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AND THE COMMITTEE OF THE REGIONS

**TOWARDS A NEW
MARITIME STRATEGY**

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Executive Summary

This document introduces a new approach of the Commission to maritime strategy. It has been prepared to re-assess Community maritime policy and to set further goals towards establishing a common maritime purpose. Not all aspects of maritime policy will be examined in the same detail. The maritime safety policy of the Community is already established. The external maritime relations policy of the Community is also well on its way. Of course, more remains to be done in both areas. But a common answer to the problems of the competitiveness of EC shipping has not yet been found. Therefore, the document will focus on this question. The document will not cover port and shipbuilding matters. A general overview and policy approach concerning the status and future of all the maritime industries of Europe is found in the parallel Commission Communication "Shaping Europe's Maritime Future - A Contribution to the Competitiveness of Europe's Maritime Industries"¹.

Since the first Commission Communication "Progress towards a common transport policy - Maritime transport" of 1985, new shipping industries have developed quickly in many countries, particularly in East Asia. Many of the traditional shipping nations have seen their shipowners take advantage of the international capital and labour markets, as well as the increasing variety of ship registers now in place. In a highly competitive market, shipping under EC flags and seafaring employment have been constantly shrinking. While this trend predates the mid-eighties, its effects on the EC maritime industry have been a cause of common concern only since that time.

The Commission is aware of the need to make the Community fit for global competition and has proposed an approach, principally in its Communications on Industrial Policy of 1990 and 1994 and the White Paper on Growth, Competitiveness and Employment of 1993. The Essen Council of December 1994 also stressed the need to promote vocational training. It furthermore pointed to the impact of tax and social security rules on the maintenance and creation of employment opportunities.

In parallel to these developments, the Maritime Industries Forum (MIF) was created in 1992 on the initiative of the Commission. This forum brings together parties from all segments of maritime industry and administrations to discuss common problems and approaches in the closely interconnected European maritime industries. Much useful work has been done in fostering synergies and launching new ideas and initiatives. The Commission Communication on Short Sea Shipping of July 1995 made use of valuable input from the MIF.

Given these developments and, at the same time, continuing concern about the continuing decline of EC shipping, it is time to re-assess the common shipping policy of the Community. This re-assessment should concern both possible new policy initiatives to be pursued through the Community's legislative institutions and the exercise by the Commission of powers falling within its sphere of competence. This Communication should serve this purpose.

¹ Com (96) 84, 13 March 1996.

The Commission has been assisted in formulating this Document by a Core Group of 12 individuals with wide ranging experience of the world of shipping. A Report of Proceedings of the Group is available upon request from the Commission.² Part A of this Communication outlines the global shipping environment and the future of EC shipping in it, with more detailed information given in Annex A. Part A continues with a brief review of policy responses by Member States and the Community to the problems facing EC shipping, and their results, with further details in Annex B. The main part of the Communication, Part B, is devoted to proposing an outline for a future maritime policy for the EC, with the emphasis on measures to enhance the competitiveness of the EC fleet and the maintenance and creation of high quality maritime employment.

In summary, to implement the future maritime strategy:

1. On **safety**, the Commission proposes:

- to pursue a policy based upon a convergent application of internationally agreed rules. To the largest extent possible, this policy should be applied to all flags. This is the case, for instance, of those non-binding resolutions of IMO which will be made compulsory through EC legislation. These binding requirements should be enforced also on ships flying the flag of non-EC States when trading to or from EC ports. These ships should not receive a more favourable treatment than EC-flagged ships.
- a joint effort by Community and Member States in the IMO to agree on a worldwide basis on certain conditions for flag administrations and their ship registers;
- a Community legal instrument, most likely a directive, laying down certain principles for Member States shipping registers; such an instrument should also ensure that the rules of the Treaty, particularly on freedom of establishment and competition, are respected; accordingly, ownership and, possibly, manning conditions will have to be scrutinized;
- to strengthen port State control through operational links with other third countries;
- to promote self-regulatory codes of behaviour in shipping;
- to encourage operators to achieve high quality standards (eg. fiscal incentives, differential port charges);
- to consider legislative action on financial sanctions for cargo owners who knowingly or negligently use sub-standard shipping;
- to examine the question of mandatory third party liability coverage in shipping as a condition for entry into EC ports;

² European Commission, DG VII/D/2, rue de la Loi 200, B-1049 Brussels.

- to consider legislative action to support any agreement made between carriers and unions on terms and conditions of work on-board ferries providing regular services to and from EC ports;

2. On **maintaining open markets**, the Commission proposes:

- to continue to secure free access and fair competitive conditions throughout the global shipping market, preferably through a multilateral approach;
- to forge international agreement on the application of competition principles in maritime transport;
- to review the maritime trade defence instruments of the Community;

These and other measures will be considered in more detail in a forthcoming Communication on external maritime relations.

3. On **securing the competitiveness of the EC shipping sector**, the Commission proposes:

- common action of Community and Member States to promote maritime training programmes and to attract young people to the profession, to safeguard maritime expertise in the Community, and to promote high quality EC employment in line with the requirements of the new STCW convention to meet current and future EC and worldwide demand for qualified seafarers;
- the improved monitoring of compliance with ILO requirements by all flags through port State control;
- to foster maritime R&D within the current and future Community Framework Programmes, both targetted at high technology in safety and environmental protection and at human resources;

4. On **State aid**, the Commission

- continues to monitor aid to the maritime sector in accordance with the Treaty and relevant aid frameworks;
- will issue revised State aid guidelines on shipping which may include a revision of the cost gap method and a new approach towards an aid practice benefitting Community shipowners;
- has started a research project on the economic impact of shipping in various Member States and will discuss the use of these and other economic methods in evaluating support schemes with all interested parties.

5. After formally informing the Parliament and the Council, the Commission will withdraw:
 - the Proposal for a Council Regulation establishing a Community Ship Register (Euros) of 1989/1991;
 - the Proposal for a Regulation on a common definition of a Community shipowner of 1989/1991. However, appropriate definitions in individual instruments, for example when considering the beneficiaries of Regulation 4057/86, the Regulation concerning unfair pricing in maritime transport, and in the determination of beneficiaries of State aid, should be provided.

A. EC SHIPPING AND POLICY

I. EC Shipping in a Global Market

The international character of the shipping industry

Maritime transport is an international industry to which there are relatively few entry barriers. In principle, any operator can, regardless of its nationality and the location of its company seat, provide international shipping services. The provision of services between two destinations neither of which is the country of registration of the ship (cross-trading) is common.

More than other transport modes, shipping has, therefore, tended to be subject to international and universal, rather than unilateral, regulation, especially on liability, international safety and labour rules.

Bulk and liner shipping

Shipping falls into two main categories: bulk and liner shipping. The balance of Member States' interests between the two differs and there are important differences in their cost structures. Relatively, liner shipping bears high network costs and, therefore, tends to be more capital intensive while bulk shipping is more labour intensive and, therefore, sensitive to labour costs.

Registers

Ships are bound to a national jurisdiction by the flag which is given to a ship entered in a register. The same national administrative, civil and criminal law provisions, including fiscal and labour requirements, thus generally apply to a ship entered in a traditional register as apply to on-shore industries. National registers have traditionally required the crew or an important part of it to be EC nationals. Progressively, EC Member States have, variously, relaxed requirements, devised alternative registers or supported their registers with State aid, while shipowners have sought less onerous registers if they considered their competitiveness threatened.

Open registers

Some states have set out to attract international shipping to their registers. Liberia, Panama, Cyprus, the Bahamas and Malta are the most important examples of this. A growing number of countries offer these "open" registers and registrations in them continue to increase. Open registers normally accept owners of any nationality and imply low corporate tax liabilities and few requirements with respect to nationality of the crew.

If a state with an open register can also offer a good maritime service infrastructure (ie. good communications, ancillary service industry such as insurance, legal services, finance and credit facilities, swift diplomatic protection and an independent judiciary), shipping companies may consider not only registering their ships there, but also transferring some of their shipping activities and even their headquarters. This will have important consequences for economic activity and employment also on shore.

Flagging out

The extent to which a change of flag may also lead to relocation of a whole company depends greatly on the amount of on-shore investment already made by the shipping company. The less the investment, the easier it will be for a company to relocate. This makes bulk shipping more likely to relocate than liner shipping.

For EC shipowners and operators, moving a vessel to an open register can be a significant factor in terms of international competitiveness, with possible labour and fiscal cost savings often exceeding US\$1 million per annum.

II. Need for EC Shipping

Conventionally, the need for EC shipping is affirmed by pointing to economic and military independence. The EC, it is said, should not depend too heavily on maritime services provided by its actual or potential competitors as these may, in specific circumstances, act in support of their long-term commercial or strategic interests. A third important consideration is the contribution that shipping makes to the broader economy through its relationship with a wide range of maritime industries.

III. Developments in EC Ownership, Flag and Employment

EC ownership

In 1994, the fleet owned or controlled by EC interests, including vessels flying a foreign flag, was 34% (in dwt) of the world fleet, down from 38% in 1985. There has been no reduction in the EC share in global ownership since 1990. In assessing the importance of the ownership trends improvements in ship productivity, new worldwide trade patterns and the emergence of new shipping nations in the Far East should be taken into account. There does not seem to be a strong need for a policy fostering EC ownership.

EC-flagged shipping

In 1970, 32% of the world tonnage remained under the flags of EC Member States. In 1994, this figure has decreased to 14%. Shipowners cite cost savings as a main reason for flagging out. The trend of flagging out indicates a growing loss of competitiveness under EC flags. Indeed, EC owners have a high percentage share of ships in open registers.

Policy conclusions

While flagging out does not always lead to a loss of seaboard employment, on-shore activities and relocation of a company, it may be very difficult to re-attract maritime business once the infrastructure and the human resources have been lost entirely.

Having ships under EC flags contributes to ensuring that safety standards can be closely monitored through flag State control. Flagging out therefore lessens the flag State control power of EC Member States.

Flagging out from EC flags has contributed to job losses of EC seafarers (51% of job losses); fleet reduction (27%) and reductions in the number of crew per vessel (22%) have also played a significant role in this process.

Recent labour supply developments

While it is difficult at this stage to assess the problems related to the general employment of EC seafarers, a more specific problem has arisen in recent years: the shortage of better qualified seafarers worldwide. Already today, certain EC Member States signal that the number of new recruits to the seafaring profession covers only about 25% of the estimated replacement need. The new STCW (Standards of Training, Certification and Watchkeeping for Seafarers) requirements could accentuate the worldwide shortage.

Policy must find a response to this predicted shortage to:

- ensure safe navigation of ships;
- preserve maritime know-how for industry;
- enforce safety policy by maritime administrations;
- continue education of young seafarers.

IV. Some Further Trends in Global Shipping

Recent years have brought, through the liberalisation of world trade and decentralised production methods, a continuous increase in global trade and, with it, growing demand for shipping services.

Liner growth

Liner shipping has grown on average at a rate of 6.5% per annum in the last 10 years, and it is projected that it will continue to grow at the same rate for the next decade. The globalisation of production is leading to demand for global transport services. To respond to this demand, trade alliances between shipping companies are being created. This trend is also leading to increasing concentration in the market.

Bulk prospects

For bulk shipping, trade growth is always difficult to predict, because demand depends on volatile factors such as seasonality of trade, yield of food crops, etc. It is estimated that the main features of this sector, namely its cyclical nature and its unpredictability, will not change fundamentally in the longer term.

Specialised services

European operators offer experience and sophistication of many years' standing in liner and cruise shipping, off shore supply, heavy load and other specialized shipping. This may be linked with sophisticated shipbuilding and new trade opportunities (including, for example, routes permitted since the opening up of the former USSR, which may require ships with special hull construction because of icy conditions).

Investment patterns

The openness of European markets has attracted foreign investment. Today, some efficient short sea and feeder operators in intra-European trades are non-European-owned. At the same time, it is recognised that many European operators possess useful experience in short sea shipping, which is an important potential growth area for shipping services.

European shipowners are also taking advantage of the opportunities in cross-trading and are beginning to set up transport networks in other continents. However, investment opportunities for EC shipping companies are limited where the provision of domestic

services is not open to foreign operators or there is discrimination in ports vis-a-vis non-national operators.

Problem of ageing ships

Heavy worldwide subsidization of shipbuilding has contributed to oversupply in ships and the resulting overcapacity in bulk shipping markets, with consequently depressed freight rates. Shipping is thus producing relatively low returns on equity and investment, which has led to extending the useful life of ships and, in general, an ageing of the fleets and sometimes reduced maintenance efforts with related safety problems. While older ships can be maintained to high standards, statistics show that overall casualty risks rise with the age of the ship.

Enlargement of the Community

Recent accessions have brought a substantial addition of tonnage under the control of EC owners. The future may bring further tonnage to the Community, as Cyprus and Malta are envisaging accession. Given the strong maritime interests involved, it is important at this juncture to develop a coherent policy for the future.

V. The EC Policy so far: Efforts and Successes

General approach

The Commission has to date applied a Community maritime policy consisting of action on external relations, maritime safety and the competitiveness of EC shipping. While this has succeeded in opening up markets, particularly in Europe, and giving the consumer a wide choice of competitive shipping services, it has not led to the creation of employment for EC seafarers.

The 1986 package

The 1986 package of legislation on shipping was based on an open market, non-protectionist philosophy to foster a competitive EC fleet and to further employment; at the same time, it provided measures to counter unfair competition.³ Overall, the Community decided that all intra-European trades except cabotage within Member States should be open and that there should be no further requirement than establishment or registration in the Community to benefit from shipping opportunities within the EC. This policy was not conditioned on any similar commitment to open markets from the Community's main trading partners.

³ The 1986 package, O.J. No. L 378, 31 December 1986, consists of four regulations:

- Reg. 4055/86 applying the principle of freedom to provide maritime transport between Member States and between Member States and third countries;
- Reg. 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport;
- Reg. 4057/86 on unfair pricing practices in maritime transport;
- Reg. 4058/86 concerning coordinated action to safeguard free access to cargoes in ocean trades.

External relations

In terms of the Community's external relations policy in maritime transport, the Commission has sought to secure free access and fair competitive conditions throughout the global market, including further liberalisation and rolling back existing restrictions. The Community is also striving within the GATS framework for multilateral liberalisation of maritime transport services. However, some important restrictions remain and the danger of new restrictions is still present.

The common policy on safe seas

The Communication on a Common Policy on Safe Seas was adopted by the Commission in February 1993.⁴ This policy has been fully endorsed by the Council and by the European Parliament.

In less than three years, several implementing measures have been finally adopted and bind Member States administrations as well as the private sector to effective compliance from 1996 on.

Proposals to keep ships under EC flags and create the single market

The Commission has proposed a number of measures with the aim of enhancing the competitiveness of EC fleets. In 1989, this included⁵ a dual-purpose measure to alleviate the financial burden of flying an EC flag and at the same time safeguard EC employment: the Euros Register. However, the proposal did not find the necessary support in Council and has not, therefore, been adopted. The package also included a proposal to liberalise domestic trades, adopted as Regulation 3577/92,⁶ and a proposed definition of the notion of Community shipowner. The latter has not been adopted, and the Edinburgh Council of 1992 asked the Commission to review it.

Also in 1989, the Commission issued guidelines for the assessment of State aid to the shipping sector.⁷ The Community's common interest was defined in terms of maintaining ships under Community flags, modernisation of fleets and maintaining employment for EC seafarers. Consequently, the Commission decided that it could authorise State aid to bridge the cost gap between operating under an EC flag and under a flag of convenience, provided it was also in line with the Commission's general State aid principles.

⁴ A Common Policy on Safe Seas, COM(93)66 final, 24 February 1993.

