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REPORT

On the public consultation on new initiative regarding dismantling of ships

The consultation on the study of options for new initiatives regarding dismantling of ships closed on 6 June 2009. In total, 27 responses were received in this period. Five EU Member States, one local authority, three NGOs, 14 industry associations or companies and two trade unions sent their comments, while three replies came from insurance, classification society and others. Not all contributions answered directly the questions put forward in the consultation paper. It should be noted that at the time the consultation was launched, the IMO Convention on the Safe and Environmentally Sound Recycling of Ships was still of draft status. The Convention was adopted on 19 May 2009. The feedback on the questions of the consultation can be summarised as follows:

a) The possible transposition of the Convention into Community law

Question 1: What could be the possible positive and negative consequences of an early transposition of these measures notably in terms of environmental, social and economic impacts?

Most stakeholders clearly support a prompt ratification of the IMO's Ship Recycling Convention by the EU Member States in order to fulfil, to a large extent, the entry into force of conditions whilst encouraging ratification by other States. Many stakeholders are in favour of early transposition of the Convention by the EU. Some argue that this should take place only as long as the EU does not impose additional requirements and others are in favour of early transposition only where it is accompanied by early ratification of the Convention. Those in favour of early transposition argue that waiting for implementation of the Convention is unacceptable when ship breaking workers continue to be killed or injured at work and considerable environmental damage occurs.

The main positive consequence of early transposition would be the improvement of ship recycling operations with respect to worker health and safety and environmental protection. Many stakeholders take the view that harmonised transposition at EU level will ensure a more level playing field and reduce administrative burdens for ship owners and recycling yards in the EU. Early transposition could also encourage the development of more ship recycling facilities. It was noted that such EU legislation should also comply with ILO conventions and recommendations. It is suggested that the Commission should promote ratification among the Member States and use its political influence to encourage recycling States to take similar action so that sufficient global ship recycling capacity is maintained.

The most significant negative consequence of early transposition identified by the stakeholders is that EU unilateral measures could lead to the reflagging of ships during their operational life to a flag of convenience, or the reflagging of ships nearing the end of their life to non-EU countries in order to avoid complying with regional measures. Reflagging would result in a reduction of the size of the EU fleet and the EU's influence with regard to maritime issues. Other negative consequences noted include the cost of setting up facilities and the risk that implementation is too rapid which may mean that there is insufficient environmentally sound ship recycling capacity for end of life ships from Europe. Finally, some stakeholders point out that since early transposition would create a duplicate regime, it would make ratification by Member States apparently redundant as an option; the likelihood of a swift entry into force of the Convention would consequently be diminished.

Question 2: Which factors will play a crucial role in ensuring that control and enforcement mechanisms are effective?

Many stakeholders held that an increased role for port State control through more inspections at EU ports will be crucial in ensuring effective enforcement and control. Other stakeholders stressed the importance of clear regulation of the entire process from cradle to grave in the ship's life cycle, including the better enforcement of waste shipment rules and more checks at EU ports. It is also suggested that the Commission establish a competent authority to act as an independent inspectorate to ensure compliance with ship recycling measures. The necessity for Member States to have in place a realistic and consistent implementation process is also considered as an important factor in ensuring effective control and enforcement mechanisms. The necessity to set up effective and deterrent sanctions was also raised.

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

Scope of the Convention

Question 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?

The stakeholders expressed differing views as regards the extension of the Convention requirements to warships and other government vessels on non-commercial service. Including such vessels in the scope of an EU regulation, provided that they are allowed to use certified facilities in third countries, would increase the demand for clean recycling and contribute to the improvement of recycling conditions in these countries. Others argued that all military and government vessels should be dismantled within the EU as it could make the existence of EU dismantling facilities more economically sustainable. It was also pointed out that these vessels would automatically follow the requirements for clean dismantling without necessarily being specifically covered by the requirements. However, many stakeholders believe that specific inclusion of these vessels would serve as a means of demonstrating the commitment of EU Member States in fully implementing the Convention requirements and ensuring that they build a level of expertise on the issue from a shipping and recycling perspective. Inclusion would avoid possible discrimination between private and State-owned vessels and consequently contribute to a better image of public authorities that should play an exemplary role by ensuring clean dismantling of their vessels.

Question 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?

