

Opinion of the Economic and Social Committee on:

- the 'Proposal for a Directive of the European Parliament and of the Council establishing a Community monitoring, control and information system for maritime traffic',
- the 'Proposal for a Regulation of the European Parliament and of the Council on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures', and
- the 'Proposal for a Regulation of the European Parliament and of the Council establishing a European Maritime Safety Agency'

(2001/C 221/07)

On 25 January 2001 the Council decided to consult the Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Economic Community, on the above-mentioned proposals.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 May 2001. The rapporteur was Mr Retureau and the co-rapporteur Mrs Bredima-Savopoulou.

As its 382nd plenary session held on 30 and 31 May 2001 (meeting of 30 May) the Economic and Social Committee adopted the following opinion by 111 votes for, with three abstentions.

1. Introduction

1.1. In line with its commitment to present a series of legislative proposals on maritime safety, the Commission is proposing three new Council and European Parliament texts on which it is asking the Committee for its views.

1.2. The Commission's 'second set of Community measures on maritime safety following the sinking of the oil tanker Erika' (hereafter 'Erika II package' for simplicity's sake) contains three proposals: one directive and two regulations.

1.3. These proposals were announced in the Erika I package on which the Committee has already commented⁽¹⁾. In that opinion the Committee made some general comments to which we would refer here before analysing the new proposals and commenting on them in detail.

1.4. The Committee is sorry to see that the Council has not followed in full the Commission's proposal for an amendment to the directive aimed at stepping up inspections in ports, which was part of the first package. As the Committee pointed out, this proposal would have significantly increased the number of qualified inspectors; the Council's present position could severely restrict the number of vessels posing a risk inspected in ports, which the Committee deeply regrets. It hopes that this situation may change so as to ensure full respect of the objectives of the Paris Memorandum and the targeting coefficients proposed by the Commission.

1.5. The Committee, which called for an agreement on the introduction of double-hull tankers to be sought first, as far as possible, in the IMO, is pleased to note that a revision of the IMO's present withdrawal timetable, as called for jointly by the EU Member States, was decided at the IMO session on 24 and 27 April 2001.

1.6. In view of the importance of the human factor for safety, there is an urgent need for the ILO's maritime conventions to be incorporated in Community law through their ratification by the Member States and for another revision of the texts on crew safety. The member countries should press the other members of the IMO and ILO, and the Community should for its part help to promote the universal ratification of these conventions and the most recent protocols so as to raise and align the general level of protection for seafarers and their safety training. For its part the Committee will draw up an own-initiative opinion on this subject, covering all modes of transport.

2. The legislative proposals of the Erika 2 package

2.1. *The directive establishing a Community monitoring, control and information system for maritime traffic*

2.1.1. The risk of accidents due to the concentration of maritime traffic in straits is particularly high; more generally,

(1) OJ C 14, 16.1.2001, p. 22.

the consequences of certain accidents may be catastrophic for the economy and environment of regions along the coasts of European seaways. Hence the need to monitor and organise traffic to minimise these risks. This is the purpose of the proposed directive.

2.1.2. The Commission suggests that Directive 93/75/EEC laying down notification requirements for vessels carrying dangerous or polluting goods, as it stands, is inadequate because it does not cover ships in transit off Europe's coasts. Therefore, and in order to monitor and control more effectively the traffic off the European Union's coasts, the proposed directive provides for:

- a) requiring vessels sailing in EU waters to carry automatic identification transponders;
- b) extending the reporting requirements of Directive 93/75/EEC to other dangerous or polluting goods and, in particular, to bunker fuels;
- c) systematic use of electronic data interchange (EDI) for reporting data on dangerous or polluting goods carried by ships;
- d) requiring ships to carry voyage data recorders (black boxes);
- e) boosting the development of common databases and interconnection of centres in order to obtain a more complete picture of traffic in European waters;
- f) closer monitoring of vessels presenting a particularly serious threat to safety at sea and to the environment;
- g) enhancing the powers of intervention of coastal Member States to avert serious accident hazards (re-routing of ships, mandatory pilotage or towage);
- h) designation of ports of refuge; and
- i) banning of vessels from leaving ports in exceptional weather conditions.