⁵ A Future for the Community Shipping Industry: Measures to Improve the Operating Conditions of Community Shipping, COM (89) 266 final, 3 August 1989.

⁶ Council Regulation (EEC) No. 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), O.J. L No. 364, 12 December 1992, p. 7.

⁷ SEC (89) 921 final.

Short sea shipping

The Commission has recently adopted a Communication on short sea shipping⁸, including an action programme with proposals for initiatives which can most appropriately be undertaken at Community level as well as recommendations addressed to Member States, their regional and local authorities, ports and the maritime industries themselves.

Competition rules

The Commission has also pursued an active policy to enforce competition in the liner trades to and from the Community.

The Member States - State aid

As the competition from non-EC flags became keener, many Member States offered various kinds of aid to shipping. Different Member States adopted different strategies and provided different budgets for their support measures. This in part reflected their general attitude towards State aid or their assessment of the relative importance of the shipping sector for their economy and society. Consequently, some concentrated on incentives to investment in modern ships, others on encouraging employment of EC seafarers, some on tax reliefs or on capital injections to support restructuring. None of these individual approaches has comprehensively solved the competitiveness problem of EC shipping.

The Member States - registers

As flagging out and loss of employment continued despite State aid, some Member States decided to create specific registers for ships flying their flag in international trade to alleviate competitive disadvantages. Irrespective of their denomination, these registers were created to exclude ships flying the flag of the Member State from certain costs inherent in the fiscal and labour regime of the first register.

In many Member States with such registers, the majority of ships in international trade are registered in the alternative register: for example, in Denmark, 92% of the total tonnage operating in international trades is registered in the Danish International Ship Register ('DIS'); the figure for the German International Ship Register ('ISR') is 76%; in Finland, 50% of the fleet is on the List of Merchant Vessels in International Trade. The first register often has thus become of secondary regulatory importance for international shipping and the alternative regime becomes the real standard.

The success of Member States' combinations of alternative registers and aid schemes has been mixed. Some Member States' registers have been successful in reversing or at least slowing the flagging out trend. In certain Member States, national government action has not stemmed the overall decline of the flag fleet.

⁸ "The Development of Short Sea Shipping in Europe: Prospects and Challenges", COM (95) 317 final, 5 July 1995.

VI. Results

The maritime policy thus far has succeeded in opening up markets, particularly in Europe, and giving the consumer a wide choice of shipping services. The application of EC competition rules to all market participants regardless of flag has furthered consumer interests and ensures fair treatment of all liner shipping companies. The newly introduced safety policy will enable the Community to ensure that safety and environmental standards are effectively applied, thereby also ensuring fairer conditions for competition. The liberalised international shipping environment has, however, not led to the creation of more employment for EC seafarers.

The measures taken by the EC and the Member States to increase the competitiveness of EC flags have thus far not been able to reverse the flagging out and loss of employment in most cases, although some alternative registers seem to show promising features.

B. A POLICY FOR THE FUTURE

I. The Approach: Applying Global Standards and Enhancing the Competitiveness of the EC Shipping Sector

1. *The response of the EC to globalisation of shipping*

Three conclusions can be drawn from the analysis of the development of shipping and policy responses of the Community and Member States.

First, both in terms of quantity and quality, the EC shipping industry is one of the most important shipping sectors worldwide. EC Member States' shipping companies control a third of the world fleet and about 40% of the EC's trade is carried on ships owned or controlled by EC interests. This is evidence that European maritime know-how is very competitive in itself. However, it seems that the regulatory framework has not yet been developed everywhere in the Community to foster this competitiveness.

Second, shipping capital and shipping labour have become so internationally mobile that national policies can no longer alone deal adequately with regulatory problems.

Third, policy responses within the EC which are out of touch with current worldwide trends and standards will lead to further exits of capital and labour from European flags.

Globalisation is a central problem of policy making to maintain or improve the competitiveness of EC industry. The White Paper of the Commission on Growth, Competitiveness and Employment of 1993 and the Communication on the Competitiveness of Europe of 1994⁹ also focus on this issue.

⁹ *European Commission, An Industrial Competitiveness Policy for the European Union, Bulletin of the European Union, Supplement 3/94.*

In line with these policies, the Commission proposes to improve the competitiveness of the EC shipping sector through a global open market policy, with particular emphasis on multilateralism and worldwide competition rules. Further, measures to foster high quality employment and high technology in the sector are being presented. They are backed up by considering some further steps with regards to the State aid practice of the Commission. Not directly targetted at improving competitiveness, but much more at preserving human life and the environment are the new policies on safety proposed in this paper. However, it is the conviction of the Commission that the strict enforcement of a safety policy based on internationally agreed standards will lead to a marked improvement of the competitive situation of ships under EC registers with stringent safety enforcement. It will also contribute to new job opportunities for qualified EC personnel. Thus, the effect of a stringent safety policy on competitiveness is of great importance.

2. *Policy choices for a future shipping policy*

In considering the optimum maritime policy for the future, the Commission has analysed the likely outcome of applying different strategies. Sectoral measures to encourage employment in shipping, which lead to an increase in costs without a corresponding increase in productivity, will inevitably fail, leading to further flagging out. Measures which restrict inward investment into EC shipping and related industries may limit the ability of EC industry to stay competitive.

Taking the draw-backs and advantages of the various approaches into account, the Commission considers a two-fold strategy:

- action to ensure safety and fair competition in international open markets (sections II and III below);
- a Community framework for enhancing the competitiveness of the shipping sector (section IV below).

For this Community shipping policy to be successful, the various interests at play must be reconciled. Four main participants are involved, to a varying degree, in any decision-making process concerning shipping policy: the Member States, shipowners and their financial backers, labour, and users.

- As stated above, Member States have different maritime traditions. Some have a tradition of State-owned fleets or strong links between industry and Government, others have adopted an essentially laissez-faire approach to shipping. Member States also have varying interests in types of transport, depending on geography, trade ties and historical development. For some States, the development of short sea shipping is a priority; others may focus on fostering their deep sea shipping, where their shipping companies are heavily involved in cross-trading. A Community policy must be aware of these different priorities and take them into account.
- Shipowners will in the first place look at their own balance sheets and prospects. They will not keep a flag for reasons of national security, pride, or for job creation if this damages their commercial position. A policy to keep shipping under EC flags must therefore be economically viable. It must create conditions to keep or attract shipowners to EC flags.

- EC labour will want to maintain living standards while having job security and a safe working environment. Investment in human skills and resources such as continuing training and education is also being demanded by employees to secure their future. EC labour is not likely to accept a lowering of wages and social standards in order to increase the competitiveness of EC shipping. Competitiveness is not an end in itself. It should lead to a better life for citizens of the Union.
- Users are primarily interested in efficient and reliable transport systems rather than maritime strategy, job creation and competitiveness. The market price they pay should reflect the full costs of maritime transport, regardless of the flag of the ship they are using. Safety and quality of ships should be viewed as essential elements in the negotiation and conclusion of contracts between users and providers in maritime transport.
- In addition, ancillary industries which depend on shipping activities for their own survival and growth will want to ensure that shipping flourishes. They will have a preference for ships which require and use their products or services.

II. Safety and Fair Competition

The Commission proposes to develop and enforce international rules on safety and environmental protection, both through flag State quality and control and through port State action.

1. *Safety: an integral part of fair competition*

Shipping is a largely free market, allowing considerable scope for ship operators to determine their vessels' operating policy, including the level of expenditure on safety/pollution prevention, related maintenance costs and the degree of compliance with internationally agreed rules. This is possible because the diligence of the different bodies in charge of ensuring or monitoring compliance (flag State and port State authorities, classification societies, charterers and marine insurers, maritime labour unions) varies greatly. The net effect is that not only safety and environmental protection standards, but also operating costs vary considerably, from "blue chip" shipowners with a long-term strategic view towards the crewing and technical management of their fleet, to unscrupulous owners who disregard even the basic requirements of safe and pollution-free vessel operation. Surveys carried out by the OECD show compliance with international standards leads to 10 - 50% higher costs than a substandard operation. Good practice turns out to be 80 - 100% more expensive than substandard maintenance. Finally, maintaining a ship at maximum safety levels will require 300% more expenditure at maximum.¹⁰

The European shipping policy response to this should aim at eradicating these unfair competitive conditions, at least in all types of trade to or from the ports of the EC,

¹⁰ Thus, while a substandard owner would spend, according to the OECD model calculation, about US-\$ 3,100 per day for maintenance for a five year old product tanker of 40,000 dwt, "good practice" would require US-\$ 4,850/day, and "excellent practice" US-\$ 9,500/day. Thus, annual cost savings from substandard operations could amount to US-\$1 million or more per ship.

independently of the flag of the ship, and also, to the extent possible, in all other trades.

2. *Registers: a crucial tool to ensure safe and fair competition*

The crucial instrument to put this policy into practice is the regime governing the conditions for entry to a ship register and the administration of the register itself. Consequently, criteria for effective and sound registers must be developed. General flag State obligations must be adopted and enforced at world level. For this to be effective, it is imperative to ensure that a flag State is able to respond to its international obligations. In parallel, the Community should ensure the quality and effectiveness of its registers. Such action should not only be related to Member State shipping registers within the Community. The problem of off shore registers must be scrutinized, too.

a. *Defining and enforcing flag State obligations at world level*

There is broad consensus within IMO, ILO and the EC that there is a compelling case for all flag States to demonstrate that they can carry out and indeed that they are carrying out their supervisory responsibility effectively. Non-compliance leads not only to unsafe shipping but also to unfair and thus unacceptable competition. Therefore flag States have to live up to their obligations and make transparent the work of their administrations with regard to how they implement and comply with IMO and ILO conventions and rules. Today, some flag States are happy to compete for shipping and collect the registration fees, but they fail to enforce safety and environmental standards under their flags. Such States should not be in the business of offering ship register services. If States are not prepared to apply IMO/ILO rules, they should be discouraged from competing with those who are.

To translate this statement into effective action, the European Community and its Member States should pursue their policy based upon a convergent application of internationally agreed rules. To the largest extent possible, this policy should be applied to all flags. This includes, for instance, those non-binding IMO resolutions which should be made compulsory through EC legislation. These binding requirements should be enforced also on ships flying the flag of non-EC States when trading to or from EC ports. These ships should not receive a more favourable treatment than EC-flagged ships.

In this context, Member States would have to apply relevant EC legislation to companies or organisations operating in or with the Member State or to all ships trading from and to EC ports irrespective of their flag. It is worth considering the option of having a multinational team of EC experts to assist Member States with this task. This may contribute to ensuring that EC legislation is implemented in a fair and uniform way.

Further, the EC and its Member States should strive, with the support of other committed nations, for the adoption of criteria for the establishment and operation of flag State administrations and registers. Criteria for operating registers should include the following:

- entry of a ship on to a register should require a full ship inspection to ensure compliance with all standards (except where the vessel is transferred from another register and there is a formal agreement of mutual recognition with the former flag State);
- the flag State should possess the necessary machinery to ensure that seafarers employed on vessels flying its flag have appropriate and valid

- certificates of competence;
- the register should always be administered by sufficient numbers of well-trained personnel, including surveyors, able in practice to monitor effectively all the ships in the register;
- non-State organizations entrusted with flag State control responsibilities should have appropriate qualifications; the flag State should possess fully independent audit and quality assurance systems to monitor the services of the recognized organisations;
- the fee structure should provide sufficient income to ensure proper enforcement of standards;
- a duty to conduct a transparent investigation of all major incidents involving ships flying the flag of the State.

These criteria should be incorporated into binding international instruments. Different legal options are available. The Community and the Member States should take the initiative and consider the following options in the appropriate IMO bodies:

- revision of Part 1 of SOLAS (Safety of Life at Sea Convention);
- adoption of an IMO Assembly Resolution providing detailed interpretations of SOLAS Part 1, Regulations 1 - 20, possibly in the form of a mandatory Code for flag States;
- use of UNCLOS (United Nations Convention on the Law of the Sea) to improve flag State compliance.

The Commission considers that the combination of the second and third points could be effective both in terms of legally binding content and timeliness. The EC could complement this policy initiative by contributing actively to assisting (financially and technically) countries outside the EC to upgrade their flag administrations in cases where a clear policy commitment is made by the government to strive for the above described objectives. In this respect, it is worth considering whether the multinational team of EC experts mentioned above¹¹ could assess the work of non-EC flag State administrations, so that such financial and technical assistance, as appropriate, could be used to improve their performance.

b. *Member States registers*

The Commission considers that in parallel with the efforts made in international fora at adopting register conditions, the Community should consider defining common criteria for registers and lay these down in a Community legal instrument. These conditions should ensure safety, environmental protection and good working conditions on ships under EC flags. They should, however, also be conducive to eliminating distortions of competition which can result from varying registration conditions and flag State enforcement.

¹¹ See above, p. 14.

Such a proposal will not introduce an EC ship register modelled on Euros. While Euros was supposed to be a voluntary parallel register, this exercise would strive to set basic conditions for all Member States registers, irrespective of their denomination as second, alternative or first register. Further, mandatory levels of State aid would not be stipulated.

Since the Commission does not expect the proposal for an EC ship register to be adopted under the present circumstances, it will, after informing the Council and the Parliament accordingly, withdraw the proposal.

Effective government monitoring: The first condition for shipping registers in the Community should be effective Government monitoring. Member States should comply with the criteria concerning flag state control agreed on IMO/ILO level.¹² All Member States Governments must be able to fulfil the obligations flowing from internationally and European agreed standards on safety, environment, working, and living conditions.

Transparent liability requirements for owners and managers: To facilitate effective flag State monitoring and to avoid unfair competition, all Member States registers should provide for mechanisms to ensure the financial, administrative, civil and criminal liability of owners and managers of ships. Managers and owners of vessels should not be allowed to avoid full disclosure of their corporate or personal identity and to escape from their obligations and responsibilities incurred by shipping operations, for instance by avoiding liability through complex corporate structures.

Crew nationality requirements: The 1986 UN Ship Registration Convention foresees as one of two alternative registration requirements the "satisfactory" manning by nationals of the flag State,¹³ or by persons domiciled or resident in the State.¹⁴ Further, Member States view minimum nationality requirements for ships entered into their register, especially in the case of the captain and officers, as necessary for military, civil and administrative reasons. Nationality requirements may seem positive for EC employment. On the other hand, if this guarantee for employment leads to costs that threaten competitiveness, shipping companies will opt for a flag which leaves complete freedom of manning.

At this stage, and taking into account the results of the discussions on the Euros proposal, the Commission considers that employment of EC seafarers should be stimulated primarily through framework measures improving the employment opportunities of these seafarers, both through training and education and certain fiscal and social security alleviations. There is an overall advantage in terms of the safe and efficient operation of ships in employing

¹² See above, p. 14 *et seq.*

¹³ The other being ownership, *see* below. Art. 7 of the Convention states that the minimum registration conditions are met if a State complies either with ownership or with manning requirements. It may, however, comply with both.

¹⁴ This Convention is not yet in force and has not been ratified by any Member State. In September 1986, the Commission proposed a Council decision concerning the ratification of this Convention (Com (86) 523 final, 25 September 1986). However, due to subsequent international developments, the Council has not dealt further with this matter.

EC seafarers even if they are more expensive. There is an overall advantage, too, for the EC as a whole in maintaining the maximum number of EC seafarers both for EC shipping and for related industries. However, a fixed regulatory minimum on EC level may not be an optimal solution for safeguarding employment and, as the discussions on Euros showed, does not appear to be an achievable solution in the present circumstances. If a fixed regulatory EC employment level is to be considered at all, it should be discussed not for shipping in general, but for different shipping sub-sectors.

