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from : Mr Bernhard ZEPTER, Deputy Secretary-General of the European Commission
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Delegations will find attached Commission document COM(2000) 603 final.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.9.2000
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**REPORT FROM THE COMMISSION
FOR THE BIARRITZ EUROPEAN COUNCIL
on the Community's strategy for safety at sea**

**REPORT FROM THE COMMISSION
FOR THE BIARRITZ EUROPEAN COUNCIL**

on the Community's strategy for safety at sea

The Feira European Council of 19-20 June 2000 welcomed the Commission's intention to deliver a report on the overall strategy concerning the safety of transport at sea to enable a decision to be taken before the end of the year.

That request arose following the sinking of the oil tanker Erika off the French coast on 12 December 1999, and the resultant pollution of roughly 400 km of coastline by more than 10 000 m³ of heavy oil.

The European Union has already assembled a sizeable battery of laws relating to safety at sea and the prevention of marine pollution.

Following the Amoco Cadiz disaster in 1978 the Commission has repeatedly drawn the Council's attention to the fact that the conventional forum for international action on safety at sea, the International Maritime Organisation (IMO) has not been adequately effective in tackling the causes of disasters at sea. Moreover, action on safety at sea had only been taken in a number of individual cases until, in March 1993, the Commission issued a Communication describing the bare bones of a common maritime safety policy. The overall strategy suggested by the Commission was rapidly implemented. Over the space of several years, twelve directives and three regulations were adopted by the Council. In general terms those instruments are intended to ensure that the rules arising from international conventions on ship safety, the prevention of pollution by ships, seafarer training and qualification criteria and on-board working conditions are implemented more stringently, or indeed in advance, within the Community. After several tragedies had taken place at sea and more particularly the sinking of the Estonia in 1994, particular attention was paid to the safety of passenger ships and of ships carrying bulk cargoes. That body of laws is basically intended for merchant ships, but the safety of recreational craft and fishing vessels is also covered by specific Community measures.

The sinking of the Erika in December 1999 spurred new developments in the drafting of a European maritime safety policy that is aimed more particularly at the environmental hazards caused by oil tankers.

That disaster caused a considerable stir among the public in Europe. Quite clearly the recurrence of such accidents and their impact on the environment have considerably reduced public tolerance.

Both the European Parliament, via its Resolution of 20 January 2000, and the General Affairs Council of 24 January call for a significant tightening of the rules governing safety at sea at Community level.

The Commission responded to these calls by adopting a "communication on the safety of oil transport by sea" on 21 March 2000, only about three months after the accident. That communication describes an overall strategy that includes a certain number of practical short and medium-term activities to prevent such accidents from ever happening again.

I- Reminder of the proposed short-term measures being examined by the Council and European Parliament

The three proposed legislative measures adopted by the Commission after the Erika disaster are currently being discussed within the Council and European Parliament.

It is extremely important that the discussions on those three measures should progress in parallel in a rapid coordinated manner within the European institutions.

1) Content of the proposed measures

- A substantial amendment of the existing Directive on the inspection of ships by the Port State in order to **make the checks in ports more stringent** since these are at the moment still inadequate. That proposal basically aims to ban ships that fall below the standards (and includes drawing up a black list of ships which may no longer enter European-Union waters) and to step up inspections on board "hazardous" ships, including oil tankers. All of these changes require more inspection staff in the ports in the various Member States. The Member States' administrations must not fail to increase staffing levels in this area.
- An amendment of the existing Directive with regard to **classification societies** for which the Member States delegate a major proportion of their inspection powers, especially as regards the structural quality of ships. Its aim is to centralise and harmonise the approval procedures for those societies, to impose specific penalties (suspension or withdrawal of approval) on societies failing to perform their duties and, in general terms to supervise activities of those societies more closely.
- The third proposal aims at a general **ban on single-hull oil tankers** in line with a timetable similar to that set by the United States, which will enable double-hull oil tankers, which are less likely to pollute in an accident, to be introduced more quickly. That timetable requires the use of double hulls for most categories of oil tanker in 2010.

Finally, the Commission proposes that, without waiting for those measures to take effect, the main industrial partners involved in oil transport by sea should reach a **voluntary agreement** in order immediately to improve safety in that area.

2) Progress made on the action package proposed by the Commission

Rapid progress has been noted as regards the proposal for a directive intended to amend the Community directive on **classification societies** and it may now be taken that there is very broad agreement on its wording within the Council.

