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**COMMISSION COMMUNICATION ON EUROPEAN CONTRACT LAW  
(COM (2001) 398 final)**

**COMMENTARY**

ECSCA, the organisation representing the EEA shipping industry, together with the International Chamber of Shipping (ICS), the members of which represent more than 50% of the world's merchant tonnage welcome the opportunity to comment on the Communication on European contract law.

From the shipping industry's perspective there is no compelling need for harmonisation of contract law in the Community. Any differences in national contract laws have not resulted in problems for the shipping industry, either between parties in different Member States or between those in Member States and third countries.

Because of its global nature, the shipping industry is extensively regulated internationally. Accordingly, an attempt to harmonise contractual issues in the area of maritime law at Community level could be counter-productive, creating uncertainties and problems.

Specialist international instruments have been developed over the years under the auspices of IMO and other UN bodies. In addition, the industry has developed numerous standard contracts which are used by parties to shipping and associated transactions world-wide.

With the exception of some carriage of goods contracts evidenced by bills of lading, which are regulated by international Conventions, maritime contracts tend to be between commercial parties of equal bargaining strength and we are not aware of any problems caused by the existence of different national contract laws. The principle of freedom of contract generally applies. Maritime contracts typically include choice of law and jurisdiction clauses. Any disputes are resolved by international remedies, including private international law rules and relevant Conventions.

In addition to the Hamburg Rules, mentioned in Annex II of the Communication, there are long-standing more widely accepted international Conventions, such the 1968 Hague-Visby Rules, which apply to bills of lading and similar contracts for the carriage of goods by sea. There are also international rules which apply to the carriage of passengers by sea. Furthermore, there is intensive and ongoing work being carried out internationally on further harmonisation, particularly in relation to the carriage of goods.

A considerable number of standard industry contracts have been developed over the years in relation to shipping transactions that are not regulated by international Conventions. Indeed, there are few other industries where there is such a widespread use of standard contracts.

BIMCO (The Baltic and International Maritime Council) has been involved - for nearly 100 years - in the development and promotion of standard contracts relating to the

whole range of shipping and related activity. BIMCO approved documents include standard ship sale and purchase contracts, towage agreements, wreck removal agreements, agreements covering ship and crew management and ship demolition.

Perhaps the best known and most widely used BIMCO documents are the standard form charter-parties. These have been developed to cater both for the different types of contracts (voyage, time, bareboat etc.) and the different trades, and can be tailored to suit individual requirements.

Proposals to develop a Convention to regulate charter-party contracts have been rejected as counter-productive. International or regional regulation of such contracts would be detrimental to the industry since it would take away or reduce the parties' commercial flexibility to adjust the contracts to the needs of the individual trades. Rules of a non-mandatory character would be likely to have a similar effect since they would apply as background law and it would probably prove impossible in practice to adjust them to the needs of the various trades. However, it must be stressed that it has long been recognised by regulators that charter-parties are typically entered into between parties of equal bargaining strength and that there is no need to intervene in this area to protect a weaker party.

In addition to the work of BIMCO, standard contracts for the industry have been developed by other organisations. For example, the Lloyd's Standard Form of Salvage Agreement approved and published by the Council of Lloyd's, which is routinely used by salvage companies and shipowners throughout the world.

The standard contracts are regularly reviewed by industry experts.

In the maritime sector, the present system of international regulation of certain commercial transactions complemented by industry standard form contracts is working well. We could not support European initiatives that might adversely affect the present arrangements. Accordingly, ECSA and ICS would favour Option 1 in the Communication whereby no Community action is taken.