"Community shipowners" or worldwide access: The question also arises of whether a minimum control or ownership criterion should also be part of an exercise to align registration conditions within the Community. The 1986 UN Ship Registration Convention states that States should, *inter alia*, provide for ownership requirements for ships flying their flag. These requirements must be sufficient to permit the flag State to exercise effectively its jurisdiction and control over ships flying its flag. The 1989/1991 Community Shipowner Regulation proposal of the Commission foresaw, broadly speaking, a 50% requirement in shares or board representation by EC nationals for a company to be considered a Community shipowner.

In answering the question, there are both legal and economic considerations to be borne in mind.

- If such a requirement were to be introduced as a condition for registration throughout the Community, one should take into account that once a company fulfils the establishment criteria of a given Member State and becomes a company in that State, it has the right under the EC Treaty to establishment in any other Member State. It thus normally has access to that Member State's register. This principle has been explicitly recognized in the *Factortame* judgment of the European Court of Justice.¹⁵
- Shipping is becoming increasingly capital intensive, and the need to attract non-EC capital into the EC may therefore grow. Rules limiting foreign control of EC shipping companies, such as minimum EC capital or board majority requirements, may stifle inward investment. States may therefore want to waive any such requirement concerning companies owning or operating the ships registered. This possibility already exists and is considered by some as a useful response to the increasing mobility of capital, labour and investment.
- However, some see dangers in policies not based on adequate standards and their enforcement by the State concerned or resulting in registration of vessels wholly owned or manned by third country nationals. In effect, such an open register could become a flag of convenience and yet benefit from all the rights conferred by the EC Treaty and legislation.

Once adequate Community rules are in place to ensure that all EC registers meet certain criteria concerning obligations imposed on shipowners and their enforcement, the question of granting access to those registers and flying the flag of a Member State could be

¹⁵ *The Queen v. Secretary of State for Transport, ex parte: Factortame Ltd. et al*, 1991 (ECR) 3905.

approached in a different light. 'Open' Community registers would seek to attract good tonnage to EC flags by fostering high quality shipping and through providing a sufficiently supportive package; they would not, however, give sub-standard operators the opportunity to gain unfair advantages from Community status: flag State control would be rigorously enforced and State support schemes would be linked to specific criteria. In this context, it seems that flag State control can be exercised by appropriate provisions on the identification and liability of owners and managers, without necessarily restricting registration to nationals.

To sum up: in defining common criteria for ship registration within the Community, the objective should be to ensure that the EC flags are as attractive as possible without compromising standards or Government monitoring. Wider use of EC registers would, by attracting vessels, capital and economic activity, create jobs for Community citizens as seafarers and in ancillary industries. The Community would further increase its flag State control and also its influence in world maritime matters.

Based on these considerations, the Commission will, after informing the Council and Parliament accordingly, withdraw its 1989 proposal for a Council regulation defining the notion of Community shipowner. However, appropriate definitions of the notion of Community shipowner will be provided in individual instruments, for example when considering the beneficiaries of Regulation 4057/86, the Regulation concerning unfair pricing in maritime transport, and in the determination of beneficiaries of State aid.

c. *Off shore Member States registers*

Shipping registers have also been established on territories of Member States outside the Community. Such registers are not conducive to improving maritime safety if there is no appropriate means to apply international and EC safety legislation to ships in such registers. It is important that flag State responsibilities of Member States include ensuring compliance with all EC safety legislation for all ships under the flag, regardless of whether the register is established within or outside the territory of the Community.

3. *Eliminating dangerous shipping*

Enforcement action is necessary to improve safety and fair competition in maritime transport. As regards trade to or from EC ports, several fundamental measures have already been adopted, including those on port State control, classification societies and seafarers' qualifications and on-board communication. Specific attention should be paid to the targeting criteria in these pieces of legislation, which require focusing on black-listed flags or certain types of ships. Qualified and well trained inspectors are essential for a coherent and effective implementation of EC port State control. The Commission is therefore developing in co-operation with the Member States appropriate initiatives to improve the training and the efficiency of the inspectors. This aims to ensure that the international conventions related to safety, pollution prevention and working conditions on board of vessels are effectively applied on all ships sailing to EC ports. Strict application of these provisions is fundamental to avoid penalising highly professional shipowners. Enforcement of compliance cannot always be limited to delay or detention of ships. Financial sanctions, adequate to be an effective deterrent, should be an integral part of the national implementing legislation. A close monitoring of the implementation of the EC port State control instrument remains a priority for the Community, so that the effectiveness of the instrument can be constantly improved.

To extend the benefits of this strategy, direct operational links should be established between the EC and other countries actually committed to similar policies, in particular Australia, Canada, and the United States. Technical assistance to other administrations, for example, in the Mediterranean basin and in Latin America, should be made more systematic to help them move rapidly towards the same level of efficiency.

4. *Fostering a spirit of quality in shipping*

Policy should not only strive to eradicate environmentally dangerous and unfairly competing shipping by prohibitive action. Mechanisms must be developed to foster shipping which not only meets the minimum standards imposed by IMO/ILO, but which aims to supply a high quality transport product and reward such a product in the market place.

Daily behaviour and commitment of shipowners is crucial for the effective achievement of "safe and clean seas" policies. Voluntary industrial codes of behaviour - above the standards of the International Safe Management (ISM) Code and adequately monitored - should be promoted within the industry to ensure the full compliance with the responsibility of operating only safe, environmentally-friendly and high quality ships. In certain types of trades the cargo owners and chartering industries have already expressed a firm commitment to cooperate to establish and implement such policy. Vetting programmes of the oil and chemical industry, though yet in their infancy, should be seen by the shipping world not just as a desirable point of arrival, but rather the basis for a more far reaching safety policy which is based on a safe ship as the a-priori of any chartering / shipping transaction (a self regulatory code of behaviour). Port State control administrations, classification societies and participants of vetting systems should cooperate to make class, statutory and port State control information accessible to each other and to market participants.

The Commission will also consider what action might be taken to encourage ship operators to respect standards that are above the minima fixed at world or Community level. Fiscal and financial benefits granted by Member States for operators striving to achieve high quality standards may be considered along with differential port charges based on objective environmental and safety standards observed in practice by different operators.

In addition, the Commission will investigate to what extent cargo owners should be subject to financial and economic sanctions when they knowingly or negligently charter or use unseaworthy or uninsured or under-insured ships. Uninsured or under-insured shipping not only encourages sub-standard operators, it also contributes to unfair competition. Furthermore, for many shipping services, third party liability is not internationally regulated. The Commission believes that the question of mandatory coverage of third party liability, such as that provided by P&I Clubs, with a high ceiling as condition to port entry, should be fully examined.

5. *Higher EC standards in certain circumstances*

In certain specific and justified cases (eg. for the protection of EC citizens and the environment), the EC could set its own intra-European safety and working standards for geographically limited operations, such as ferry services operating to or from a European port, whatever their flag, as a condition to providing such services.

This approach has already been adopted in the regulation on the ISM Code for ferry services. It could be followed up whenever appropriate, for example, if, in spite of technical evidence, IMO failed to adopt safety measures to the high level appropriate or desirable for operation of these vessels from or to EC ports. The Community should consider legislative action to support any agreement made between the major operators and labour organisations on terms and conditions of work on-board ferries providing regular services to and from EC ports. This might set standards on working hours, rest periods, technical standards, operational conditions, crew nationality or wages. The same considerations could be applied to other vessels providing sensitive services on specific routes to and from Community ports.

III. Maintaining Open Markets

1. *Basic approach*

The Commission will present a Communication on external relations in maritime transport, detailing its policy and proposals for action. The following is a broad outline of the Commission's basic approach in this area.

In pursuit of the objective of securing free access and fair competitive conditions throughout the global shipping market, the Community generally favours a multilateral approach. At the conclusion of the General Agreement on Trades in Services (GATS), a Negotiating Group on Maritime Transport Services (NGMTS) has been created to achieve multilateral agreement on the liberalisation of maritime transport services and the removal of trade barriers, which had not been agreed upon in GATS. The deadline of negotiations is fixed for mid-1996. The negotiations cover international shipping, auxiliary services and access to, and use of, port facilities. National treatment¹⁶ in these areas should be granted. Binding commitments should be made by as many countries as possible. The Most Favoured Nation (MFN)¹⁷ principle should be applied to its fullest extent. Specific derogations from the MFN principle should be phased out. Whilst it has not yet been possible to reach a multilateral agreement liberalising the provision of maritime transport services, the Commission is of the opinion that a failure to achieve a positive outcome in these negotiations would risk legitimising unacceptable restrictions on maritime transport.

The Commission proposes to ensure that the EC uses its full political and economic weight to further fairer and more open markets through adopting a coordinated approach and stance, using, as appropriate, its trading and political, as well as shipping, power. This is why the Commission will propose to the Council to grant it a mandate to engage in shipping negotiations with certain third countries.

Another main target for a future external relations policy is ensuring coherence of action of the Community and of the Member States in their relations with third countries and the

¹⁶ National treatment: treatment shall be no less favourable than the one accorded by a country to its own like services and service suppliers.

¹⁷ Treatment of other NGMTS members shall be no less favourable than the treatment a country accords to like services and service suppliers of any other country.

harmonious achievement of Community objectives in discussions or negotiations in international organizations.

In the context of creating open markets and fair competition, the Commission considers that transparency for State aid schemes is important. Within the Community, the Commission can enforce the principles of fair competition through its powers granted by the Treaty. An attempt to achieve more transparency of subsidies worldwide is certainly to be welcomed; however, such a worldwide stock-taking may be more difficult to execute. One possibility to develop greater transparency may, as a first step, be to build on the initiative taken within OECD to draw up a full inventory of State aid given by its member countries. Moreover, the GATS also includes a general provision on subsidies, which is applicable to maritime transport, and which foresees the development of subsidies' disciplines in further negotiations to be engaged soon.

2. *Regulation 4058/86 on coordinated action to safeguard free access to cargoes in ocean trades*

While the Commission proposes a negotiated approach to a further liberalisation of world shipping markets, it will also make use, when appropriate, of Regulation 4058/86.

Regulation 4058/86 provides initially for a diplomatic approach to opening markets to EC shipping companies, where access is restricted by Government measures. It does not provide the Commission with the authority to initiate procedures. It permits the Member States separately, or as a group, to take measures. The Regulation has only been invoked once, in relation to the West-African trades. However, the possibility provided by the Regulation to take counter-measures has been of particular value to the Commission in its discussions with a number of countries when seeking to secure market access and non-discriminatory treatment for Community shipowners. There is a widespread view that Regulation 4058/86 needs reviewing in the light of developments and experience gained since 1986.

3. *Competition Rules*

Safeguarding free and fair competition both in liner and bulk shipping is an essential requirement of EC transport policy. Shipping is a service industry, implying that it should always provide the best services at the lowest price to shippers and passengers. Competition rules have a crucial part to play in maintaining free and fair competition in shipping markets. The Commission applies them in order to ensure the existence of effective competition in the liner shipping trades serving the Union and the provision of high quality, low-cost services to shippers.

a. *Acting against market access barriers through agreements*

Distortion in competitive conditions results not only from Government measures, which should be addressed within the context of external relations, but also from anti-competitive practices between private enterprises. Governments may abandon certain trade restrictions vis-a-vis third country enterprises. They may then, however, turn a blind eye to anti-competitive agreements between enterprises to foreclose markets or discriminate against non-nationals. If the parties to such agreements cover an important segment of the market, the result of such practices is the same as Government measures in place to

protect national industries against foreign competition.¹⁸ Undertakings which are individually or collectively in a dominant position (as is the case with many liner shipping conferences) may abuse that dominant position by taking measures to foreclose the market or eliminate competition.¹⁹ It has thus rightly been stated that the only way to open markets definitively is the worldwide agreement to apply general competition law principles to market behaviour by public and private companies.

b. *International competition standards*

As shipping is an intrinsically international industry, it is important to have by and large similar rules between countries governing competitive behaviour in these markets. Agreement on a set of international competition standards, as recently proposed in a study on behalf of the European Commission,²⁰ should therefore play a central role in order to keep and maintain open markets and fair competition. Abuses of dominant positions are forbidden under the EC Treaty and should not be allowed internationally. Neither the maritime transport nor the port service sector should be exceptions. Agreements which restrict competition in the maritime transport sector should be seen in principle as being unlawful and be prohibited unless shippers obtain a fair share of the benefits and the restrictions of competition are indispensable to achieve those benefits. A prime example of a type of agreement which, in the view of the Commission, does not meet this standard, is capacity non-utilisation.²¹ International competition standards should also deal with the impact of growing oligopolisation in liner shipping on the competitive environment in this market.

The Commission encourages other nations to cooperate in the development of international standards of fair competition, outlawed practices and forbidden abuses for maritime and port services. Such an exercise could rely on the World Trade Organisation, which is already working in this field, or bilateral agreements between the EC and third countries as the appropriate framework.

c. *Application of competition rules in EC trades*

The Commission believes that applying EC competition rules to shipping, and at the same time respecting the specifics of the maritime sector, has already enhanced the productivity of operators. Enhanced productivity and a customer-oriented approach to the provision of maritime services should further increase opportunities for operators to provide shippers with high quality services at low prices. This may lead to improved freight rates for certain advanced services, reflecting a normal commercial pricing strategy. Such a development is to be welcomed also from a transport policy point of view. Higher returns can lead to better safety management and replacement or scrapping of ships than is currently the case.

¹⁸ See, for maritime transport, the Commission decision *Shipowners' Committees*, O. J. 1992 No. L 134/1.

¹⁹ Commission decision *CEWAL*, O.J. 1993 No. L 34/20.

²⁰ *Immenga/Jenny/Petersmann*, 'Competition Policy in the New Trade Order: Strengthening International Cooperation and Rules', COM (95) 359 fin., 12 July 1995.

²¹ See Commission Decision *TAA*, O.J. 1994 No. L 376/1; Art. 4 of Commission Regulation 870/95.

The maritime activities of traditional liner conferences are authorised under EC competition rules because, in general, they are believed to bring an appropriate degree of stability to maritime transport. However, inefficiencies may have been engendered by conferences with all operators charging the price determined by the conference, sometimes at the expense of the more innovative operator who could not charge the premium price for a premium service. Conversely, in conferences, the more cost-efficient operator is not allowed to charge a lower price to its customer, as it is bound by the common tariff. Furthermore, it is possible that trade-lane based conference rules hinder the provision of global services by consortia. Application of competition rules is also important in light of the cyclical overcapacity which appears to be a recurrent feature of liner shipping markets. Especially with regard to liner shipping, the possibility of increasing freight rates or managing capacity in times of low capacity utilization may tend to foster uneconomic investment decisions, the consequences of which would ultimately be borne by the transport user.

4. *Unfair market behaviour*

Last, a framework to maintain fair competition in international markets should also rely on instruments directed against unfair behaviour of single market participants. Regulation 4057/86 is an instrument to combat unfair pricing practices in liner shipping. It has only been used formally once,²² but there is every reason to think that it has proved useful by acting as a deterrent for contemplated unfair behaviour in other cases.

However, it is widely felt that the Regulation has a number of deficiencies. Firstly, it can also protect shipping companies which the Community has no interest in protecting. This is because the Regulation defines a Community shipowner as a company established in the EC. It does not, therefore, require any substantial link with or economic involvement in Community industry, such as EC employment, investment, or flag. From this, it follows that attempts may be made to circumvent the Regulation by establishing a company in a Member State.

