

COM-3/044

Brussels, 27 June 2001

**OPINION**

of the Committee of the Regions

of 13 June 2001

on a

**Communication from the Commission to the European Parliament and the Council on a second set of Community measures on maritime safety following the sinking of the oil tanker Erika**

- **Proposal for a Directive of the European Parliament and of the Council establishing a Community monitoring, control and information system for maritime traffic**
- **Proposal for a Regulation of the European parliament and of the Council on the establishment of a fund for the compensation of oil pollution damage**

**in European waters and related measures**

- **Proposal for a Regulation of the European Parliament and of the Council establishing a European Maritime Safety Agency**

(COM(2000) 802 final - 2000/0325-0326-0327 (COD))

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**The Committee of the Regions**

**HAVING REGARD TO** Communication from the Commission to the European Parliament and the Council on a second set of Community measures on maritime safety following the sinking of the oil tanker Erika

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

(COM(2000) 802 final - 2000/0325-0326-0327 (COD));<sup>1</sup>

**HAVING REGARD TO** the decision of the European Council dated 25 January 2001 to consult it, in accordance with Articles 265.1 and 80 of the Treaty establishing the European Community;

**HAVING REGARD TO** the decision of its President dated 6 February 2001 to instruct Commission 3 for Trans-European Networks, Transport and the Information Society to draw up the opinion;

**HAVING REGARD TO** its opinion of 4 April 2001 on the Proposal for a Regulation of the European Parliament and of the Council concerning the Committee on Safe Seas and amending the Regulations on maritime safety and the prevention of pollution from ships

the Proposal for a Directive of the European Parliament and of the Council amending the Directives on maritime safety and the prevention of pollution from ships

(COM(2000) 489 final - 2000/0236 and 2000/0237 (COD) - CdR 405/2000 rev. 1);<sup>2</sup>

**HAVING REGARD TO** its opinion of 21 September 2000 on the 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

(COM(2000) 142 final - 2000/0065 (COD) - 2000/0066 (COD) - 2000/0067 (COD) - CdR 165/2000 fin);<sup>3</sup>

**HAVING REGARD TO** its opinion of 14 February 2001 on the Communication from the European Commission to the Council and the European Parliament on Integrated Coastal Zone Management: A Strategy for Europe (COM(2000) 547 final), and European Parliament and Council Recommendation concerning the implementation of Integrated Coastal Zone Management in Europe (COM(2000) 545 final - CdR 372/2000 fin);

**HAVING REGARD TO** the Conventions and Codes drafted by the International Maritime Organisation and International Labour Organisation, for example:

International Convention for the Safety of Life at Sea (SOLAS), 1960 & 1974; Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 1972; International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978; International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78); International Safety Management Code (ISM), 1993;

**HAVING REGARD TO** Council Decision of 28 June 1999 laying down the procedures for the

exercise of implementing powers conferred on the Commission 1999/468/EC;<sup>4</sup>

**HAVING REGARD TO** the following international treaties and Conventions:

1982 UNCLOS III International Law of the Sea; 1992 UNCED Rio Earth Summit; Agenda 21 (Chapter 17 on Oceans); the Paris Memorandum of Understanding on Port State Control, the ongoing work of the International Commission of Shipping on coastal and port state control procedures as well as the conventions and codes set out under the IMO and ILO conventions;

**HAVING REGARD TO** the draft opinion adopted by Commission 3 on 18 April 2001 (CdR 50/2001 rev. 1) (rapporteurs: **Dr Walsh**, UK/ELDR, and **Mr Nikos Tabakidis**, EL/PSE);

**unanimously adopted the following opinion at its 39th plenary session on 13 and 14 June 2001 (meeting of 13 June 2001).**

### **The Committee of the Regions' views and recommendations**

#### **1. Introduction**

1.1 Three separate proposals have been made:

- A proposal for a Directive of the European Parliament and of the Council establishing a Community monitoring, control and information system for maritime traffic.
- A 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.
- A proposal for a Regulation of the European Parliament and of the Council establishing a European Maritime Safety Agency.

