

Public consultation on the options for new initiative regarding dismantling of ships

1. Introduction

The dismantling of end-of-life ships is an issue of international concern: ships from all over the world are dismantled in South Asia in grave environmental and occupational health and safety conditions. Urgent action to improve the situation is needed, also in view of the expected increase of the numbers of ships going for dismantling. It is predicted that in 2010 nearly 800 single hull tankers will have to be dismantled well before the new IMO Convention enters into force.¹ Furthermore, as a consequence of the economic crisis, experts predict that up to 1000 ships/year will be dismantled in 2009-2011². The adoption of legally binding measures is therefore of utmost urgency.

The International Maritime Organization (IMO)'s is expected to adopt in May 2009 a globally binding ship recycling regime. The provisions for the entry into force of this Ship Recycling Convention³ will not be known before that date. However, given that IMO conventions take on average six years to enter into force, it is unlikely that the Ship Recycling Convention will enter into force before 2015.

Consequently, there is a need for "interim measures". The Commission is therefore proposing several policy initiatives to address the problem in a timely manner. These proposals are based on a Communication of the Commission proposing an EU Strategy on better ship dismantling, adopted in November 2008.⁴ The Strategy reflects the call from the European Parliament to the Commission and Member States to take urgent action on this issue to counter the fact that currently 'on various shores in Southern Asia and elsewhere enormous seagoing ships are dismantled under working conditions which are environmentally damaging and humanly degrading'.⁵

The Strategy's overarching objective is to ensure that ships with a strong link to the EU in terms of flag or ownership are dismantled only in safe and environmentally sound facilities worldwide, in line with the draft Ship Recycling Convention. The Strategy sets out possible action areas and tools. In particular, it proposes making key elements of the Convention mandatory at EU level, filling the gaps identified, encouraging voluntary action, among others by industry, and assessing the feasibility of the introduction of a ship dismantling fund. The Strategy is accompanied by an Impact Assessment which concluded that the most appropriate option is that of an integrated policy approach combining legislative measures to implement and complement the draft Convention at EU level, and non-legislative measures to promote voluntary action by industry.⁶

To assist in the preparation of possible measures before the coming into force at international level of the forthcoming Ship Recycling Convention, the Commission launched a study focusing on the assessment of two of the policy options outlined in the EU Strategy for better ship dismantling: (i) transposition of key elements of the forthcoming Ship Recycling Convention into Community law and development of relevant complementing measures; (ii) the feasibility of establishing a 'ship dismantling fund' to finance ship recycling in safe and environmentally sound facilities. More specific

¹ European Commission, DG Energy and Transport: *Oil Tanker Phase Out and the Ship Scrapping Industry*, COWI final report, June 2004.

² Lloyd's List: <http://www.lloydslist.com/ll/news/ship-scrapping-set-to-surge-over-next-two-years/20017620199.htm>

³ IMO Draft international Convention for the safe and environmentally sound recycling of ships, 2008, (MEPC 58/2316, Annex 6)

⁴ COM (2008) 767 final

⁵ European Parliament resolution of 21 May 2008 on the Green Paper on better ship dismantling available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0222+0+DOC+XML+V0//EN>

⁶ SEC(2008) 2846

studies notably on the establishment and regular updating of a list of ships "ready for recycling" and on a list of "green recycling facilities" are launched in parallel. This consultation aims at supporting the study of these different options by gathering the stakeholders' views on the policy options identified in the Strategy and on their feasibility, possible efficiency and potential positive and negative impacts in terms of environment, economic and social effects. The results of the consultation will contribute towards the development of future action and measures by the Commission.

A transparent consultation process is an integral part of policy shaping, from the conception of the Commission proposal to the final adoption of a legislative measure and its implementation.

The European Commission is launching this process to encourage and allow stakeholders who are involved with ship dismantling issues and have the information and experience which must be taken into account to provide their input.

Neither the fact that this stakeholder process is being launched, nor the content of the present document should be interpreted as a political or legal signal that the Commission intends to take a given action.

2. Request for information/topics for consultation

This consultation is divided into three parts: (1) the possibility of an early transposition of key elements of the IMO Convention; (2) the possibility of going beyond the Convention; (3) the introduction of non legislative measures.

a) The possible transposition of the Convention in Community law

Through early transposition of the IMO Convention requirements, the EU would indeed play a leading and exemplary role in promoting the implementation of the future Convention. The Commission proposes in its Strategy that key elements of the Convention should be taken up as soon as possible after adoption of the Convention.

