

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 417/2002 on the accelerated phasing in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No 2978/94'

(COM(2002) 780 final — 2002/0310 (COD))

(2003/C 133/19)

On 22 January 2003 the Council decided to consult the European Economic and Social Committee under Article 80(2) of the Treaty establishing the European Community, on the above-mentioned proposal.

The Specialised 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 13 March 2003. The rapporteur was Dr Bredima-Savopoulou.

At its 398th plenary session on 26 and 27 March 2003 (meeting of 27 March) the European Economic and Social Committee adopted the following opinion by 100 votes to 10 with 10 abstentions.

1. Introduction

1.1. The sinking of the tanker 'Prestige' (19.11.2002) and the ensuing ecological disaster off the coasts of Spain and later on spreading to those of France mobilized European public opinion three years after the similar accident of the tanker 'Erika' off the coast of France. The Commission in its Communication on improving safety at sea in response to the accident ⁽¹⁾ announced a number of measures to minimise the risk of future accidents involving ships such as 'Erika' and 'Prestige'. The Transport Council on 6 December 2002, called for an acceleration of the calendar for phasing-out of single-hull tankers, for applying the Condition Assessment Scheme (CAS) for single hull tankers that are over 15 years of age, as well as the conclusion of administrative agreements by Member States with a view of refusing single hull oil tankers carrying the heaviest grades of oil into their ports, terminals and anchorage areas. The conclusions of the recent Council meeting in Brussels on 20 and 21 March include a set of measures which the EESC supports very warmly.

2. The Commission proposal

2.1. In order to meet the objectives of the Transport Council, the Commission proposed the following three amendments to Regulation (EC) No 417/2002 ⁽²⁾:

- A provision that heavy grades of oil shall only be carried by double hull tankers.
- A revision of the EU phasing out scheme to ensure in particular that single hull tankers of category 1 will not

operate beyond 23 years and 2005 or 28 years and 2010 for category 2 and 28 years and 2015 for category 3.

- A broader application of the special inspection regime for tankers (the Condition Assessment Scheme), designed to assess the structural soundness of single hull tankers that have passed the age of 15 years.

2.2. The severe oil spill resulting from the 'Prestige' compelled the Commission to reconsider the phasing out scheme under Regulation (EC) No 417/2002. The purpose of the proposed revision of the phasing out scheme is to lower the age limits and cut-off dates to the level as initially proposed in the 'Erika' I package in order to ensure a better protection of the marine environment. The Commission is aware of the considerable economic impact on the tanker industry and intends to present an economic analysis as soon as possible.

2.3. As with the 'Erika' accident heavy fuel oil proved once again to be among the most polluting types of oil, hence, the Commission's proposal to prohibit the transport of heavy grades of oil in single-hulled tankers bound for or leaving EU ports. The Commission asserts that there is today a sufficient capacity of double hull oil tankers to ensure that there will be no disturbance of security of supply.

⁽¹⁾ COM(2002) 681 final.

⁽²⁾ OJ L 64, 7.3.2002, p. 1, EESC Opinion OJ C 14, 16.1.2001, p. 22.

3. General comments

3.1. The EESC expresses its deep concern for the disaster of the tanker 'Prestige' and the ensuing social, environmental and economic consequences. It is thankful that no loss of life occurred. It is of the utmost urgency that every effort should be exerted so that the occurrence of such incidents is minimised and the victims are fully compensated. There is an obligation for all parties concerned to give priority to urgently reviewing the effectiveness of the current regime for the carriage of oil by sea. Future measures should be adequate and address the real causes of such incidents.

3.1.1. The circumstances and causes of the Prestige incident are still under investigation. Although it is probable that, if the ship had been taken immediately to a place of refuge, the disaster might have been contained, it is possible to point to some of these causes or a combination of causes: structural failures in the ship which was 26 years old; maintenance shortcomings; decisions or lack thereof on dealing with the incident which compounded the problem; inappropriate manoeuvres etc.