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

2.2.1. The Commission's proposed regulation for improving the liability and damage compensation schemes in force complements the existing international two-tier regime by creating a European supplementary fund, the COPE Fund, to compensate victims of oil spills in European waters. The COPE Fund will have a ceiling of EUR 1 000 million and will be

financed by European oil receivers of EU coastal Member States receiving more than 150 000 tons per annum of crude oil or heavy fuel oil and in proportion to the quantities received. The Fund will only be activated once an accident that exceeds, or threatens to exceed, the ceiling provided by the IOPC Fund has occurred in EU waters.

2.2.2. Further, the Commission intends to address through the IMO the shortcomings in the international liability and compensation system, with a view to achieving the following amendments in the Civil Liability Convention 1992:

- the liability of the shipowner should be unlimited if it is proved that the pollution damage resulted from gross negligence on his part;
- the prohibition of compensation claims for pollution damage against the charterer, manager and operator of the ship should be removed from the Civil Liability Convention; and
- compensation and damage caused to the environment should be reviewed and widened in light of comparable compensation regimes established under Community law.

2.2.3. To complement the measures in the area of liability and compensation, the Commission proposes to make provision for financial penalties or sanctions for established grossly negligent behaviour on behalf of any person involved in the transport of oil at sea.

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

2.3. *Regulation establishing a European Maritime Safety Agency*

2.3.1. The Commission asserts that the task of ensuring the proper and convergent implementation of existing rules related to the EU maritime safety and pollution prevention legislation, is difficult due to the diverse administrative tradition of the EU Member States. Consequently, and in order to help the Commission ensure an efficient application of existing Community legislation the creation of a European Maritime Agency is proposed under a draft Regulation.

2.3.2. The Commission thinks that it would be somewhat unrealistic, or at least premature, to envisage setting up an integrated European operational structure or coastguard that would take over the role of national maritime administrations. On the contrary, the Agency should support the action of Member States and the Commission in applying Community legislation, monitoring its implementation and evaluating the effectiveness of the measures in force.

2.3.3. The Agency will not be empowered to take decisions since it would be up to the Member States and in particular the Commission, in its capacity as custodian of the application of Community legislation, to perform the necessary follow up to the Agency's work and suggestions.

2.3.4. The Agency will have legal personality and will need to be located in a convenient location that will also enable it to develop working relations with appropriate EU institutions.

2.3.5. The Agency will be controlled by an Administrative Board consisting of four representatives of the Commission, four representatives of the Council, four representatives nominated by the European Parliament and four representatives from the industry (including users) nominated by the Commission. Its Executive Director will be appointed by the Administrative Board on a proposal by the Commission. The term of office of the Executive Director and the members of the Administrative Board will be five years, renewable only once.

2.3.6. A small number of the Agency personnel will be seconded from the EU institutions on a temporary basis. The other personnel will be recruited on the basis of experience and merit and will be hired on the basis of temporary renewable contracts.

2.3.7. The tasks which the Agency has to carry out in order to fulfil the defined objectives include, inter alia, the provision of technical assistance in preparing amendments to Community legislation, strengthening of the port State control regime, and monitoring of classification societies. The Agency may decide to establish regional centres in some Member States where better surveillance of maritime traffic is warranted. In order to perform the tasks entrusted to it, the Agency will carry out visits to the Member States to verify their performance in the implementation of the legislation.

3. General comments

3.1. Ship reporting

3.1.1. The ESC supports the creation of a comprehensive and centralised system for ship reporting, surveillance and control, encompassing Search and Rescue and Vessel Traffic Information Services.

3.1.2. The ESC notes that to a large extent, the specific proposals reiterate obligations already imposed upon ships by various IMO Conventions. The UNCLOS Convention recognises IMO as the competent organisation for matters related to maritime safety and pollution prevention affecting international shipping.

