



Memo

Erika: two years on

Two years after the Erika ran aground the Member States should make every effort to apply the new maritime safety rules that they have agreed in the European Union. Adoption of the Erika I package of measures and progress made on the Erika II package are a major step towards putting effective rules into place to increase maritime safety and to counter the risks of oil spills. Thanks to these measures substandard ships and floating rust buckets should disappear from Europe's waters within two years. *"The EU now has one of the best regulatory arsenals in the world to guarantee maritime safety . It is essential that these measures should be put into effect with the utmost resolution and speed. The Commission, for its part, will continue its efforts and propose follow-up measures to complete these rules and banish the spectre of a new Erika disaster,"* declared Mrs Loyola de Palacio, Vice-President responsible for energy and transport.

On 12 December 1999, the Erika, a 25 year-old single-hull oil tanker flying the Maltese flag and chartered by TOTAL-FINA, broke in two some 40 nautical miles off the southern tip of Brittany, polluting almost 400 kilometres of French coastline. The damage caused to the environment and the exceptionally high cost of the damage to fisheries and tourism make the Erika oil spill one of the major environmental disasters of recent years.

The wreckage of the Erika aroused much public concern about the safety of maritime transport. It also highlighted the risk presented by old, poorly maintained ships and the need to reinforce and harmonise European rules on maritime safety and the control of ships in ports in particular, going further, where necessary, than International Maritime Organisation guidelines and standards.

After the accident was reported the European Commission prepared measures in record time designed to increase maritime safety off our coastlines substantially. Three months later, on 21 March 2000, the Commission adopted a first series of proposals, known as the Erika I package, which was quickly followed, in December 2000, by a second set of measures, the Erika II package designed to provide in depth answers to the lacuna.

The Erika I package provides an immediate response to certain shortcomings highlighted by the Erika accident. It steps up controls in ports, monitors the activities of classification societies and speeds up the timetable for eliminating single-hull tankers.

This first package of measures was agreed upon by Parliament and the Council as part of the co-decision procedure. It will be formally adopted on 12 December next and enter into force 18 months later, the time needed for Member States to take the necessary internal measures.

Adoption of the Erika I package, however, is only one step in the Community action programme. The Erika II package contains measures that are just as essential: establishment of a Community fund to compensate the victims of oil spills up to €1

billion, closer monitoring of traffic in European waters, and creation of a European maritime safety agency. Examination of these measures is well under way in the European Parliament and the Council. Policy agreement on the proposals concerning the Community traffic monitoring system and creation of a European maritime safety agency could be obtained before the end of the year and enter into force in 2003.

While the European Union has a full battery of laws to protect its coastlines, **the effectiveness of Community laws will depend on due and proper application by the Member States.**

Erika I package: the three measures adopted

Stepping up controls in ports

The current directive on port State control has been substantially amended in order to **step up controls in ports**, which so far have proved to be inadequate.

Thus, ships that have been laid up on more than one occasion due to poor condition and fly flags of convenience will henceforth be **banned** and refused entry into **EU ports** by virtue of a **blacklist** published by the Commission.

In addition, all **vessels posing a risk** will be subjected to more stringent obligatory annual inspections. Unlike ordinary inspections, which may just be a relatively superficial examination of the condition of the vessel, the expanded inspections provided for by the new directive will include a systematic, detailed check of a number of vital elements of a vessel. Any corrosion or structural problems, for example, that might be the cause of accidents such as the one involving the Erika, will thus be detected more easily. These inspections will be determined by the age and category of the vessel (e.g. tankers more than 15 years old such as the Erika), and also by the vessel's "**target coefficient**", which measures the potential risk presented by a vessel, and criteria such as the fact that the vessel is flying a flag of convenience or members of the crew have complained about conditions on board or the poor state of the vessel as seen from the number of deficiencies highlighted and the number of times it has previously been laid up.

At present EU port State control inspectors board around 10 to 12 000 ships a year, but of this number only around 700 ships are subjected to real, thorough inspections. The new directive guarantees expanded annual inspections on more than 4000 vessels thought to pose a risk.