3.2. Despite the precedent of the tanker 'Erika' (which was also refused a place of refuge) and the repeated and consistent calls for a clear and adequate regime of places of refuge for ships in distress, the regime is still unclear. The EESC recalls its opinion on the proposal for the accelerated phasing-in of double hull tankers (Erika I package)⁽¹⁾ and its opinion on the Erika II package⁽²⁾ and reiterates its call to address and resolve this politically unpopular issue. Therefore, it fully supports the proposal for speeding up the preparations of the plans to accommodate vessels in places of refuge. What is required is the designation of places of refuge in the EU waters, the implementation by EU Member States of the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC Convention 1990) as requested in its Opinion on the Erika I package and a clear-cut emergency response plan and procedures for implementation when a ship in distress needs to be taken to such a place. The plan should stipulate the obligations of the master, the coastal state and the salvor. All these actions have to be clarified and co-ordinated by one single authority preferably at EU level by the European Maritime Safety Agency (EMSA).

3.3. The EESC reiterates the concern⁽³⁾ expressed in previous opinions 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 by EU legislation. 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. The EESC expresses its concern about the continued attitude of regulators who view shipmasters as having the overriding responsibility of ships. In reality, in present day shipping operations the masters real power and resources have been severely constrained. Since many national authorities still target the master and ships officers through the legal system in preference to searching through the bureaucratic maze of ownership and control of ships, it is necessary to clarify the legal liability of all parties involved in maritime transport. In light of the above considerations, the EESC reiterates its previous 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.

3.4. The proposal for a regulation is an immediate response to the Prestige accident. The EESC urges that as soon as the outcome of the investigation is known, whatever supplementary measures it may judge necessary be implemented. However, the EESC points out that the double hull is not in itself sufficient to solve the enormous problem of environmental disasters caused by accidents involving oil tankers, and that other measures are essential.

3.5. The EESC recalls that with its opinion on the Erika I package it expressed the view that the measures taken at international level to improve safety and reduce accidental pollution have brought about considerable drop in the incidence of such pollution. Pollution caused by ships is far from being the only source of maritime pollution, although its importance should not be minimised, bearing in mind that ships account for an estimated 15 % of total pollution. It should be noted that large oil tankers transport huge quantities (the Prestige was carrying 77 000 tonnes of oil), hence concentrating the damage. It also is recognised that discharges from urban areas and land-based economic activities account

⁽¹⁾ OJ C 14, 16.1.2001, p. 22.

⁽²⁾ OJ C 221, 7.8.2001, p. 54.

⁽³⁾ OJ C 14, 16.1.2001, p. 22 and OJ C 221, 7.8.2001, p. 54.

for two-thirds of marine pollution along coastlines and in estuaries, and drastic reductions must be made for these discharges. While welcoming measures proposed to reduce maritime pollution caused by ships, the EESC would like to see a similar approach to maritime pollution caused by discharges from urban areas and land based economic activities ⁽¹⁾.

3.6. The principle of proportionality — enshrined in the jurisprudence of the European Court of Justice and EU law — should be observed in all instances. Proportionality of the proposed measures should refer not only to the consequences but also to the real causes of the incident. The EESC wonders what would be the EU reaction in similar incidents of double hull ships which cannot be excluded in the near future as they develop their commercial life.

3.7. The EESC subscribes to the general view that maritime accidents are the result of ineffective implementation or infringements of the existing legislation rather than its inadequacy. Therefore, the EESC fully supports the earlier application of the measures in the Erika I and Erika II packages and the priority attached to them by the Commission. The measures should be applied rigorously and in parallel.

3.8. The sense of urgency to address highly sensitive economic, social and environmental issues should not disregard the rules of international law. In a string of past opinions since 1993 the EESC has been consistently advocating that regulations relating to maritime safety and pollution prevention affecting international shipping should stem from the competent International Maritime Organization (IMO). Unilateral measures may undermine the IMO status and trigger off unilateralism by third countries that may seriously curtail the important cross trading activities of the EU fleet. There are already indications for such action from the US and some Asian countries. Therefore, it is desirable to ensure that EU rules on maritime safety and protection of the maritime environment take into account the fact that EU waters must remain open without discrimination to all vessels which meet international standards. In light of the above considerations and of the international character of maritime transport, the proposed measures should be referred to IMO for a possible global application.