In particular, the following set of measures could be transposed into Community law:

- 1) requirements applicable to ships: establishment and maintenance of an inventory of hazardous materials present on board, certification that the ship is 'ready for recycling';
- 2) requirements for recycling facilities: obligation to be authorised and inspected by the authorities, requirements for the prevention of impacts on human health and the environment, protection worker's rights;
- 3) rules on reporting and exchange of information: information duties of recycling states and reporting requirements for shipowners and recycling facilities.

An overarching concern relates to the level of enforcement and control. The establishment of appropriate enforcement mechanisms for ship recycling is linked to the better enforcement of waste shipment rules and an increased role for port state control through more checks at EU ports.

1. What could be the possible positive and negative consequences of an early transposition of these measures notably in terms environmental, social and economic impacts? Please briefly explain.
2. Which factors will play a crucial role in ensuring that control and enforcement mechanisms are effective?

b) Establishing the necessity and type of measures that the EU could adopt to go beyond the Convention if transposed

The Commission is also considering a range of additional requirements and measures such as the extension of the scope of the Convention, an obligation for EU-flagged ships to use only certified facilities, the development of a list of ships ready for scrapping, the establishment of an audit and certification scheme for ship recycling facilities and the possibility of setting up a funding mechanism.

Scope of the Convention

The EU strategy also envisages the need for measures beyond those of the draft Convention. Firstly, this concerns the scope of the future rules. The Convention exempts three categories of ships from its scope: small vessels below 500 GT, ships used only on government non-commercial service, including warships which have a relatively high contamination with asbestos and other hazardous materials, and ships operating throughout their life only inside domestic waters. It requires Parties to ensure through the appropriate measures that the exempted ships act in a manner consistent with the Convention in so far as this is ‘reasonable and practicable’. The Commission is contemplating the possibility of including in the ship recycling measures, amongst others, rules for the clean dismantling to ships, which are not covered by the Convention.

3. What would be the advantages and disadvantages of the extension, at EU level, of the draft Convention’s requirements to the clean dismantling of warships and other government vessels?
4. What would be the advantages and disadvantages of the extension, at EU level, of the draft Convention’s requirements to the clean dismantling of ships of less than 500 GT?

Exclusive use of certified facilities and establishment of a certification and audit scheme

In its current version, the draft Convention provides for a voluntary audit scheme of the mechanism each Party shall establish for ensuring that Ship Recycling Facilities comply with the requirements of the Convention. The proposals for a mandatory certification and audit scheme for individual facilities have not been accepted by IMO countries during the negotiation of the Convention.

In terms of controlling ship recycling facilities the draft Convention relies on national regulation in the form of authorizations of ship recycling facilities granted by the competent authorities of recycling states. A potential weakness of such control system is that the existing governance problems in some developing countries and the lack of a non-compliance mechanism in the Convention might reduce its effectiveness in practice. A possible solution for ships with close relation to the EU could be to transpose the essential requirements on social, environmental, health and safety measures for recycling facilities into Community law. A study by the European Maritime Safety Agency (EMSA) has proposed a business-to-business certification and audit scheme for ship recycling facilities as a way to establish more transparency and ensure a more level playing field worldwide.

5. What could be the possible positive and negative impacts of the introduction of such a measure?
6. Which organisations and actors do you foresee playing a key role in such audit and certification system?

Development of a list of ships ready for recycling

The development and maintenance of a list of ships ready for scrapping has been suggested, notably by the European Parliament, as being a sensible mean to improve enforcement.

The following possible criteria for establishing the list have been identified: legal obligations like the phasing-out of single-hull oil tankers, special risk factors (such as prior accidents), age of the ship (e.g. compared to the recycling average of its category of ships), quality of the ship, flag of the ship, owner of the ship, number and reasons of previous detentions of vessel and/or crew in a port for deficiencies, economic factors (freight rates market conditions, price of scrap metal proposed in the main recycling countries, performance of the recognized organization etc.)

Additional requirements could be introduced for the ships present on this list like: specific reporting requirements or the obligation to declare that they will go only to specific recycling facilities when calling at EU ports, an obligation to make a deposit or to constitute a financial guarantee or of an equivalent insurance like in the Waste Shipment Regulation ((EC) n°1013/2006).