The general aims of the proposal on **port state control** have been well received within the Council, which also fosters hopes for an agreement on its wording before the end of the year. However, the provisions covering mandatory, more stringent inspections of "hazardous" ships such as oil tankers that are more than fifteen years old, are likely to be watered down since the Member States are reluctant to employ the staff needed in order to meet those additional commitments. The Commission is able to understand the desire for some flexibility in dealing with any exceptional situations which may occur in Community ports, but could not accept any text allowing ships such as the Erika to evade mandatory inspection. Thus, if the more stringent inspections only became mandatory (as certain Member States would prefer),

beyond an excessively high target coefficient,¹ ships identical to the Erika would not be inspected.

With regard to the proposed regulation on **double-hull oil tankers** a joint approach must be taken within the International Maritime Organisation (IMO) in order to attempt to have forms of action similar to those preferred by the European Union adopted quickly. It would now seem that there is a broad enough consensus in favour of amending the international rules in force. However, it is still necessary to continue the work on the proposed regulation in order to be able to have this instrument adopted by the Council in December, together with the other forms of action proposed, that being the date on which it will be possible to judge the success or otherwise of the action taken within the IMO.

The Community institutions must work in concert in order to enable the Nice European Council to note an agreement on those three instruments by the end of the year.

So far the Commission has not received any clear signs from the oil companies of any will whatsoever to conclude any voluntary agreement on improving transparency and chartering practices relating to sea-going oil tankers, whereas the other parties, the shipowners specialising in the carriage of oil products by sea, and the classification societies, have expressed an interest in taking part in such a debate.

II - A second string of measures to improve safety at sea

Beyond the proposed short-term action set out in the annexes to the Communication, the Commission has announced further action, during the months ahead, to provide long-term protection of European waters against the risk of accidents and pollution of the seas.

1) Action intended to improve the safety of traffic at sea and prevent pollution by ships

The safety of traffic at sea in European waters is a crucial factor: 90% of the trade between the European Union and non-member countries is seaborne. The risk of accident resulting from the concentration of traffic along the main European seaways is particularly high in certain narrows such as the English Channel or straits of Gibraltar. Moreover, the environmental impact of accidents at sea which is likely to occur even in areas outside those where traffic is highly concentrated (as happened when the Erika sank) may be disastrous for the economies and environments of the Member States concerned.

As an underlying principle of navigation at sea, freedom of the seas has enabled a worldwide transport-services market to develop that is characterised by free competition in an area where there is little regulation. That freedom has been a great help in expanding world trade and Europe's economy. However the principle of freedom of the seas must not serve as a smoke screen in order to deny those states, through whose waters vessels carrying seriously polluting cargoes sail, the right to identify and more closely to monitor those vessels and to take on-board action if their own shorelines are seriously threatened. The principle of freedom of the seas may be fully compatible with making ship inspections more stringent, more especially since the advances in communications technologies nowadays enable precise

¹ Under the "targeting coefficient", a number of points are allotted to ships in the light of various criteria, such as age, flag, previous detentions, etc. Ships receiving the greatest number of points must be inspected as a matter of urgency. That tool enables hazardous vessels to be targeted and reduces the likelihood of discrepancies in port practices.

information on traffic to be obtained while reducing the cumbersome nature of the identification procedures to a minimum.

Compared with other areas, such as passenger-ship safety, which are governed by many detailed Community regulations, the prevention of accidents due to traffic at sea is at the moment only based on one Community Directive introducing mandatory declarations by operators and captains of ships carrying dangerous or polluting cargoes and bound for a European port. The basic aim of that Directive is to enable operating authorities in the Member States to acquire detailed information on the cargo on board a ship in order to deal more quickly and effectively with the consequences of an accident at sea.

A new body of legislation, with more ambitious aims, is being prepared. It will provide for the setting-up of a European system of information on sea traffic on the basis of the following main guiding principles:

- introducing a wider obligation to declare before entry into European waters,
- improving the procedures regarding the transmission and use of data concerning dangerous cargoes, more particularly by making systematic use of electronic data interchange (EDI),
- requiring vessels sailing in Community waters to carry on board automatic identification systems (or transponders) in accordance with the timescale laid down by the IMO in order to ease their identification and monitoring by the relevant coastal authorities,
- boosting the development of common databases and the networking of centres responsible for managing the information received under the Directive in order to provide a more complete picture of the traffic, especially transit traffic, in European waters,
- ensuring closer monitoring of the vessels presenting a particularly serious threat to safety at sea and the environment,
- enhancing the powers of intervention of the Member States, as coastal States, if there is an accident hazard or threats of pollution off their coasts.

2) Improving the liability and damage-compensation systems currently in force

The carriage of large quantities of oil by sea is an intrinsically dangerous activity which poses major threats to the marine environment. For that reason, since the seventies, the international community has used the framework provided by the IMO to draw up international conventions laying down detailed rules governing liability and damage compensation in the event of pollution by tanker ships. However, it should be remembered that the United States have not ratified those international conventions and have set up their own system of liability for pollution damage.