3.9. The implementation of the Commission proposal creates the urgent need for new vessels which meet the new requirements. For reasons of safety, guarantees and strategy, the Community's shipbuilding policy will have to be analysed and reconsidered so as to facilitate the construction of ships in European yards and draw up a European plan for financing the replacement of scrapped vessels.

4. Specific comments

4.1. The EESC believes that the EU should adopt a balanced policy taking into account the environmental, economic and social effects in line with the stipulations of the Göteborg Summit for a sustainable assessment of EU actions.

4.2. The EESC maintains that there is pressing need to implement rapidly and effectively the following:

- a clear-cut regime on places of refuge
- the introduction of contingency plans for accidents
- the intensification of supervisory measures
- the need to clarify the legal liability of all parties involved in maritime transport
- improved vocational skills for crews
- requiring repairs to be carried out at dockyards offering guaranteed quality, thus ensuring safety, more stringent technical standards for the design and construction of vessels
- a stronger enforcement of the port state control Directive
- the more rapid implementation of the Directive requiring greater transparency of classification societies
- the ratification by EU Member States of the Bunkers Convention and the Hazardous and Noxious Substances (HNS) Convention.

4.3. In view of the serious socio-economic implications and of the international character of shipping, the EU Member States, under speedy procedures, should endeavour to introduce through IMO for global application a satisfactory accelerated phasing-out schedule for single-hull tankers which would be aligned with the Oil Pollution Act (OPA) schedule of the

⁽¹⁾ EESC Opinion to be adopted on Marine Environment (NAT/166).

US. The EU initiative in IMO should be taken without prejudice to the right and obligation to ensure timely and adequate environmental protection at EU level.

4.4. The EESC supports the banning of single-hull tankers for the carriage of the most polluting heavy grades of oil. However, the proposal may create both supply and refining difficulties in the EU exacerbated by the war in Iraq. It should be noted that much of the heavy crude oil imported in the EU is produced in the North Sea and transported in specialized high quality single-hull shuttle tankers. These vessels are unique to the North Sea operation and are of a high standard. In this context, derogations could be envisaged where appropriate.

4.5. The banning of carriage of heavy grades of oil will affect all single-hull oil tankers from 600 dwt and above. However, the majority of those below 5 000 dwt are engaged in short-sea shipping and domestic voyages. Moreover, there are very few double-hull tankers actually to provide these operations. Mindful of the need to safeguard vital bunkering operations in the EU and to maintain supplies to locations that depend on sea transport for their oil (e.g. the servicing of islands), the EESC would propose that for single hull tankers below 5 000 dwt the banning measures are introduced in a progressive manner. The EU should propose to the IMO the designation under the Marpol Convention of highly sensitive environmental areas (e.g. Venice, Bocche di Bonifaccio) as 'areas to be avoided' by tankers carrying heavy fuel oil. Moreover, the EU and the IMO should cooperate to establish, in accordance with the SOLAS Convention, mandatory routing systems along the EU coasts for single-hull tankers carrying higher polluting oils.

4.6. The EESC welcomes the proposal whereby there is a broader CAS inspection regime to assess the structural soundness of single-hull tankers that have passed the age of 15 years. In the case of ageing ships, a thorough inspection of vital parts of the hull is essential to detect possible weaknesses in order to rectify them and reduce the risk of breaking up in heavy seas.

5. Conclusions

5.1. Without prejudice to the remarks above, the EESC supports the proposal for a Regulation on the accelerated phasing in of double hull or equivalent design requirements, submitted by the Commission.

