The access refusal order may be lifted if the owner or the operator of the ship is able to show to the satisfaction of the competent authority of the port of destination that the ship can be operated without danger to the safety of passengers or crew, or without risk to other ships, or without presenting an unreasonable threat to the marine environment.
3. To this end, the owner or the operator must address a formal request for the lifting of the access refusal order to the Member State of the Community port of destination. This request must be accompanied by a certificate from the flag State administration or from the classification society acting on its behalf, showing that the ship fully conforms to the applicable provisions of the international conventions and satisfies the conditions mentioned in paragraph 2. The request for the lifting of the access refusal order must also be accompanied, where appropriate, by a certificate from the classification society which has the ship in class showing that the ship conforms to the class standards stipulated by that society.
4. If the request for a lifting of the access refusal order is presented in accordance with paragraph 3, the Member State of the port of destination must, on the basis of the information provided by the owner or the operator of the ship, authorise the ship to proceed to the port of destination in question, for the sole purpose of verifying that the ship meets the conditions specified in paragraph 2.

On arrival at the port of destination, the ship must be subjected to an expanded inspection, the cost of which will be borne by the owner or the operator. The expanded inspection must cover at least the relevant items of Annex V, section C, and the items that were inspected in the course of the last detention in a port of a Member State.

The expanded inspection referred to in the previous subparagraph must be performed by the inspectors of the Member State of the port of destination, assisted by inspectors of a recognised organisation within the meaning of Directive 94/57/EC, who have no commercial interest in the ship inspected.

5. If the results of the expanded inspection satisfy the Member State in accordance with paragraph 2, the access refusal order must be lifted. The owner or the operator of the ship must be informed thereof in writing.

The competent authority must also notify its decision in writing to the flag State administration, the classification society concerned, the other Member States, the European Commission, the *Centre Administratif des Affaires Maritimes* and the MOU Secretariat.

6. Information relating to ships that have been refused access to Community ports must be made available in the Sirenac system and published in conformity with the provisions of Article 15 and of Annex VIII."

ANNEX III

Annex VIII is replaced by the following:

"ANNEX VIII

Publication of information related to detentions and inspections in ports of Member States

(As referred to in Article 15)

I. - Information published in accordance with Article 15(1) must include the following:

- name of the ship,
- IMO number,
- type of ship,
- tonnage (gt),
- year of construction,
- name and address of the shipowner or operator of the ship,
- in the case of ships carrying liquid or solid cargoes in bulk, the name and address of the charterer and the type of charter (voyage charter or time charter),
- flag State,
- the classification society or classification societies, where relevant, which has/have issued to this ship the class certificates, if any,
- the classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State, stating the certificates delivered,
- port and date of the last expanded inspection stating, where appropriate, whether a detention was ordered,
- port and date of the last special survey and the name of the organisation which carried out the survey,
- number of detentions during the 24 previous months,
- country and port of detention,
- date when the detention was lifted,
- duration of detention, in days,
- number of deficiencies found and the reasons for detention, in clear and explicit terms,

- description of the measures taken by the competent authority and, where relevant, by the classification society as a follow-up to detention,
- if the ship has been refused access to any port within the Community, the reasons for such measure in clear and explicit terms,
- indication, where relevant, of whether the classification society or any other private body that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention,
- description of the measures taken in the case of a ship which has been allowed to proceed to the nearest appropriate repair yard, or which has been refused access to a Community port.

II – Information concerning ships inspected made public in accordance with Article 15(2) must include the following:

- name of the ship,
- IMO number,
- type of ship,
- tonnage (gt),
- year of construction,
- name and address of shipowner or operator of the ship,
- in the case of ships carrying liquid or solid cargoes in bulk, the name and address of the charterer and the type of charter (voyage charter or time charter),
- flag State,
- the classification society or classification societies, where relevant, which has/have issued to this ship the class certificates, if any,
- the classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State, stating the certificates delivered,
- country, port and date of inspection,
- number of deficiencies, by category of deficiency."

ANNEX IV

The following Annexes IX and X are added:

"ANNEX IX

Inspection report drawn up in accordance with Article 8

The inspection report must contain at least the following items.

I- General

1. Competent authority that wrote the report
2. Date and place of inspection
3. Name of the ship inspected
4. Flag
5. Type of ship
6. IMO number
7. Call sign
8. Tonnage (gt)
9. Deadweight tonnage (where relevant)
10. Year of construction
11. The classification society or classification societies, where relevant, which has/have issued to this ship the class certificates, if any
12. The classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State
13. Name and address of the ship's owner or the operator
14. Name and address of the charterer and type of charter (voyage charter or time charter) in the case of ships carrying liquid or solid cargoes in bulk
15. Final date of writing the inspection report.

II - Information relating to inspection

1. Certificates issued in application of the relevant international conventions, authority or organisation that issued the certificate(s) in question, including the date of issue and expiry
2. Parts or elements of the ship that were inspected (in the case of more detailed or expanded inspection)

3. Type of inspection (inspection, more detailed inspection, expanded inspection)
4. Nature of the deficiencies
5. Measures taken.

III - Additional information in the event of detention

1. Date of the detention order
2. Date of lifting the detention order
3. Nature of the deficiencies warranting the detention order
4. Information on the last intermediate or annual survey
5. Indication, where relevant, of whether the classification society or any other private body that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention
6. Measures taken.

ANNEX X

Data to be provided in the context of monitoring implementation

Member States must communicate the following information to the Commission in application of Article 17, using the model tables below.

1. Data to be provided annually

Every year Member States must provide the Commission with the following data for the preceding year by 1 April at the latest.

1.1. Number of inspectors acting on their behalf in the framework of port State control of shipping.

This information must be communicated to the Commission using the following model table.

| Port/Area | Number of full-time inspectors | Number of part-time inspectors ⁴² | Conversion to full time |
|--------------------|--------------------------------|--|-------------------------|
| <i>Port X.....</i> | | | |
| <i>Port Y.....</i> | | | |
| TOTAL | | | |

⁴² Where the inspections carried out in the context of port State control represent only part of the inspectors' work, the total number of inspectors must be converted to a number equivalent to full-time inspectors.

This information must be provided at national level and for each port of the Member State concerned. For the purposes of this Annex, a port is taken to mean an individual port and the geographical area covered by an inspector or team of inspectors, comprising several individual ports where appropriate. The same inspector may work in more than one port/geographical area.

- 1.2. Total number of individual ships that entered their ports at national level.
- 2. Data to be provided on a quarterly basis

Member States must provide the Commission every three months with a detailed list of movements of individual ships that entered their ports, using the following model.

| Port X | | | | | | | | |
|-----------------|--------|------|------|------|----|----------------------|------------------------|-------------------|
| Date of arrival | IMO No | Name | Flag | Type | GT | Year of construction | Classification society | Date of departure |
| .././2... | | | | | | | | .././2... |
| .././2... | | | | | | | | .././2... |

LEGISLATIVE PROPOSAL II

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Council Directive 94/57/EC on common rules and standards
for ship inspection and survey organisations
and for the relevant activities of maritime administrations**

EXPLANATORY MEMORANDUM

The proposed amendments to Council Directive 94/57/EC can be divided in two categories: the fine-tuning of the Community-wide recognition of classification societies, including controls and sanctions, and the more stringent requirements to be met by the recognised organisations.

1. THE FINE-TUNING OF THE COMMUNITY-WIDE RECOGNITION OF CLASSIFICATION SOCIETIES

The proposed amendments to Council Directive 94/57/EC will thoroughly change the present system of Community-wide recognition of the classification societies to be authorised to work on behalf on the Member States.

1.1 The granting of the recognition

The proposed system is for the Commission to inspect the organisation prior to the granting of the recognition on the basis of the Commitology procedure. The need to assess the good safety and pollution prevention performance of the organisation is proposed as a *conditio sine qua non* to grant the recognition. This procedure will apply both to “big” and “small” (not fulfilling the quantitative requirements of the Annex to the Directive) organisations.

This new procedure will ensure that compliance with the provisions of the Directive by the organisations seeking recognition as well as their good record of safety and pollution prevention performance – measured in respect of all their classed ships, irrespective of the flag they fly – are assessed in a centralised and harmonised manner. This will apply to the forthcoming requests for recognition, particularly likely in view of the enlargement of the European Union.

1.2 The suspension of the recognition

In addition to the authority of Member States to suspend recognition of an organisation working on its behalf, a similar authority shall apply at Community level. It is therefore proposed to insert a new system by which the Commission, on the basis of the Commitology procedure, may suspend the recognition of an organisation for a limited period of time. This suspension shall apply when an organisation whose safety and pollution prevention performance is worsening fails to take the appropriate corrective measures as requested by the Commission.

1.3 The withdrawal of the recognition

The proposed system provides for the Commission, on the basis of the Commitology procedure, to decide on the withdrawal of the recognition. This decision shall be based on the failure to fulfil the provisions set out in the Directive, as well as on unsatisfactory safety and pollution prevention performance.

1.4 A positive side effect of the proposed amendments: the simplification and enhancement of the procedure for monitoring the recognised organisations

The system of inspections to be carried out on the recognised organisations pursuant to Council Directive 94/57/EC obliges all Member States to carry out assessments on all the organisations they authorise. This is in order to verify (i) that such organisations effectively carry out the tasks delegated to them and (ii) that the organisations comply with the criteria of the Annex to the Directive. While the first type of assessment has to remain the responsibility of each Member State, the second one can be carried out more effectively in a harmonised and centralised manner. It is therefore proposed that the inspections of the recognised organisations to verify compliance with the Directive be carried out by the Commission together with the Member State proposing the recognition. This new system of inspections will remove the burden at present imposed on the Member States to inspect all the organisations working on their behalf and to draft and distribute the reports of such inspections.

Member States will still maintain a close control on the recognised organisation. The proposed amendments deeply involve the Committee set up under the Directive in the decisions on the recognition of an organisation and on the possible sanctions against those failing to meet the required provisions.

The constant monitoring of the recognised organisations, through the evaluation of their safety and pollution prevention performance and through the inspections carried out in a centralised and harmonised manner, will ensure a better control of the recognised classification societies. As the evaluation of the performance of these organisations will be carried out with respect to their classed fleet, irrespective of the flag their ships fly, it will be possible to monitor and, if necessary sanction, unacceptable cases of differing performance of the recognised organisations when working on behalf of different flags.

It is proposed that all unnecessary duplication of provisions with the Directive on Port State Control (PSC) concerning the reporting obligations of Member States be deleted by the present text of the Directive. However, it is considered important to maintain the obligation for Member States to report all cases of negligent acts by the recognised organisations which they may discover when carrying out their PSC inspections.

1.5 The liability of the classification societies

The establishment of the working relationship between the Member States and the organisations authorised to work on their behalf, and more precisely the limitation of the financial liability of the classification societies for minor negligence, represented the primary reason of delay for a proper implementation of the Directive. It is felt necessary now to harmonise this issue at Community level by laying down common provisions to be applied by all Member States. The proposed text is in line with what has already been agreed by the majority of Member States and it is also acceptable to the recognised organisations. The proposed text fixes the following principles for the limitation of the financial liability of the classification societies:

- for a wilful act or omission or gross negligence: unlimited liability;

- for personal injury or death, caused by any negligent or reckless act or omission of the recognised organisation: € 5 million;
- for loss or damage to property, caused by any negligent or reckless act or omission of the recognised organisation: € 2.5 million.