7. Which criteria would you consider as relevant and practical to define ships ready for recycling? Please detail the advantages and disadvantages of each of these criteria in particular for improving enforcement.
8. What measures do you consider effective to ensure that the ships present on the list are treated in safe and environmentally sound facilities? Please provide details about their economical, social and environmental impacts.

Ensuring sustainable funding

The feasibility of establishing a funding system for clean ship dismantling ('ship dismantling fund') is also being assessed. This part of the consultation is based upon three possible funding systems: The first scenario is related to the birth of a ship whereas both scenario (ii) and (iii) are linked to the ships' operating life. The funds collected could be used to ensure a level playing field by covering the difference of cost low-standard facilities and safe and environmentally sound ones.

(i) Environmental charge up front for new built vessels: This option has similarities to the End of Life Vehicle Directive⁷ and would build up funds over a long horizon since it only applies to new vessels having a long economic life (the number of new vessels per year is low relative to fleet size). The scenario has good linkage to the cradle to grave philosophy behind the draft Convention. One immediate disadvantage is that it only affects new builds and not the existing ships.

(ii) Recurrent tax on shipping industry (in the form of annual tax on individual vessels): This option follows the polluter pays principle in that it charges for producing shipping services rather than the vessels. This scenario includes fees being levied during the entire lifetime of a vessel. The fees should most likely be based on the tonnage of the ship. This scenario would affect both new and existing ships. On the other hand, it requires more complicated control mechanisms, which however could be reduced by linking to current shipping mechanisms as for instance i) include the fees in the insurance premiums of the vessel or ii) levying by Flag States.

(iii) European port based funding system: Under this system, a charge is collected on all ships calling at European ports. It is technically a service charge on 'shipping services' to be paid by the shipping companies. This option also has similarities to environmental funds and existing funding systems such as the International Oil Pollution Compensation (IOPC) Funds set-up. A tonnage based charge would link to polluter pays and would give a stable funding base. The charge may potentially result in a

⁷ Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles, OJ No. L269, 21.10.2002, p. 34

diversion of cargo traffic to other means of transport but this would be relevant only for the shorter voyages. Another variation of this scenario could be a deposit collected on all ships calling at European ports.

For all three options the consideration is whether the charge/tax should be individualized and follow the vessel or be a general funding contribution. This issue has also direct linkage to the disbursement side of the fund, as a non-vessel linked funding system opens the discussion as to which vessels should be allowed to take out funds for recycling.

It would be important for the funding mechanism to provide proper incentives for existing vessels due for phasing out already within the interim period before entry into force of the Convention.

9. Which of the three options or combinations of the three options described above would be the most appropriate in terms of economical, environmental and social impacts?
10. What criteria do you consider necessary to be fulfilled for a vessel to be eligible to take out funds for recycling from the fund? Please provide details about their advantages and disadvantages.

Other additional measures including the publication of a list of "green" recycling facilities.

It has been suggested that guidance of the Commission for the shipping industry could be of particular value to help the shipping industry choosing "green" recycling facilities. Moreover, the publication of this list would make it possible for interested users and third parties (trade unions, NGOs) to verify the information. "green"-qualified facilities would gain a marketplace advantage, which in turn would create incentives for upgrading the environmental and safety performance of the industry in general.

11. Should the EU develop a list of 'green' ship recycling facilities and on which criteria should this list be based? Please detail the advantages and disadvantages of each of these criteria.
12. In your opinion are there any other additional measures that should be regulated at EU level? Please provide information about their economical, environmental and social impacts.

c) Non-legislative measures, including voluntary measures that could be promoted during the interim period

As stated in the Strategy, the potentially simplest and quickest way to change practices on the ground already in the interim period, before entry into force of the Convention and implementing measures, would be a voluntary commitment by the relevant stakeholders. If ship recycling facilities agreed to improve their environmental and safety performance in line with the emerging new standards, and ship owners were ready to contribute to this, the amount of pollution and the number of fatal accidents and occupational diseases could be significantly reduced. Voluntary industry action can be encouraged by various measures, such as an EU-wide public campaign, an award for exemplary activities and guidance with a list of clean ship dismantling facilities. In addition, the Commission considers that public funding to third countries could play a role if there is sufficient commitment by the relevant governments and industries to cooperate.

13. What sort of non-legislative interim measures do you consider to be currently effective in encouraging sound ship dismantling practices? Please provide information about their economical, environmental and social impacts. How can these be expanded upon and promoted?