These new rules and regulations should also make for a considerable increase in the number of vessel inspectors in ports and help the Member States to meet the obligatory inspection thresholds set by the directive (25% of vessels entering port). In practice this minimum threshold is not achieved by all Member States (see Annex I) and the Commission has had to initiate infringement procedures against some of them.

The European Parliament has helped in no small measure to improve the effectiveness of the Commission's proposals. It has called for the introduction, for example, of obligatory black boxes on all ships calling at EU ports, based on a timetable from 2002 to 2007. The absence of a black box on board a vessel should lead to its being laid up in port.

Greater control of the activities of classification societies

The rules contained in the current directive concerning classification societies have been beefed up to make for **greater control of the activities** of these private organisations which play a crucial role in maritime safety.

The job of the classification societies is to check the structural quality of vessels. Nearly every country in the world delegates a good part of its inspection powers. The new rules will provide a better guarantee of the quality of classification societies at European level. They introduce in particular:

- a new sanction: suspension of Community approval for a year, which can lead to complete withdrawal of approval if the deficiencies resulting in suspension persist;
- the requirement of good safety and pollution control performance before Community approval is granted;
- stricter quality criteria, in particular compliance with certain procedures in the event of a switch of class and greater transparency in the communication of information on vessels in that class.

Without waiting for the new measures to enter force, the Commission is already taking a close look at the activities of approved classification societies. It has already carried out a number of audits designed to establish whether organisations approved by the Member States meet the requirements of the directive. These audits have helped to limit the scope of the approvals granted to certain organisations, given their real capacity.

Elimination of single-hull tankers

On average **single-hull tankers** present a greater risk of pollution in the event of an accident and are often old ships. The main objective of the measure is to protect the coastline of the European Union against the increased risk of pollution presented by the imminent arrival of single-hull tankers banned from American waters under OPA 90 (Oil Pollution Act) but authorised to operate under current IMO legislation.

The recently adopted regulation provides for a general **ban on single-hull tankers by 2015 at the latest, in accordance with a timetable for their gradual phasing-out** (timetable shown in Annex II)

Timetable for implementation of the Erika I package

The measures adopted as part of the Erika I package will enter into force in 18 months' time. The sole exception concerns the port of Rotterdam which has obtained a six-month extension on the requirement of implementing greater controls in ports. The Nice European Council in December 2000 nonetheless called on the Member States to implement the measures earlier. The Commission therefore expects the Member States to begin work immediately on legislative and administrative transposition measures and to start recruiting the vessel inspectors needed to carry out the new measures. The Commission, for its part, plans to publish a blacklist of substandard ships in the Official Journal at the beginning of next year, ahead of the entry into force of the directive on port control. The Commission will also step up its monitoring of classification societies and, where necessary, propose that their recognition be suspended.

Erika II package: measures still under discussion

- Establishment of a **European maritime safety agency**. Within the space of a few years several safety standards have been established and Member States have been obliged both to comply with them and to approximate their inspection and control procedures. The European maritime safety agency will support the action of the Commission, the Member States and candidate countries. It will assess the effectiveness of maritime safety measures put in place. The main task of the Agency will be to collect information, operate databases on maritime safety, monitor classification societies and organise inspections in the Member States in order to check the conditions of port State control. It could also assist national inspectors in their work and help make for an exchange of experience that would benefit all concerned. The Transport Council on 7 December might reach agreement on this dossier.
- **Greater safety in maritime traffic and more effective prevention of pollution by ships:** a proposal for a directive provides for the establishment of a system of notification which also covers vessels which do not call at Community ports. It increases the powers of intervention of Member States, in their capacity as coastal states, where there is a risk of accident or a threat of pollution off their coastlines, even beyond their territorial waters. It imposes the carriage on board ships in Community waters of automatic identification systems (or transponders) as well as black boxes similar to those used in aviation in order to help enquiries in the event of accidents. The directive sets out to improve procedures concerning the transmission and use of data relating to dangerous cargoes and to increase the development of common databases. Given that most shipwrecks occur in extreme weather conditions, the directive also provides for the possibility of preventing ships from leaving port in such conditions. Finally, it makes it compulsory for each Member State to have ports of refuge for vessels in distress. The Transport Council of 7 December 2001 may reach an initial agreement on this issue.
- **Improvements in the existing schemes concerning liability and compensation for pollution damage:** two years after the Erika accident the people hit hardest by the oil spill, hoteliers and those working in the maritime sector, have still not been fully compensated for their losses. This is due to the limits of the current international scheme (in particular FIPOL) when the cost of pollution exceeds the present ceilings. The Commission takes the view that it is unacceptable for Europeans not to be properly compensated several years after a serious accident. To prevent situations of this kind arising in the future, the Commission has proposed that a fund for the compensation of oil pollution damage be set up, with a global ceiling of €1 billion, to compensate victims where the current ceilings of €200m are exceeded. The Commission's proposal also provides for Member States to impose fines for negligence on the part of anyone involved in the transport of oil by sea.