2. THE MORE STRINGENT REQUIREMENTS TO BE MET BY THE RECOGNISED ORGANISATIONS

The classification societies members of the International Association of Classification Societies (IACS) have adopted and implemented a so-called “Transfer of Class (TOC) Agreement”, aimed at avoiding the unacceptable practice of ships changing class in order to avoid carrying out the requested repairs (“class hopping”). It is felt necessary to make the main provisions of this Agreement compulsory at Community level, and therefore for all the organisations recognised on the basis of the Directive, whether they are members of IACS or not. The relevant provisions of the TOC Agreement to be transposed into the Directive are those stating that the certificates of a ship changing class can be issued by the gaining organisation only after all overdue surveys, overdue recommendations, conditions of class, operating conditions or operating restrictions issued against the vessel by the losing classification society have been properly dealt with. To make sure that the gaining organisation have a full picture of the condition of the ship, on transfer the complete history file of the vessel has to be transferred by the losing to the gaining society.

Moreover, in order to enhance transparency, the recognised organisations shall disclose more information on their classed fleet, and on changes, suspensions and withdrawals of class. In an attempt to tighten the net around substandard ships, the recognised organisations are required to communicate to the Port State Control authorities all overdue surveys, overdue recommendations, conditions of class, operating conditions or operating restrictions issued against a ship.

In order to meet the common concern that sometimes the classification societies do not exercise sufficient control on their regional offices, the proposed amendments foresee the obligation for the recognised organisations to establish clear and direct lines of responsibility and control between their central and regional offices, as well as the possibility to visit their regional branches during the periodic inspections of the organisations.

It is proposed that recognised organisations be required to define targets and methods to measure their own safety and pollution prevention performance. They are also required to establish an internal system to measure the quality of their services, both in relation to the statutory tasks they carry out on behalf of the flag administrations and in relation to their private activity (class certificates).

Last but not least, it is proposed that the recognised organisations no longer be able to make use of non-exclusive surveyors to carry out statutory tasks. The exclusive surveyors shall only be authorised to operate on board those types of ships of which they have an extensive knowledge.

The new requirements aim to strengthen the working procedures of the classification societies in order to enhance their quality performance and, in turn, maritime safety

and pollution prevention in general. The proper implementation of these stringent provisions will be monitored by the Commission and the Member States in the framework of the inspections of the recognised organisations to be carried out on the basis of the Directive.

Before concluding this chapter, it is important to mention the fact that through the amendments to Directive 94/57/EC – and particularly by the means of the provisions stating that Member States are bound to apply the international conventions to which they are contracting parties – the Commission has better specified the content of the ‘acquis communautaire’ to be applied by the Member States in the field of maritime safety. This requirement is particularly important because the forthcoming enlargement of the Community includes Malta and Cyprus, whose fleets are respectively the fourth and sixth largest in the world.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Directive 94/57/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations

(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 Commission⁴³,

Having regard to the opinion of the Economic and Social Committee⁴⁴,

Having regard to the opinion of the Committee of the Regions⁴⁵,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴⁶,

Whereas:

- (1) Safety and pollution prevention at sea may be enhanced by a proper and compulsory implementation by Flag States of the existing relevant conventions in force at international level.
- (2) Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations⁴⁷, as amended by Commission Directive 97/58/EC⁴⁸, established a system of Community-wide recognition of technical organisations that, in compliance with the international conventions, may be authorised to a various extent to inspect ships and issue the relevant safety certificates on behalf of the Member States.
- (3) The practical implementation of that Directive showed that some adjustments to the Community-wide recognition of technical organisations might have highly contributed towards the strengthening of such a system while simplifying the monitoring and reporting obligations imposed on Member States.

⁴³ OJ C , , p. .

⁴⁴ OJ C , , p. .

⁴⁵ OJ C , , p. .

⁴⁶ OJ C , , p. .

⁴⁷ OJ L 319, 12.12.1994, p.20.

⁴⁸ OJ L 274, 07.10.1997, p. 8.

- (4) Since the adoption of Directive 94/57/EC some developments have occurred in the relevant legislation at Community and international level requesting that further adjustments to Directive 94/57/EC be made.
- (5) In particular, for the purposes of Directive 94/57/EC, it is appropriate to apply the amendments to the international conventions together with the protocols and related codes of mandatory status, referred to in Article 2 (d) of Directive 94/57/EC, which entered into force after the adoption of the Directive as well as the relevant International Maritime Organisation (IMO) Resolutions.
- (6) With a view to promoting an effective implementation of the obligations of the flag States laid down in the international conventions, the IMO Assembly adopted Resolution A.847 (20) on Guidelines to assist Flag States in the implementation of IMO instruments at its twentieth session.
- (7) IMO adopted the International Safety Management (ISM) Code through Assembly Resolution A.741 (18) of 4 November 1993 which was made mandatory through the new Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) Convention.
- (8) With a view to ensuring a uniform implementation of the ISM Code, guidelines on the implementation of the ISM Code by administrations were adopted on 23 November 1995 by IMO through Resolution A.788 (19).
- (9) With a view to harmonising the statutory surveys and inspections to be carried out by the flag administrations pursuant to the international conventions, IMO adopted Resolution A.746 (18) of 4 November 1993 on Survey Guidelines under the Harmonised System of Survey and Certification.
- (10) A good record of safety and pollution prevention performance – measured in respect of all ships classed by an organisation, irrespective of the flag they fly – shall become essential to grant the initial recognition and to maintain such a recognition.
- (11) In order to grant the initial recognition to the technical organisations wishing to be authorised to work on behalf of the Member States, compliance with the provisions of Directive 94/57/EC can be assessed more effectively in a harmonised and centralised manner by the European Commission.
- (12) Similarly, the continuous ex post monitoring of the recognised organisations to assess their compliance with the provisions of Directive 94/57/EC can be carried out more effectively in a harmonised and centralised manner. Therefore it is appropriate that the Commission, together with the Member State proposing the recognition, be entrusted with this task on behalf of the whole Community.
- (13) In addition to the authority of Member States to suspend the recognition of an organisation working on its behalf, a similar authority should apply at Community level, the Commission being allowed, on the basis of the Committee procedure, to suspend the recognition of an organisation for a limited period of time in the case where the safety and pollution prevention performance of the organisation is worsening and it fails to take the appropriate corrective measures as requested.

- (14) The decision on the withdrawal of the recognition of an organisation that fails to fulfil the provisions set out in the Directive, or whose safety and pollution prevention performance becomes unsatisfactory, has to be taken at Community level, and therefore by the Commission, on the basis of the Committee procedure.
- (15) Since Directive 94/57/EC ensures freedom to provide services in the Union, the Community should negotiate with those third Countries where some of the recognised organisations are located an equal treatment for the recognised organisations located in the Community.
- (16) The limitation of the financial liability of the organisations working on behalf of the Member States represented a major obstacle to the proper implementation of Directive 94/57/EC. Its harmonisation at Community level will contribute to solve this problem.
- (17) Provisions of Directive 94/57/EC concerning the Committee procedure should be amended and adapted to take account of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁴⁹.
- (18) Since transparency and exchange of information between interested parties is a fundamental tool to prevent accidents at sea, the recognised organisations shall provide all relevant information concerning the conditions of the ships in their class to the Port State Control authorities.
- (19) In an attempt to prevent ships from changing class in order to avoid carrying out necessary repairs, the recognised organisations shall exchange all relevant information among themselves concerning the conditions of ships changing class.
- (20) The qualitative criteria to be met by the technical organisations in order to be recognised at Community level and to maintain such a recognition shall include provisions to ensure that only exclusive surveyors can carry out the statutory tasks for which the organisation is authorised. The organisation must have a tight control on all its personnel and offices, including the regional ones and it must establish its own safety and pollution prevention performance targets and indicators. The organisation must put in place a system to measure the quality of its services. Directive 94/57/EC should be amended accordingly.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Council Directive 94/57/EC is hereby amended as follows:

1. Article 2 shall be amended as follows:
 - a) in point (b), the words “including ships registered in Euros once that register is approved by the Council” shall be deleted;

⁴⁹ OJ L 184, 17.7.1999, p. 23.

- b) in point (d), the words “in force at the date of adoption of this Directive” shall be replaced by “in force on 1st July 2000”.

2. Article 3, paragraph 1 shall be amended as follows:

The following sentence shall be added at the end of the paragraph: “Member States shall act in accordance with the provisions of the Annex and the Appendix to IMO Resolution A.847 (20) on Guidelines to assist Flag States in the implementation of IMO instruments”.

3. Article 4 shall be replaced by the following:

- “1. Member States may submit to the Commission a request for a recognition for organisations which fulfil the criteria set out in the Annex and the provisions of Article 14, paragraphs 2, 4 and 5. Member States shall submit to the Commission complete information concerning, and evidence of, compliance with such requirements. The Commission shall carry out an inspection of the organisations for which the request of recognition was received in order to verify that the organisations meet the above mentioned requirements. A decision on the recognition shall take into account the safety and pollution prevention performance records of the organisation, referred to in article 9. The recognition shall be granted by the Commission in accordance with the procedure referred to in Article 7.
2. Member States may submit to the Commission a request for a limited recognition of three years for organisations which meet all the criteria of the Annex other than those set out under paragraph 2 and 3 of the section ‘General’ of the Annex. The same procedure referred to in paragraph 1 will apply with the exception that the criteria of the Annex for which compliance has to be assessed during the inspection carried out by the Commission are all the criteria other than those set out under paragraphs 2 and 3 of the section ‘General’. The effects of this recognition shall be limited to the Member States which have submitted a request for such recognition.
3. All the organisations which are granted recognition shall be closely monitored by the committee set up under Article 7, also in view of deciding about extension of the limited recognition of organisations referred to in paragraph 2. A decision on the extension of such recognition shall not take into account the criteria set out under paragraphs 2 and 3 of the section ‘General’ of the Annex while it shall take into account the safety and pollution prevention performance records of the organisation, referred to in article 9. The decision on the extension of the limited recognition shall specify under which conditions such extension is granted, particularly in respect of the limitation of the effects of the recognition provided for in paragraph 2.
4. The Commission shall draw up and update a list of the organisations recognised in compliance with paragraphs 1, 2 and 3. The list shall be published in the Official Journal of the European Communities.
5. The organisations which, at the date of the entry into force of this Directive, are already recognised on the basis of Council Directive 94/57/EC continue to be recognised. Their compliance with the new provisions laid down in this

Directive shall be assessed during the first inspections referred to in Article 11.”

4. Article 5 shall be amended as follows:

- a) In paragraph 1, the reference to “Article 3 (2) (i)” shall be replaced by “Article 3 (2)” and the words “located in the Community” shall be deleted.
- b) Paragraph 2 shall be deleted.
- c) Paragraph 3 shall become paragraph 2, the words “reciprocal recognition” shall be replaced by “reciprocal treatment” and the following sentence shall be added at the end of the paragraph: “In addition, the European Community may request that the third State where a recognised organisation is located grant a reciprocal treatment for those recognised organisations which are located in the Community”.