3.1.3. The envisaged reporting system covers the wider area of European waters and encompasses operational mandatory reporting systems established through IMO. The Commission suggests that transiting ships will have to participate in IMO systems covering EU waters and progressively in new systems. In the first place, the Member States and the Commission should endeavour to establish the proposed system through IMO, as envisaged by Article 20 of the proposed directive, and implement it independently if IMO fails to establish such a system at international level in a reasonable period.

3.1.4. The ECS recalls that in its opinion on the Erika I package⁽¹⁾ it endorsed the calls for the introduction of a coastal State scheme which would pinpoint zones and ports of refuge that must have the necessary equipment and capability to deal with accidents, which would enable the authorities to provide pro-active assistance to vessels in distress.

3.1.5. In view of the interaction between ships and coastal stations, the ESC considers it particularly important that Member States fulfil their corresponding obligations stemming from the directive in a timely manner.

3.2. COPE Fund

3.2.1. Liability and compensation for damage to the environment resulting from spills of persistent oil from tankers is governed by the 1969/1992 Civil Liability Conventions (CLC) and the 1971/1992 International Oil Pollution Compensation Fund Conventions (IOPCF).

3.2.2. The Conventions establish a two-tier system whereby the shipowner is liable under CLC and cargo interests are responsible under IOPCF. Under CLC, the shipowner is strictly liable for pollution damage and is obliged to have insurance to meet his liabilities up to a limit established by the Convention. When claims following an oil spill incident exceed the ceiling, additional compensation is available from the IOPC Fund, which is financed by oil importers.

⁽¹⁾ OJ C 14, 16.1.2001, p. 22.

3.2.2.1. It is generally accepted that the system has attempted to strike an appropriate balance between the interest of claimants in receiving certain, rapid and adequate compensation, the ability of the shipowner to obtain insurance cover and the need to involve cargo interests in payment for pollution damage.

3.2.3. Up to now, 57 countries are parties to the 1992 CLC and 55 countries are parties to the 1992 IOPC Fund, and more are expected to join. It is noteworthy that every important maritime nation, except the US and China, has joined the IOPC Fund. However, some countries have remained a party to the original CLC (1969) which has a weaker compensation regime than the 1992 protocol, but provides for unlimited liability of the shipowner if the accident and pollution occurred as a result of the owner's fault. The 1992 protocol (CLC 1992) also provides for unlimited liability, but this is virtually impossible to implement because it is subject to exceptionally restrictive conditions under the liability regime: there must be a very serious fault, personally attributable to the shipowner and deliberate; actual personal intent to cause the disaster must be proved, which is practically impossible for the victims.

3.2.4. In the opinion of the Committee, the balance should be maintained between the interests at stake, but it is clear that the compensations under the present system do not cover the real amount of the direct and indirect damages caused by oil spills and that the present ceilings need to be raised substantially under CLC as well as under IOPCF. The Erika case shows that the compensations, not yet paid, fail largely to compensate the real damage. The contributing parties to both systems of compensation have no other choice, if they wish to keep their contributions to these Funds within reasonable limits, but to pursue the most effective possible policy of safety and prevention of accidents.

3.2.5. The introduction of an additional European framework (third tier), intended to work in parallel and in complement with the international system, is justified for the Committee if the international system does not rapidly fix new appropriate ceilings. The amount of EUR 1 000 million is to some extent comparable to the unilateral US ceiling of USD 1 000 million.

3.2.5.1. The ESC has maintained in a regular chain of opinions that, in view of the international nature of maritime transport, measures should be taken preferably at international level. The setting-up of a European complementary compen-

sation Fund should not be a reason not to improve compensations under the existing conventions and the priority of the Member States in IMO should be to work together for these essential improvements.

3.2.5.2. A significant improvement in the international system would in fact proportionately reduce the financing requirements of a complementary European system, in the interests of all parties, and spread the cost over all operators from countries party to the conventions and not just European operators.

