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Staff Working Document

**Regulatory Concerns raised during the Consultation Process on a future Maritime
Policy for the European Union**

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The Green Paper¹ "Towards a future Maritime Policy for the Union: A European Vision for the Oceans and Seas" indicated the importance of ensuring a stable regulatory environment for the maritime and related sectors, and of working towards a better, simpler and more consolidated regulatory environment.

Regulatory simplification is a basic pillar on which the EU Integrated Maritime Policy stands and a priority for the Commission. Cumbersome legislation and procedures can lead to duplication and overlapping of responsibilities, which in turn tend to create barriers between Member States and economic and social operators. Such a scenario creates additional difficulties as well as delaying the actual integration of Member State and EC maritime policies.

Specifically, the Green Paper invited stakeholders to provide the Commission with examples of European legislation leading to unintended results which ran counter to maritime objectives. This was requested in the following manner:

“The interdependence of the maritime sectors and policies may mean that legislation developed for the needs and objectives of one policy may have unintended and contradictory impacts on other maritime goals in the overall context of sustainable development. Where such impacts can be identified the Commission believes that amendments to Community legislation in question should be considered. To avoid a theoretical, bureaucratic exercise, the Commission appeals to stakeholders to identify such cases, in order to propose changes based on an integrated analysis”².

The Commission held a year-long consultation and adopted its Blue Book³ and its accompanying Action Plan in October 2007. With respect to regulatory concerns and the Commission’s appeal for stakeholders to identify examples, the Action Plan stated the following:

“A list containing examples of such regulatory obstacles will be compiled. Such a list will provide the basis for further reflection on possible regulatory amendments in the future...The Commission will produce a first report on this subject in 2008 with proposals for consultation on appropriate regulatory changes”⁴.

¹ Towards a Future Maritime Policy for the Union: A European Vision for the Oceans and Seas - COM(2006) 275 Final

² Ibid, p.21, last para

³ Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions: An Integrated Maritime Policy for the European Union – COM(2007) 575 Final & accompanying Commission Staff Working Document SEC(2007) 1278

⁴ Commission Staff Working Document SEC(2007) 1278, p.6

Simplification and streamlining of the regulatory environment is already underway within the EU. In October 2005, the 'Strategy for Simplifying the regulatory environment'⁵ set out a rolling programme of simplification measures identifying the legislation it intends to simplify between 2005 and 2008. The idea is to produce legislation that does not go beyond what is necessary to achieve the objectives, and address legislation that is inconsistent or obsolete. In 2005, a Communication on a 2006-2008 action plan for simplifying and improving the Common Fisheries Policy was also adopted⁶. These efforts to simplify legislation within the EU should also be directed at the regulations covering maritime and related sectors, in order to give the best competitive edge possible to our maritime sectors. Simplification and reduction of burdens deriving from the application of Community legislation is a priority, and a significant contribution to this end must be made in the maritime sector.

While the Green Paper requested that stakeholders provide specific examples of legislation leading to unintended consequences for maritime objectives, the consultation process did not produce many examples. Stakeholders had, nonetheless, indicated that this was an issue of considerable interest to them. Furthermore, some of the examples provided pointed to general problems with legislation without indicating specific provisions or describing the precise concern, which made it difficult to move forward on any proposals for change. We can only assume that the exercise was too costly and too time-consuming for stakeholders to be able to contribute as they would have liked to, or that the concerns were not deemed sufficiently difficult to be raised.

Examples of the few issues that were raised by stakeholders during the Green Paper consultation process are set out below. The inclusion of these items in this report does not imply that the Commission considers the examples raised as regulatory concerns, nor does it automatically trigger Commission action on these points. The purpose of the report is to bring to the attention of Commission services, Member States and stakeholders alike those issues which stakeholders have raised as regulatory concerns, in order to give all concerned the opportunity to evaluate these issues and to react as appropriate.

At this stage, the Commission will not take further action on existing legislation referred to in the examples mentioned, unless such action is already part of ongoing Commission work, or unless it receives further substantiated reactions to this report which can clearly demonstrate the need for regulatory change. As to new regulation, the Commission will take into account the points raised by stakeholders in evaluations of future action.

I. General support for simplification and ambiguities in EU legislation

Most stakeholders indicated their support for the concept of simplification and several of them provided useful examples of what should be considered in future legislative proposals. All stakeholder contributions can be found on the European Commission maritime affairs website⁷.