5. Article 6 shall be amended as follows:

- a) Paragraph 2 shall be replaced by the following:
 - “2. The working relationship shall be regulated by a formalised written and non-discriminatory agreement or equivalent legal arrangements setting out the specific duties and functions assumed by the organisations and including at least:
 - the provisions set out in Appendix II of IMO Resolution A.739 (18) on guidelines for the authorisation of organisations acting on behalf of the administration, as specified in the Annex, Appendixes and Attachment to IMO MSC/Circular 710 and MEPC/Circular 307 on model agreement for the authorisation of recognised organisations acting on behalf of the administration,
 - the following provisions concerning the limitation of the financial liability:
 - (i) if liability arising out of any incident is finally and definitely imposed by a court of law on the Administration for loss or damage to property or personal injury or death, which is proved in that court of law to have been caused by a wilful act or omission or gross negligence of the recognised organisation, its bodies, employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to indemnification from the recognised organisation to the extent said loss, damage, injury or death is, as decided by that court, caused by the recognised organisation;
 - (ii) if liability arising out of any incident is finally and definitely imposed by a court of law on the Administration for personal injury or death, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to

indemnification from the recognised organisation, to the extent said personal injury or death is, as decided by that court, caused by the recognised organisation, up to but not exceeding an amount of € 5 million;

- (iii) if liability arising out of any incident is finally and definitely imposed by a court of law on the Administration for loss or damage to property, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to indemnification from the recognised organisation, to the extent said loss or damage is, as decided by that court, caused by the recognised organisation, up to but not exceeding an amount of € 2.5 million;
- (iv) neither party shall be liable to the other for any special, indirect or consequential losses or damages resulting from or arising out of services performed under the agreement, including without limitation loss of profit, loss of production, loss of contract, loss of use, business interruption or any other special, indirect or consequential losses suffered or incurred by any party howsoever caused;
- (v) without prejudice to what is stated above, for any claim arising out of the recognised organisation's performance or non-performance under this Agreement, the recognised organisation, its officers, employees, agents or others who act on behalf of the recognised organisation, shall be entitled to the same defences (including but not limited to any immunity from or limitation of liability) as would be available to the Administration's own personnel if they had themselves performed the work;"

- provisions for a periodical audit by the administration or by an impartial external body appointed by the administration into the duties the organisations are undertaking on its behalf, as referred to in article 11, paragraph 1,
- the possibility for random and detailed inspections of ships,
- provisions for reporting essential information about their classed fleet, changes suspensions and withdrawals of class, irrespective of the flag the vessels fly, as referred to in article 14, paragraph 3".

b) Paragraph 4 is replaced by the following:

- "4. Each Member State shall provide the Commission and the other Member States with precise information on the working relationship established in accordance with this Article."

6. Article 7 shall be replaced by the following:

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

Where reference is made to this Article, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

This committee shall be called by the Commission at least once a year and whenever required in the case of suspension of authorisation of an organisation by a Member State or in the case of suspension of recognition by the Commission under the provisions of Article 10. The Committee shall draw up its rules of procedure.”

7. Article 8, paragraph 1, first indent, shall be replaced by the following:

“- apply, for the purposes of this Directive, subsequent amendments to the international conventions, protocols, codes and resolutions related thereto mentioned in Articles 2 (d) and 6 (2) , which have entered into force,”

8. Article 9 shall be replaced by the following:

“1. The recognition of organisations referred to in Article 4 which no longer fulfil the criteria set out in the Annex or which fail to meet the safety and pollution prevention performance records mentioned in paragraph 2 shall be withdrawn. The withdrawal of the recognition shall be decided by the Commission in accordance with the procedure referred to in Article 7, after the organisation concerned has been given the opportunity to submit its observations.

2. In preparing drafts for a decision relating to the matters referred to in paragraph 1, the Commission shall take into account the outcome of the inspections of the recognised organisations referred to in Article 11 as well as the safety and pollution prevention performance records of the organisations, measured for all the ships they have in class irrespective of the flag the ships fly.

Indication of the safety and pollution prevention performance records of the organisations shall be derived from the statistics produced by the Paris Memorandum of Understanding on Port State Control and/or by similar schemes. Other indications may be derived from an analysis of the casualties involving ships classed by the recognised organisations.

Reports produced by Member States on the basis of Article 12 shall also be taken into consideration to assess the safety and pollution prevention performance records of the organisations.

The Committee set up under Article 7 shall determine the criteria to be followed in order to decide, on the basis of the information referred to in this paragraph, when the performance of an organisation acting on behalf of a flag State can be considered an unacceptable threat to safety and environment. Draft decisions relating to the matters referred to in paragraph 1 shall be submitted to the committee by the Commission upon its own initiative or at the request of a Member State.”

9. Article 10 shall be amended as follows:

a) The first two sentences shall become paragraph 1 and shall be replaced by the following:

“1. Notwithstanding the criteria specified in the Annex, where a Member State considers that a recognised organisation can no longer be authorised to carry out on its behalf the tasks specified in Article 3 it may suspend such authorisation on the basis of the following procedure:”.

b) The following paragraphs shall be added:

“2. Whenever the Commission considers that the safety and pollution prevention performance records of a recognised organisation worsen without however justifying the withdrawal of its recognition on the basis of the criteria referred to in article 9, paragraph 2, it may decide to inform the recognised organisation accordingly and request it to take appropriate measures to improve its safety and pollution prevention performance records. Should the recognised organisation fail to provide the Commission with an appropriate answer or should the Commission consider that the measures taken by the recognised organisation failed to improve its safety and pollution prevention performance records, the Commission may decide to suspend the recognition of the organisation for a period of one year in accordance with the procedure referred to in Article 7 after the organisation concerned has been given the opportunity to submit its observations. During that period, the recognised organisation will not be allowed to issue or renew any certificate to ships flying the flag of the Member States while the certificates issued or renewed in the past by the organisation will remain valid.

3. The procedure referred to in paragraph 2 shall apply also in the case where the Commission has evidence that a recognised organisation failed to fulfil the provisions of article 14, paragraphs 3, 4, or 5.

4. One year after the adoption of the decision of the Commission to suspend the recognition of an organisation, the Commission shall assess whether the shortcomings referred to in paragraph 2 and 3 which lead to the suspension have been removed. In the case where such shortcomings are still present, the recognition shall be withdrawn in accordance with the procedure referred to in Article 7.”

10. Article 11 shall be amended as follows:

a) In paragraph 1, the following text shall be deleted: “and that such organisations fulfil the criteria specified in the Annex. It may do so by having the recognised organisations directly monitored by its competent administration or, in the case of organisations located in another Member State, by relying upon the corresponding monitoring of such organisations by the administration of another Member State.”

- b) In paragraph 2, the words “Each Member State shall carry out this task on a biennial basis” shall be replaced by “Each Member State shall carry out this task at least on a biennial basis”.
- c) Paragraphs 3 and 4 shall be deleted.
- d) A new paragraph 3 shall be inserted as follows:

“3. All the recognised organisations shall be inspected by the Commission, together with the Member State which submitted the relevant request for recognition, on a regular basis and at least every three years to verify that they fulfil the criteria of the Annex. In selecting the organisations for inspection, the Commission shall pay particular attention to the safety and pollution prevention performance records of the organisation, to the casualty records and to the reports produced by Member States as per Article 12. The inspection may include a visit to regional branches of the organisation as well as random and detailed inspection of ships. The Commission shall provide the Member States with a report of the results of the inspection.”

11. Article 12 shall be replaced by the following:

“In exercising their inspection rights and obligations as port states Member States shall report to the Commission and to other Member States the discovery of issue of valid certificates by organisations acting on behalf of a flag State to a ship which does not fulfil the relevant requirements of the international conventions, or any failure of a ship carrying a valid class certificate and relating to items covered by that certificate. Only cases of ships representing a serious threat to safety and environment or proving a particularly negligent behaviour of the organisations shall be reported for the purposes of this Article.”

12. Article 13 shall be deleted.

13. Articles 14, 15, 16 and 17 shall become Articles 13, 14, 15 and 16 respectively.

14. Article 14, paragraphs 3 and 4, shall be replaced by the following:

“3. The recognised organisations shall provide all relevant information to the administration and to the Commission about their classed fleet, changes, suspensions and withdrawals of class, irrespective of the flag the vessels fly. Information on changes, suspensions, and withdrawals of class, including information on all overdue surveys, overdue recommendations, conditions of class, operating conditions or operating restrictions issued against their classed vessels - irrespective of the flag the vessels fly - shall also be communicated to the Sirenac information system for Port State Control inspections.”

“4. The recognised organisations shall not issue certificates to a ship, irrespective of its flag, declassified or changing class for safety reasons before informing the competent administration of the flag State to determine whether a full inspection is necessary.”

- c) The following paragraph 5 shall be added:

“5. In cases of transfer of class from one recognised organisation to another, the losing organisation shall inform the gaining organisation of all overdue surveys, overdue recommendations, conditions of class, operating conditions or operating restrictions issued against the vessel. On transfer, the losing organisation shall provide the gaining organisation with the complete history file of the vessel. The certificates of the ship can be issued by the gaining organisation only after all overdue surveys have been satisfactorily completed and all overdue recommendations or conditions of class previously issued against the vessel have been completed as specified by the losing organisation. Prior to the issuance of the certificates, the gaining organisation must advise the losing organisation of the date of issuing of the certificates and confirm the date, location and action taken to satisfy each overdue survey, overdue recommendation and overdue condition of class. The recognised organisations shall co-operate with each other to properly implement the provisions of this paragraph.”

15. Article 15, paragraph 3, shall be replaced by the following:

“3. The Member States shall immediately communicate to the Commission and to the other Member States the text of all the provisions of domestic law which they adopt in the field governed by this Directive.”

16. The Annex to the Directive shall be amended as follows:

- a) The word “should” shall be replaced by the word “must” in paragraph 2 of Section ‘A. GENERAL’.
- b) The words “would be” shall be replaced by the word “are” in the second sentence of paragraph 3 of Section ‘A. GENERAL’.
- c) The word “should” shall be replaced by the word “must” in paragraph 4 of Section ‘A. GENERAL’.
- d) The word “should” shall be replaced by the word “must” in paragraph 5 of Section ‘A. GENERAL’. The following words shall be added at the end of the paragraph: “or maintained in an electronic data base accessible to interested parties”.
- e) The word “should” shall be replaced by the word “must” both in the first and in the second sentence of paragraph 6 of Section ‘A. GENERAL’.
- f) The word “should” shall be replaced by the word “must” in paragraph 7 of Section ‘A. GENERAL’.
- g) The following words shall be added at the end of paragraph 4 of Section ‘B. SPECIFIC’: “and to the Commission”.
- h) The following words shall be added at the end of paragraph 5 of Section ‘B. SPECIFIC’: “The organisation’s policy must refer to safety and pollution prevention performance targets and indicators”.