The majority of stakeholders agree that extending the scope to ships of less than 500 GT is unlikely to have a noticeable effect on the recycling habits of the EU's smallest vessels as these are already recycled under acceptable conditions in Europe. If the scope is extended to such ships, this is seen as a mid-term measure.

Such vessels are mostly pilotage ships and offshore supply vessels. Additional requirements would disadvantage them in terms of international competition or would be an incentive for them to register under non EU-flags. The potential impact of such an extension would most likely fall on fishing vessels and smaller coastal vessels. It would lead to additional administrative costs for owners of smaller fishing vessels without clear environmental gain. The stakeholders stressed that careful consideration should be given to the operational, financial and administrative burden of including small vessels within the scope of future EU legislation as well as the total recycling capacity that would be required. In any case, should the scope be extended, a lower limit would need to be set for vessels such as yachts, pleasure crafts and canoes. Another proposed solution is to develop a less stringent system for these ships e.g. one that does not include a certification system.

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

Question 5: What could be the possible positive and negative impacts of the introduction of such a measure?

Several stakeholders question the effect of a business-to-business voluntary certification and audit scheme. A number of these argue that such a scheme should instead be mandatory, with some encouraging a global mandatory scheme and others referring to an EU mandatory scheme.

Some stakeholders believe that a certification and audit scheme could result in potential legal obstacles for the EU fleet from the recycling States. A few stakeholders believe that an audit and certification scheme should rely on the IMO Convention. One stakeholder expressed concerns that an EU system would introduce an "alternative layer" of auditing and certification. Some argue that an EU specific third party certification and audit scheme could have a counterproductive effect by reducing the incentive for recycling States to ratify the Convention, underlying that the recycling states were very determined not to accept audit and third party verification during the negotiations of the convention. Finally, a few stakeholders argue that such EU rules could result in the reflagging of EU ships as a result of lack of compliant recycling capacity.

Question 6: Which organisations and actors do you foresee playing a key role in such audit and certification system?

Almost all stakeholders agree that the national authorities and/or the classification societies/accreditation organisations have a key role in such audit and certification system. It is suggested that this should be done by an independent supervision and control organisation, while the State's role would be to control implementation. Such an organisation must be independent from the construction and demolition sector. Two of the stakeholders, supporting an EU audit and certification system, specifically mention the European Maritime Safety Organisation (EMSA) as having a key role within such system. One of these also mentions the European Coastguard with regard to the establishment of port State control with the Memorandum of Understanding criteria. One stakeholder proposes that local trade unions should play a key role in auditing and improving standards and 'giving voice to workers'.

Development of a list of ships ready for recycling

Question 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.

Most of the stakeholders are not in favour of such a list and have thus not proposed such criteria. The arguments for this are mainly that it will be very difficult to establish objective criteria. This could result in the wrongful inclusion of ships in the list which would in turn have negative economic impacts on the market price of that ship. Two of these stakeholders refer instead to existing port State control mechanisms to be in place with the potential of monitoring 'sub-standard ships'. One stakeholder proposes the generation of a list of ships registered and/or operated in the EU with a requirement for the owners of these ships to report yearly to a common EU register on the condition of the vessel including intended decommissioning date. Such a system could produce an EU wide transparent list. Another stakeholder argues that transparency would be encouraged if a market observatory was established, which could provide information to stakeholders on market trends, volumes in ship breaking facilities and compliance with standards. It was noted that the purpose of developing such a list should be made clear.

The following potential criteria were proposed without further detail: ship age, ship condition (e.g. damage), ship type and freight market. Similar criteria, with a few additional comments, are proposed

by a different stakeholder: special risk factors, age of ship and its quality, recognition of the recycling average of its category of ships, flag of the ship and the absence of dangerous substances. Finally, one stakeholder proposes a list generated on the basis of the Ready for Recycling Certificates issued by EU flag States. This will, according to the stakeholder, take into consideration the economic and market changes, etc.

Question 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.

A number of stakeholders oppose such a list of ship recycling candidates and do not propose specific measures. Some stakeholders refer generally to implementation of the IMO Convention and associated guidelines as the best way of ensuring that ships are recycled in safe and environmentally sound facilities.