Secondly, in the context of globalisation and the increasing sophistication and capital intensity of liner shipping, it is questionable whether a liner shipping operator, even if government-sponsored, would now risk an aggressive entry into one trade by heavy underbidding. The pattern of entry into markets observed in the last few years is one of cooperation through vessel sharing or slot charter agreements. One could therefore argue that Regulation 4057/86 in its present concept is outdated, at least for the larger liner trades.

For these reasons, the Commission considers that Regulation 4057/86 should be thoroughly reviewed. This review should also take into account progress in the on-going negotiations of liberalisation of trade in services. In the meantime, the Commission will apply the law as it stands, notwithstanding the above-mentioned difficulties.

²² *Hyundai Merchant Marine*, Council Regulation (EEC) No. 15/89, O. J. No. L 4, 6 January 1989, p. 1.

IV. A Policy for Competitiveness

This section introduces measures to further training and employment, launch Research and Development (R&D) initiatives for the shipping sector and, finally, a possible revision concerning the policy on State aid.

1. *Training and employment*

It has been mentioned above why it is crucial for the EC to maintain and enhance the supply of EC seafarers. Accordingly, the Commission proposes the following policy lines.

According to the BIMCO/ISF study of 1995,²³ there is a problem concerning the supply of officers and specialist ratings which is likely to worsen in the future. Parallel to this, the increasing average age of the European seafaring workforce has raised concern as has the relatively high wastage rate. For some EC countries, the number of cadets is only one quarter of the recruits demanded to ensure a sufficient future supply for the maritime industries. A possible shortage has implications not only for the safe operation of ships but for the whole range of associated industries. The liner shipping industry is increasingly developing employees' expertise for use in different parts of the intermodal transport chain. For example, the liner shipping career may thus now involve employment for several years on a ship, before work in logistics, then in marketing. Fostering training and employment will therefore be of benefit to seaboard and on-shore activities.

The Commission is concerned about the impact of the current trend on the maritime education infrastructure in the EC. If there is a lack of students, training facilities may have to close down. The consequences are not only further job losses for teachers and personnel, but also the loss of knowledge and research capability which these institutes provide.

The Commission has commissioned a study dealing with issues of training and employment in Member States, covering worldwide trends in seaborne employment and steps taken by Member States for promoting maritime training programmes and sea careers and possible measures to attract young people to the profession. The study will analyse, in particular:

- market developments (new trades and shipping routes at both international and intra-Community levels), the environmental and regulatory climate and market opportunities, including the use of new technologies;
- legislation and control measures (impact of STCW 1995, implementation of Port State Control);
- quality and mobility of manpower (transferability of manpower eg. from tankers and bulk carriers to ro-ro vessels) and
- manning policies (in different countries, company policies, etc).

The Commission has set up a steering committee to oversee the study which includes trade union and employer representatives. The Commission intends to present the

²³ *BIMCO* (The Baltic and International Maritime Council)/*ISF* (International Shipping Federation): 1995 Manpower Update, The World-wide Demand for and Supply of Seafarers.

recommendations of the study, which is expected to be finalised by May 1996, to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. It will also discuss the recommendations with the Joint Committee on Maritime Transport.²⁴

The Commission will examine the degree to which Member States have taken advantage of EC funds for education, training and retraining. This will concern, in particular, the European Social Fund which provides various options for EC financial support for maritime training. It also underpins key EC programmes such as 'LEONARDO' which places particular emphasis on training in connection with new industrial changes and innovations requiring trans-national co-operation. 'LEONARDO' provides financial support for three types of measures: transnational pilot projects; transnational placement and exchange programmes; and the development of knowledge in the area of vocational training through surveys and analyses.

In line with the relevant Treaty provisions and, where appropriate, with existing financial instruments, the Commission will encourage training schemes and incentives to employment by Member States, in particular the following:

- the absorption of training costs within national education and training systems;
- direct assistance to seafarers during training, in particular, grants to pursuing higher or additional qualifications, also in view of related on-shore activities;
- financial support by Member States for shipping companies which provide on board training facilities for cadets.
- adoption of a modular framework of certification in line with the Revised International Convention on Training (STCW 1995), whereby each module represents the standard of competence required to perform a specific function on board a ship;
- facilitating and increasing access to maritime employment by citizens of Member States by increasing awareness and understanding of national education and training systems; this should promote effective implementation of Directives 89/48/EC and 92/51/EC on the general system for the recognition of diplomas and certificates in the EC; the ongoing concerted action on METHAR (Maritime Education and Training Harmonization) under the 4th R&D Framework Programme will play an important role in this context;

²⁴ The Joint Committee on Maritime Transport was created by the Commission in July 1987 to assist it in the formulation and implementation of EC policy to improve and harmonize living and working conditions, and to improve the Community's economic and competitive position, in this sector. The members of the Joint Committee, who are appointed from the European Community Shipowners' Associations (ECSA) and the European Committee of Transport Workers' Unions (CTWUEC), fulfil this role by issuing opinions on EC policy and preparing studies and other joint initiatives.

- promoting exchange and the setting up of education networks and ventures between European maritime training institutes; this should encourage the exchange of information and coordinate action to enhance the efficiency of maritime education and training and bring it in line with the new requirements set up by new international conventions and codes such as STCW and ISM. In this context, the Commission is examining the creation of a network of EC training maritime institutes. This question has been considered under the 4th Framework R&D Programme in order to encourage the exchange of information and coordinate action with a view to rationalising maritime education and making it more efficient. The recently set up NEPTUNE network should contribute to this exchange.

The Commission is also considering further actions, such as organising a conference on the future of seafaring in the European Union, at which, among other things, the possibility of a European-wide maritime approach for the future of the training requirements and employment perspectives would be discussed.

Concerning legislative action, the Commission is preparing proposals for Council Directives on the adaptation of Directive 94/58 on the minimum level of training of seafarers in the light of the recently adopted revised STCW 1995 convention and to introduce common criteria for the recognition of certificates by the EC issued by third countries based on the IMO standards. The Commission attaches great importance to improving and upgrading, at world level, the quality and qualifications of seafarers. It has the intention to contribute to the IMO efforts to ensure the proper implementation of internationally agreed training standards. The Commission has agreed to assist IMO in organising a series of regional seminars to explain the requirements of the revised STCW 1995 and highlight the obligations to be fulfilled by contracting parties under the new regime.

Further, the Commission will, in conformity with STCW requirements on recognition of certificates, undertake a study of the maritime education and training systems of a number of major labour supplying countries and make appropriate recommendations.

Regarding long term actions to safeguard the existing maritime expertise in the EC and the competitiveness of EC maritime industries, extensive research and development efforts are necessary, with a focus on quality, productivity, safety and environment protection. Under the on-going 4th Framework R&D Programme, a number of projects are being financed, such as enhancing simulation techniques to improve human performance as well as improving and co-ordinating maritime education and training systems in Europe (METHAR). The Commission will examine this question further with Member States in preparing the 5th Framework Programme.

2. *Research and development*

The contribution that the Fourth EC Research and Development Framework Programme (1994 - 1998) can make to the competitiveness of EC shipping is important. The transport part of the Programme dedicates 19% or some 50 million ECU of its resources to R&D in waterborne transport. This budget covers R&D aiming at the competitiveness and efficiency of the shipping sector, the improvement of maritime safety and the protection of the environment as well as addressing the impact of human factors on the safety and efficiency of the maritime transport system.

In particular, the research actions support the development of new logistical concepts (e.g. in relation to short sea shipping and ports) and technological tools (e.g. fast waterborne transport systems, vessel traffic management and information systems and integrated ship control systems). Research is also addressing specific human element-related issues such as improved simulation procedures for training, European requirements for the implementation of ISM (International Safety Management Code) and STCW as well as communication in a multi-cultural environment.

To co-ordinate these projects and those developed in the Member States, five concerted actions -- (1) short sea shipping, (2) vessel traffic management and information systems, (3) maritime education and training, (4) casualty investigation and (5) inland navigation -- were taken, involving over 150 experts from Member States and European industries. A common European state of the art and a common view on further research requirements were achieved.

Several other R&D programmes of the Fourth Framework Programme contribute to more efficient and safer shipping: in the Marine Science and Technology (MAST) Programme, R&D is undertaken to predict sea states, currents, ice thickness and ice motion, etc. in view of operational forecasting. In the Environment and Climate Programme, research activities include remote sensing from space for the detection of oil pollution and mapping of sea ice.

It is expected that the R&D actions currently being developed under the 4th Framework Programme and those under consideration for the future 5th Framework Programme will favour a better integration of maritime transport into the transport chain. Activities include:

- integrated waterborne logistics (eg. short sea shipping and port information networks)
- the implementation of "quality operations" with a view to enhanced safety and environmental-friendliness (eg. safety in coastal waters, electronic charts display and information systems, integrated ship control);
- an improved role for the human resources both in terms of waterborne operations and of job satisfaction and opportunities.

A Commission Task Force "Maritime Systems of the Future" has been given the role of promoting the co-ordination of all Community research programmes that relate to the maritime sector. The Task Force brings together representatives from all European Community research programmes relevant to the maritime industry. It has the key objective of ensuring the most cost effective exploitation of research and development programmes. The Task Force will also encourage the co-ordination of national research programmes in Member States in order to improve the competitiveness of the European maritime sector. It is already co-ordinating the exploitation of resources in the 4th R&D Framework Programme and will make recommendations for the 5th R&D Framework Programme; it is further monitoring the MARIS G-7 initiative.²⁵

²⁵ For a full description of the brief of the Task Force see *Commission, Green Paper on Innovation*, COM 95(688) final, 20 December 1995.

MARIS is a framework concerning the potential benefits of the information technologies for a broad range of maritime activities. It has been inaugurated by the G-7 Conference on the Information Society in February 1995 and has now been extended to non-G-7 EC Member States. This project is promoting interconnectivity and interoperability, and all maritime industries around the world are invited to take part in this initiative.

Summing up, the R&D support of the Community is expected to generate a favourable environment for an increased competitiveness of maritime transport. It also contributes to safer and more efficient equipments and newbuildings and a better use of human resources at sea.

3. *State Aid to Shipping*

The Commission believes that the approach outlined above for safety, international open markets and fair competition will help reduce distortion of competition. Efforts in training and employment policy and in research and development will enhance the competitiveness of the EC shipping sector.

However, support measures may nevertheless be required for the present to maintain and develop the Community's shipping industries²⁶. In principle, of course, state aid as defined in Article 92(1) of the Treaty is incompatible with the common market. However the Commission continues to believe that the importance of maintaining and developing the shipping sector for economic and employment reasons as well as the particular nature of the international competition which it faces can justify the application of the derogation provided in Article 92(3)(c).

In 1989 the Commission established guidelines²⁷ defining the conditions under which state aids to shipping may be considered compatible with the common market. The Commission believes that it is important to maintain guidelines for this sector but has concluded that the current guidelines need to be revised. This revision will take into account developments in the international competition which EC operators face as well as the global trend towards liberalisation of trade in goods and services.

Community shipowners can face a significant operating cost handicap compared with competing non-Community operators, sometimes as a result of non-commercial advantages enjoyed by the latter. Unlike in most other sectors and to a much greater extent even than for most other modes of transport, this is true even in trades within the Community. The cost gap is the result of employment-related charges and fiscal costs under EC flags, which may be significantly higher than those achievable by operation under other registers.

Support measures should aim primarily at reducing such fiscal and other costs and burdens borne by vessels under EC flags (under conditions which directly stimulate the development of the sector and employment) rather than at providing general financial

²⁶ The section is not concerned with aid to shipbuilding, which is governed by a different set of Community and international rules, nor with aid to fishing vessels, to which special rules also apply.

²⁷ SEC (89) 921 final.

assistance. They should also cover support to training and employment as well as R&D incentives.

The Commission has sole competence to monitor State aid and to enforce the Treaty rules in this sector. Nevertheless, in the interest of transparency, it proposes to sound out the views of all parties concerned on the issues raised. The Commission will then draft revised guidelines. This will take into account reactions to this paper, the jurisprudence of the Court of Justice²⁸ and the results of the exercise under way to draw up an inventory of all State aid in favour of shipping currently in force in the Community.

a. *Approaches to State aid*

Different national priorities: EC Governments have different national priorities and perceptions of the need and best means to support their shipping industry. Some have vigorously sought to maintain their flag fleets, some have preferred a more laissez-faire approach. Some have strong interest in deep-sea shipping, others have fleets more specialised in short sea services. Some other Member States have emphasised other transport or industrial priorities.

These different priorities have determined the structure of support measures given by national governments. They include special fiscal regimes (tonnage tax, exemption or reductions in corporate and seafarers' income taxes, social security liabilities and other charges), generous accounting provisions to reduce taxation (roll-over relief, special depreciation schemes), aid to bridge the cost gap (allowing ships to be brought under EC flags), capital injections linked with restructuring, and special ship registers.

Community approach to support measures: Because of these differences in national priorities, harmonisation through a Community instrument, even to the limited degree proposed in Euros, has not proved acceptable. This calls into question whether a single legislative act is indeed the solution.

The alternative is an approach to State aid that accommodates certain differences in the priorities and approaches of the Member States while ensuring that competitive distortions are kept to a minimum. Policy could foster the conditions for competitive EC maritime industries to thrive, fully recognising the strengths and weaknesses of the different components and so ensure that the Community remains a strong player in global maritime affairs.

The Commission's role is to set the parameters with which State aid can be approved. As noted earlier, the Commission plans to revise the 1989 guidelines regarding aid to companies operating ships registered in the Community and it sets out below a number of issues and options to be considered. Guiding the Commission's approach will be a number of basic principles: aid measures should serve the common interest, they should be transparent, and they should not introduce unacceptable distortions of competition.

The EC Treaty provides that State aid can only be accepted under particular conditions. The Commission will therefore see to it that any aid measure for the maritime sector fits within the general industrial and aid policy of the Community as well as with its transport

²⁸ E.g. *Siemens v. Commission*, Case T-459/93, 8 June 1995.

policy. The Commission must always consider the common interest of the Community in assessing proposals to grant aid. Aid schemes should not be at the expense of other Member States' economies and must be shown not to risk unacceptable distortion of competition between Member States or between modes of transport.²⁹ They must be shown, too, to be capable of promoting the development of the sector. State aid must be restricted to what is necessary to achieve its purpose. State aid must also be granted in a transparent manner and generally be applied degressively.

The Community's approach could be based on the principles of non-discrimination and economic link.

Non-discrimination and economic link: The Commission seeks to ensure that nationals and companies of all Member States have full access to the facilities, products and services found in one Member State without discrimination. In the case of establishment by entry in shipping registers, this principle has been applied since the *Factortame* judgment of the Court of Justice in 1991³⁰. In addition, State aid may not discriminate on grounds of nationality between companies established in a Member State.

Member States should ensure that aid is focused on entities which contribute to sustainable economic activity in the Community. Traditionally, State aid has been linked first and foremost with flag. But, flying the flag may not, by itself, ensure this result (eg. if no ownership or manning requirements are attached). Other factors may ensure that beneficial shipping activity continues in the EC even if ships flying the flags of third countries are involved.

One option might be to subject the acceptability of State aid to the condition that beneficiaries show genuine involvement in the Community economy. In addition to being liable for taxation in the Community, this might be done, for example, by having substantial management and operational functions there, employing at least a minimum number of EC seafarers, investing and employing EC personnel on-shore or being established in the Community. Control as such of a shipping company may not be enough on its own to show the genuine involvement, but may be important in conjunction with other elements. Such companies could be defined as *Community shipowners* for the purposes of support schemes and a suitable definition incorporated in revised State aid guidelines.

Some argue that the criterion of an economic link is more relevant than the flag link and should replace it; others believe that the two criteria should be cumulative. If the first option were to be followed, measures would be needed to ensure that there was no resultant distortion of competition between EC and non-EC flagged vessels.