#### **2. General comments from the Committee of the Regions on the Erika II proposals**

1. The Commission is to be congratulated on following up the Erika I proposals so speedily and for bringing forward a generally constructive set of proposals aimed at long-term reinforcement of the more immediate Erika I measures to create a safer maritime environment. Particularly welcome is the focus on liability and the commercial approach to improving safety which this represents, in addition to the regulatory measures.
2. Whilst the Committee of the Regions (CoR) supports the Commission's objective to increase the safety of oil tankers it is concerned that this understandable focus should not be allowed to obscure a poorer record of accidents and loss of life experienced in *other shipping sectors*. The CoR urges the Commission and the Member States to broaden its scope with regard to other ship types and work with the international maritime community in promoting a "safety culture" in *all* sectors.
3. The issues of maritime safety, marine pollution, and coastal zone management are inextricably linked. If one were to prioritise the agenda for improving safety, reducing pollution and protecting coastal zones it should be as follows:

- protect human lives,

- conserve the environment, and
  - protect property.
4. The major criticism of the European Commission's proposals is that there is an assumption that an ever increasing level of technical measures and reliance on technology can replace the science and art of seamanship or sound management ashore. There is no mention of the human element and that if ships were crewed by sufficient numbers of well trained people, who were not suffering from fatigue, and had adequate protection from the cruder commercial pressures of maritime trade, the safety record would undoubtedly be better.
  5. With current manning levels at such a low level, the time constraint and pressure on crews is greater now than ever. The Committee of the Regions urges the Commission to construct new regulation in a manner, through the use of proven technologies and management best practice, that reduces the regulatory pressure on the crews themselves. Whatever systems are devised, human factors will always be part of the safety equation.
  6. The Committee of the Regions encourages the Commission to work proactively with the Member States and the International Maritime Organisation (IMO) to establish agreements on a consensual basis at International level before seeking to invoke additional measures at a European level. This could lead to a more complex legal environment, difficulties in dealing with third country vessels and no real reduction in pollution incidents in European waters of concern to local and regional authorities in coastal regions.
3. **Navigation Measures to Improve the Safety of Shipping and Prevent Pollution from Ships**
1. With regard to the requirement for ships sailing in Community waters to carry transponder systems so that they can be automatically identified and constantly monitored by the coastal authorities, the Committee of the Regions is concerned that transponders are largely an untried technology in the marine environment and the regulation will not apply to all ships. However, the Committee of the Regions recognises that transponders have a great potential, especially in alleviating the reporting requirements for ships crews. The Committee of the Regions therefore urges the Commission and the Member States to work in a co-ordinated way through IMO, in order to improve the technical specifications and functioning (e.g. automatic transmission of data) of the transponders.
  2. The Committee of the Regions recalls the case of the ROSE BAY (Devon, United Kingdom) where an oil pollution incident occurred from a collision between a small fishing trawler and a moored oil tanker. In this case a significant pollution incident occurred with a large clean up cost for the local authorities concerned. The current Commission proposals would not limit this type of accident. (i.e. no provision for fishing vessels below 45 metres).
  3. The Committee of the Regions is concerned that otherwise valuable technological developments are not seen as "simple solve-all solutions". Voyage Data Recorders or "black boxes" and Electronic data interchange are over emphasised when the human element of training, fatigue and competence play an equally significant role in the reduction of accidents. The application of these technologies to the shipping industry is still new and needs to be developed in cooperation with the proposed European Maritime Safety Agency (EMSA). The proposed measures make no obligation on the

Member States to use this data.