3.2.6. The Commission proposes to address other shortcomings in the international system through the IMO. The ESC notes that work is underway in IMO in the IOPC Fund which has set up a working group to this effect. The findings of two sessions of this working group in March and June 2001 will be submitted to its Assembly in autumn 2001. The ESC also acknowledges that the IMO adopted a 50 % increase of the CLC/Fund limits in November 2000 which will enter into force in November 2003.

3.2.7. Despite the above increase, even the new levels would still be inadequate to meet certain claims, like the Erika case, which would far exceed the current level of 200 m SDR. Moreover, experience with past incidents indicates that large oil spills may occur from relatively small tankers, e.g., in the case of Erika. In such instances under the CLC regime the maximum amount payable according to that vessel's tonnage was USD 12 m, with the IOPCF providing complementary compensation up to the present ceiling of 200 m SDR.

3.2.8. In the light of the above considerations, the ESC believes that the ongoing discussions in IMO should also consider a possible readjustment of CLC compensation levels between categories of vessels without disturbing the overall balance between ship and cargo.

3.2.9. The Commission proposes that under a revision of the CLC the pecuniary liability of the shipowner shall be unlimited, if it is proved that the pollution damage resulted from gross negligence in his part.

3.2.10. However, the ESC notes that limitation of liability of the shipowner is the cornerstone of the 1992 Civil Liability Convention. The limitation of liability is coupled with strict liability of shipowners and the provision of insurance of the relevant sums by the insurers of oil pollution claims, the P&I

Clubs. Under the current regime, there is provision for direct access of claimants against the P&I Clubs and quick settlement of claims without the need to prove any fault on behalf of the shipowner, thus, avoiding protracted litigation and possible frustration of the victims of pollution incidents.

3.2.11. In light of the above, the ESC therefore believes that the current system of shipowner liability — which as mentioned above is to be raised 50 % in 2003 — could be maintained in IMO. However, the Committee thinks that a fault-based regime with potentially unlimited liability for the shipowner and possibly the owner of the cargo — who like the shipowner should be obliged to ensure the safety of potentially polluting cargoes — in the case of serious fault or negligence attributable to them, merits serious consideration with a view to adjusting the present regime so that at all events it operates forthwith in favour of the victims of pollution.

3.2.12. Therefore the Committee considers that with regard to the Commission's proposal on unlimited liability further study is needed so that its implementation does not lead to delays in compensation or entail legal fees to the extent that initiating such proceedings brings no benefit to the plaintiff or may even be more detrimental than the present system. It must be remembered, for instance, that in the case of the pollution of the northern coast of Brittany by the Torrey Canyon the substantial compensation obtained by the victims was in fact largely eaten up by their expenses after ten years of proceedings, evaluations and counter-evaluations. However, the competent courts should be able, in the case of serious or intentional fault, to impose appropriate penalties, for instance within the framework of the proposed implementation of an environmental penal law.

3.2.13. Over the last ten years, out of 360 tanker accidents, in virtually all cases the damage has been covered by the shipowners' insurance, with a complementary call being made on the Fund in only five cases. The Erika was the only case in which the amounts granted from the Fund were, according to estimates, far below the damage as determined under the present system for identifying damage eligible for compensation, which the Committee regards as too restrictive.

3.2.14. The Commission proposes that the compensation of damage caused to the environment should be reviewed and widened in light of comparable compensation regimes established under Community law to cover the claims concerning damages to biodiversity.

3.2.15. The ESC recalls that in its opinion on the Erika I package it has already favoured this idea. According to that

opinion, 'the ESC strongly urges the Commission and the Member States to coordinate their efforts within the IMO on tightening safety standards and providing fuller compensation for victims of pollution caused by ships, which should also include damage to the environment and to biodiversity'.

3.2.16. Moreover, the recent sinking of the chemical tanker *Ievoli Sun* (31 October 2000, off the French coast) highlighted the most unsatisfactory legal regime regarding the liability and compensation of hazardous and noxious substances other than oil.

3.2.17. The ESC recalls its opinion on *Erika I* in which it addressed this point and reiterates that the EU Member States should urgently ratify the Hazardous and Noxious Substances Convention (HNS) of IMO with a view to precipitating its international entry into force.