- i) The following words shall be added at the end of paragraph 6 (b) of Section ‘B. SPECIFIC’: “and an internal system to measure the quality of service in relation to these rules and regulations is put in place”.
- j) The following words shall be added at the end of paragraph 6 (c) of Section ‘B. SPECIFIC’: “and an internal system to measure the quality of service in relation to the compliance with the international conventions is put in place”.
- k) Paragraph 6 (g) of Section ‘B. SPECIFIC’ shall be replaced by the following:
 - “(g) the requirements of the statutory work for which the organisation is authorised are only carried out by its exclusive surveyors or by exclusive surveyors of other recognised organisations; in all cases, the exclusive surveyors must have an extensive knowledge of the particular type of ship on which they carry out the statutory work and of the relevant applicable requirements;”.
- l) The word “and” at the end of paragraph 6 (i) of Section ‘B. SPECIFIC’ shall be deleted.
- m) Paragraph 6 (j) of Section ‘B. SPECIFIC’ shall be replaced by the following:
 - “(j) a comprehensive system of planned and documented internal audits of the quality related activities is maintained in all locations”.
- n) The following two paragraphs shall be added to paragraph 6 of Section ‘B. SPECIFIC’:
 - “(k) the statutory surveys and inspections required by the Harmonised System of Survey and Certification for which the organisation is authorised are carried out in accordance with the provision set out in the Annex and Appendix to IMO Resolution A.746 (18) on Survey Guidelines under the Harmonised System of Survey and Certification;
 - (l) clear and direct lines of responsibility and control are established between the central and the regional offices of the society.”
- o) Paragraph 7 (b) of Section ‘B. SPECIFIC’ shall be replaced by the following:
 - “(b) to carry out all inspections and surveys required by the international conventions for the issue of certificates, including the means of assessing – through the use of qualified professional staff and in accordance with the provisions set out in the Annex to “IMO Resolution A.788 (19) on guidelines on implementation of the International Safety Management (ISM) Code by administrations” – the application and maintenance of the safety management system, both shore-based and on board ships, intended to be covered in the certification.”
- p) The word “should” shall be replaced by the word “must” in paragraph 9 of Section ‘B. SPECIFIC’.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than twelve months after the date of adoption of this Directive. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE PROPOSAL III

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON THE ACCELERATED PHASING-IN OF DOUBLE HULL OR EQUIVALENT DESIGN STANDARDS
FOR SINGLE HULL OIL TANKERS**

EXPLANATORY MEMORANDUM

GENERAL INTRODUCTION

1. *Actual situation and problems:*

The major consequences of accidental oil spills caused by oil tankers, as recently demonstrated with the structural failure of the ERIKA off the French coast, remain an issue of major concern for the European Commission.

In a follow-up to the pollution accidents with the oil tankers "Aegean Sea" off la Coruña in December 1992 and the "Braer" off the Shetland Islands in January 1993, the Commission issued its Communication "a common policy on safe seas"⁵⁰. This communication took stock of the existing situation with regard to maritime safety and the prevention of pollution of the marine environment. It underlined in particular the request of the extraordinary Council on Environment and Transport of 25 January 1993 to support the action in the International Maritime Organisation (IMO) on the reduction of the safety gap between new and existing ships by upgrading and/or phasing-out existing ships, built to earlier standards, after a reasonable period of operation. This request stressed the need of paying particular attention to oil tankers not meeting the international standards on segregated ballast tanks and their protective location as laid down in the International Convention for the Prevention of Pollution from Ships, 1973 and the Protocol of 1978 related thereto (MARPOL 73/78).

A first, regional decision concerning the phasing-out of single hull oil tankers was taken in 1990 by the United States, when they promulgated the Oil Pollution Act (OPA 90) in which double hull requirements both for new and existing tank vessels have been established. The application of the OPA 90 double hull requirement to existing tank vessels is dependent on the age, the size in gross tons and hull configuration of the vessel. Basically two main categories can be distinguished.

The first category of tankers will not be allowed under OPA 90 to operate in US waters after 1 January 2010 unless they comply with the double hull requirements. This category includes all existing single hull oil tankers above 5000 GT without double bottom or double sides. In the period from 2005 to 2010, such single hull oil tankers will not be longer allowed to operate in US waters when they reach an age of 25 years, or 23 years for tankers above 30000 GT, unless they comply with the double hull requirements.

The second category of tankers will not be allowed under OPA 90 to operate in US waters after 1 January 2015 unless they comply with the double hull requirements. This category includes existing single hull oil tankers above 5000 GT fitted with double bottom or double sides, and all existing single hull oil tankers below 5000 GT. In the 10 years preceding the deadline of 2015, tankers above 5000 GT are phased out when they reach the age of 30 years, and 28 years for tankers above 30000 GT. For tankers below 5000 GT, no phasing-out age limits are specified.

⁵⁰ COM(93)66 final of 24.02.1993

Faced with the unilateral decision by the USA, the IMO had to take action to also reduce at international level the safety gap between new and existing oil tankers, resulting in July 1993 in the entry into force of important amendments to the MARPOL 73/78 Convention. More rigorous measures concerning the design and construction standards for new and existing oil tankers were included in these amendments. These design and construction standards aimed at providing a better protection against oil pollution in the event of collision or stranding. They require that oil tankers delivered on or after 6 July 1996 comply with the double hull or equivalent design requirements laid down in Regulation 13F of Annex I of the MARPOL 73/78 Convention.

In addition, the amendments to the MARPOL 73/78 Convention included also a phasing-in scheme for single hull oil tankers above 20000 tons deadweight, delivered before 6 July 1996. According to Regulation 13G, such tankers have to comply with the double hull or equivalent design standards of Regulation 13F of Annex I of the MARPOL 73/78 Convention not later than 25 years, or in some cases 30 years, after their date of delivery. As a consequence, existing single hull oil tankers that do not meet the requirements concerning segregated ballast tanks and their protective location will, at international level, no longer be allowed to operate beyond 2007, or in some cases 2012, unless they comply with the double hull or equivalent design requirements of Regulation 13F of Annex I of the MARPOL 73/78 Convention. For existing single hull oil tankers complying with these requirements on segregated ballast tanks and their protective location this deadline will be reached at the latest in 2026.

The differences in age limits and end-dates between the OPA 90 phasing-out scheme and the one established at international level through the amendments to the MARPOL 73/78 Convention will, from 2005 onwards, have as a consequence that single hull oil tankers not longer allowed to operate in US waters because of their age, may shift their trading patterns to other regions in the world, including the European Union, and continue operating until they have to comply with the double hull requirements in accordance with the age limits provided for in the MARPOL 73/78 Convention. This changing trading patterns will result into a situation where the oldest single hull oil tankers which under the MARPOL 73/78 Convention are allowed to continue operating, will become more dominantly present in the oil trades to and from and within the European Union.

A study on the environmental impact of single hull oil tankers carried out in 1999 for the Commission services addressed the effects of OPA 90 on the tanker fleet operating outside the USA. The study's estimations show that during the period 2000 to 2025 on average 15% of the crude oil tankers will be banned from US waters but still allowed to operate under the MARPOL 73/78 Convention. It also noted that there will be in 2010 a distinct maximum in the number of crude oil tankers of less than 20000 tons DWT banned from the USA, due to the end date limit of 2010 in OPA 90. For crude oil tankers in excess of this size the maximum increase in numbers diverted to Europe will be reached in 2015. The study estimates further that OPA 90 will have less pronounced effects for oil product tankers. For oil products tankers in the 5000 to 30000 tons deadweight category, the maximum of diverted ships will be reached in 2015, whilst for the larger size category this maximum will be reached in 2005.

2. *Proposed action at Community level:*

The Commission is of the opinion that the situation described above should give rise to concern, since accident statistics reveal increasing accident rates for older ships. An appropriate Community response to this situation is considered necessary, in particular in view of the nearing of the year 2005, the first important cut-off date under OPA 90 at which certain single hull oil tankers will be banned from US waters. In order to avoid that such tankers start or continue trading to European ports, an accelerated application in the Community of the phasing-in scheme of the double hull or equivalent design requirements of Regulation 13 F of Annex I of MARPOL 73/78 is proposed. This accelerated phasing-in scheme has to be aligned with the age limits and end-date limits provided for in OPA 90, to avoid that oil tankers banned from the US under the OPA 90 regime, could shift their trading patterns to Europe.

As regards to size and hull configuration criteria, the proposal maintains the distinction made in the MARPOL 73/78 Convention between three main categories. Category 1: so-called "pre-MARPOL" single hull oil tankers, being crude oil tankers of 20000 tons deadweight and above and oil product carriers of 30000 tons deadweight and above having no segregated ballast tanks in protective locations (SBT/PL). Category 2 is including "MARPOL" single hull tankers, being of the same size as category 1, but which are equipped with SBT/PL. Category 3 contains single hull oil tankers below the size limits of categories 1 and 2, delivered before 6 July 1996, and therefore not subject to the phasing-in scheme for the double hull requirements laid down in Regulation 13G of Annex I of MARPOL 73/78.

The Commission proposes the following approach for each of these categories.

For category 1 the proposal envisages to lower the age limits of 25 or 30 years provided for in the MARPOL 73/78 Convention to one single age limit of 23 years. Since these single hull oil tankers were delivered before the date the SBT/PL requirements of MARPOL 73/78 started to apply (1982), a final deadline in 2005 is specified to prevent that they would continue operating beyond the proposed age limit of 23 years. In addition, the waiver possibility provided for in Regulation I/13G(7) of Annex I of MARPOL 73/78 to accept other structural or operational arrangements, such as hydrostatic balanced loading, as an alternative to the double hull requirements, should not be allowed. This limitation is necessary to avoid that tankers that have reached their age limit can continue operating beyond this age limit by using other arrangements than the double hull or equivalent design configuration.

For category 2 the proposal specifies compliance with the double hull or equivalent design requirements not later than when they reach the age of 28 years or on 1 January 2010, whichever of these dates comes first.

Finally for category 3, the Commission proposes to introduce an age limit of 25 years when the tankers are not equipped with SBT/PL and 30 years when they are, combined with an end date limit of 1 January 2015 beyond which no single hull oil tanker of that category will be allowed to trade to European ports.

Since this proposal for an accelerated phasing-in scheme at Community level is aligned with the age and end-date limits in OPA 90, single hull oil tankers banned from US waters will not be able to shift their trading patterns to Europe.

By applying the same end-date limits as in OPA 90, the EU system will result into a considerable shorter phasing-in period, having an important, but at this stage not quantified in detail, impact on the rate at which single hull oil tankers will have to be replaced by double hull tonnage. First estimates, based on available statistics on the composition of the world tanker fleet today, indicate that the impact for categories 2 and 3 will be considerable.

Category 2 contains today about 2000 single hull ships (worldwide). In addition, 1000 double hulled tankers are available in this size category. In the proposed EU system, about 70% of these 2000 ships will have to be phased out on age limit (28 years) before 2010, and about 30% of them (+/- 600 ships) on deadline in 2010.

Category 3 totals today about 3000 single hull tankers. In this size category only 300 double hull tankers are available today, due to the lack of any age or deadline limit in the MARPOL 73/78 Convention for replacing the existing single hulls by double hulls. The proposed EU system, combining age limits (25 or 30 years) with the deadline of 2015, will have the following impact: 70% (+/- 2000 ships) will have to be phased out before 2015 on age limit, whilst the remainder 30% (+/- 1000 ships) will have to be phased out on deadline in 2015. In view of the large number of ships that will have to be phased out on deadline in 2010 and 2015, the continuity of oil supply and distribution in Europe could be temporary disturbed if there were no sufficient double hull tonnage. However it is recognised between the major shipbuilding associations (AWES in Europe, SAJ in Japan and KSA in South Korea) that for the foreseeable future supply of merchant vessels will exceed demand. Today this excess capacity is estimated to be ca. 3-4 Mio cgt, which if it were used for the construction of double hull tankers, would represent ca. 10,42-13,89 million tons deadweight and be able to cope with the increased demand arising from this proposal.

The attached proposal provides that compliance with the accelerated phasing-in of the double hull or equivalent design standards for single hull oil tankers should be imposed to oil tankers of 600 tons deadweight and above, flying the flag of a Member State and as a condition for access to EU ports, irrespective of the flag the ships fly.