²⁹ On competition between modes see *Commission, Fair and Efficient Pricing in Transport*, Com (95) 691 final, 20 December 1995; on the competition between shipping and other modes of transport see *Commission, The development of short sea shipping in Europe*.

³⁰ *The Queen v. Secretary of State for Transport, ex parte: Factortame Ltd. et al*, 1991 (ECR) 3905.

b. Action on employment and corporate costs

In the 1989 guidelines, the Commission accepted that Member States' flag fleets faced a difficult competitive position because of advantages available to operators flying flags of third countries, including flags of convenience. These lead to differences in operating costs. A method was devised to ensure that the global impact of state aids would not exceed a ceiling to be defined on the basis of the cost handicap which ships operated under the flag of low-salary Member States meet on world markets. The calculation was based on the hypothetical operating cost of vessels under Portuguese and Cypriot flags, as nominally the cheapest EC flag and a flag of convenience. Once weighted to reflect the composition of the national flag fleet in terms of vessel types, this resulted in a single national ceiling for annual operating aid, applicable to all types of vessel. The national ceilings of the different Member States were, however, not identical.

This method, however, is now being reviewed. The cost gap, which is principally the result of crew-related costs and company fiscal treatment, differs greatly in the world market according to the type and size of vessel, the technology available on-board and efficiency. Most importantly, with many EC registers offering certain flexibility in choice of manning nationality, it does not take into account the actual EC component of a crew and its cost.

For these reasons, an alternative method could consist in allowing Member States to base aid proposals on real costs for a real vessel, operated by a shipowner established there: that is to say, the actual additional cost incurred by a shipowner as a result of his decision to use high quality EC seafarers in his crew and/or to continue to manage shipping activities from the EC.

A new method, based on extensive research of crewing practice for typical vessels operated by EC owners and the resultant costs, as well as the corporate tax regime which applies, is being considered to allow the vessel-related operating cost gap to be calculated for each particular vessel or shipping operator reflecting the actual number of EC seafarers and officers employed on board and the flag of the vessel. This may involve alleviation of fiscal burdens, without removing the interest of the shipowner to negotiate an appropriate salary package with potential crew members and their labour representatives. This approach should allow Member States to bring employment-related costs to levels in line with world norms which often mean exemption from tax and social security liabilities for seafarers.

However, this approach should not contradict the objective of cohesion:

- wages will not be affected so that seafarers requiring a lower level of remuneration will still be in a competitively advantageous position (the cost reduction will apply only to related liabilities, normally paid to the State);
- in terms of company tax, it would have to be shown that differences in company tax regimes between Member States would not have diversionary effects.

In the future, the Commission intends progressively to reduce the level of aid which it will approve, when the world economic and political situation allow.

As to corporate costs, it has been explained above that progressive delocalisation can be a problem. Policy might, therefore, be targeted not only on the ship and its various cost factors, but on the conditions of doing shipping business in the EC and the fiscal environment. Keeping and attracting strategic management of shipping in the EC is essential to securing a strong European flag fleet. State aid in the form of tax breaks, capable of achieving the objectives of keeping EC seafarers employed and securing necessary investment in the sector, might be considered to ensure that EC operators are not disadvantaged to the extent that they find themselves under commercial pressure to move out of the EC, provided they do not unacceptably distort competition within the EC.

On the other hand, shipping companies which, although controlled by European interests, do not employ EC seafarers on board, do not show any commercial investment in Europe nor pay corporation, tonnage or registration taxes to EC countries, do not face cost gaps because of the EC fiscal and social systems and should not, therefore, benefit from State aid.

c. *Aid within general frameworks*

In line with the relevant provisions of the Treaty, the Commission could give a derogation from the general prohibition of State aids for training aid schemes and incentives to further EC employment by Member States, as described above, as well as those already contained in the 1989 guidelines. The Commission is ready to consider whether there are other types of aid linked to the recruitment, training and retention of seafarers which ought to be permitted under any revised guidelines. Schemes which go beyond general measures, but which do constitute State aid within the meaning of the Treaty, such as financial support to shipping companies which provide on board facilities for cadets could be acceptable according to the State aid rules of the Treaty.³¹

In order to safeguard the existing maritime expertise in the EC and the competitive edge of the EC maritime industries, further extensive research and development efforts are necessary, with a focus on quality, productivity, safety and environmental protection. For such projects, State support may also be authorised within the limits set by the Treaty.³²

d. *The criterion of measurable benefit*

Recently, it has been argued that support bringing benefit to Community shipping and more broadly to the Community's maritime industries might be measured in terms of higher added value and sustainable employment.

Various economic models to measure the impact of support schemes exist. One such research method, the economic impact study, has been developed to assess the importance of a sector to a national economy. It operates on the following premises:

³¹ *Commission, Framework for Employment Aid*, O.J. 1995 No. C 334/14.

³² *Commission, Framework for Aid to Research and Development*, O.J. 1996 No. C 45/5; see also *Framework for Environment Aid*, O.J. 1994 No. C 72/3.

- it accepts that considerable value is added on shore (eg. by processing, warehousing, distribution, international services), not only in shipping³³;
- to measure this impact, it assesses the direct and indirect effects of a specified approach through an input/output analysis. This analysis presents linkages between a particular sector and the rest of the economy.
- an economic impact analysis can also forecast possible effects on State revenue flows and on economic activity and employment in shipping and related sectors, if a given support policy is followed.

However, an input/output analysis cannot provide all the factors to assess the merits of support schemes. It provides some insights into the importance of the shipping sector. But it can neither assess the impact of such a scheme on the size of the EC fleet nor does it take into account that the money for the support scheme needs to be transferred from other possible usage. These opportunity costs, including their indirect effects, need to be subtracted from the benefits. Therefore, additional analysis is needed both to assess the degree to which a support scheme is likely to change the location pattern of shipping and to quantify the opportunity costs of the support scheme.

So far, the economic impact study method has only been applied, as regards shipping, by one Member State. In order to obtain a clearer picture of its value for the Community, the Commission has engaged in a research project to quantify the economic impact of the maritime sector in some representative Member States and to calculate the relation between added value, employment and Government revenue flows. Although these studies will not be completed until 1998, the Commission intends to initiate discussions in the coming months with Member States' experts and other interested parties on the methodology and on the implications of this approach for the European Union as a whole.

V. Measures for Related Sectors

It has been emphasised throughout this document that shipping is closely linked with other maritime industries, and the Communication of the Commission "Shaping Europe's Maritime Future - A Contribution to the Competitiveness of Europe's Maritime Industries" underscores this argument. This fact, among others, adds to the importance for the EC to keep its fleets. Since shipping is one link in both the maritime industries cluster and the overall transport chain, measures to keep the Community attractive for maritime industries must not relate to shipping alone, nor must measures supporting shipping be purely sectoral and at the expense of other sectors.

Detailed consideration of related maritime sectors is beyond the scope of this document. The Maritime Industries Forum has done extensive and valuable work on the interrelation of the maritime industries, and the Commission fully subscribes to its efforts. In addition, the Commission would stress the need for improvements in port efficiency, the accelerated

³³ For example, applied in the Netherlands, this method assessed value added at 70% land-based to 30% sea-going.

integration of shipping into the Trans-European Networks and the intermodal transport chain³⁴ and the maintenance of a strong and competitive European shipbuilding industry.

CONCLUSION

The Commission considers that the combination of legislative, administrative and political initiatives detailed in this Communication will ensure that EC interests in high quality and fairly priced shipping services are supported. The Commission would value the views of the other European institutions, the Member States and other interested parties on its proposals, in particular those concerning employment, shipping registers and the policy for competitiveness. On other aspects of the policy, such as R&D, safety measures and the development of short sea shipping, the Institutions have already endorsed the Commission's policy but further input is welcomed. On the question of State aid, the Commission has sole competence to determine whether a specific national measure is in the common interest of the Community and, therefore, compatible with EC law. Nevertheless, the Commission would encourage interested parties to comment on the various possible approaches outlined; this might help the Commission to draft revised guidelines which reflect the world situation (eg. developments in GATS), general Commission policy (limiting State aid as far as possible and progressively phasing it out) and Court jurisprudence. On external relations policy, a detailed Communication will follow, but the views of the Institutions, the Member States and other interested parties on the outline approach proposed might be useful.

To structure the debate on the new approach to maritime strategy, the Commission would welcome views and comments, preferably by September 1996.

³⁴ See the Communication on Short Sea Shipping in Europe.

EC SHIPPING IN A GLOBAL MARKET PLACE

I. The Shipping Market and Environment

Maritime transport is an international industry to which there are relatively few regulatory barriers to entry. As the globalisation of industry spreads, it is to be expected that the volume of shipping will grow still further. New markets will create new trade flows which will require transport facilities. Given the proportion of trade carried by sea, this will encourage further interest in the shipping market.

1. *Bulk and liner shipping*

When considering the key features of the industry, cargo shipping can usefully be divided into two main categories: bulk and liner shipping. Besides these, passenger shipping, which consists today of cruise and passenger ferries services, is also important.

Bulk transport is generally organised in a free market environment, although some countries still have important cargo reservation schemes. It does not, as a rule, require extensive inland and logistics investment.

Liner shipping is traditionally organised in maritime conferences, which adopt common or uniform tariffs and conditions of carriage. However, there are also liner shipping companies which are not part of these arrangements and set prices independently, or by reference to the tariff of the conference with which they compete.

Bulk and liner have important differences in their cost structures. Liner shipping bears higher infrastructure and network costs and has a higher proportion of costs on land; it thus tends to be more capital intensive than bulk shipping. Thus, bulk shipping is more sensitive to relative seaboard labour costs than liner shipping.

Both types of cargo shipping are intrinsically international in nature. More than other transport modes, shipping has, therefore, tended to be subject to international and universal, rather than unilateral, regulation, especially on liability, international safety and labour rules.

Further, both bulk and liner services can be divided according to their trade areas: short sea and deep sea. Short sea services include ferry and feeder services as links in the intermodal chain. Within the short sea trades of the Community, bulk shipping is also of importance.

2. *Registers*

Ships are bound to a national jurisdiction by the flag which is given to a ship entered in a register. A State's administrative, civil and criminal law provisions will thus apply to the ship. The same fiscal and labour requirements apply to shipping under traditional registers as apply to on-shore industries, so that shipping companies pay taxes and make social security contributions on the same basis as other industries. National EC first registers have traditionally required the crew or an important part of it to be EC nationals. Some registers allow exemptions or reductions concerning income tax and social security or alleviation in respect of crew nationality requirements.

Direct taxes in the Community have not been harmonised and tax rates differ widely. The scope of application of taxes also differs with respect to shipping, with alleviation given by some Member States in different instances. Consequently, the corporate tax effectively paid by shipping companies in different Member States varies considerably.

In some instances, States have set out to attract international shipping to their registers. Liberia, Panama, Cyprus, the Bahamas and Malta are the most important examples of this. These "open" registers accept any nationality of owner and will in general have few requirements with respect to nationality of the labour force.¹ Shipowners, therefore, have unrestricted access to the international labour market. Offering open register facilities is source of revenue for countries. The largest open registers, Panama, Liberia, and Cyprus, apply corporate tax rates of zero and are estimated to produce annual incomes of US\$ 10 - 20 million. They are run as commercial undertakings.

For EC shipowners and operators, the cost savings that can be achieved by changing to an open register can be significant: eg. for a 2,700 TEU containership, crew costs may be US\$ 1,144,000 per year more under the German flag than under Panama registration. Similarly, the owner of a Suezmax 140,000 dwt tanker might save US\$ 958,000 tax per year if he flags his ship out from Italy to Panama. A more extensive cost comparison is found in **Annex A-1**. It is clear from these data that EC shipping companies may suffer an important disadvantage because they face higher labour and fiscal costs than some of their international competitors.

If a country with an open register also possesses a good maritime service infrastructure, ie. good communications, ancillary service industry such as insurance, legal services, finance and credit facilities, swift diplomatic protection and an independent judiciary, shipping companies may consider not only registering their ships there, but also transferring some of their activities and even the headquarters. The extent to which a change of flag may also lead to a relocation of a whole company, with consequences for economic activity and employment also on shore, depends greatly on the amount of on-shore investment. The less there is fixed on-shore investment, the easier it will be for a company to relocate. This makes bulk shipping a more plausible target for total relocation than liner shipping.

The decision whether to relocate is influenced not only by operational costs, but also by the effect of corporate tax on profits in a given country.

3. *Global competition and mobility of assets*

Compared with other modes of transport, shipping is generally free of regulatory market access barriers. In principle, any operator can, regardless of its nationality and the location of its company seat, provide international shipping services. In practice, though, important restrictions remain and the danger of new restrictions is still present. The provision of services between two destinations neither of which is the country of registration of the ship (cross-trading) is common.

According to estimates from the European Community Shipowners' Associations (ECSA), Denmark, the Netherlands, and the UK have important cross-trading interests in liner

¹ Thus, Cyprus requires that 15% of the crew of a vessel registered in Cyprus must be Cypriots; however, this requirement is subject to waiver.

shipping, while Greece, Belgium and Germany are heavily involved in world-wide bulk cross-trading.

Global competition immediately highlights any competitive disadvantage, whether business-related or regulatory in nature. A shipping company may therefore seek to overcome costly or burdensome regulatory disadvantages by flagging out. This will, in principle, not entail any retaliatory regulatory disadvantages for it, as international trades are to a large extent free of any access barriers relating to nationality.

II. Need for EC Shipping

Conventionally, the need for EC shipping is affirmed by pointing to economic and military independence. The EC, it is said, should not depend too heavily on maritime services provided by its economic competitors as these may, in specific circumstances, act in support of their long-term commercial interests.² This might have a detrimental influence on EC trade. In times of military crisis, the EC Member States should be able to rely on a merchant fleet reserve for defence needs.

A third important consideration is the contribution that shipping makes to the broader economy through its relationship with a wide range of maritime industries.

1. *Economic independence*

The prime need of European trade is for efficient and safe maritime transport. This is provided by EC and non-EC shipping companies. A wide range of cost-effective services is essential to maintain the competitiveness of European industries and Europe's economic independence as a whole. The maintenance of open, competitive shipping markets and the vigorous application of flag-blind competition rules are the best way of securing this result.

Indeed, aggressive pursuit of the objective of maintaining shipping independence at the expense of non-Community operators could rebound if it were to lead to protection for inefficient European operators. It could also encourage imitation by other countries which risks damaging cross-trading, in which several EC Member States have important interests.

If one follows the argument that a Community fleet is necessary for economic independence, this may be guaranteed by EC control of shipping. As it does not necessarily require EC flagged vessels, the goal of economic independence would not in itself call for measures supporting EC flag shipping and EC employment. Nevertheless, the issue of economic independence merits continuous vigilance as to the genuine openness of world shipping markets. It may be prejudiced, as may shipper choice, if markets are closed, for example, through unfair pricing, long-term arrangements within closely vertically integrated organisations or cargo restrictions, formal or informal.

² See European Commission, Maritime Transport Report, Sec (94) 933 final, 8 June 1994.

2. *Military needs*

In case of military need, Member States may want to ensure readily available naval capacity. For this, it will not only need the appropriate ships, but also qualified national seafaring personnel who are available for military activities. However, a strategic ship reserve will depend on the military priorities of a given country, its geographic location and its geopolitical commitments and may relate to specific ship types. Questions of naval defence cooperation are for the time being addressed in NATO, and the WEU is following these developments closely. Although defence considerations clearly underlie the concern in a number of Member States about the decline in EC flagged vessels and in the availability of EC seafarers, it seems that the question of a naval ship reserve is outside the direct scope of Community industrial and maritime policy.³

3. *Contribution to broader economy*

An important argument for maintaining an EC flag fleet in the first place, and an EC-controlled fleet in the second place, is the contribution EC shipping makes to the overall health of the EC economy. Thus, for example, it has been calculated that for every 100 ECU of added value created in the shipping sector itself, 35 ECU of value is added in the supplying industries in the Netherlands. About 44% of this added value flows back to the public authorities, in form of taxes and social security contributions. Investment on-shore is an important aspect of maritime activity. By providing high quality and cost effective products and services, related sectors contribute substantially to the long term prospects of the EC shipping sector.