3.2.18. The complementary European fund would therefore only be called upon in cases which the Committee hopes are as rare as possible. Nevertheless, the damage eligible for compensation is the same as that defined under the existing conventions. In the Committee's view, however, compensation should also cover — besides damage to the environment and biodiversity, including the cost of restoring the environment and rescuing animals affected by the pollution — the indirect damage suffered by individuals, certain financial losses suffered by firms, in particular SMEs, in certain sectors such as tourism, and the lasting effect on the image of a coastal region discouraging the establishment of new businesses and tourism for a long period.

3.2.19. To facilitate the access of individuals and SMEs-SMIs to compensation, the Committee thinks that — within the framework of national judicial systems and with regard to the use of the COPE Fund — consideration should be given to recognising the right of professional organisations and local associations whose members are directly affected, including ad hoc associations founded in the wake of an accident and who can show proof of legal competence or a mandate to represent victims' groups, to act at law on behalf of their members.

3.3. *The European Maritime Safety Agency*

3.3.1. The ESC, whilst endorsing the purpose of the proposed creation of a Committee on Safe Seas replacing the existing committees referred to in the Council regulations and

directives in force in the field of maritime safety, wonders how that proposal relates to the proposal to create the European Maritime Safety Agency.

3.3.2. The ESC believes that there must be no overlapping between the role and competences of the regulatory Committee on Safe Seas and the administrative European Maritime Agency.

3.3.3. Although the Agency institutionally cannot have any legislative or regulatory powers, there is a need to clearly define the role and competences of the European Maritime Safety Agency in order to avoid any risk of confusion or duplication of work with the Committee on Safe Seas. The need is particularly evident in view of one of the important tasks assigned to the Agency, namely to assist the Commission in the process of updating Community legislation in the field of maritime safety.

4. Specific comments

4.1. Comments on the content of the proposed instruments

4.1.1. The Committee notes that the Erika I and II packages basically comprise technical and financial provisions and that in spite of concerns about the key role of the 'human factor' in accident prevention and crisis management — concerns raised, moreover, by the Commission and entirely shared by the ESC — this fundamental dimension is missing from the second package.

4.1.1.1. The 'human factor' is no less important in accident prevention and crisis management since 80 % of maritime accidents are attributed to it. The EU has issued several directives aimed at achieving a high quality in respect of port State inspections, classification societies and crew. Directive 94/58/EC⁽¹⁾ in the version Directive 98/35/EC⁽²⁾ lays down the minimum level of training for seafarers through the adoption of the IMO's STCW Convention. Directive 1999/63/EC⁽³⁾ lays down EU — wide rules for working time on Member State vessels, thus contributing to ship safety. It is

supplemented by Directive 1999/95⁽⁴⁾ which extends the rules on crew working hours to third country ships calling at Community ports. Article 12 of Directive 95/21⁽⁵⁾ on port State control sets out the professional profile of inspectors. Article 4(1) of Directive 94/57⁽⁶⁾ in conjunction with Annex B No 6 expressly stipulates that classification society inspectors are to be subject to internal quality audits and continuous training.

4.1.1.2. Without underestimating the abovementioned provisions, some of which are shortly to be amended, the Committee still thinks that, along with the legal and technical measures, consideration should be given to specific new measures on the number, basic and ongoing training, and general working conditions of inspectors, traffic controllers, rescuers and ships' crews. It also notes with concern the increasing number of incidents of fraudulent certification of seafarers which eventually affects safety as well as the alarming increase of piracy attacks on ships in some parts of the world needing an international reaction. The Committee therefore calls on the Commission to draw up appropriate proposals, for example in a new 'Erika III' package on the human dimension, thus making for a comprehensive and integrated approach to maritime safety.