⁵ Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions: Implementing the Community Lisbon Programme: A strategy for the Simplification of the Regulatory Environment - COM(2005) 535 final

⁶ Communication from the Commission to the Council and the European Parliament – 2006-08 Action Plan for simplifying and improving the Common Fisheries Policy – COM(2005) 647 final

⁷ http://ec.europa.eu/maritimeaffairs/post_green_en.html

The *Government of Italy*⁸ indicates that it would like to see a more clear-cut legal framework. It points out that legal uncertainties with regard to the application of nature conservation legislation continue to cause substantial delays for many projects, and that these delays are to a large extent caused by ambiguities in the applicable EU legal framework.

*Europêche*⁹ believes that, when implementing maritime policy, the Commission should not add any legislative measures which would further burden the fishing industry.

The *Malta International Shipping Council*¹⁰ points out that while the legal framework needs to be predictable, it must also be flexible enough to adapt to changing circumstances. The Council also suggests that impact assessments should precede legislative proposals.

This is already the case under Commission rules. Impact assessments are published with each legislative proposal¹¹.

The *Scheldemondraad*¹² suggests that EU Regulation should be subject to a maritime test and that such work should be encouraged in the Member States.

II. Concerns raised and subsequently covered in existing initiatives

*Andreas Constantinou*¹³, from the Republic of Cyprus, indicates that Regulation (EEC) 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community provides that the social security coverage of seafarers is with the country of the flag state of the vessel on which they are working. He suggests that this leads to fragmented social security coverage, and that the Regulation should be amended to reflect the fact that social security coverage for EU seafarers should remain with the country of residence. This issue has since been raised in the Communication on social exclusions adopted in October 2007¹⁴, and will be pursued in that context.

III. Concerns raised and resolved during the consultation process

*The Greek Cultural Club of Friends of Traditional Vessels*¹⁵ raised a concern arising from Council Regulation EC 2369/2002 amending Regulation (EC) 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector. The concern raised relates to the third option mentioned, namely the permanent cessation of fishing vessels' fishing activities. The third option allows the "permanent reassignment of fishing vessels for non-profitable purposes other than fishing", which excludes the possibility of using such vessels in museums or as pleasure boats. Before the end of the consultation process, the Greek Cultural Club of Friends of Traditional Vessels

⁸ Contribution #280, p.11, para 4

⁹ Contribution #40, p.2, para 1

¹⁰ Contribution #51, para 5.6

¹¹ http://ec.europa.eu/governance/better_regulation/impact_en.htm

¹² Contribution #268, p.5, para 3.1

¹³ Contribution #115, p.1, 2nd para

¹⁴ Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions: Reassessing the Regulatory Social Framework for more and better seafaring jobs in the EU - COM(2007) 591 Final

¹⁵ Contribution #69, p.1 last para

indicated that the new Regulation 1198/2006 on the European Fisheries Fund appeared to remedy the situation. They indicated that guidelines for implementing the new Regulation should provide economic measures that would not inevitably force fishermen choosing cessation to necessarily destroy their vessels.

IV. Specific Concerns raised

*The European Transport Workers' Federation (ETF)*¹⁶ indicates that the definition of 'community seafarers' as laid down in the 2003 revision of the 1997 Community Guidelines on State Aid to Maritime Transport should be revised. The present definition, which covers "all seafarers liable to taxation and/or social security contributions in a Member State", allows funds to be used to employ non-EU seafarers, rather than safeguarding EU employment (except in the case of scheduled passenger services between Community ports). Safeguarding EU employment was one of the objectives of the 1997 State Aid Guidelines. The upcoming Communication on a strategy for maritime transport for 2008-2018 will address issues of employment and social policy relating to shipping.

The *Social Sectoral Dialogue for Sea Fisheries*¹⁷ points out that, although the objective of Commission Regulation (EC) No 1805/2005 amending Regulation (EC) No 356/2005 laying down detailed rules for the marking and identification of passive fishing gear and beam trawls is to improve the visibility of gear, there is an increased risk of a vessel being caught in the net of other fishing vessels and capsizing. They indicate that the safety conditions of fishermen have in fact worsened as a result. These issues are to be addressed in the follow-up to the Communication on social exclusions¹⁸.

Both the *International Salvage Union (ISU)*¹⁹ and the *Maritime Law Advisory Council*²⁰ indicate that Directive 2005/35/EC of the European Parliament and of the Council on ship source pollution and on the introduction of penalties for infringements, and Council Framework Decision 2005/667/JHA to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution will dissuade people from choosing seafaring careers due to the criminalisation of seafarers. They indicate that this could have a detrimental effect on salvage operations, as salvors may desist from undertaking salvage operations, knowing the possible consequences.

