



# ECSA Newsletter

European Community Shipowners' Associations

• N° 2/07

## ECSA SEMINAR 6 MARCH 2007

On 6 March 2007, ECSA organised a seminar in Residence Palace in Brussels, entitled "European Shipping a Global Industry Serving European and Global Trade". The seminar aimed at explaining the global nature of shipping, including European shipping, and its importance to global trade as well as to the European economy.



With more than 160 people attending, including Vice President/Transport Commissioner Jacques Barrot and the German Presidency, the seminar was considered a great success by ECSA President Mr Lennart Simonsson, who moderated the debate.

On behalf of ECSA, key speakers were:

- **Michael Parker** – Chairman of Andrew Weir Shipping Ltd, and CMA/CGM UK Holdings and ECSA Board Member – spoke about Europe as a cluster of maritime know-how and the key role of shipping therein. He also addressed the need to attract young people to a seafaring career and the need to provide them with sufficient career opportunities when they come onshore. To that end, he called upon the Commission and Member States to establish an appropriate and stable regulatory framework to turn these needs into reality, with the 2004 Community Guidelines on state aid to maritime transport being an important step in the right direction.
- **Torben Janholt** – CEO of J.Lauritzen, Chairman of the Danish Shipowners' Association and ECSA Board Member – asked the question how Europe can contribute to global governance. He underlined the need to maintain an international regulatory framework, through IMO and ILO, for the global shipping industry. He felt that regional legislation should be avoided since it may, amongst others, discourage EU Member States from ratifying the relevant international conventions and hamper a proper development of European shipping and thereby global as well as European trade. Instead, he suggested that ratification of international conventions should be promoted and monitored with Member States as well as through bilateral contacts with third countries.
- **John C. Lyras** – Chairman of Paralos Maritime Cooperation S.A and ECSA Board Member – stressed that shipping is still the most environment friendly transport mode. However, he acknowledged that shipping will have to make significant endeavours to improve its record in terms of air emissions, in particular NOx and SOx. However, the shipping industry is fully committed to undertake these efforts and to come forward with solutions, which need to be holistic and to be dealt with through IMO (Marpol VI).
- **Philippe Louis-Dreyfus** – CEO of Louis-Dreyfus S.A.S., Vice President and Board Member of ECSA – explained the position of ECSA on the Third Maritime Safety Package. He

stressed that ECSA supported this Package which was felt to be a constructive package as opposed to the Erika I and II Packages which both were issued in reaction to major oil spills resulting from the incidents with the oil tankers Erika and Prestige. However, contrary to the five safety-related proposals of the Third Maritime Safety Package, notably those on port state control, flag state compliance, classification societies, vessel traffic monitoring and accident investigation, ECSA expressed serious concerns as regards the two liability proposals thereof, i.e. that on the liability of carriers of passengers by sea and inland waterways in the event of accidents and particularly that on civil liability and financial guarantees for shipowners. As regards the latter proposal, ECSA suggested that a priority should be the ratification by EU Member States of the relevant IMO Conventions, notably 1996 LLMC (limitation of liability for maritime claims), HNSC (hazardous and noxious spills) and BOC (bunker oil spills).

**Vice President and Transport Commissioner, Jacques Barrot**, addressed the audience by underlining the efforts made by shipping to meet the demands of global economy. He also stressed on the need for efficient and sustainable mobility with shipping playing an essential part therein. He confirmed that operators need a stable legal environment allowing them to develop their business and on this point he reassured ECSA that the Commission is fully aware of the global nature of shipping and is actively working to promote a fair level playing field for EU shipping at world-wide level. However, whilst there is a need for a stable regulatory framework, this framework should be adapted to changing economic circumstances. It is for this reason that the European Commission has put forward some key questions on which Mr. Barrot is awaiting a constructive and proactive attitude from the industry. The key questions are as follows:

- How to achieve a better internal market in shipping? Is there a need to create a "Common European Maritime Space", including Motorways of the Seas and ports?
- How can Europe attract young people to the seafaring profession?
- What options does Europe have to protect our coasts? Is there a need for a Common Coastguard?

Finally, on the role of the EU in IMO Mr. Barrot said "I want Europe and Europe's industry to interact better and to play a much more active role to support the common efforts of the International Maritime Organisation. All together we have an interest in promoting quality shipping through IMO. Let us stop using IMO as a "brake unit" and, let us pull our weight together. An appropriate representation of the European Union in the IMO will play in the interest of all quality minded operators in the world. It is for that reason that I ask you to re-evaluate the Commission's request for representation in IMO and see the benefits behind this proposal".

Following the presentation of Vice President/Transport Commissioner Barrot, the following Ministers and Secretaries of State addressed the seminar on the viewpoints of their Governments on shipping and on a future maritime policy for the EU:

- **Mr Jörg Hennerkes** – Secretary of State at the Federal Ministry of Transport, Building and Urban Affairs, who spoke on behalf of the German Presidency of the EU;
- **Mr Dag Terje Andersen**, Minister of Trade and Industry from Norway;
- **Mr Censu Galea**, Minister for Competitiveness and Communications, Malta;
- **Mr John Tzoannos**, Secretary General of the Ministry of Mercantile Marine, Greece;
- **Mr Makis Constantinides**, Permanent Secretary of the Ministry of Communication and Works, Cyprus.