The main characteristics of the system introduced by the international conventions are:

- strict liability vis-à-vis ship owners; it is, however, limited per event to an amount linked to the registered tonnage of an owner's vessel; a system of mandatory liability insurance is also introduced,
- no further request for pollution damage reparations may be made against the owner, charterer or any other party involved unless it can be demonstrated that the damage is deliberate or due to gross negligence,

- the oil industry is collectively paying into a guarantee fund, the IOPCF, that is calculated on the basis of oil imports; the IOPCF is activated when the compensation offered under the above sections is inadequate. However, the level of compensation is also capped at roughly \$200 million.

The system introduced by those conventions has demonstrated a certain effectiveness and several requests for redress have been regulated in a suitable manner via that system.

However, thirty years after it was introduced, there is now a perceived need for a more thorough-going revision of the system currently in operation. The Erika disaster highlighted several shortcomings which need to be corrected.

More particularly, the following have been identified:

- the maximum level of compensation is clearly not enough. The extent of the damage caused by the Erika disaster will probably exceed that upper limit by a considerable amount. On this assumption the victims will only receive partial redress. In its Communication on the safe transport of oil by sea the Commission had stated that it would be necessary to raise the upper compensation limit to \$1 000 million following the American example, in order to guarantee sufficient cover for any future oil slicks affecting the European Union's coastline;
- the system in force does not contain any incentives for decision-makers in the shipping industry to supply and use quality ships for this type of intrinsically dangerous transport operation;
- the damage-compensation procedures are complex, slow and obscure.

The immediate priority is to deal with the first of those shortcomings. It is not acceptable for members of the European public who have suffered the dramatic consequences of major accidental pollution not to receive full and complete compensation. Increasing the compensation ceilings is already being discussed at international level, but it now emerges that this increase - if approved - might still be woefully inadequate. The Commission therefore intends to propose that a European fund to compensate for damage caused by pollution be set up which would provide top-up compensation for victims where the ceilings set by the Conventions are exceeded. That top-up fund would operate in accordance with parallel procedures that supplement those of the IOPCF.

As regards the other shortcomings identified above, it is necessary to proceed without awaiting any amendment of the Convention governing shipowner liability. The Commission will bring the Member State administrations and the bodies representing the oil shipping industry together in order to adopt a coordinated position with a view to amending the international conventions. The Commission has already announced its intention to put forward proposals in order to be able to awaken the liability of all of the other operators involved in transport by sea, including charterers. If an amendment of this type is not accepted by the international bodies, the Commission will put forward a system of overall liability at Community level. Such a system could include unlimited liability in the event of negligent behaviour.

Against this backdrop it is important to stress, in line with the White Paper on environmental liability of 9 February 2000, that a revised system of damage compensation linked to pollution of the seas by oil products will also have to address the matter of damage to wildlife and biodiversity.

3) Towards a European structure for maritime safety

Within just a few years a wide-ranging body of laws has been enacted. The Member States must implement the rules effectively and uniformly, more particularly by consolidating the procedures and practices applying to inspection in ports and the fitness checking of ships.

In order to help the Commission to ensure that the efficient, harmonious implementation of those rules is monitored and checked within the European Union, the Commission, as put to the European Parliament, is contemplating the setting-up of a specific structure which might take the form of a "European Agency for Maritime Safety".

This structure would support the Commission's and the Member States' actions in applying and monitoring Community law and in assessing the effectiveness of the tools provided. It would also help in preparing the technical adjustments to Community law. It should be able to perform the tasks of acquiring and analysing factual and statistical information and perform individual audits or expert assessments as part of implementing Community law.

More specifically, the body could perform the following main tasks:

- providing technical assistance in preparing the proposed amendments to the Community legal texts, more particularly in the light of changes in the international regulations,
- inspecting, *in situ*, the conditions under which the Port State control is carried out by the Member States,
- gathering data and operating databases on safety at sea (and in particular developing EQUASIS),
- tasks involving the monitoring of shipping and the management of information relating to sea traffic,
- assessing and auditing the classification societies,
- being involved in or coordinating activities relating to investigations following an accident at sea,
- providing assistance to the States applying for accession in order to assess how far their maritime administrations meet their obligations as flag and Port States.

As announced in the Commission Communication of 21 March, the proposals concerning the safety of traffic at sea and the European structure will be finalised by the end of the year and will be followed immediately by a proposal on liability. All of these forms of action together, including the first package of short-term measures, make up a coherent whole which should significantly improve maritime safety in the waters and ports of the European Union. The Council and the European Parliament are requested to conduct their examination with the greatest urgency in order that these proposals may quickly lead to practical action.