The *International Association of Classification Societies (IACS)*²¹ notes that Directive 2001/105/EC 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 does not provide a uniform regime in Member States. They indicate that such non-provision is with respect to the liability owed by Recognized Organisations to Member States in the event of maritime accidents. They further state that in some Member States this exposes the Recognized Organisations to unlimited liability for simple negligence or error. The IACS is calling for an amendment of the legislation so as to reasonably limit the liability of Recognized Organisations to Member States, without extending such limited liability to instances of gross negligence.

¹⁶ Contribution #78, p.13, 3rd para

¹⁷ Contribution #285, English Version p.5, 3rd para

¹⁸ See footnote 14.

¹⁹ Contribution #68, para 13. IV (ii)

²⁰ Contribution #289, para 2.4-2.5

²¹ Contribution #138, p.4 para 2.2 b)

The *Dutch Maritime Provinces*²² point out that EU regulation may conflict with maritime heritage. They give the example of EU Fisheries Regulation, which requires such high hygiene standards that original oyster pits are unable to meet them, resulting in the loss of traditional craftsmanship.

The *Greek Shipping Cooperation Committee*²³ emphasizes the need to observe international law and to refrain from introducing measures independently of the IMO, and in terms which are at odds with the global regime, MARPOL. They point to the EU Directive on Criminal Sanctions for ship-source pollution and the Commission actions on restrictions of the sulphur content of bunker fuel emissions as examples of independently introduced measures. Regarding restrictions of sulphur content of bunker fuel emissions, they indicate that the EU Directive conflicts with MARPOL (annex VI).

*Sail Training International*²⁴ take the view that some EU Directives have been inappropriate for the objectives of sail training vessels. They point out that Council Directive 98/18/EC on safety rules and standards for passenger ships does not allow sail training vessels to earn extra income from day trips for the general public. They note that measures similar to the ISPS code (International Ship and Port Facility Security) have been adopted at European level, and that as a result of these measures ships may not be berthed close enough to the public to significantly contribute to promoting maritime awareness and coastal tourism.

They also propose examples of EU Directives being inappropriate for sail training vessels, in their opinion. For example, Council Directive 1999/63/EC concerning the agreement on the organisation of working time of seafarers, states that no person under 16 years of age shall work on a ship (clause 11). Many sail training vessels train young people from the ages of 12 and over. In the UK, this issue was resolved by providing exclusions to the definition of 'seafarer' for trainees and volunteers without critical safety duties, thus exempting them from the legislation.

Sail Training International also points out that the financial burden of complying with new Directives must be considered. They give the example of complying with Council Directive 93/104/EC²⁵ concerning certain aspects of the organization of working time, which, in their view, results in significant additional staff costs to ensure there are always enough crew on vessels for each to have the required number of hours of rest. They point out that they are remedying this by increasing the number of volunteer certified watch officers; however, this is still considered to entail an additional burden.

V. New suggestions of issues where legislation was called for

The *Government of Estonia*²⁶ indicates that EU legislation laying down the necessary requirements and obligations for large ports should not lessen the competitiveness of small ports by making their construction and maintenance economically ineffective.

The relationship between small and large ports was mentioned in the recent Commission Communication on Ports Policy²⁷.

²² Contribution #235, p.7, under 'maritime heritage'

²³ Contribution #103, para 2.7, p.3-4

²⁴ Contribution #355, para 4.3.3

²⁵ This Directive has been repealed and replaced with a consolidated Directive 2003/88/EC.

²⁶ Contribution #444, p.8, para 3.3, last para

The *Government of the Netherlands*²⁸ suggests that risk assessment developed in international fora should be promoted. It also states that the EU Directive on port reception facilities for ship-generated waste should be aligned more closely with MARPOL.

The *Conference of Parliamentarians of the Arctic Region*²⁹ suggests that an audit of existing legal regimes that impact on the Arctic should be conducted with an eye to climate change.

*European Maritime Heritage (EMH)*³⁰ cautions that maritime policy should devise a legislative framework which enables the European fleet of traditional ships to develop. They also feel that forced scrapping should be reconsidered in order to allow such vessels to be kept for heritage purposes. EMH also suggests that further proposals should promote the operation of traditional ships across national borders within the EU, and that passengers aboard heritage vessels should be defined differently from other passengers. They also suggest that heritage vessels should be defined in a manner that is different from cargo ships. Finally, heritage vessels generating income for upkeep should not be considered as a business in the commercial sense of the word.