4.1.2. The ILO plays and must continue to play, in close cooperation with the IMO, a key role in respect of crew training, living and working conditions and safety. Thus new international labour conventions for seafarers were adopted by the maritime session of the ILO Conference in 1966, the application of the ILO's maritime conventions being closely linked to that of IMO conventions. Furthermore, on 26 January 2001 in Geneva, the 29th session of the ILO's Joint Maritime Commission adopted several safety-related resolutions and a social declaration highlighting the need for an integrated approach including the human dimension. The Commission and the Member States have a major joint responsibility for the ratification, effective implementation and follow-up of the ILO's maritime conventions and recommendations. The ESC notes with regret that a delay has built up in implementing this joint responsibility and urges the Commission and Member States to make up this delay as soon as possible.

⁽¹⁾ OJ L 319, 12.12.1994, p. 28-58, ESC Opinion OJ C 34, 2.2.1994, p. 10.

⁽²⁾ OJ L 172, 17.6.1998, p. 1-26, ESC Opinion OJ C 206, 7.7.1997, p. 29.

⁽³⁾ OJ L 167, 2.7.1999, p. 33-37.

⁽⁴⁾ OJ L 14, 20.1.2000, p. 29, ESC Opinion OJ C 138, 18.5.1999, p. 33.

⁽⁵⁾ OJ L 157, 7.7.1995, p. 1-19.

⁽⁶⁾ OJ L 319, 12.12.1994, p. 20-27, ESC Opinion OJ C 34, 2.2.1994, p. 14.

4.1.3. The failure to recruit sufficient qualified inspectors for State port inspection duties was why the Council watered down the Erika I proposals, which both the Commission and ESC expressly regretted. All land-based safety personnel, and pilots, marine rescuers, anti-pollution specialists, etc. must be taken into account in terms of recruitment, training and appropriate working conditions.

4.1.4. The ESC reiterates its concern⁽¹⁾ that economic pressure on masters and crews who continue to serve on board substandard ships may have an impact on ship safety. Therefore, crew members must be encouraged to report anomalies on board likely to cause accidents and subsequently must be given proper protection. In the Committee's view the human dimension of safety must be taken into consideration as a matter of urgency if the proposed technical measures are to be applied effectively under favourable conditions.

4.2. *Directive establishing a Community monitoring, control and information system for maritime traffic*

4.2.1. The information on ships' bunker and fuel tank capacity should be integrated into the EQUASIS databank. To determine the quantity and nature of potentially polluting products actually transported by a ship, and to make it possible to take appropriate measures in the event of an accident or to apply certain rules of navigation, the Committee thinks that the declaration should cover the nature and quantities of the ship's cargo and fuel.

4.2.2. The ESC notes that Chapter V of the International Convention on the Safety of Life at Sea (SOLAS Convention) contains detailed provisions on ships' routing, ship reporting systems and vessel traffic services, supplemented with resolutions describing in detail the principles of these services and systems and operational arrangements. Therefore, the requirement of Article 5 seems to be redundant for vessels covered by the SOLAS regime, as the obligation of ships to participate in IMO-adopted reporting systems and to comply with the applicable procedures already stems from the SOLAS Convention.

4.2.3. The ESC acknowledges the usefulness of automatic identification systems (AIS) known as transponders. However, and in order to be consistent with the international require-

ments, Article 7 should require ships to be fitted with AIS in accordance with the schedule in the SOLAS Regulation V/19.2.4. Conversely, Member States should furnish themselves with the required shore radio reception equipment as early as 1 July 2003 in order to be able to utilise the data from the transponders.

4.2.4. Article 8 should be changed so that it requires ships to be fitted with a voyage data recorder (VDR) when required to be so fitted by SOLAS Regulation V/20, which will enter into force on 1 July 2002. IMO concluded that at this stage it should not be a requirement that existing cargo ships be fitted with VDRs. By utilising the procedure of Article 23, it will be possible in future to harmonise the requirement for existing cargo ships with that of IMO, in terms of timing and variation of standards (simpler VDR equipment).

4.2.5. The Committee also hopes that the final agreement for the deployment of the Galileo system will be operational soon as it enables the position of ships to be determined very precisely and, once integrated into the navigation surveillance system, would make a considerable contribution to safety, to monitoring the route of ships and to pinpointing the location of accidental and intentional spills.