All government speakers agreed that shipping is a global industry, which requires a global regulatory framework through IMO and ILO and not regional solutions. They also acknowledged the importance of European shipping for global and European trade. Furthermore, they expressed support for the Commission's aim at treating the oceans and seas in a holistic way in the context of the Green Paper on a Future Maritime Policy for the EU.

Topics receiving particular attention from governments were as follows:

- The need for shipping to tackle air emissions in a pragmatic way within an international context.
- The need to invest in infrastructure, e.g. through the Marco Polo II Programme.
- It should be avoided that seafarers are used as scapegoats in case of shipping incidents or accidents.
- The image of the shipping industry must be improved, e.g. the general public must become aware of the importance and good performance of the sector. An improved image will also contribute in making the sector more attractive to youngster opting for a seafaring career.
- Shipping is an industry with specific features requiring a specific treatment.
- The EU's maritime know how must be preserved and further efforts are needed to improve education and employment opportunities.
- Shipping needs to operate within a global context without any barriers. Further efforts need to be undertaken in an international context thereto, in particular in WTO.
- Cooperation between European Coastguards should aim at coordinating efforts amongst EU Member States to tackle real daily problems, such as illegal immigration and drug and human trafficking.
- The 1994 Agreement between Member States and EU Institutions providing the basis for coordinating positions in view of IMO meetings should be

maintained instead of aiming at an EU observer status in IMO.

### COMPETITION RULES

On 23 February 2007, the Commission published a long-awaited report providing an economic and legal analysis of the tramp shipping industry. The report was carried out by a consortium, consisting of Fearnleys, Global Insight and Philip Wareham. The report had been commissioned by DG COMP in July 2006 with an aim at providing them with economic fact and figures on the supply side as well as demand side of the tramp shipping sector. At the same time, the report also aimed at analysing the current EC competition rules and the extent to which they are applicable to tramp shipping services in general and to shipping pools in particular. The report is part of an ongoing exercise, which started in 2004 between DG COMP and ECSA.

The study can be found on the website of DG COMP:

<http://ec.europa.eu/comm/competition/antitrust/legislation/maritime>.

In sum, the consultants share the view that tramp shipping is a global industry, with the exception of certain parts of the LPG sector, and that specialised services, such as reefer services, are liner-like services operating on a global basis as well. It was furthermore confirmed that shipping pools have limited market shares and have not been in a position to be dominant or to make abuse of their market position. The consultants stressed that *"the evidence did not indicate that pools have historically ever been able to use their joint resources and combined market power to push prices up at any time in any segment of the industry. Far from it."*

On the legal side, it was felt that shipping pools involve hard-core cartel restrictions, including price fixing and capacity regulation, which are in principle prohibited under EC competition law. The consultants therefore carried out an assessment of shipping pools under EC competition rules. Depending on the qualification of shipping pools under these

rules, an assessment of shipping pools needs to be carried out either under Article 81 (1) or Article 81 (3). Possibly, shipping pools could also qualify for application of a specific Block Exemption Regulation. In any event, if shipping pools would fall under Article 81 (3), the consultants confirmed that shipping pools would meet the cumulative requirements under this article and could therefore be maintained under EC competition rules. Furthermore, it was felt that specialised services could fall under the Liner Consortia Regulation, provided that the scope thereof would be enlarged. Finally, certain clauses in pool agreements, in particular non competition clauses, termination clauses and lay up clauses, need further examination under EC competition law.

The consultants agreed that guidance or guidelines would be required to clarify certain issues in relation to shipping pools.

### **THIRD MARITIME SAFETY PACKAGE – VOTE IN TRAN**

On 27 February, the Transport Committee of the European Parliament (TRAN) voted on all seven legislative proposals of the Third Maritime Safety Package.

The outcome of the voting in TRAN can be summarised as follows:

#### ***Port State Control - Rapporteur: Ms Dominique Vlasto***

TRAN welcomed the proposal which aims at improving the quality and effectiveness of checks on ships in European ports. The amendments which were supported sought to strengthen the inspection regime, the criteria for selecting ships for inspection, and the parameters needed to calculate a ship's risk profile. The Commission was furthermore called upon to develop, with the assistance of EMSA, a database showing the risk of profiles of ships and indicating all ships due for inspection.

Support was also given to amendments aiming at expanding the inspection regime to be applied to vessels with a high risk profile and to passenger ships and oil and

chemical tankers of more than 12 years old. Under certain conditions, ships that have been detained in ports more than twice in the preceding 36 months could be banned from EU ports. The role of pilots in detecting possible shortcomings on board should be extended, and port authorities should immediately inform the competent authority of the port state in case they learn that a ship has anomalies or apparent defects.