Other stakeholders have proposed specific measures. Two stakeholders mention that a list mainly based on Article 12 of the Convention would offer good guarantees and one stakeholder indicated that it was in the process of elaborating such a list. Further, they add that any State could monitor and enforce the provisions for safe and environmentally sound recycling and that port State control offers a valuable enforcement mechanism. Two stakeholders refer to aid/assistance programmes from EU to Asian facilities. This could take the form of an aid program for technical assistance to promote, in particular, the safety training of workers and support the establishment of basic infrastructure for environmental and health protection or an exchange program for non-EU socially responsible ship breakers with European facilities in order to develop best practice. This list of socially responsible ship breakers could be based on a list of minimum standards regarding human rights for ship breaking employers to comply with (such a minimum standards list should be under development by the stakeholder in question).

Other measures proposed are the inclusion of contractual clauses ensuring the recycling of vessels in facilities that meet the Convention standards, the introduction of a requirement for ships entering EU ports to register their intended recycling date, the use of independent inspectors to assess the infrastructure of the facilities to ensure it is adequate to protect workers from health risks and the environment from pollution. Final measures proposed include the establishment of a “clean marine award” to provide public recognition for recycling and shipping companies with a clear environmental profile, the development of clear and effective guidance for ships and a ban on beaching.

Ensuring sustainable funding

Question 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?

Many stakeholders expressed scepticism with regard to the general idea of an EU fund and emphasize the need for global action for a global problem. They favour mechanisms at the IMO rather than EU level. Some stakeholders question the practicality of a fund and are consequently opposed to any of the options put forward, while others also express concern about the proposed methods for collecting funds and find them to be administratively complex and difficult to enforce. However, others believe that a fund, combined with mandatory regulations, would provide ship breakers and ship breaking countries worldwide with real incentive to invest in best practice facilities. There is a real risk that regulation without the creation of a parallel financing mechanism will lead to circumvention of the rules and an increased use of substandard shipbreaking yards by ship owners to avoid extra costs. They further argue that costs are manageable for the industry.

Some stakeholders call for a more in-depth study of the impacts of a ship dismantling fund outlining the exact objectives of the fund and including a cost-benefit analysis. Such a study should establish the need for a fund and consider the sources of the funding. The majority of stakeholders seem to agree

that whatever option or combination of options is used, they should be applied evenly and transparency should be ensured.

Of the many parties involved in the process, some stakeholders criticise the fact that all three options disproportionately target a single stakeholder (the ship owner) . In general, a ship dismantling charge is viewed by the ship owners as an additional cost to flying an EU flag or calling at an EU port. With regard to the three options, concern is raised in relation to the distortion of competition, in particular between EU and non-EU ports (for example, in the Mediterranean). However, the charge to be collected is quite low in relation to the total daily operating costs of a vessel and only accounts for about 5-10% of the current port fees.

The stakeholders expressed differing views as regards the most appropriate option. Some favoured the first option (environmental charge up front for newly built vessels) as the most straightforward in terms of implementation. However, others pointed to the fact that this option only affects new ships and is thus problematic as the old vessels are the ones up for scrapping and those that cause the most problems in terms of clean dismantling. Others stressed that this option would likely only work for European ship building facilities and/or European owners. With the significant majority of new building taking place outside Europe, it would be difficult to implement and enforce. Others point out that such a tax would discriminate against the owners of EU flagged vessels, leading to a distortion of competition and the re-flagging of ships.

Other stakeholders favour the second option (recurrent tax on the shipping industry in the form of an annual tax on individual vessels) because it is an individualised charging system allowing for differentiation between older vessels and newer ships containing less hazardous substances. However, others find it problematic, as an independent body would have to oversee the levy and its application. This option is also sometimes seen as unfair as it would only apply to EU flagged or operated vessels.

Several stakeholders favour the third option (European port-based funding system), an option similar to environmental funds and existing funding systems such as the International Oil Pollution Compensation (IOPC) Funds. It would apply to all vessels regardless of ownership and would be in line with the 'polluter pays' principle. It would be easier to collect and administer than any of the other options. This charge should also be based on a tonnage charge which again would link to the 'polluter pays' principle. The use of a port funding system would give a stable funding base.

Finally some stakeholders are of the opinion that a combination of the proposed options might be the best way forward.