4.2.6. To the extent that the purpose of Article 13 is to identify ships posing a potential hazard and to pass the relevant information to another party, the article has a clear scope. However, the actions specified in paragraph 3 that seem to fall under the scope of port State control may be confusing.

4.2.7. The ESC supports any effort whereby mariners and coastal States are informed of navigational dangers. Any obligations placed upon a master for reporting incidents and accidents at sea in accordance with Article 14 should be consistent with international law, and in principle with Article 8 and Protocol I of the MARPOL Convention and Regulation V/31 of the SOLAS Convention. However, the 1982 UN Convention on the Law of the Sea, which recently came into force, opens up new possibilities for action by the coastal State to protect the economic resources and safety of its waters and coastline for the whole length of its exclusive economic zone, which may extend to 200 nautical miles from its coast and even further if necessary. These new powers are not defined exhaustively by the Convention. The relevant information to be communicated by the master in the event of one of the risks specified in Article 15 occurring is consistent with IMO Resolution A.851(20).

⁽¹⁾ OJ C 14, 16.1.2001, p. 22.

4.2.7.1. The Committee recognises that under present maritime transport conditions and because of the high number of flags and sub-standard ships, bearing in mind the nature of their cargo, the quantities transported and the density of the traffic off the coast of Europe, it has become necessary to extend significantly the powers of port States and coastal States, not least to make up for the laxity of some States under whose flag a huge tonnage is registered. This requires the preparation, on the legal basis of the UN Convention, of maritime legislation more appropriate to our times and the major risks which exist, as illustrated by recent major accidents. Civil society supports these trends and calls for stricter and more effective standards on navigation safety and pollution prevention.

4.2.8. Exceptionally adverse weather and sea conditions may affect all ships at sea, but the general state of the vessel or the nature of the cargo should encourage extra prudence. Under Regulation V/34 of the SOLAS Convention the master has the obligation to ensure that the intended voyage has been planned so as to ensure safe navigation and avoidance of dangerous situations, including anticipation of all known navigational hazards and adverse weather conditions. Similarly, the company, or any other person, shall not prevent or restrict the master from exercising his professional judgement with respect to safe navigation and protection of the marine environment. However, masters are too often forced to act against their better judgement. The ESC therefore understands the reason for the proposal in Article 15, and the desire to intervene in exceptional cases where masters appear to be lacking in prudent seamanship or even reckless in opting to proceed to sea in exceptionally bad weather. However, the article does not offer sufficiently elaborated objective criteria to help port authorities to act in a consistent and uniform manner. The ESC believes that Article 15 should be more specific in this regard, setting out clearly the general principles. At the same time the Commission and Member States should contribute to relevant developments in IMO in developing detailed guidelines for practical implementation.

4.2.9. The ESC welcomes the acknowledgement of the need to establish a legal framework to accommodate ships in distress. The ESC also shares the view that there is obviously a Community and an international dimension to this problem, since ships refused access to one port or to a safe haven may, while searching for another safe haven, create demands on other nations' search and rescue facilities or cause pollution to other nations' coastline.

4.2.10. The ESC, while in agreement with the proposal, realises the sensitive nature of the notion of 'port of refuge' and the conflicting interests. However, it feels that in most cases ships in distress are in need of sheltered waters to

avert or minimise the consequences of the incident and not necessarily the protection of a port as such. Therefore, under certain circumstances and under certain conditions that should be clearly set out in Article 17, the ESC suggests that the concept of 'places of refuge' or sheltered waters should also be taken into consideration, possibly with appropriate equipment, so that vessels in distress can be directed there in lieu of a port, when appropriate. The ESC maintains that the overriding consideration should always be the safeguarding of life.

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

4.3.1. Article 10 — Penalties

4.3.1.1. Under Article 10 Member States shall lay down financial penalties on any person found by a court of law to have contributed by his wrongful, intentional, or grossly negligent acts or omissions to an incident causing or threatening to cause oil pollution. According to § 3 such penalties shall not be insurable and they would be of a penal nature. Moreover, such penalties would apply to any ship and not only to tankers to which the rest of the directive applies.