The specific shipping-related activities ashore which generate added value vary in importance from Member State to Member State and include port handling, stevedoring, logistics, ship inspection and classification, ship management and broking, international banking and financial services, underwriting and insurance business, consultancy and professional services.

EC shipowners currently order approximately 50% of their newbuildings in EC shipyards. Thus, while foreign shipowners also contribute to the EC shipbuilding order book, a steady source of orders from EC-based shipping allows these industries to plan ahead.

EC shipping personnel provide vital know-how not only for the safe operation of ships, but also to related sectors. Many maritime industries have traditionally relied on seafaring skills and experience. The jobs they provide outnumber the jobs on sea. For example, in Germany, at the end of 1993, there were 16,000 jobs on board, 44,000 in shipbuilding and 70,000 in ship supply industries. For the UK, it is estimated that maritime related industries provide 416,500 jobs, of which 80,000 are directly related to merchant shipping. Seafarers, after some years at sea, will often use their experience and knowledge in subsequent employment on-shore. For example, officers and able seamen may be employed after their seafaring life in a wide range of related occupations such as logistics services, marketing, managing fleet operations, and in related business and administration.

³ In relation to industrial policy, the Commission has adopted a Communication "The Challenges facing the European Defense Related Industry, a contribution for action at European level" (Com (96) 10 final, 24 January 1996).

They can also contribute to continuing maritime education in the EC⁴ as well as to the enforcement of national and international standards.

III. Developments in EC Ownership, Flag, and Employment

1. *Evolution of EC ownership*

a. *The facts*

In 1994, EC interests retained a total of 34% (in dwt) of the world fleet. This is down from 38% in 1985. However, between 1985 and 1994, the aggregate EC controlled fleet grew in total terms (dwt) by 12%. There has been no reduction in the EC share in global ownership since 1990. Greece is the largest shipowning nation in the world in total terms, controlling 18% of the world fleet. In container shipping, German ownership is world leader with 13% control in this sector.⁵

b. *Policy conclusions*

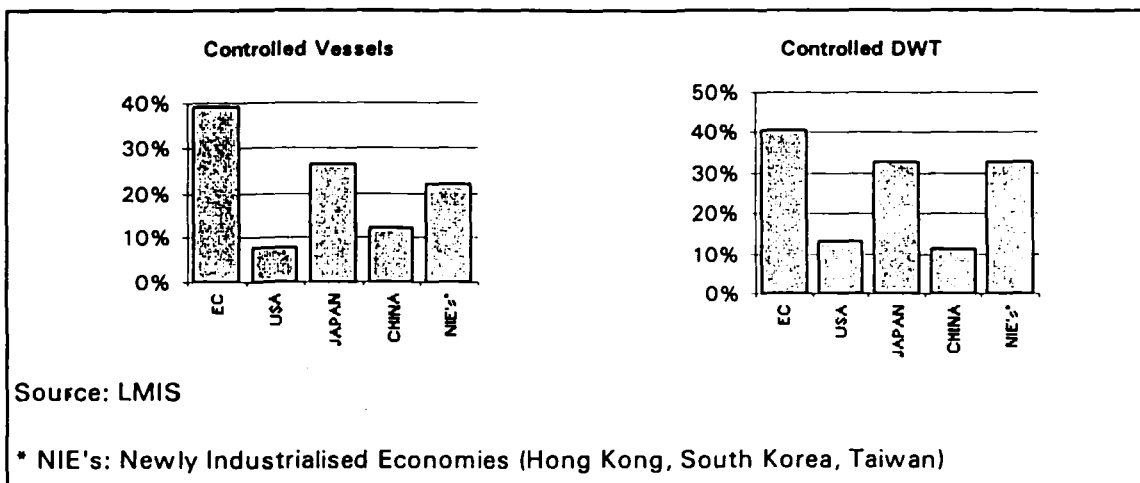
In assessing the relative decline in ownership, the following factors should be taken into account:

- generally speaking, productivity of ships has been improving. Thus, the same or even more cargo can be carried today with less tonnage than in the past;
- the loss of control since the early 1960s, when the EC controlled half of the world fleet, is largely based on a readjustment to the post-colonial era and the emergence of new shipping nations in the Far East, which have built up fleets along with their trade. Indeed, world trade patterns have changed considerably: it is estimated that in the year 2000, intra-Asian trade will account for 48% of all cargo carried on the main shipping routes, up from 36% in 1987. Conversely, the traditionally dominant trade between the US, Europe and Japan has diminished in relative terms. It may be considered natural that a large proportion of the vessels carrying the Pacific rim trade is owned by Asian interests.
- The EC controlled fleet deploys more capacity in the home trades of the EC than the controlled fleet of other major trading nations in their respective home trades.

⁴ According to NUMAST, the following professions rely on seafaring expertise: harbour administration and control/port operations, marine pilotage, marine engineering, ship inspection and surveying, coastguards, marine equipment industry, marine law and insurance, nautical colleges, ship management, shipbrokers.

⁵ Further information on the controlling interest of Member States in the world fleet can be found in **Annex A-2**.

Owned/Controlled Fleet as Percentage of Total Supply Serving Home Trade (1993)

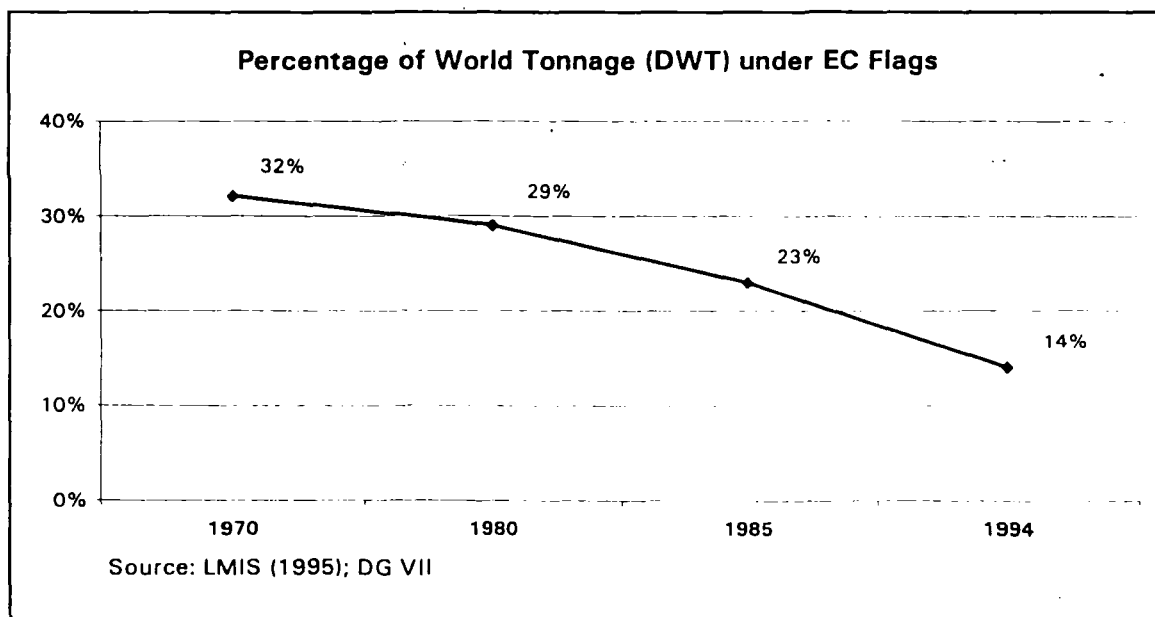


The loss of control in total terms over the past decades seems thus to follow a normal path in the light of worldwide trade patterns and division of labour, and there does not seem to be a strong need for a specific policy fostering EC ownership.

2. *Flagging out*

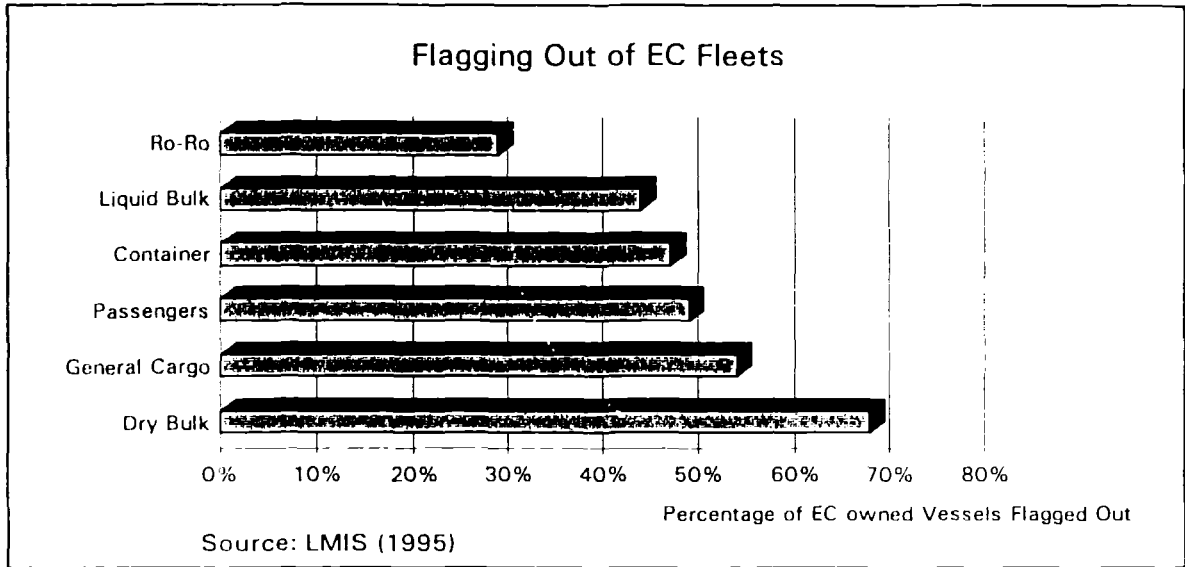
a. *The facts*

The main reason for flagging out is overall cost savings, with crew costs, tax and fiscal costs being cited most often. The extent of this trend can be seen from the following figures:

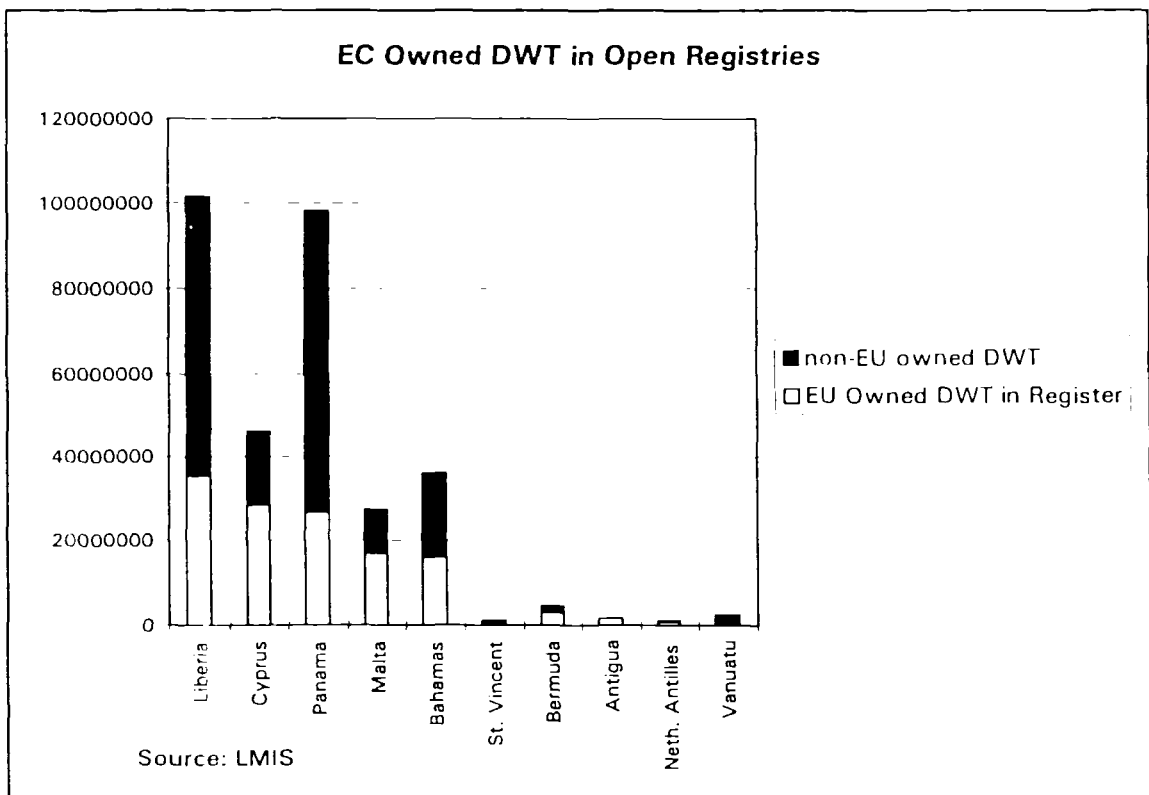


Today, 56% of the EC tonnage is flagged out. Further factual information concerning the flagging out trend from EC flags can be found in **Annex A-3**.

It is noticeable that the extent of flagging out is related to the type of shipping operation.



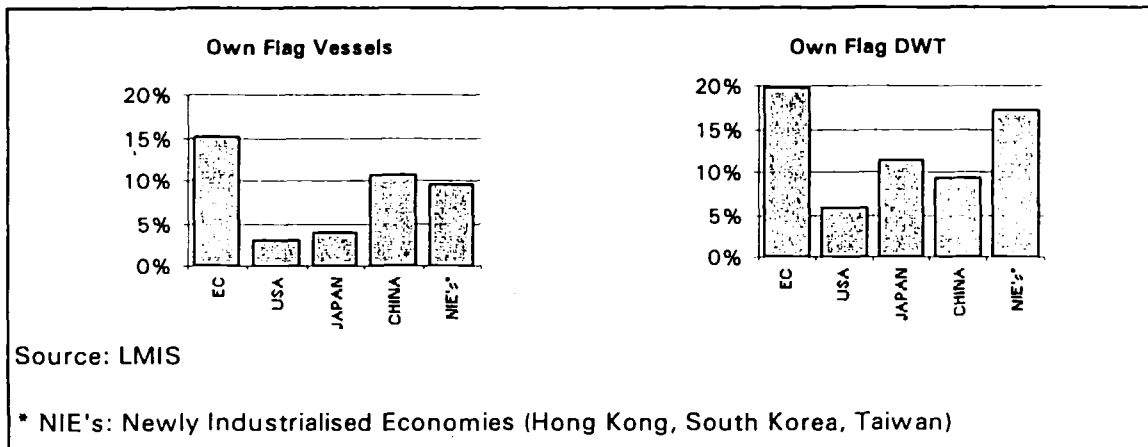
Flagging out indicates a growing loss of competitiveness under EC flags. Indeed, EC owners have a high percentage share of ships in open registries.



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However, similar problems appear to confront major Asian carriers as they have also flagged out: e. g., 65% of Japan's *NYK* vessels fly a foreign flag. Further, in assessing the gravity of flagging out, one should bear in mind that the EC flag fleet still deploys more capacity in the EC's home trade than the flag fleet of other major trading nations in their respective home trades.