4. The Committee of the Regions welcomes the European Commission's and Member States efforts to continually review and improve Port State Control systems. These efforts should be encouraged.
5. The European Commission should work actively with Member States and the IMO to ensure that a simple, well publicised and transparent policy on "Ports of Refuge" is operated in EU waters. A number of incidents have taken place, as in the case of the CASTOR (Spain), where a port of refuge has been refused as a result of the doctrine of "NIMBY" ("Not In My Back Yard") over-riding common sense allowing the potential for damage to a vessel to worsen with the prospect of a serious environmental disaster.
6. The Committee of the Regions believes that the decision to leave port should be left to the competency of the Master of the vessel and the Port authorities of the Coastal state concerned, it must be borne in mind that weather can change radically within a short period of time.
7. On the issue of Black Lists, the Committee of the Regions questions their use in relation to "proactively identifying dangerous situations sooner". Under the Paris Memorandum of Understanding (MOU) on Port State control, Black Lists of flags are compiled already on the basis of ships detained.
8. On the issue of intervention, the Committee of the Regions understands that different arrangements exist in each Member State. A number of Member States have nominated a national contact point which will take charge from a technical point of view in the event of a disaster. With different arrangements across the EU for intervention, the Committee of the Regions would urge the European Commission and Member States to improve co-ordination procedures between agencies. A crucial test of this will be to ensure that all EU coastal states have the courage to allow technical experts to do the best they can to mitigate against disaster without political interference. The experience of the SEA EMPRESS (Wales, UK) exemplifies this challenge. The Committee of the Regions urges the Commission to work closely with the IMO on the topic of intervention. The EU Member States are subject to the provision of International Law relating to the Right of Innocent Passage. The Committee of the Regions is concerned that further reporting requirements may be difficult to implement with third country vessels and burdensome for the ships crews.
9. The Committee of the Regions urges the European Commission to ensure that all EU waters are covered by equally effective reporting systems in line with IMO provisions. Despite the legal and administrative hurdles to be overcome with the implementation of a common reporting system, it is important that both the Commission and the Member States take swift action in preparing measures, for presentation to IMO, on a common approach to reporting systems in the EU.

#### **4. Improving the Liability and Damage Compensation Schemes in Force**

1. The Committee of the Regions endorses the "Polluter Pays" principle with the costs of non-accidental sources of pollution being recovered from the owners of the vessel.
2. The Committee of the Regions would wish to see further provision brought forward for pollution incidents other than oil. The case of the IEVOLI SUN (Channel coast, France) illustrates this point.

3. The Committee of the Regions welcomes the creation of a supplementary fund and the proposal for an effective compensation of claimants over and above the 50% offered by the International Oil Pollution Fund (IOPC), but the Committee of the Regions would urge the European Commission to develop these proposals effectively with the IMO. Compensation proposed European supplementary fund from (the COPE fund) would thus be based on the same principles and rules as the current international fund system, but subject to a ceiling which is deemed to be sufficient for any foreseeable disaster, i.e. EUR 1,000 million. The Committee of the Regions welcomes the proposal for the COPE Fund to also be used to speed up the payment of full compensation to the victims in the EU.
4. The Committee of the Regions reminds the European Commission of the size and diversity of the claims that resulted from the loss of the ERIKA. Some of these claims required significant assessment to ensure careful and efficient resolution. The Committee of the Regions is concerned by the resources that would be required by the European Commission to achieve this follow up effectively thus avoiding delay.
5. The Committee of the Regions reminds the European Commission that if the COPE fund is to be successful Member States should provide accurate records of all oil receivers handling in excess of 150,000 tonnes per annum that will contribute to the fund.
6. The Committee of the Regions welcomes the thrust of the proposals, but they do not go to the real heart of trying to nail irresponsible ship owners who hide behind single ship companies, switch flags with apparent impunity, and abandon ships and their crews rather than meet their financial obligations when these vessels become embarrassing to them. A recent example of this was the stranding of a coaster, the LAGIK in the river Nean near Boston (Lincolnshire UK), last December. The vessel swung across the river and broke in two. The good news is that the bunkers were removed, the cargo discharged and the ship cut into pieces and removed with no serious pollution. The bad news is that a citizen of an EU Member State who, is the true owner of the vessel, has been able to walk away without meeting any cost of the accident as the ship was registered offshore and owned by a nominee company. It is believed that the clean up costs to the local authorities involved is in the order of £2m. (full details of this incident are available). Similarly, in the case of the CETA (Isles of Scilly, United Kingdom) which was grounded on the Isles of Scilly, the local authorities had to foot the bill of the removal of debris. The crew had been rapidly taken out of the Member State's (coastal state) jurisdiction and there was no compensation fund covering this class of vessel. The Committee of the Regions surges the European Commission and the Member States to establish better co-ordination of their activities in establishing a clear "chain of responsibility" so that liability for environmental clean up, or mitigating against further damage, can be secured efficiently.
7. To ensure the effective operation of the two tier International-EU system, the COPE Fund will only be activated once an accident occurs that exceeds, or threatens to exceed, the maximum limit provided by the IOPC Fund. The Committee of the Regions expects the Commission to establish a clear framework for its operation in co-operation with the IMO.