3. *Accompanying measures:*

As an accompanying measure to the phasing-in of the double hull or equivalent design standards for single hull oil tankers, a system of financial incentives and disincentives is proposed to encourage the trade of double hull oil tankers to and from and between ports in the Community, and to discourage the trade of single hull oil tankers. This system should be based upon the principles established in Council Regulation (EC) No 2978/94 of 21 November 1994 on the implementation of IMO Resolution A.747(18) on the application of tonnage measurement of ballast spaces in segregated ballast oil tankers⁵¹ (SBT Regulation). These principles foresee the application of reduced port and pilotage dues for the most environmentally friendly oil tankers as opposed to those offering less protection against oil pollution.

However, the SBT Regulation does not take into account the higher level of protection against accidental oil pollution that double hull oil tankers offer as

⁵¹ OJ L 319, 12.12.1994, p. 1.

compared to single hull oil tankers, and does not differentiate between double hull oil tankers and single hull oil tankers with regard to the reduction of port and pilotage dues. Moreover, in view of the proposed deadline of 2005 for single hull oil tankers not complying with the requirements of MARPOL 73/78 on segregated ballast tanks and their protective location, there are no justified reasons to maintain any longer the differential financial treatment system the SBT Regulation provides between such oil tankers and tankers that do comply with the SBT/PL requirements of MARPOL 73/78.

The attached proposal therefore foresees revoking the SBT Regulation and to incorporate a new financial incentive system that during the period of the accelerated phasing-in scheme encourages the operation of oil tankers complying with the double hull or equivalent design requirements and to discourage the operation of oil tankers not complying yet with these requirements. This new system should be a combined system providing a reduction on port and pilotage dues for oil tankers complying with the double hull or equivalent design standards and applying a surcharge on the port and pilotage dues for oil tankers not yet complying with these standards.

In establishing this combined incentive/disincentive system, a fair balance should be aimed at to avoid loss of revenues for the providers of port and pilotage services and to avoid that such losses would be at the detriment of the quality of these services or need to be compensated by raising port and pilotage dues for ships unconnected with the transport of oil and oil products. In view of the progressive increase of the number of double hull or equivalent design oil tankers and the decrease of the number of single hull oil tankers over the period of the envisaged accelerated phasing-in scheme, the balance in revenues for port and pilotage service providers has to be achieved by making the reduction on port and pilotage dues for double hull or equivalent design oil tankers regressive with their age and the surcharge on port and pilotage dues for single hull oil tankers progressive with the ship's age.

The percentages of these reductions and surcharges laid down in the proposal should be adaptable through Comitology procedure to take account of the rate at which single hull oil tankers are replaced by double hull tonnage may change over the period of the accelerated phasing in. Finally the proposal provides that the differential charging will cease to be applied when the accelerated-phasing in scheme for the double hull or equivalent design standards has been fully accomplished.

A second accompanying measure provided for in the proposal is to notify to the IMO the Community legislation on the accelerated phasing-in of the double hull or equivalent design standards for single hull oil tankers, once it is adopted. Such a notification would comply with the provisions of Article 211 of UNCLOS. Paragraph 3 of UNCLOS article 211 provides the right to coastal states for imposing particular requirements as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their off-shore terminals. It stipulates further that due publicity to such requirements shall be given and that they shall be communicated to the competent international organisation and that this communication should mention the States which are applying the same requirements in the context of a co-operative arrangements.

JUSTIFICATION FOR A REGULATION

4. a) What are the objectives of the envisaged 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 is the present solution)?

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 in maritime transport as foreseen in Article 80 (2).

To this end, the main objective of the envisaged action is to implement in the Community, in a harmonised way, an accelerated phasing-in of the double hull or equivalent design standards of the MARPOL 73/78 Convention for single hull oil tankers. A harmonised and advanced implementation at Community level of these standards is considered necessary to ensure that oil tankers trading to and from and between ports of the Member States comply as quickly as possible with the double hull or equivalent design standards in order to reduce the risks of accidental oil pollution and its consequences in European waters.

Although not all Member States are concerned with the conditions of access for oil tankers due to their lack of coastline and ports, the Regulation will affect all Member States to a certain extent, since all Member States may have oil tankers flying their flag.

5. b) Is the envisaged action solely the responsibility of the Community or is the responsibility shared with the Member States?

It is a responsibility shared between the Community and the Member States.

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

In view of the internal market dimension of maritime transport, an action at Community level is the only possible way to ensure that the same level of safety and marine pollution prevention is guaranteed by oil tankers trading to and from and between European ports, while reducing the risks of distortion of competition between ports due to the application of divergent principles for charging port and pilotage dues.

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

The Community has a major interest in ensuring that the transport by sea of oil and oil products necessary for its economy is carried out in the safest and most environmentally friendly way, to avoid the detrimental consequences of oil pollution. A harmonised action is necessary to avoid distortion of competition between oil tankers already complying with the latest international requirements concerning accidental oil pollution prevention and those tankers, which do not do so yet. These standards have been internationally agreed but the relevant international Convention in which they are embedded does not ensure for their harmonised and simultaneous application. Their implementation in the Community can only be assured through the establishment of an enforceable and harmonised Community framework.

The cost of inaction would be that the rate of pollution accidents and the seriousness of their consequences caused by the structural failure or damage of single hull oil tankers would remain unacceptably high. Furthermore, if no harmonised and accelerated phasing-in of the double hull or equivalent design standards for these oil tankers is established within the Community, the risk of substandard and over-aged oil tanker tonnage shifting its trade patterns from areas such as the United States, where stricter safety policies are applied, to Europe cannot be deterred.

Also, inaction could entail a risk of distortion of competition between ports through the application of diverging criteria for charging port and pilotage dues to oil tankers, without giving due consideration to the enhanced protection against accidental oil pollution double hull or equivalent designs are offering as opposed to single hull oil tankers.

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

Since the internationally agreed requirements for single hull oil tankers to comply with the double hull or equivalent design standards are providing to a large extent freedom of interpretation and application to the flag State administration and also exclude a considerable number of existing oil tankers from their scope of application, they are not enforceable in a unified and harmonised way ensuring a fast replacement of all single hull oil tankers by double hull oil tankers. In addition, the possibilities for waivers leading to a lack of or a divergence in implementing these international standards could result in a distortion of competition. Hence it is necessary to ensure a harmonised and accelerated application of these internationally agreed standards, in the form of a Regulation.

9. f) Is uniform legislation necessary or does a Directive setting the general objectives and leaving the execution to the Member States suffice?

Uniform legislation in the form of a regulation is necessary for the reasons set out above. In accordance with the principle of proportionality, the proposed Regulation will establish at Community level the age and dates at which single hull oil tankers have to comply with the internationally agreed double hull or equivalent design standards, as well as a uniform approach for a differential charging system for port and pilotage dues to be applied to single and double hull oil tankers visiting European ports.

The actual differential charging system for port and pilotage dues embedded in Council Regulation (EC) No 2978/94 of 21 November 1994 on the implementation of IMO Resolution A.747(18) on the application of tonnage measurement of ballast spaces in segregated ballast oil tankers⁵² cannot longer be continued since it makes no distinction between single hull and double hull oil tankers having both segregated ballast tanks. The most appropriate approach is to revoke this Regulation and replace it by a new one, in which also the accelerated phasing-in scheme is incorporated and linked with a new differential charging system. Acting by way of a Directive would, in addition, require for an additional period for transposing its provisions in the national legislation of the Member States, resulting in a further delay for implementing the accelerated phasing-in scheme.

⁵² OJ L 319, 12.12.1994, p.1.

CONTENT OF THE REGULATION

10. The proposed Regulation specifies the age limits and end-dates by which single hull oil tankers have to comply with the double hull or equivalent design requirements of Regulation 13F of Annex I of the MARPOL 73/78 Convention. The age limits proposed are either lower than the ones specified in Regulation 13G of Annex I of MARPOL 73/78 or apply to categories of tankers which because of their size are not covered by that Regulation. The end-date limits specified aim at avoiding that single hull oil tankers can continue or start trading to European ports after the end-date limits beyond which they are not longer allowed to operate in the waters falling under the jurisdiction of the United States. Compliance of these requirements will be imposed as a condition of access to ports of the Member States for all oil tankers of 600 tons deadweight and above, irrespective of the flag they fly. Further, all oil tankers of that size category, flying the flag of a Member State will have to comply with the accelerated phasing-in scheme of the double hull or equivalent design standards.
11. In addition, and as a complementary measure, the proposal foresees the replacement of the actual differential charging system for port and pilotage dues as laid down in Council Regulation (EC) No 2978/94. The existing system has to be abolished, since it does not provide for a differentiation in the charging of port and pilotage dues between single hull and double hull oil tankers both equipped with segregated ballast tanks. Moreover, the accelerated phasing-in system will lead to the disappearance of single hull oil tankers without segregated ballast tanks as soon as in 2005, and therefore there will be no reasons to prolong the actual system beyond that date. The new financial system for differential charging of port and pilotage dues proposed foresees a reduction of these dues for double hull oil tankers, but the reduction should be regressive with the ship's age. For single hull oil tankers a surcharge on the dues is applied, progressive with ship's age. The proposal specifies that this differential charging system should cease to be applied, once the phasing-in of the double hull or equivalent design standards for single hull oil tankers is fully accomplished.
12. Finally, the proposed Regulation provides for its notification to IMO, once it has been adopted. The purpose of this notification is to inform the international maritime community about the new rules of play in the Community for trading with oil tankers to and from and between ports of the Member States.
13. The proposal provides also for a mandate to the Commission, subject to Comitology, for amending the Regulation to take account of amendments to the relevant international instruments, as well as for adjusting the percentages of the reductions and surcharges in the differential charging system, to take account of possible fluctuations in the rate at which the replacement of single hull tonnage by double tonnage is taking place over the phasing-in period.

SPECIAL CONSIDERATIONS

Article 1

The purpose of the Regulation: to raise the safety and pollution prevention standards for oil tankers operating to and from and between ports of the Member States to reduce the risks of accidental oil pollution due to collision or grounding.

The way to achieve this objective is through accelerating the timing by which single hull oil tankers have to comply with the double hull or equivalent design standards of Regulation 13F of Annex I of MARPOL 73/78. As an accompanying measure the Regulation also provides for a differential charging system for port and pilotage dues between single hull and double hull or equivalent design tankers.

Article 2

This Article defines the scope of application of the Regulation. It covers all oil tankers of 600 tons deadweight and above, irrespective of the flag they fly, when calling at Community ports and all oil tankers of that size flying the flag of a Member State.

Article 3

This Article contains the definitions of the key concepts of the Regulation, which are mainly derived from the relevant definitions in the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78).

Article 4

Article 4 lays down the age limits and date limits by which single hull oil tankers have to comply with the double hull or equivalent design standards of the MARPOL 73/78 Convention. Depending on the size and configuration of the tankers, the age limits vary between 23 to 30 years and the end-date limits between 2005 and 2015. In addition, paragraph 2 of this article specifies that for the purpose of complying with this article, the waiver possibility provided for in Regulation 13G(7) of Annex I of MARPOL 73/78 to accept other structural or operational arrangements as alternatives for compliance with the double hull or equivalent design requirements of Regulation 13F of Annex I of MARPOL 73/78, shall not be accepted.