4.3.1.2. The ESC notes that according to the terms of this article, the criminal legislation would have to be adopted by the Member States and not by the EU. Nevertheless, the ESC wonders whether it is compatible with the EU legal order to introduce legislation of a criminal nature at the present stage of development of Community law. Moreover, in several Member States national legislation provides criminal penalties of a financial nature for cases of maritime pollution. The Commission is invited to produce an inventory of relevant national legislation in EU Member States before proceeding to adoption of Article 10. Furthermore, the term 'grossly negligent acts or omissions' may not be sufficiently precise for inclusion in a Community legal instrument and may jeopardize already well established and workable legal regimes. Pending developments regarding the Communitisation of the third pillar, it should be ensured that under national legislation of Member States there is no impunity for such offences.

4.4. *Regulation establishing a European Maritime Safety Agency*

4.4.1. The ESC notes that the diverse administrative structures and traditions of the Member States are not limited only

in the area of maritime safety and the prevention of marine pollution. In the view of the ESC, the proper and convergent implementation of existing legislation can be ensured by a number of important and well-known factors, such as clear policies, firm commitments and adequate resources. The proposed Regulation does not address the roots of divergent implementation, nor does it attempt to establish a model administrative structure to redress the situation. Instead, it establishes an administrative body empowered to audit (and overrule?) the powers and prerogatives of national administrations.

4.4.2. The ESC is of the view that the desirable aim can be better achieved with a wider and more balanced representation of interested parties (including users) and professional sectors in the Administrative Board. It also considers that it would be advisable to ensure that a significant part of the staff of the Agency is seconded from national administrations, for obvious reasons. National experts as staff members for a fixed term can facilitate the necessary linking of the Agency with national administrations and can acquire knowledge and experience in the pursuance of EU policy for the benefit of their administration after the expiration of their term.

4.4.3. The ESC notes the wide range of the defined tasks of the Agency and the task of performing any other task assigned to the Commission by Community legislation on maritime safety, including legislation applicable to ships' crews. While some of the tasks seem to be of a purely administrative character, others may create the risk of confusion or duplication of work required by Community legislation to be performed by other bodies, namely the Committee on Safe Seas and the Committee established under Directive 94/57/EC as amended.

4.4.4. The powers of the Agency to carry out visits to the Member States and to have access to all files, data and reports and to make copies, to ask oral explanations from any staff member and to have access to any premises, land or means of transport may appear excessive and reaching far beyond the

aims of the regulation. A proper and effective working relationship and a full cooperation between Member States and Community institutions are necessary and have to be established and developed, while they might be affected if there were an excessive imbalance in the status, competences and the prerogatives of the respective entities.

5. Conclusions

5.1.1. The Committee, subject to the comments and suggestions set out above, considers that in general the Erika II package is a step in the right direction towards establishing safe navigation conditions and avoiding accidental pollution, and for ensuring, in the event of an accident, sufficient and fair compensation for all the damage caused to individuals and the environment.

5.1.2. However, there is still a long way to go before the legislative proposals on maritime safety are fine-tuned and completed, bearing in mind at all times the international character of maritime transport and the powers and role of the current regulatory and standards institutions, in particular the IMO and ILO and their conventions and recommendations, and more generally the whole international convention system encompassed by the United Nations Convention on the Law of the Sea (Montego Bay Convention, to which the Community itself is party) which lays down the rights and obligations of flag, coastal and port States, all institutions and conventions which play a key role and need to be strengthened.

5.1.3. Even more important is the need to create the conditions for effectively implementing European and international maritime law. This requires long-term political commitment, increased material resources, genuine and effective cooperation between the Commission and the Agency, maritime committees and competent Member State authorities. It further requires the human factor to be taken into account — in the Committee's view the most essential element in the safety of maritime transport, a strategic sector of activity for the internal and external trade of the EU.

Brussels, 30 May 2001.

The President
of the Economic and Social Committee
Göke FRERICHS