## 5. A European Maritime Safety Agency

1. The Committee of the Regions welcomes this proposal and believes that it has merit for the reasons stated: co-ordinating the implementation of existing legislation,

harmonising the training of surveyors and uniformity of survey practices, conducting technical tasks for the European Commission, and collating data.

2. The Committee of the Regions believes that it is imperative that the European Maritime Safety Agency is sufficiently resourced in order that well qualified and experienced staff be employed so that it operates effectively and is credible in the eyes of the industry.
3. The Committee of the Regions would be keen to see that the terms of reference for the EMSA include other sectors of shipping than just oil.
4. Within a complex legal structure at International, European, national and regional level, the Committee of the Regions urges the European Commission to facilitate and continue research through the EMSA into the most appropriate and enforceable procedures. To this end a rationalisation of the existing regulations and directives is welcomed where it contributes to an additional added value in the field of maritime safety.
5. The Committee of the Regions urges the Commission to differentiate clearly between the terms of reference of the EMSA and the future proposal on the creation of a Committee on Safe Seas.
6. The Committee of the Regions has consistently viewed the issues of maritime safety and marine environmental protection in an integrated manner and believes that it is essential to treat this proposal with a holistic approach. The benefits to European maritime regions of the sensitive introduction of technically sound decisions will result in sustainable coastal zones and an environmentally friendly shipping industry. For this reason, the Committee of the Regions would seek involvement in the Board of the EMSA, as a representative of local and regional authorities engaged in Integrated Coastal Zone management across the EU.
7. Conscious of the international dimension of shipping, the Committee of the Regions is keen to ensure that the implications of change within European practice do not force problems of shipping offshore, creating negative impacts elsewhere in the world. The European Commission should ensure that the proposed Agency works proactively with its Member States and the International Maritime Organisation on this issue.

## 6. Conclusions

1. These “Erika II” proposals present an opportunity to take a step back, review the whole picture and endeavour to develop a set of rules which do apply to all classes of ship thus reducing the risk to crews, vessels and coastal environments.
2. The Committee of the Regions urges new arrangements to be implemented in such a way that EU action adds value to the existing arrangements put in place at national and regional level.
3. It is important to ensure that the EU works proactively to achieve consensual progress in the IMO to achieve new measures and that a clear chain of responsibility is identified for the operation of all shipping in European waters reducing the final negative impacts on local and regional authorities.
4. The Committee of the Regions would encourage the European Commission to engage in further research in relation to the technical measures proposed. In designing these

research programmes due regard should be given to the operational practices in the shipping industry and the cost/benefit relationships accruing.

Brussels, 13 June 2001.

The President

The Secretary-General

of the

of the

Committee of the Regions

Committee of the Regions

**Jos Chabert**

**Vincenzo Falcone**

<sup>1</sup> OJ C 120 E of 24.04.2001, p. 67-88

<sup>2</sup> OJ C 365 E of 19.12.2000, p. 276-279, 280-283

<sup>3</sup> OJ C 212 E of 25.7.2000, p. 102-126

<sup>4</sup> OJ L 269 19.10.1999 p. 45

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