Article 5

This article establishes the differential charging system for port and pilotage dues between single hull and double hull or equivalent design tankers, based upon the application of a reduction of these dues for double hull or equivalent design tankers, which is regressive with the age of the ship. For single hull oil tankers, not yet complying with the double hull or equivalent design standards, a surcharge on the port and pilotage dues has to be applied which is progressive with the ship's age. Where charging systems for port and pilotage dues are based upon another criterion than deadweight, they have to ensure that at least the same percentage for the reductions and surcharges is applied as in the system based upon deadweight. Finally, the article specifies that the differential charging system shall cease to be applied once the accelerated phasing-in of the double hull or equivalent design standards has been fully accomplished.

Article 6

Article 6 provides for the notification to IMO of the adoption of this Regulation. This notification aims at providing the international maritime community with information on the new rules of play for trading with oil tankers to and from and between ports of the Community.

The United Nations Convention on the Law of the Sea (UNCLOS) provides in its Article 211, concerning pollution from vessels, the right to coastal states to impose particular requirements as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their off-shore terminals. It stipulates further that due publicity to such requirements shall be given and that they shall be communicated to the competent international organisation and that this communication should mention the States which are applying the same requirements in the context of a co-operative arrangements. The notification to the IMO of the adoption of this Regulation aims at meeting this provision of UNCLOS.

Article 7

Article 7 contains provisions on monitoring and reporting on the implementation of the Regulation. It provides that Member States regularly verify that port and pilotage authorities correctly apply the differential charging system for port and pilotage dues as provided for in Article 5. Member States are required to report annually to the Commission on the results of their verification, and this within 4 months after each year upon which is reported.

Article 8

The establishment of a regulatory Committee is incorporated in this article, including also a reference to the procedures of article 5 of Council Decision 1999/468/EC⁵³, in accordance with which it has to act. The article also fixes the period for the Council to act in accordance with the provisions of paragraph 6 of that article to 3 months.

Article 9

This Article provides the right for the Commission to amend the Regulation and its Annex, in accordance with the procedure laid down in Article 8, to update the references to the relevant Regulations of MARPOL 73/78 in line with any subsequent amendments that may be adopted to these Regulations.

It also provides under the same procedure for the adjustment of the percentage of reductions and surcharges on port and pilotage dues to be applied, to take into account variations in the rate at which the replacement of single hull oil tankers by double hull or equivalent design tankers will take place during the phasing-in period.

⁵³ 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.

Article 10

In view of the new differential charging system for port and pilotage dues established in Article 5, the existing differential charging system laid down in Council Regulation (EC) No 2978/94 has to be abolished. The existing system provides for differential port and pilotage dues between oil tankers equipped with segregated ballast tanks in protective locations (SBT/PL) and those without. However, by using only the SBT/PL criterion, it does not provide for any differentiation between single hull and double hull or equivalent design tankers.

Articles 11 and 12

No comments

Annex

The annex to the regulation specifies the percentages of the reductions and surcharges on port and pilotage dues to be applied in function of the ship's age.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on the accelerated phasing-in of double hull or equivalent design requirements
for single hull oil tankers**

(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 Commission⁵⁴,

Having regard to the opinion of the Economic and Social Committee⁵⁵,

Having regard to the opinion of the Committee of the Regions⁵⁶,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁵⁷,

Whereas:

- (1) within the framework of the common transport policy further measures must be taken to enhance safety and prevent pollution in maritime transport ;
- (2) the Community is seriously concerned by the shipping accidents involving oil tankers and the associated pollution of its coast-lines and harm to its fauna and flora and other maritime resources;
- (3) the Commission underlined in its Communication “a common policy on safe seas”⁵⁸ the request of the extraordinary Council on Environment and Transport of 25 January 1993 to support the action in the International Maritime Organisation (IMO) on the reduction of the safety gap between new and existing ships by upgrading and/or phasing-out existing ships, built to earlier standards, after a reasonable period of operation, paying particular attention to oil tankers not meeting the amendments of the International Convention for the Prevention of Pollution from Ships, 1973 and the Protocol of 1978 related thereto (MARPOL 73/78) which entered into force in 1982;
- (4) the European Parliament in its Resolution on a common policy on safe seas⁵⁹ welcomed the Commission Communication and called in particular for action to be taken to improve tanker safety standards;

⁵⁴ OJ C [...], [...], p. [...].

⁵⁵ OJ C [...], [...], p. [...].

⁵⁶ OJ C [...], [...], p. [...].

⁵⁷ OJ C [...], [...], p. [...].

⁵⁸ COM(93)66 final of 24.02.1993.

⁵⁹ OJ C 91, 28.031994, p.301.

- (5) the Council, by its Resolution of 8 June 1993⁶⁰, fully supported the objectives of the Commission Communication;
- (6) at international level, the International Maritime Organisation has established in the International Convention for the Prevention of Pollution from Ships, 1973 and the Protocol of 1978 related thereto (MARPOL 73/78) internationally agreed pollution prevention rules affecting the design and operation of oil tankers;
- (7) important amendments to the MARPOL 73/78 Convention containing more rigorous measures concerning the design and construction standards for oil tankers have been adopted by the IMO on 6 March 1992, which entered into force on 6 July 1993. These measures impose double hull or equivalent design requirements for oil tankers delivered on or after 6 July 1996 aimed at preventing oil pollution in the event of collision or stranding. Within these amendments a phasing-in scheme for single hull oil tankers delivered before that date took effect from 6 July 1995 onwards requiring such tankers to comply with the double hull or equivalent design standards not later than 25 years and in some cases 30 years after their date of delivery. As a consequence of these measures existing single hull oil tankers not complying with the requirements of MARPOL 73/78 concerning segregated ballast tanks and their protective location will no longer, at international level, be allowed to operate beyond 2007, and in some case 2012, unless they comply with the double hull or equivalent design requirements of Regulation 13F of Annex I of MARPOL 73/78. For existing single hull oil tankers that do comply with the requirements of MARPOL 73/78 on segregated ballast tanks and their protective location this deadline will be reached at the latest in 2026;
- (8) prior to the adoption of these amendments to MARPOL 73/78, the United States already adopted in 1990 the Oil Pollution Act establishing double hull requirements both for new and existing tank vessels. These requirements provide that after 1 January 2010 single hull oil tankers without double bottom or double sides will not be allowed to operate to and from US ports unless they comply with the double hull requirements. In addition, in the period preceding this final deadline such single hull oil tankers will not be longer allowed to operate to and from US ports from 2005 onwards when they reach an age of 25 years, and in some cases 23 years, unless they comply with the double hull requirements. For single hull oil tankers fitted with double bottom or double sides this final deadline is fixed on 1 January 2015 and the ship's age limit in the preceding period between 2005 and 2015 is 30 years and in some cases 28 years;
- (9) it can be expected that the differences between the international regime and the one established by the United States concerning age limits and end-date limits for the application of the double hull requirements to existing single hull oil tankers will result, from 2005 onwards, that single hull oil tankers not longer allowed to operate to and from US ports because of their age, and particularly after the end-date limits of 2010 and 2015, will shift their trading patterns to other regions in the world, including the European Union, and continue operating until they have to comply with the double hull requirements in accordance with the age limits provided for in the MARPOL 73/78 Convention;

⁶⁰ OJ C 271, 07.10.1993, p.1.

- (10) comparison of tanker age and accident statistics show increasing accident rates for older ships. It has been internationally agreed that the adoption of the 1992 amendments to MARPOL 73/78 requiring the application of the double hull or equivalent design standards to existing single hull oil tankers when they reach a certain age will provide these tankers with a higher degree of protection against accidental oil pollution in the event of collision or stranding;
- (11) it is in the interest of the Community to adopt measures to avoid that single hull oil tankers that due to their advanced age, or after the end-date limits, are no longer allowed under the Oil Pollution Act 1990 to operate to and from US ports, will start or continue operating to and from European ports and thereby maintain or increase the risk of accidental oil pollution in European waters;
- (12) these measures should be based upon the principles of the MARPOL 73/78 Convention that existing single hull oil tankers have to comply with the double hull or equivalent design requirements not later than when they reach a certain age. The age limits in these measures should be aligned with those of the Oil Pollution Act 1990 and for that purpose an accelerated phasing in of the double hull or equivalent design standards of MARPOL 73/78 should be established for existing single hull oil tankers by lowering the age limit and specifying end-date limits in line with those of the Oil Pollution Act 1990, beyond which these ships have to comply with these standards as a condition for entering into a port or the internal waters of a Member State of the Community;
- (13) the requirements of Regulation 13G of Annex I of MARPOL 73/78 for existing single hull oil tankers to comply with the double hull or equivalent design standards apply only to crude oil tankers of 20000 tons deadweight and above and to product carriers of 30000 tons deadweight and above. The double hull or equivalent design requirements of Regulation 13F of Annex I of MARPOL 73/78 apply to oil tankers of 600 tons deadweight and above delivered after 6 July 1996. This difference in size limits in the scope leaves the category of single hull crude oil tankers delivered before 6 July 1996 and having a deadweight between 600 and 20000 tons deadweight as well as product carriers delivered before 6 July 1996 with a deadweight between 600 and 30000 tons unaffected. In view of the importance of this lower tonnage category of oil tankers for the intra-Community trade similar measures should be adopted to ensure that these tankers will also have to comply with the double hull or equivalent design standards of MARPOL 73/78. For that purpose a phasing-in of the double hull or equivalent design standards of MARPOL 73/78 should be established for this category of single hull oil tankers as a condition for entering into a port or the internal waters of a Member State of the Community;
- (14) the European Parliament, in its Resolution on the oil slick off the French coast adopted on 20 January 2000⁶¹, welcomed any efforts by the Commission to bring forward the date by which oil tankers will all be obliged to have a double-hull construction;
- (15) the accelerated phasing in of the double hull or equivalent design requirements for single hull oil tankers should be accompanied by complementary measures aimed at encouraging the trading with double hull or equivalent design oil tankers in advance of the accelerated phasing-in scheme. These complementary measures should consist of providing financial incentives for double hull or equivalent design oil tankers and

⁶¹ OJ C [...], [...], p. [...].

disincentives for single hull oil tankers operating to or from ports of the Member States in the Community;

- (16) these complementary measures should be based upon the principles established in Council Regulation (EC) No 2978/94 of 21 November 1994 on the implementation of IMO Resolution A.747(18) on the application of tonnage measurement of ballast spaces in segregated ballast oil tankers⁶². These principles foresee the application of reduced port and pilotage dues for the most environmentally friendly oil tankers as opposed to those offering less protection against oil pollution;
- (17) Council Regulation (EC) No 2978/94 does not take into account the higher level of protection against accidental oil pollution offered by double hull or equivalent design oil tankers as compared to single hull oil tankers. Therefore the Regulation does not differentiate between double hull oil tankers and single hull oil tankers fitted with segregated ballast tanks with regard to the reduction of port and pilotage dues;
- (18) in view of the nearing deadline for single hull oil tankers not complying with the requirements of MARPOL 73/78 on segregated ballast tanks and their protective location there are no reasons to maintain any longer the differential charging system Council Regulation (EC) No 2978/94 provides between such oil tankers and tankers that comply with the requirements of MARPOL 73/78 on segregated ballast tanks and their protective location;
- (19) in view of aiming at promoting the trading to European ports of double hull or equivalent design oil tankers, the financial incentive system of Council Regulation (EC) No 2978/94 should be replaced by a system that during the period of the accelerated phasing-in scheme encourages the operation of oil tankers complying with the double hull or equivalent design requirements and discourages the operation of oil tankers not complying yet with these requirements. For that purpose Council Regulation (EC) No 2978/94 should be repealed;
- (20) the financial incentives for oil tankers complying with the double hull or equivalent design standards and financial disincentives for oil tankers not yet complying with these standards should be based upon a combined system providing a reduction of port and pilotage dues for oil tankers complying with the double hull or equivalent design standards and applying a surcharge on the port and pilotage dues for oil tankers not yet complying with these standards;
- (21) Port and pilotage dues should be proportionate with the services rendered and be calculated in a non-discriminatory manner.
- (22) this combined system of reductions and surcharges on port and pilotage dues should be balanced to avoid loss of revenues for the providers of port and pilotage services and to avoid that such losses would be at the detriment of the quality of these services or need to be compensated by raising port and pilotage dues for ships unconnected with the transport of oil and oil products;
- (23) in view of the progressive increase of the number of double hull or equivalent design oil tankers and the decrease of the number of single hull oil tankers over the period of the accelerated phasing in scheme the balance in revenues for port and pilotage service