5.2. Despite the precedent of the Erika accident and the ensuing mobilization of the EU institutions which resulted in two legislative packages (Erika I and II), the EESC regrets that another ecological disaster has occurred from the sinking of the tanker Prestige.

5.3. The EESC deplores the fact that its repeated calls (in its opinions on the Erika I and II packages) for a number of concrete measures have not materialized. Therefore, it feels compelled to reiterate them hoping that they will be taken into account in order to avoid the occurrence of similar accidents in the future.

5.4. The circumstances of the Prestige incident raise a number of questions which merit attention so that reasonable, practical and proportionate measures, which will address the causes of similar incidents, can be taken. Therefore, an investigation into the causes of the incident and compensation to the victims is of the utmost priority.

5.5. In line with the Göteborg Summit stipulations present action should be subject to a sustainability impact assessment covering its potential economic, social and environmental consequences. A cost/benefit impact study prescribing an overall balanced policy is urgently requested. Hence, trade must go hand in hand with maritime safety and environmental protection.

5.6. The EESC believes that there is a compelling need for the earliest and rigorous application of the Erika I and II packages and the urgent introduction of a regime on places of refuge and contingency planning with a clear line of authority to assist vessels in distress preferably at EU level by EMSA.

5.7. The EESC requests:

- the introduction of contingency plans for accidents;
- the intensification of supervisory measures;
- the need to clarify the legal liability of all parties involved in maritime transport;
- improved vocational skills for crews;

- requiring repairs to be carried out at dockyards offering guaranteed quality, thus ensuring safety, more stringent technical standards for the design and construction of vessels;
- a stronger enforcement of the port state control Directive;
- the more rapid implementation of the Directive requiring greater transparency of classification societies;
- the ratification by EU Member States of the Hazardous and Noxious Substances Convention (HNS) and the Bunkers Convention;
- the implementation by EU Member States of the Oil Pollution Preparedness, Response and Cooperation Convention 1990 (OPRC);
- the adoption of an Erika III package of measures addressing the involvement of the human factor in maritime safety;
- more stringent application of the Convention on training, certification and watchkeeping for seafarers (STCW 78/95);
- an obligation upon shipping companies operating cargo (oil, gas or chemical products) or passenger vessels within the EU to carry out a risk assessment for maritime transport activities in Community waters and ports for each vessel or group of vessels with the same characteristics. For this purpose, the IMO Guidelines for formal safety assessment (FSA Guidelines) should be used as a reference. The risk assessment must be approved by the maritime authority of the country in which the company is located, as should monitoring and any revisions of the assessment.

5.8. In view of the serious socio-economic implications and of the international character of shipping the EU Member

States, under speedy procedures, should endeavour to introduce through IMO for global application a satisfactory accelerated phasing-out schedule for single-hull tankers which would be aligned with the Oil Pollution Act (OPA) schedule of the US. The EU initiative in IMO should be taken without prejudice to the right and obligation to ensure timely and adequate environmental protection at EU level.

5.9. The EESC supports the banning of single-hull tankers for the carriage of the most polluting heavy grades of oil. In this context, derogations could be envisaged where appropriate.

5.10. The proposed banning of single-hull tankers from 600-5 000 dwt would seriously affect bunkering operations in the EU and put at risk the supply of islands and other locations that depend on sea transport for their oil. It would also be hampering the promotion of the European short-sea shipping sector. Therefore, for single-hull tankers below 5 000 dwt. the banning measures could be introduced in a progressive manner.

5.11. The EU should propose to the IMO the designation under the Marpol Convention of highly sensitive environmental areas as 'areas to be avoided' by tankers carrying heavy fuel oil. The EU and the IMO should cooperate to establish, in accordance with the Solas Convention, mandatory routing systems along the EU coasts for single-hull tankers carrying higher polluting oils.

5.12. The EESC welcomes the proposal whereby there is a broader CAS inspection regime to assess the structural soundness of single-hull tankers that have passed the age of 15 years.

Brussels, 27 March 2003.

The President
of the European Economic and Social Committee
Roger BRIESCH