#### ***Obligations of Flag States - Rapporteur: Ms Marta Vincenzi***

TRAN supported an amendment making it a precondition for the first registration of a ship in a Member State that this Member State should ascertain that the ship complies with the relevant international rules. There was also strong support for making the IMO's flag state obligations more acceptable to EU Member States.

#### ***Ship Inspection and Survey Organizations - Rapporteur: Mr de Grandes Pascual***

TRAN supported amendments favouring the set up by Member States of an assessment committee, together with the recognised organisations. Its tasks should include regulation and assessment of the systems for management of the quality of recognised organisations (ROs), in accordance with ISO 9001 quality standard criteria. The ROs shall consult with each other periodically with a view to maintaining equivalence and securing the harmonisation of their rules and regulations and point out that mutual recognition will take place only in those cases that are appropriate.

As regards liability arising out of any marine casualty, TRAN introduced a cap in case of lower amounts determined in a sentence or settlement. Furthermore, it was agreed that the Commission should be entitled to impose fines in the case of serious, or, alternatively, repeated failure to fulfil the criteria of the proposal's annex I, revealing grave shortcomings in the organisation's structure, systems, procedures or internal controls. These fines should only be imposed after the

organisation and the Member State concerned have been given the opportunity to submit observations.

***Community vessel traffic monitoring and information system - Rapporteur: Mr Dirk Sterckx***

TRAN supported the Commission's proposal to establish a clear and precise legal framework for places of refuge for ships in distress. It was also agreed that there should be no "margin of discretion" for Member States in applying this decision on places of refuge. Furthermore, support was also given to an independent authority, which should be set up to designate ports of refuge for vessels in distress.

***Investigation of accidents - Rapporteur: Mr Jaromir Kohlíček***

The amendments adopted intend to strengthen the independency of the investigative body and aim at stricter distinction between technical and criminal investigations. Furthermore emphasize was put on the efficiency of the early warning system, the cooperation between Member States and the importance of incorporating findings into the joint methodology.

***Liability of carriers of passengers by boat in the event of accidents - Rapporteur: Mr Paolo Costa***

TRAN supported the Commission's proposal to ensure adequate protection for passenger victims onboard ships and inland navigation vessels by incorporating the 2002 Athens Protocol which provides, amongst others, for a higher liability of the carrier and compulsory insurance. Furthermore, support was given to the right for an advance payment for the passengers in case of death or injury.

***Civil liability and financial guarantees of ship-owners - Rapporteur: Mr Gilles Savary***

TRAN supported all Commission's proposals, amongst others, that on ratification and incorporation of the 1996 IMO Convention on Limitation of Liability

for Maritime Claims (1996 LLMC) into EU law. However, TRAN went further than the European Commission by deepening the conditions on which the liability of carriers would be engaged (i.e. concept of fault) and accepting to limit the implementation of the 1996 LLMC to victims not part of the transport chain. Finally, TRAN urged Member States to ratify the Bunker Oil Spills Convention and the international Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNSC).

All seven legislative proposals of the Third Maritime Safety Package will now go to the Plenary session of the European Parliament for a discussion and a vote thereon. It is planned to vote on five of these proposals in April. The vote on the proposals relating to flag state compliance and civil liability for shipowners, on the contrary, is already planned in March 2007.

**EMSA TO LAUNCH ANTI-POLLUTION VESSEL TENDER**

EMSA recently published a Prior Information Notice (2007/ S 30-035502) in the EU Official Journal (13:2:2007) for at-sea oil recovery services in the Atlantic, West Mediterranean, Aegean and Black Sea areas. This is the first step in a procurement procedure whereby the Agency intends to establish contracts to ensure the availability of appropriate vessels in each of the areas identified. More information at:

<http://www.emsa.europa.eu/end185d014d016.html>

The deadline for submitting applications is 24 April 2007.

**THE EUROPEAN CRUISE COUNCIL PRESENTS A COMPREHENSIVE STUDY ON THE CONTRIBUTION OF CRUISE TOURISM TO THE ECONOMIES OF EUROPE**

On 6 February, the European Cruise Council presented the results of a comprehensive study on the contribution of Cruise Tourism to the Economies of

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Europe at the occasion of a European Cruise Conference in Brussels.

The results of this study were as follows

- The cruise industry's direct expenditure in Europe is € 8.3 billion and it is expected to increase to € 12.7 billion by 2010.
- Europe is the world leader in cruise ship construction and refurbishment, with orders worth more than €18 billion up to 2010.
- The cruise industry is a major source of employment – up to a quarter of a million by 2010.
- Cruising is a major source of inbound tourism. Over 2.8 million cruise passengers embarked on cruises from European ports in 2005.

- On average, passengers spent €100 each in every port visited on their cruise during 2005.
- European travel agents were paid an estimated €500 million in commission from sales of cruises in 2005.

While clearly a significant economic sector and a major direct and indirect source of employment, it is particularly relevant in the Green Paper context that cruise lines view Europe as the market that offers the greatest potential for growth.

More information can be found at the [ECC website](#).

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