Some stakeholders propose that the charges are based not only on the tonnage of the ships, but also on the toxicity of the ship: ships with higher quantities of hazardous materials contained in their structure should be obliged to pay a higher charge. Others state that use of a port by a vessel has no significance on the cost of recycling the vessel and are concerned that levy or port dues would likely be distorted between vessel types and trading patterns. Some stakeholders do not believe in the success of an EU fund because at an international level it has been proved that it was not feasible to establish such a fund. They point to recent discussions on the IMO Convention where concern was expressed about the development of such a fund.

Question 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.

In general, the stakeholders call for clear conditions for when a ship meets the requirements for receiving the corresponding funds. Some stakeholders point to the IMO Convention requirements for dismantling at certified ship recycling facilities, while others are in favour of more stringent unilateral EU requirements. Higher costs from more strict requirements could be compensated from the fund thus providing incentives for ship owners not to disassociate themselves from Europe. Some

stakeholders point out that the first criterion should be that the ship is registered as an EU ship. Others contend that the recycling company should also be registered in the EU for a vessel to be eligible to take out funds. Others find that other recycling yards that comply with the standards and are open to independent monitoring should also be an option.

More specifically, most stakeholders commenting on the criteria argue that a ship owner should use a *certified* facility and that the certification should only be awarded to facilities that have had a proven positive impact. The certification should be proof that the vessel has been dismantled in a yard certified by a third-party certification and audit scheme. The applied recycling facility should comply with the standards set out in the relevant ILO ship recycling guidelines.

Finally, some stakeholders repeat their opposition to a fund system or their scepticism of the relative merits of a fund. They call for discussions related to the mechanism of establishing a fund and justification and understanding of how such a fund could be used.

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

Question 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.

Most stakeholders are in favour of such list as guidance to ship owners with regard to where to recycle their ship. Approximately half of the stakeholders propose the requirements of the IMO Convention to form the selection criteria for such list. A few of these stakeholders refer to risks of exceeding the Convention requirements, e.g. by creating a barrier to ratification or generating a competitive disadvantage for compliant yards over Convention compliant yards due to the required additional investments.

One stakeholder proposes the ILO guidelines for Asian ship recycling countries as a good basis. Another stakeholder refers to unspecified 'highest standards of environmental control, disposal of hazardous waste, health and safety and employee involvement', which they further propose to qualify shipowners for grants from the recycling fund. One national stakeholder supports a list of EU facilities and proposes to use facilities permitted in accordance with the Waste Framework Directive as a starting point for such list. Finally, one stakeholder refers to the importance that such a green list must be interpreted as an award for those who will be on it and not a denunciation for those who are not.

Question 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.

The stakeholders who propose the requirements of the IMO Convention to form the selection criteria for such a list do not propose additional measures. One stakeholder mentions that additional measures should not go beyond the scope of the current waste shipment regulation. Other stakeholders propose additional measures including decent wages for ship breaking workers, a list of building sites to be put in place, financial and/or tax benefits promoted for ship owners and investors who are willing and prepared to invest in and financially support the building of environmental and sustainable ship dismantling yards. One stakeholder considers that clear indications of what is acceptable for a recycling facility and what is not acceptable need to be given so that owners can ensure compliance with potential EU measures. It was also suggested to make mandatory the green passport for any new ship with an obligation to update it for each significant maintenance or repairing operation and for old ships prior to decommissioning. Such a passport would guarantee the traceability of all materials when the ship changes ownership.

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

Question 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?

Some stakeholders advocate the use of standard sale and purchase contracts for ship recycling. Significant improvement in recycling practices could be achieved through the introduction of incentives for owners to dismantle their ships in an environmentally safe and sound manner. Reference is made to a number of initiatives by private investors and organizations to build ship dismantling yards according to green standards. It is also suggested that the EU could play a leading role in implementing green ship dismantling standards worldwide by actively and financially supporting these initiatives e.g. through public campaigns and guidance in the form of a list of 'green' ship dismantling facilities or guidance aimed at dismantling facilities. Bilateral cooperation or partnership agreements are also seen as a useful tool for the transfer of know-how.

Other stakeholders do not consider non-legislative measures to be effective. They have had little impact so far and therefore voluntary measures are most likely to follow a similar path. Global mandatory legislation establishing a level playing field is needed to change effectively the current situation.