The *Federation of European Private Port Operators (FEPORT)*³¹ and the *Maritime Industries Forum (MIF) Group Transport*³² both indicate that the Birds and Habitats Directives are causing difficulties and delays. The MIF focuses on these delays specifically in the context of port development. Indeed, the MIF suggests that the Birds and Habitats Directives are the best examples of how the development of new port expansion projects is being obstructed. They point out that the Directives do not take into consideration the added value of ports for society as a whole. They also state that the Directives pay no attention to other EU policies. FEPORT also feels that the vagueness of certain provisions in the Directives makes them legally contestable. FEPORT suggests that more prominence should be given to self-regulation by the industry.

The *European Research Vessel Operators (ERVO)*³³ suggests that the Commission should support and coordinate initiatives to replace the ageing European Regional Class research fleet and consider initiatives that may lead to unified European legislation on scientific diving from research vessels.

The *European Conference of Transport Research Institutes (ECTRI)*³⁴ stresses the importance of reconciling different policies, specifically mentioning the need to reconcile the integrated maritime policy with EU maritime transport policy (The 2001 White Paper on Transport Policy and the review carried out in 2006³⁵). They indicate that the aim should be to emphasise the close coherence between the two policies in order to avoid contradictions between them. ECTRI also mentions the importance of addressing the concentration or distribution of port activities in the development of maritime transport and environmental conservation against the background of Natura 2000 and the Birds and Habitats Directives.

27 Communication from the Commission on a European Ports Policy. COM(2007) 616 final.

28 Contribution #263, para 3.2.2

29 Contribution #244, p.2, 5th para after recommendations

30 Contribution #450, p.4 last para, p.8 last para, p.9 bottom, p.10 last para

31 Contribution #225, p.5, para 5

32 Contribution #446, p.1, para 3, p.5, point 5, para 1

33 Contribution #408, last para

34 Contribution #116, p.3 para 7. and p.3 last 2 paras before II

35 COM(2006) 314 Final

The Commission will address the application of environmental law to ports in Guidelines to be adopted at the end of 2008.

The *British Ports Association*³⁶ states that, in order to avoid potential conflict, spatial planning, river basin management plans, terrestrial plans, and any others overlapping should undergo harmonisation in order to ensure that their goals are complementary. The suggestion is that, when a proposed development straddles boundaries between two planning systems, both should work together to produce a single consent.

An article contributed to *Science Diet*³⁷ by author Juan Luis Suarez de Vivero points out that current legal instruments, such as UNCLOS and the Convention on Biodiversity (1992), do not define the rights of ownership over Blue Biotech. The author makes the point that the EU's support for Blue Biotech must keep this in mind.

VI. Conclusions

While several suggestions were raised during the consultation process, they remain general. All the suggestions have been forwarded to the appropriate Commission services. In future, it will be necessary to have the most detailed information possible in order to ensure that the Commission can gain a clear understanding of what the concerns are, and how modifications to existing legislation could be of assistance in achieving maritime policy goals.

In order to further evaluate the concerns raised, the Commission will follow up on the report with key stakeholder organizations, such as the Maritime Industries Forum (MIF) which brings together employers and unions, and in particular the European Transport Workers' Federation (ETF); the European Science Foundation Marine Board (ESF); the European Network of Maritime Clusters; the Conference of Peripheral Maritime Regions (CPMR); and the Member States' High Level Focal Points group on Maritime Policy. An opportunity to further discuss the concerns raised will be provided in a workshop organised during the upcoming European Maritime Day. Stakeholders are encouraged to use the Commission's existing tools, such as the Enterprise Europe Network, where they can obtain information and practical advice on European legislation and policies that are relevant to a particular company or sector³⁸.

Any new examples, as well as reactions to the present report, can be sent to the following email address: MARE-A1@ec.europa.eu.

³⁶ Contribution #176, para 4.2

³⁷ Contribution #61, p.2 bottom - p.3 top

³⁸ http://www.enterprise-europe-network.ec.europa.eu/index_en.htm. The Enterprise Europe Network offers support and advice to businesses across Europe. While the services are specifically designed for small and medium enterprises (SMEs), they are also available to all businesses, research centres and universities across Europe.