⁶² OJ L 319, 12.12.1994, p.1.

providers should be achieved by making the reduction on port and pilotage dues for double hull or equivalent design oil tankers regressive with their age and the surcharge on port and pilotage dues for single hull oil tankers progressive with the ship's age. This differential charging system should cease to be applied when the replacement of single hull oil tankers by double hull or equivalent design oil tankers has been fully accomplished;

- (24) since the measures necessary for the implementation of this Regulation 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 Commission⁶³, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision;
- (25) certain provisions of this Regulation containing references to the regulations of the MARPOL 73/78 Convention may be amended by the Commission, assisted by the Committee, to bring them in line with amendments to these regulations adopted or entered into force. Also the percentages of the reductions and surcharges on port and pilotage dues in the Annex may be amended by that Committee to ensure that the revenues for port and pilotage service providers are kept in balance in view of the pace and extent at which single hull oil tankers are replaced by double hull or equivalent design oil tankers during the phasing-in period;

HAVE ADOPTED THIS REGULATION:

Article 1

Purpose

The purpose of this Regulation is to establish:

- an accelerated phasing-in scheme for the application of the double hull or equivalent design requirements of the MARPOL 73/78 Convention to single hull oil tankers, and
- a system of financial incentives and disincentives, providing for a reduction on port and pilotage dues for oil tankers complying with the double hull or equivalent design standards and a surcharge on these dues for oil tankers not yet complying with these standards.

Article 2

Scope

This Regulation shall apply to all oil tankers of 600 tons deadweight and above,

- when entering into a port or the internal waters of a Member State, irrespective of their flag, or
- flying the flag of a Member State.

⁶³ O.J. L 184, 17.07.99, p.23

Article 3
Definitions

For the purpose of this Regulation,

- (1) “MARPOL 73/78” shall mean the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto together with the amendments thereto, in force;
- (2) “oil tanker” shall mean an oil tanker as defined in Regulation 1 (4) of Annex I of MARPOL 73/78;
- (3) “deadweight (DW)” shall mean deadweight as defined in Regulation 1 (22) of Annex I of MARPOL 73/78;
- (4) “new oil tanker” shall mean a new oil tanker as defined in Regulation 1 (26) of Annex I of MARPOL 73/78;
- (5) “crude oil tanker” shall mean a crude oil tanker as defined in Regulation 1 (29) of Annex I of MARPOL 73/78;
- (6) “product carrier” shall mean a product carrier as defined in Regulation 1 (30) of Annex I of MARPOL 73/78;
- (7) “single hull oil tanker” shall mean an oil tanker not meeting the double hull or equivalent design requirements of Regulation 13F of Annex I of MARPOL 73/78;
- (8) “double hull oil tanker” shall mean an oil tanker meeting the double hull or equivalent design requirements of Regulation 13F of Annex I of MARPOL 73/78;
- (9) “age” shall mean the age of a ship, expressed in number of years after the date of its delivery;
- (10) “port and harbour authority” shall mean a public or private person which charges fees to ships for providing facilities and services to shipping;
- (11) “pilotage authority” shall mean a public or private person entitled to render pilotage services to shipping;

Article 4

Compliance with the double hull or equivalent design requirements by single hull oil tankers

1. Member States shall not allow single hull oil tankers to enter into their ports or internal waters after the earliest of the dates specified hereafter, unless such tankers comply not later than the earliest of those dates with the double hull or equivalent design requirements of Regulation 13F of Annex I of MARPOL 73/78:
 - (1) for crude oil tankers of 20000 tons deadweight and above and product carriers of 30000 tons deadweight and above not meeting the requirements for a new oil tanker in Regulations 13, 13B, 13E and 18(4) of Annex I of MARPOL 73/78: when they reach the age of 23 years or 1 June 2005.

- (2) for crude oil tankers of 20000 tons deadweight and above and product carriers of 30000 tons deadweight and above meeting the requirements for a new oil tanker in Regulations 13, 13B, 13E and 18(4) of Annex I of MARPOL 73/78: when they reach the age of 28 years or 1 January 2010.
 - (3) for crude oil tankers of 600 tons deadweight and above but less than 20000 tons and product carriers of 600 tons deadweight and above but less than 30000 tons not meeting the requirements for a new oil tanker in Regulations 13, 13B, 13E and 18(4) of Annex I of MARPOL 73/78: when they reach the age of 25 years or 1 January 2015.
 - (4) for crude oil tankers of 600 tons deadweight and above but less than 20000 tons and product carriers of 600 tons deadweight and above but less than 30000 tons meeting the requirements for a new oil tanker in Regulations 13, 13B, 13E and 18(4) of Annex I of MARPOL 73/78: when they reach the age of 30 years or 1 January 2015.
2. Other structural or operational arrangements such as hydrostatically balanced loading as referred to in Regulation 13G(7) of Annex I of MARPOL 73/78 shall not be accepted as alternatives for compliance with the requirements of paragraph 1.

Article 5

Differential charging of port and pilotage dues for double hull and single hull oil tankers

1. Member States shall ensure that port and harbour authorities and pilotage authorities, when charging port and pilotage dues to oil tankers, apply a differential charging system to the effect that:
 - the fees for double hull oil tankers are at least reduced with the percentages mentioned in the Annex in comparison with the fees applied to single hull oil tankers of the same deadweight having an age of less than 5 years, and
 - the fees for single hull oil tankers are at least increased with the percentages mentioned in the Annex in comparison with the fees applied to single hull oil tankers of the same deadweight having an age of less than 5 years.
2. Where the fees for port and pilotage dues are charged on another basis than deadweight, Member States shall ensure that the charging system applied by port and harbour authorities and pilotage authorities provides at least the same percentages of reduction in fees for double hull oil tankers and increase in fees for single hull oil tankers as mentioned in paragraph 1.
3. The differential charging system for port and pilotage dues shall cease to apply on the latest of the dates referred to in Article 4.

Article 6

Notification to the IMO

The Presidency of the Council and the Commission shall inform the International Maritime Organisation of the adoption of this Regulation, whereby reference shall be made to article 211, paragraph 3 of the United Nations Convention on the Law of the Sea.

Article 7

Monitoring and reporting

1. Member States shall regularly verify that port and harbour authorities and pilotage authorities apply correctly the differential charging system specified in article 5.
2. The Member States shall send to the Commission annually a report on the results of this verification, including breaches committed by their port and harbour authorities and pilotage authorities. The report shall be provided at the latest by 30 April of the year following the year upon which it reports.

Article 8

Committee procedure

1. The Commission shall be assisted by the committee instituted by Article 12, paragraph 1, of Council Directive 93/75/EEC⁶⁴.
2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Council Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.
3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

Article 9

Amendment procedure

1. The references in the Articles to the regulations of Annex I of MARPOL 73/78 may be amended, in accordance with the procedure laid down in Article 8, in order to bring them in line with amendments to these regulations adopted by the IMO.
2. The percentages for the reductions and surcharges of the differential charging system for port and pilotage dues in the Annex may be amended in accordance with the procedure laid down in Article 8, to take account of the pace and extent of the replacement of single hull oil tankers by double hull oil tankers during the phasing in period.

⁶⁴ Council Directive concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods, OJ L 247, 5.10.1993, p. 19.

Article 10

Repeal of Council Regulation (EC) No 2978/94

Council Regulation (EC) No 2978/94 of 21 November 1994 on the implementation of IMO Resolution A.747(18) on the application of tonnage measurement of ballast spaces in segregated ballast oil tankers⁶⁵ is repealed as from [12 months after the entry into force of this Regulation].

Article 11

Implementation

1. Member States shall, in due time, but before the date of application referred to in Article 12, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this Regulation.
2. When Member States adopt measures as referred to in paragraph 1, they shall contain a reference to this Regulation or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
3. The Member States shall immediately communicate to the Commission all provisions of domestic law which they adopt in the field governed by this Regulation. The Commission shall inform the other Member States thereof.

Article 12

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

⁶⁵ OJ L 319, 12.12.1994, p. 1.

ANNEX

Differential charging of port and pilotage dues
for double hull or equivalent design oil tankers and single hull oil tankers

Minimum percentages of reductions and surcharges
to be applied as referred to in Article 5.

| Ship's age | 0-5 | 5-10 | 10-15 | 15-20 | 20-25 | >25 |
|---|-------|-------|-------|-------|-------|-------|
| <u>Reduction</u> for double hull or equivalent design oil tankers | - 25% | - 20% | - 15% | - 10% | - 5% | None |
| <u>Surcharge</u> for single hull oil tankers | none | + 10% | + 15% | + 20% | + 25% | + 30% |

FINANCIAL STATEMENT

1. TITLE OF OPERATION

Proposal for a Regulation of the European Parliament and of the Council on the accelerated phasing-in of double hull or equivalent design standards for single hull oil tankers

2. BUDGET HEADING(S) INVOLVED

Part A (see § 10)

Part B (see § 7) - budget-heading B2-702 : Preparation, evaluation and promotion of transport safety

3. LEGAL BASIS

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

4. DESCRIPTION OF OPERATION

4.1 General objective

Protecting the marine environment from accidental oil pollution caused by oil tankers through an accelerated phasing-in of double hull or equivalent design standards for single hull oil tankers.

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: none

6. TYPE OF EXPENDITURE OR REVENUE

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

The operational expenses are to cover the holding once a year of meetings with experts of the industry involved and the carrying out every third year of an assessment study on the impact, implementation and effectiveness of the measure. The appropriations for these operational expenses are detailed in table 7.2. and will be covered by budget heading B2-702

The administrative expenses are to cover the holding once a year of a meeting of the regulatory Committee to be established under the proposed Community measure. Details of the associated costs are specified in table 10.3.

7. FINANCIAL IMPACT

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

The total cost of operation is calculated by totalling the individual costs on a yearly basis, starting with the year n at which the proposed Community measure will have entered into force (see table 7.2).

These individual costs consist of a yearly returning amount of 5.000 € for organising once a year a 1 day meeting with experts of the industry involved. In addition, every third year, the Commission services intend to contract an assessment study on the impact, implementation and effectiveness of the measures adopted. This regular assessment of the measure over the entire phasing-in period is necessary for the Commission to be able to propose under Comitology procedure eventually necessary amendments to the accompanying incentive/disincentive system for the acceleration of the phasing-in of double hull or equivalent design standards in the Community. The cost for such an assessment study is estimated to be 100.000 €.