An accident such as the one involving the Erika can happen at any time. Given this risk, the Commission's proposal offers a solution which can rapidly be put in place and will guarantee that victims are fully and promptly compensated. In this context, the Commission regrets that the Transport Council refuses to consider a European solution, preferring to leave these discussions at the international level.

The necessity of new rules: measures announced in the White Paper

The European Commission has already announced in its new White Paper on Transport¹ the proposals which it hopes to prepare in order to complete the Community legislative arsenal strengthening maritime safety and to adapt to the challenges of enlargement.

Combat the use of “slaves of the sea”: social conditions for crews

The blacklist of substandard ships which will soon enable the European Union to close its ports to dangerous ships should logically include ships whose crews are underqualified and underpaid. To this end, the European Union should rapidly define the minimum social conditions it intends to enforce for crews. The Commission is proposing to initiate a dialogue among all the international maritime actors to examine the issues of training and shipboard living and working conditions.

Combat flags of convenience: inspection powers also for the IMO

Taking the International Civil Aviation Organisation as a model and in view of enlargement, the European Union should support Japan's initiative to give the IMO the power to audit flag States. Internationally acknowledged inspectors could thus carry out audit missions enabling States to identify shortcomings in ships flying their flag. This would be the first step in verifying compliance with the international obligations entered into by all States party to the IMO conventions.

Promote the reflagging of ships to Community registers: tonnage tax.

The installation of a tonnage tax regime will enable a large number of ships to return to Community flags and therefore be subject to strengthened safety rules. Under this system, shipowners would pay a tax based on the tonnage they operate, regardless of the actual earnings of the business. The Commission plans to present a proposal on this subject in 2002.

The Single Sea: a European traffic management system

By 2010, the enlarged Union could, as in the air transport sector, have a traffic management system in place to protect itself against dangerous or suspicious movements of ships, in particular by diverting them to ports of refuge. A harmonised system of this nature for the management of shipping from the Bosphorus to the Baltic, taking in the Bay of Biscay and the English Channel, will give the European Union the means to coordinate intervention and control and thereby, without going so far as setting up a common coastguard, to take effective action on the US model against all hazards on its seaboard (particularly drug trafficking, illegal immigration and the transport of dangerous goods).

Finally; as the Commission had already announced in its Communication of 21 March 2000², it is necessary to go beyond the fight against pollution from accidental spillage to attack the complex problem of detection and civil sanctions to penalise the operational pollution that each year in the Mediterranean and the North Sea represents dozens of Eriks.

For more information: Maritime Safety Unit +32 2 296 82 65

http://europa.eu.int/comm/transport/themes/maritime/english/safety/index_safety.html

¹ White Paper “European Transport Policy for 2010: time to decide”, adopted 12 September 2001. Available at http://europa.eu.int/comm/energy_transport/en/lb_en.html

² COM(2000) 142 final, Communication on the safety of the seaborne oil trade, ERIKA package: http://europa.eu.int/comm/dgs/energy_transport/library/com142-en.pdf

Annex I

Annual Report 2000 of the Paris MOU

Inspection efforts - 1

Inspection efforts of members compared to target

