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**COMMISSION ACTION PLAN ON A MORE COHERENT EUROPEAN CONTRACT  
LAW (2003/C 63/01)**

**ECSA/ICS JOINT COMMENTARY**

ECSA, 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 Action Plan on a more coherent European contract law.

As already stressed in the previous ECSA/ICS position paper on the Communication on European contract law, the shipping industry reiterates that for shipping there is no compelling need for harmonisation of contract law in the Community.

In the maritime sector there is already an applicable system of international regulation of certain commercial transactions, complemented by industry standard form contracts. This system is working to the satisfaction of the shipping industry and should remain applicable on an international basis, taking into account the international nature of shipping.

The shipping industry fears that an attempt to harmonise contractual issues in the area of maritime law at Community level, as envisaged in the Commission Action Plan, could be counter-productive and would create (legal) uncertainties and problems.

In the maritime sector, specialist international instruments have been developed over the years under the auspices of the International Maritime Organisation (IMO) and of other UN bodies. Examples are the Hamburg Rules, the 1968 Hague-Visby Rules which apply to bills of lading and similar contracts for the carriage of goods by sea. Moreover 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 (e.g. within the context of UNCITRAL) on further harmonisation, particularly in relation to the carriage of goods. E.g. an UNICITRAL instrument is currently under negotiation aiming at achieving greater uniformity for the liability regimes of carriage of goods by sea.

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. ECSA and ICS 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 specialist international instruments, the industry has developed numerous standard contracts which are used by parties to shipping and associated transactions world-wide. These standard contracts have been developed over the

years in relation to shipping transactions that are not regulated by international Conventions. The best example is the BIMCO standard form charter-parties, which have been developed to cater both for the different types of contracts (voyage, time, bareboat etc.) and the different trades, and which 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 also 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.

All standard contracts are regularly reviewed by industry experts.

In sum, the present system of international regulation of certain commercial transactions in the maritime sector, complemented by industry standard form contracts, is working well and should continue to be applicable on an international basis. ECSA and ICS fear that an attempt to harmonise contractual issues in the area of maritime law at Community level could be counter-productive and would create (legal) uncertainties and problems. Accordingly ECSA and ICS do not favour a harmonisation of contractual issues in the area of maritime law at Community level.