It is envisaged that the commitment and payment appropriations for each of the individual costs will be made in the same year (see table 7.3)

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 | 0,2 |
| – Meetings of experts ⁶⁶ | | 0,005 | 0,005 | 0,005 | 0,005 | 0,005 | 0,025 |
| – Information and publications | | | | | | | |
| Total | | 0,005 | 0,005 | 0,105 | 0,005 | 0,105 | 0,225 |

⁶⁶ 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 | | 0,005 | 0,005 | 0,105 | 0,005 | 0,105 | 0,225 |
| Payment appropriations | | | | | | | |
| year n | | | | | | | |
| n+1 | | 0,005 | | | | | 0,005 |
| n+2 | | | 0,005 | | | | 0,005 |
| n+3 | | | | 0,105 | | | 0,105 |
| n+4 | | | | | 0,005 | | 0,005 |
| n+5 and subs. years | | | | | | 0,105 | 0,105 |
| Total | | 0,005 | 0,005 | 0,105 | 0,005 | 0,105 | 0,225 |

8. FRAUD PREVENTION MEASURES

- Control of adherence to the procedures for inviting Member States' experts to the Regulatory Committee meetings.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1 Specific and quantified objectives; target population

- Specific objectives: links with general objective
Establishment of an accelerated phasing-in scheme for single hull oil tankers to comply with the double hull or equivalent design standards of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78).
- Target population: distinguish for any individual objectives; indicate the end-beneficiaries of the Community's financial contribution and the intermediaries involved.
No financial contribution is provided for in this proposal.
The differential charging system proposed for port and pilotage dues is balanced by compensating the reduction in dues awarded to double hull tankers by surcharges on dues to be paid by single hull oil tankers.

9.2 Grounds for the operation

- Need for Community financial aid, with particular regard for the principle of subsidiarity.
No Community financial aid is foreseen in this proposal.

- Choice of ways and means

- * advantages over possible alternatives (comparative advantages)

The advantage of establishing at Community level an accelerated phasing-in of the double hull or equivalent design standards to single hull oil tankers, compared to individual action by Member States will be that distortion of competition and divergence in safety levels can be avoided. It will also ensure that all oil tankers trading to the European Union will have to comply with one common set of standards and procedures to be respected in all ports established in the Community, providing more clarity and ensuring a uniform treatment.

- * explanatory reference to similar Community or national operations

There are no similar Community or national operations to be referred to in this context.

- * spin-off and multiplier effects expected

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 phase out single hull oil tankers more expeditiously than provided now under MARPOL 73/78.

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

The main factor of uncertainty is the rate at which single hull oil tankers will be replaced by double hull oil tankers over the phasing-in period. The proposal therefore foresees the possibility to adapt, through Comitology procedure, the percentages of reductions and surcharges to be applied in the differential charging system for port and pilotage dues, in order to ensure that revenues for providers of port and pilotage services can be kept in equilibrium, and to avoid that compensation for loss in revenues is made by reducing the quality of these services or by raising port and pilotage dues for ships unconnected with the transport of oil or oil products.

9.3 Monitoring and evaluation of the operation

- Performance indicators selected

- * output indicators (measurement of resources employed)

The output indicators will be provided by Member States when reporting on the implementation of the Regulation's provisions at national level, and more in particular on the application of the differential charging systems for port and pilotage dues.

- * impact indicators (measurement of performance against objectives)

As impact indicators the above reporting by Member States should be considered, together with port State control data, in particular concerning deficiencies and detentions reported on oil tankers. Also the number and extent of accidental oil pollution due to structural damage or failure of oil tankers, will be an indicator for the impact of the proposed measure. Further, article 7 of the draft proposal requires reporting by the Member States on the application of the differential charging system.

- Details and frequency of planned evaluations
The frequency at which evaluations are planned is annual. These evaluations will be done by Member States and will consist of reporting on the implementation of the differential charging system for port and pilotage dues in the navigable waters and ports in their territory.
- Assessment of the results obtained (where the operation is to be continued or renewed)
The information contained in the Member States' reports will be used for the assessment of the need for adjusting the percentages for reductions and surcharging in the differential charging system. For that purpose an evaluation study in the 3rd year, i.e. after each 2nd reporting year, is budgeted (see table 7.3).

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

10.1 Effect on the number of posts

| 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 | 0,5 | - | 0,5 | - | Indefinite |
| | B | - | - | - | - | - |
| | C | - | - | - | - | - |
| Other resources | | - | - | - | - | - |
| Total | | 0,5 | - | 0,5 | - | indefinite |

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 regulatory Committee established for the purpose of this Regulation 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 accelerated phasing-in of double hull or equivalent design standards for single hull oil tankers

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 in maritime transport as foreseen in Article 80 (2) read in conjunction with Article 71 (1) (c).

To this end, the main objective of the envisaged action is to apply in the Community, in a harmonised way, an accelerated phasing-in scheme for single hull oil tankers to comply with the double hull or equivalent design standards of the International Convention on the Prevention of Pollution from Ships (MARPOL 73/78). A harmonised and accelerated implementation at Community level of these international standards is necessary to reduce considerably the risks and consequences of accidental oil pollution in case of collision or grounding of these types of ships. It is also necessary to avoid that distortion of competition between ports is created due to the application of divergent charging systems for port and pilotage dues for single hull and double hull or equivalent design oil tankers.

The Community has a major interest in ensuring that the transport of oil and oil products by sea is carried in safe and acceptable conditions, with a minimum risk of oil pollution in case of accidents. A harmonised action is necessary to avoid re-occurrence of important oil pollution of European coasts, fauna and flora and harm to the marine environment, as in the case of the sinking of the oil tanker ERIKA off the French coast in December 1999.

In view of the internal market dimension of maritime transport, an action at Community level is the only possible way to ensure that the same level of protection against oil pollution due to collision or grounding accidents is guaranteed for all oil tankers trading to and from and between European ports, while reducing the risks of distortion of competition between ports due to the application of divergent principles governing the charging of port and pilotage dues for environmentally friendly oil tankers.

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 affected by this proposal are shipping companies operating oil tankers trading to and from and between the ports of the European Community for the import and export and distribution of oil and oil products within the Community.

The Regulation addresses all oil tankers above 600 tons deadweight, regardless of their flag, when operating to and from and between ports of the Member States. There is no differentiation between the size of shipping companies operating such oil tankers and the ports receiving them for loading or unloading their cargo, as all sea-borne trade of oil and oil products transported by oil tankers to and from and between Community ports is affected by the Regulation. The total number of oil tankers operating world-wide is estimated to be above 7000. In view of the important share of the EU seaborne imports and exports of oil and oil products, which on average can be estimated to be around one third of the world seaborne trade⁶⁷, a considerable part of this oil tanker fleet is calling at Community ports for the loading or unloading of oil and oil products. As to the ports concerned most of them are large ports as are the companies operating the terminals. Indeed many of the oil terminals are the property or are managed by the major oil companies. As regards the operators of the tanker fleet involved, they may be or belong to large companies, but also a large number of mostly smaller sized tankers are operated by small and medium sized enterprises.

There is no special geographical area within the Community where these businesses are found: all except the two land-locked Member States have seaports catering for commercial ships. Austria and Luxembourg are thus excluded from applying the provisions of the Regulation related to ports. However, as both these countries are maritime flag States, their ships are affected by it.

The expected reduction in oil pollution accidents with single hull oil tankers will have a beneficial effect for the marine environment and considerably reduce the risk and consequences of European coastlines being heavily polluted due to such accidents and the associated financial, social and industrial costs. It will also avoid disturbance of maritime traffic that may be caused by such accidents and the associated cost and time for salvage of the ships and their cargoes, or in the worst case, for wreck removal and recovery of the polluting cargoes, and the need for carrying accident investigations to establish the causes of the loss.

⁶⁷ See figures on the importance of oil trade for the Community in the Communication to which this proposal is attached.

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

Oil tanker operating companies and oil loading and unloading ports will have to ensure that single hull oil tankers are gradually replaced by more environmentally friendly double hull or equivalent design tankers, in accordance with the accelerated calendar specified in the proposal, which is based upon a combination of ship's age limits and end-date limits. In addition port and pilotage authorities rendering services to oil tankers will have to apply a differential charging system for port and pilotage dues between single hull and double hull or equivalent design oil tankers.

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

The proposal is expected to have a beneficial effect on employment, since the accelerated replacement of old single hull oil tankers by new double hull tonnage will increase the demand for newbuildings. This is expected to have a positive effect for the shipbuilding industry and the associated marine equipment manufacturing and supply industry. However, it should be noted that due to the large shipbuilding capacity available in the Far East and the fierce and aggressive pricing policy of that industry, the major part of new shipbuilding orders arising from the accelerated phasing-in scheme would not be secured by European shipyards. The positive impact on employment for the European shipbuilding industry may be therefore rather limited. On the other hand, the European marine equipment manufacturers may benefit from this increased demand for newbuildings, as they will receive more orders, also for ships to be built outside the Community. Finally the measure may have a beneficial impact on the employment opportunities for European seafarers. It can be expected that the demand for highly qualified crewmembers may increase due to the replacement of old single hull oil tanker tonnage by new double hull tonnage. As these new ships will be equipped with state of the art equipment, better-qualified crew will be necessary to safely operate them. It can also be expected that owners of new tonnage, as opposed to them operating old and low value tonnage, will prefer to rely upon qualified crew for the operation of their investments.

The accelerated phasing-in of the double hull or equivalent design standards for single hull oil tankers is expected to have a beneficial effect on the competitiveness of quality operators trading with modern and environmentally friendly oil tankers. Today they are suffering from unfair competition by sub-standard operators exploiting sub-standard and over-aged tonnage, which are cutting corners on safety and marine pollution prevention to offer bottom price for the transport of oil and oil products. These low market prices do not allow quality operators to obtain a return on their investments.

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

For the reasons explained above and for the sake of safety and oil pollution prevention, no distinction is made in the scope of application of this Regulation as regards the size of ships or ports, or companies operating them. Considering that the replacement of single hull oil tonnage by new double hull tonnage is agreed at international level as a measure necessary to reduce the risks of accidental oil pollution, such a distinction is considered not to be necessary nor desirable. On the

contrary, making such distinctions would create a two-tier safety regime and would entail risks for distortion of competition.

However, the proposal aims at balancing the revenues of port and pilotage authorities which are rendering services to oil tankers trading to and from and between European ports. This balance will be achieved by compensating the reduction in port and pilotage dues granted to double hull oil tankers with surcharges on port and pilotage dues for single hull oil tankers.

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)
 - Committee of EU shipbuilders' associations (CESA)
 - 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 (UIA)

Industry and professional organisations have been consulted on the main objectives and principles of the proposal. In general the industry and professional organisations consider the proposed phasing-in scheme as very stringent, whilst appreciating the need for taking measures to enhance considerably the prevention of accidental oil pollution. Some of these organisations have not awaited this proposal to announce that they will take voluntary measures to contribute to this enhancement. All these ideas for voluntary actions by some parts of the maritime industry emerged after the sinking of the ERIKA and aim at providing a reasoned reply to the justified public and political concern about the safety of oil transport by sea. This proposal is considered by the industry as a stringent but unavoidable measure to ensure that a level playing field is created for all players involved, in particular for those which for the time being are not (yet) prepared to commit themselves to similar voluntary actions.