Own Flag Fleet as Percentage of Total Supply Serving Home Trade (1993)



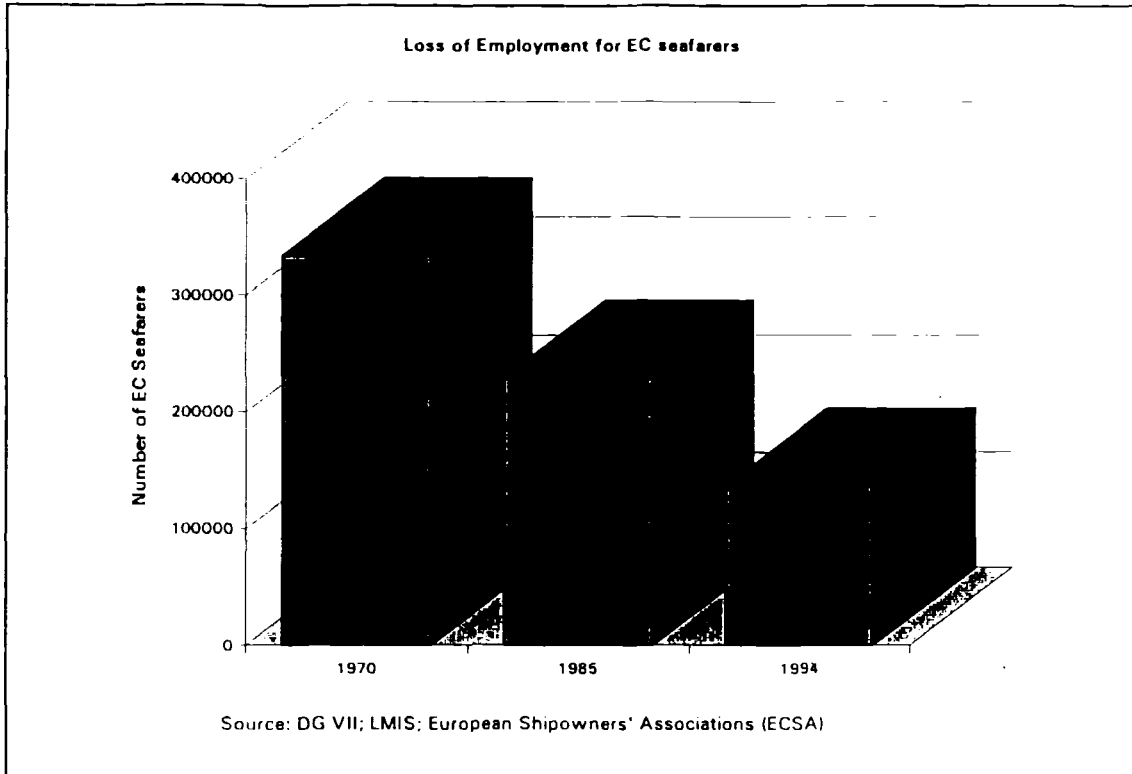
b. Policy conclusions

Nevertheless, there are several reasons why the EC should be concerned about flagging out.

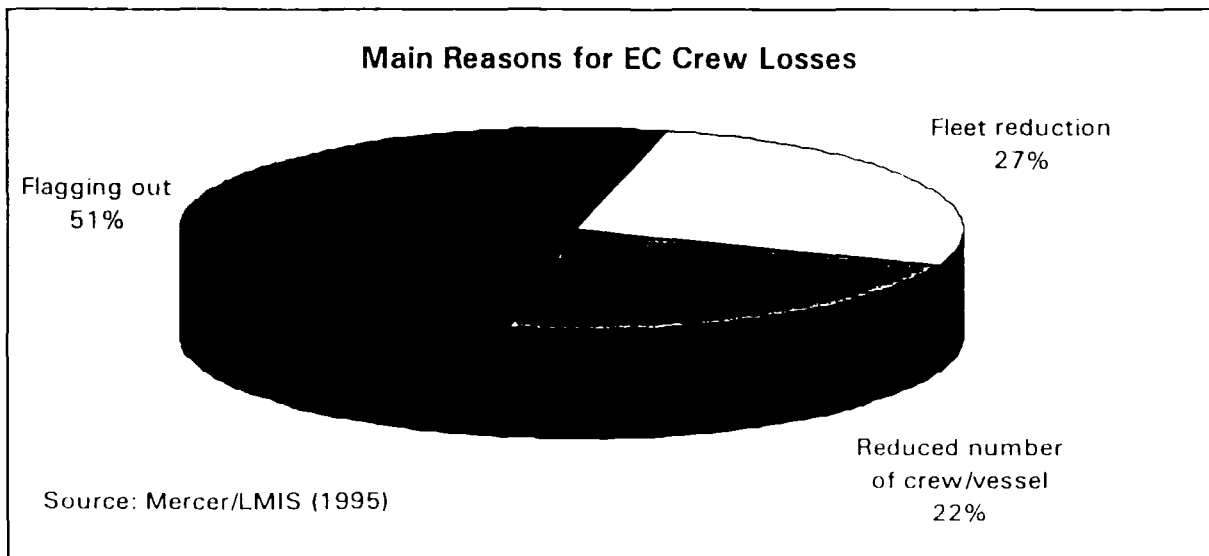
Flagging out ships may often constitute a means of avoiding a regime which is seen as too burdensome by economic operators. To secure, for example, the reduction in corporate tax offered by low tax non-EC countries, a company must often establish effective management of its flagged-out ships outside the Community. Once it has done so, the delocalised management develops its own momentum and the *"raison d'être"* of the European management starts to erode. Over time, the whole management may move off-shore giving further impetus to the use of non-EC flags and indeed whatever facilities are on offer in the global market place. Flagging out does not always lead to loss of seaboard employment, on-shore activities or relocation of a company, but it may be very difficult to re-attract maritime business once the infrastructure and the human resources begin to move away.

As explained further below, having ships under EC flags contributes to ensuring that safety standards can be closely monitored through flag State control. It has been shown that, in some instances, the safety record of ships flagged out from EC registers is worse than for ships in those registers. If all relevant EC legislation is properly enforced, flying an EC flag should be synonymous with operating a safe ship. Flagging out lessens the control power of EC Member States over standards.

Flagging out from EC flags has also contributed to job losses for EC seafarers.



Not all of the job losses, however, are the result of flagging out: reduction in the number of vessels, coupled with the development of larger vessels, and rationalisation have also played their part.



3. *Recent labour supply developments*

a. *Difficulties in assessing impact of gross employment trend*

As stated above, flagging out is responsible for roughly half of the job losses in the last decade to EC seafarers. But before drawing any policy conclusions from this fact, the following has to be taken into account.

The figures may overestimate the actual employment loss for EC nationals, as they do not provide any information on the employment of EC nationals on ships under a foreign flag. Additionally, they do not provide any information on the rank of seafarers. The loss is likely to be less pronounced for officers than for ratings, as evidence suggests that on a flagged out ship the owners will retain at least officers of their own nationality. In some instances, the flagging out does not affect the crew nationality at all.⁶

However, even if EC seafarers are retained on board flagged out vessels, working conditions, pay and benefits, such as sickness and accident insurance, are often worsened. EC seafarers who keep their jobs when vessels are flagged out may, therefore, experience these negative consequences and some loss of morale.

Conversely, operators may seek to reduce costs on EC flagged vessels by employing non-nationals. Estimates from national shipowners' associations suggest that while, in 1983, 14% of seafarers on EC flagged vessels were non-nationals, the proportion had risen to 35% in 1994 while total employment fell nearly a third. Information is not readily available on how many of these non-nationals came from outside the EC, nor on the rank or position there were appointed to.

In this connection, it should be noted that job losses due to manning of ships with low-cost labour may lead to cost savings in the transport business. When this leads to lower freight rates, it makes traded products cheaper and therefore increases growth and employment in the economy as a whole.

b. *Shortage of qualified seafarers*

While it is thus difficult at this stage to assess the problems in terms of the gross employment of EC seafarers, a more specific problem has arisen in recent years, to which a policy response is urgently needed: the shortage of better qualified seafarers worldwide.

As stated above, the number of seafarers from EC countries has consistently fallen during the last two decades. While this tendency has in the past been qualified as a problem affecting OECD countries only, a *worldwide* shortage of officers and specialist ratings is now envisaged. Already today, certain EC Member States signal that the number of new recruits to the seafaring profession only covers about 25% of the estimated replacement needs. Even for these recruits, it is suggested that there are not sufficient places on board EC flag vessels for them to gain the requisite experience.

⁶ Further information on employment trends under EC Member States flags can be found in Annex A-4.

The new STCW (Standards of Training, Certification and Watchkeeping for Seafarers) requirements, while leading to higher levels of competence, could accentuate the worldwide shortage of skilled seafarers.

The reasons why policy must find a response to this predicted shortage, are four-fold.

First, to ensure safe navigation of ships.

Second, to preserve the maritime know-how in the Community which is needed in ancillary industry.

Third, for the enforcement of the safety policy of the Community, by maritime administration;

Fourth, for continuing education of young seafarers.

In this context, the loss of qualified employment in shipping is assuming a new dimension; it cannot be judged only numerically and should not therefore be considered of minor importance by comparison with even larger job losses in other European sectors as a consequence of increased international competition. Lack of availability of highly trained and well qualified EC seafarers may jeopardize the effectiveness of the ambitious Community efforts to implement and enhance maritime safety and pollution prevention and may gravely affect the European maritime industries as a whole. But this problem may turn out to be a great opportunity for the EC to become a supplier of high quality personnel to shipping worldwide.

IV. Some Further Trends in Global Shipping

1. Further globalisation

Recent years have brought, through the liberalisation of world trade and decentralised production methods, a continual increase in global trade and with it growing demand for shipping services. In line with this development, the globalisation of the shipping industry has continued unabated. Registration in open registers continues to increase, and there is a growing number of countries offering these registers.

Liner shipping has grown on average at a rate of 6.5% per annum in the last 10 years, and it is projected that it will continue to grow at the same rate for the next decade. The globalisation of production is leading to demand for global transport services. To respond to this demand, trade alliances between shipping companies are being created. These alliances or consortia can meet customer demand for global transport coverage, while the traditional conference system, based on geographically restricted trade routes, cannot. This trend is also leading to increasing concentration of market power in the hands of a small number of operators and the emergence of very large maritime logistics companies.

With globalisation of industry, door-to-door transport networks will tend to become more and more important for manufacturers and shippers. There is therefore a tendency towards developing increasingly customised services which encourage individual client-provider relationships. All these developments are tending to replace the traditional self-regulation between groups of users, the shippers' councils, and groups of providers, the conferences.

For bulk shipping, trade growth is always difficult to predict, because demand depends on volatile factors such as seasonality of trade, yield of food crops, etc. It is estimated that the main features of this sector, namely its cyclical nature and its unpredictability, will not change fundamentally in the longer term.

2. *Investment patterns*

The openness of European markets has attracted foreign investment. Today, some efficient short sea and feeder operators in intra-European trades are non-European-owned. For example, the US company *Sea-Land* is heavily involved in European short sea traffic. The Japanese shipping company *NYK* is said to have invested US-\$ 350 million into its EC transport network. Other Japanese shipping companies have bought EC shipping companies or have created shipping joint ventures with EC companies for intra-EC services. At the same time, European shipowners are taking advantage of the opportunities in cross trading and are beginning to set up transport networks in other continents. However, investment opportunities for EC shipping companies are limited where the provision of domestic services is not open to foreign operators or there is discrimination in ports vis-a-vis non-national operators.

3. *The problem of ageing ships*

Heavy worldwide subsidization of shipbuilding has contributed to oversupply in ships and the resulting structural overcapacity in bulk shipping markets, with consequently depressed freight rates. This cause of oversupply should, however, diminish, provided the major OECD shipbuilding nations, accounting for about 80% of world shipbuilding, abolish subsidies to shipbuilding from 15 July 1996, as agreed. The conclusion of the OECD Shipbuilding Agreement banning all forms of competitive distortion will broaden the scope of shipowners choice regardless of non market criteria.

The depressed rates and the increasing competitive pressure has contributed to lower returns for many shipowners. Shipping has thus been lagging behind other industries in terms of return on equity and investment. This has led to extending the useful life of ships and, in general, an ageing of the fleets and sometimes reduced maintenance efforts with consequent safety problems.

Average ship age ⁷	1985	1994
EC-flagged	16 years	21 years
World	14 years	17 years

While older ships can be maintained to high standards, statistics show that overall casualty risks rise with age of ship. For example, studies of tankers and bulkers show that the risk for 20 year old ships is more than twice the risk for 10 year old ships.

⁷ Statistics refer to vessels over 100 GRT in respect of liquid bulk, dry bulk, general cargo, container, Ro/Ro, and other dry cargo categories.

4. *Enlargement of the Community*

Recent accessions have brought a substantial addition of tonnage under the control of EC owners. Sweden ranks 14th as a shipowning nation, Finland 34th, and Austria 68th. The future may bring further tonnage to the Community, as Cyprus and Malta are envisaging accession. Accession could thus boost the maritime importance of the Community and considerably increase its flag State control and its say in world maritime matters. To anticipate this trend and develop a coherent maritime policy framework, especially concerning registers and maritime safety, which takes account of these possible future accessions, is thus gaining in urgency.

V. **Opportunities for EC Shipping**

As already noted, EC shipping faces many challenges, but it is still well placed to take advantage of the opportunities arising both from the general increase in demand for shipping services and from increasing specialisation. EC liner companies are in aggregate as profitable as non-EC liner shipping companies. Globalisation of trade and production will demand an increasingly individualised transport product, which in turn will require qualified expertise and specialized personnel. An EC approach fostering training and development of skills can contribute to meeting these demands. There is recent evidence that owners are seeking EC seafarers as specialized professional expertise is required to maintain expensive assets and performance according to stringent safety regulation and increasing customer demands. Another important possible growth area is short sea shipping.⁸ Traditionally, many European operators possess experience in this field which can be used both in Europe and outside. Further, in cruise shipping, off shore supply, heavy load and other specialized shipping, European operators offer experience and sophistication of many years' standing.

Sophisticated shipbuilding can help EC shipping explore the new trade opportunities (including, for example, routes permitted since the opening up of the former USSR, which may require ships with special hull construction because of icy conditions). The need for new types of vessel should create export potential for specialised ships and systems and also provide new employment opportunities for trained personnel on-board.

⁸ See European Commission, *The Development of Short Sea Shipping in Europe: Prospects and Challenges*, COM (95) 317 final.

Corporate Tax Gap for Ten Vessel Types

	EU Flags		Lower cost Open Registry (non ITF)	Annual Cost Difference (in '000 \$)	
	A	B		A	B
Tankers					
Suezmax (140 000 dwt)	Italy	Greece	Panama	958.2	107.1
Product tanker (40 000 dwt)	Italy	Greece	Panama	494.4	38.8
Bulkers					
Cape Size (150 000 dwt)	Italy	Greece	Panama	709.1	119.5
Panamax (65 000 dwt)	Italy	Greece	Cyprus	439.3	58.8
Handy-size (28 000 dwt)	UK	Greece	Panama	202.8	27.2
Container					
Large (4 000 TEU)	Neth.	Denmark	Panama	782.1	752.8
Line - Haul (2 700 TEU)	Germany	France	Panama	372	460.6
Deepsea Feeder (1 500 TEU)	Germany	Greece	Panama	253.3	29.3
General Cargo					
Breakbulk (15 000 dwt)	Germany	Greece	Cyprus	168.1	16.3
Ro-Ro (6 000 dwt)	Italy	Greece	Panama	308.9	4.6

Against lower-cost Open Registry

Source: Mercer Management Consulting/LMIS

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Crew Cost Differences for Ten Vessel Types

	EU Flags		Lower cost Open Registry (non ITF)	Annual Cost Difference (in '000 \$) ¹		Cost Index ¹	
	A	B		A	B	A	B
Tankers							
Suezmax (140 000 dwt)	Italy	Greece	Panama	1228	185	368%	140%
Product tanker (40 000 dwt)	Italy	Greece	Panama	1192	179	370%	141%
Bulkers							
Cape Size (150 000 dwt)	Italy	Greece	Panama	865	155	313%	138%
Panamax (65 000 dwt)	Italy	Greece	Cyprus	794	149	304%	137%
Handy-size (28 000 dwt))	UK	Greece	Panama	472	144	227%	139%
Container							
Large (4 000 TEU)	Neth	Denmark	Panama	630	380	279%	208%
Line - Haul (2 700 TEU)	Germany	France	Panama	1144	1124	433%	427%
Deepsea Feeder (1 500 TEU)	Germany	Greece	Panama	1144	91	433%	126%
General Cargo							
Breakbulk (15 000 dwt)	Germany	Greece	Cyprus	1221	88	383%	122%
Ro-Ro (6 000 dwt)	Italy	Greece	Panama	587	82	265%	123%

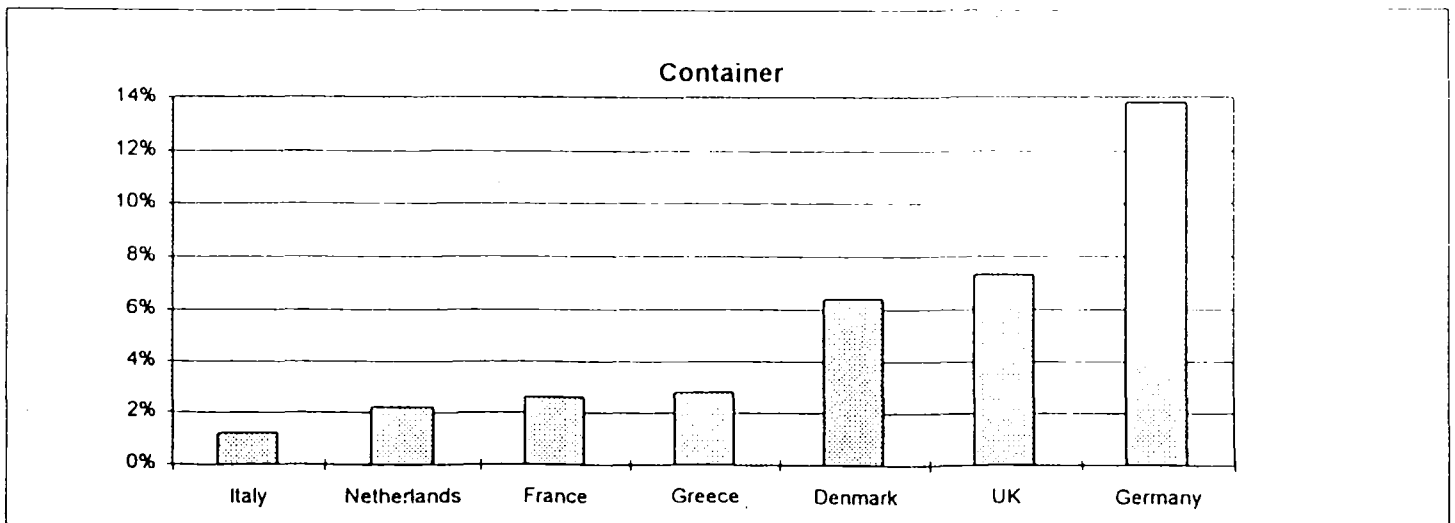
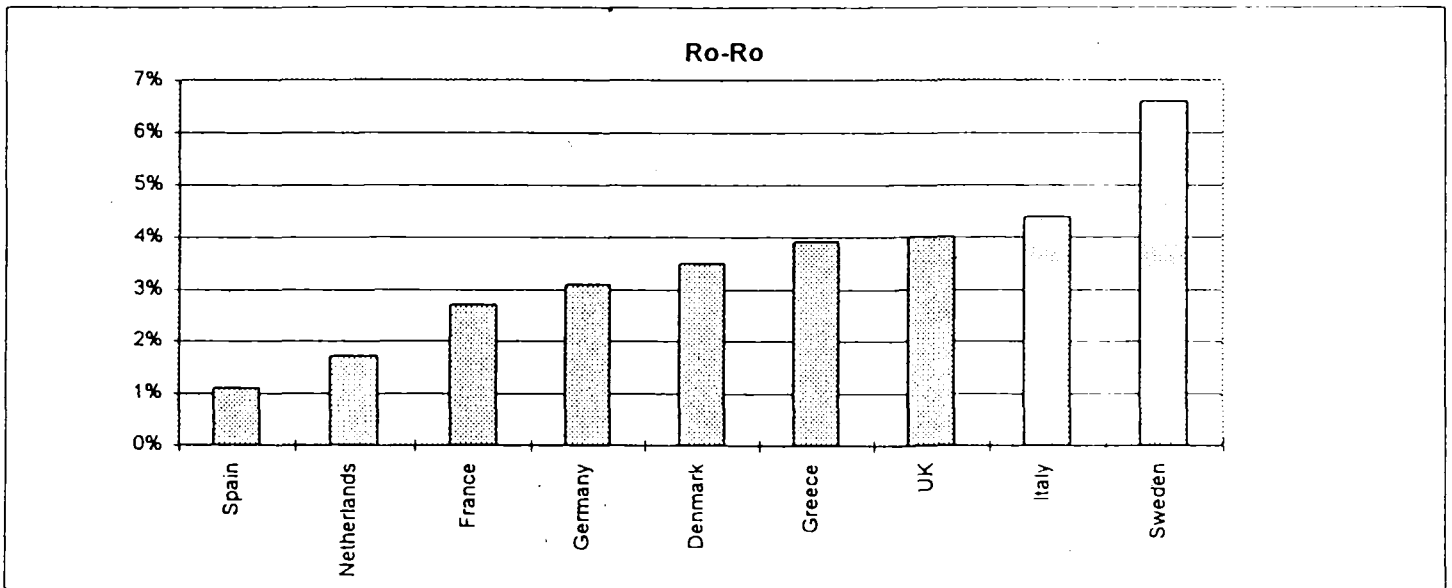
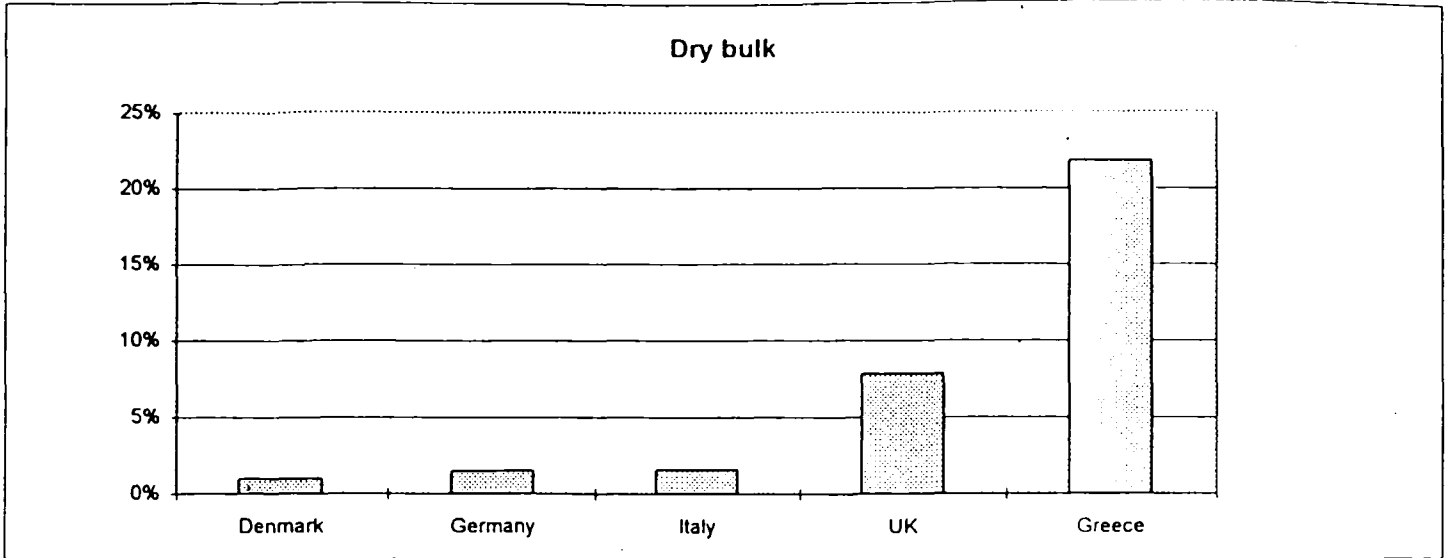
¹ Against lower-cost Open Registry

Source Mercer/LMIS (1995)

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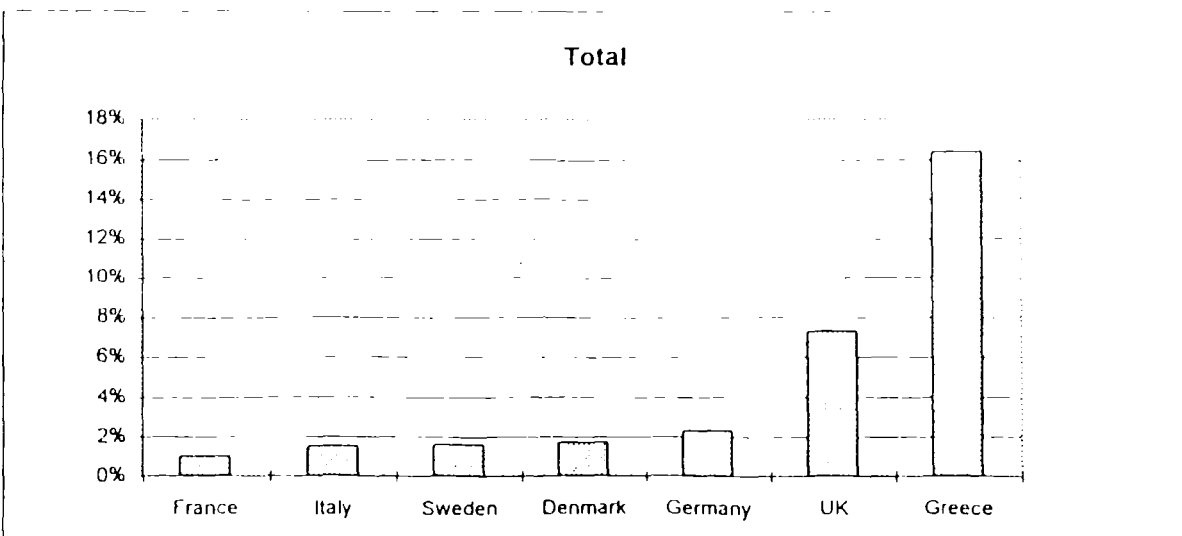
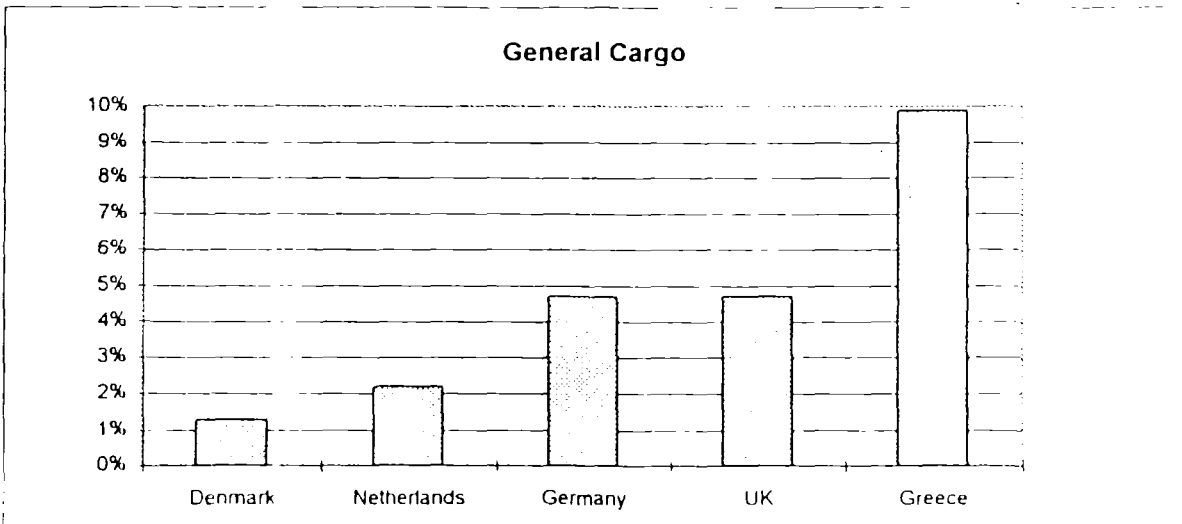
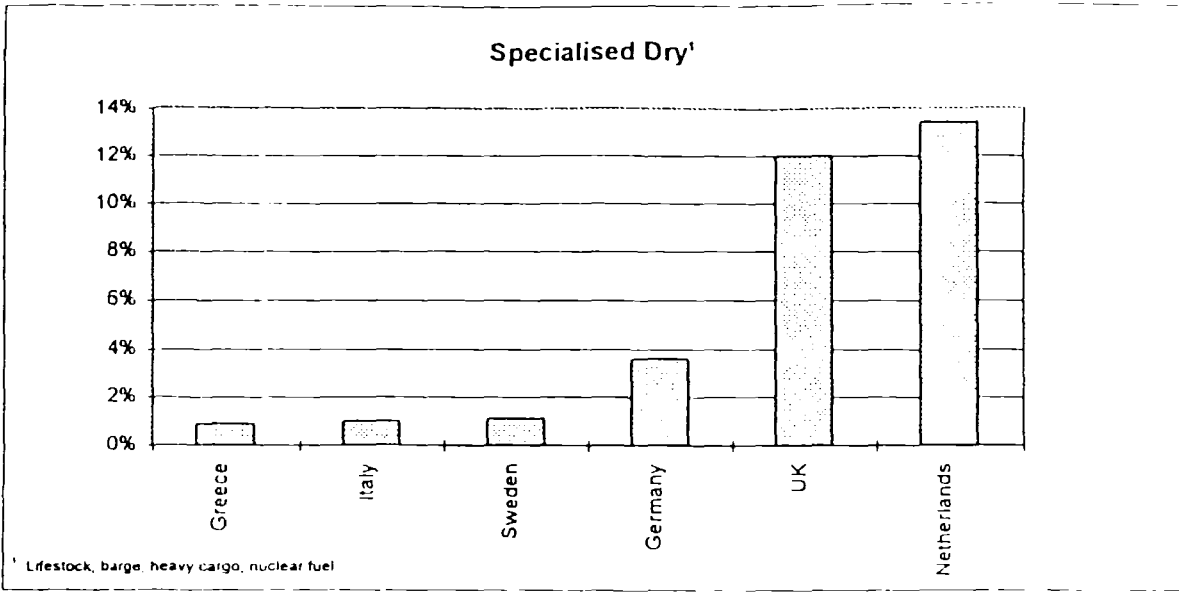
Controlling Interest of Certain Member States
in Specific Ship Types as Percentage of World Fleet
(in DWT, 1994)

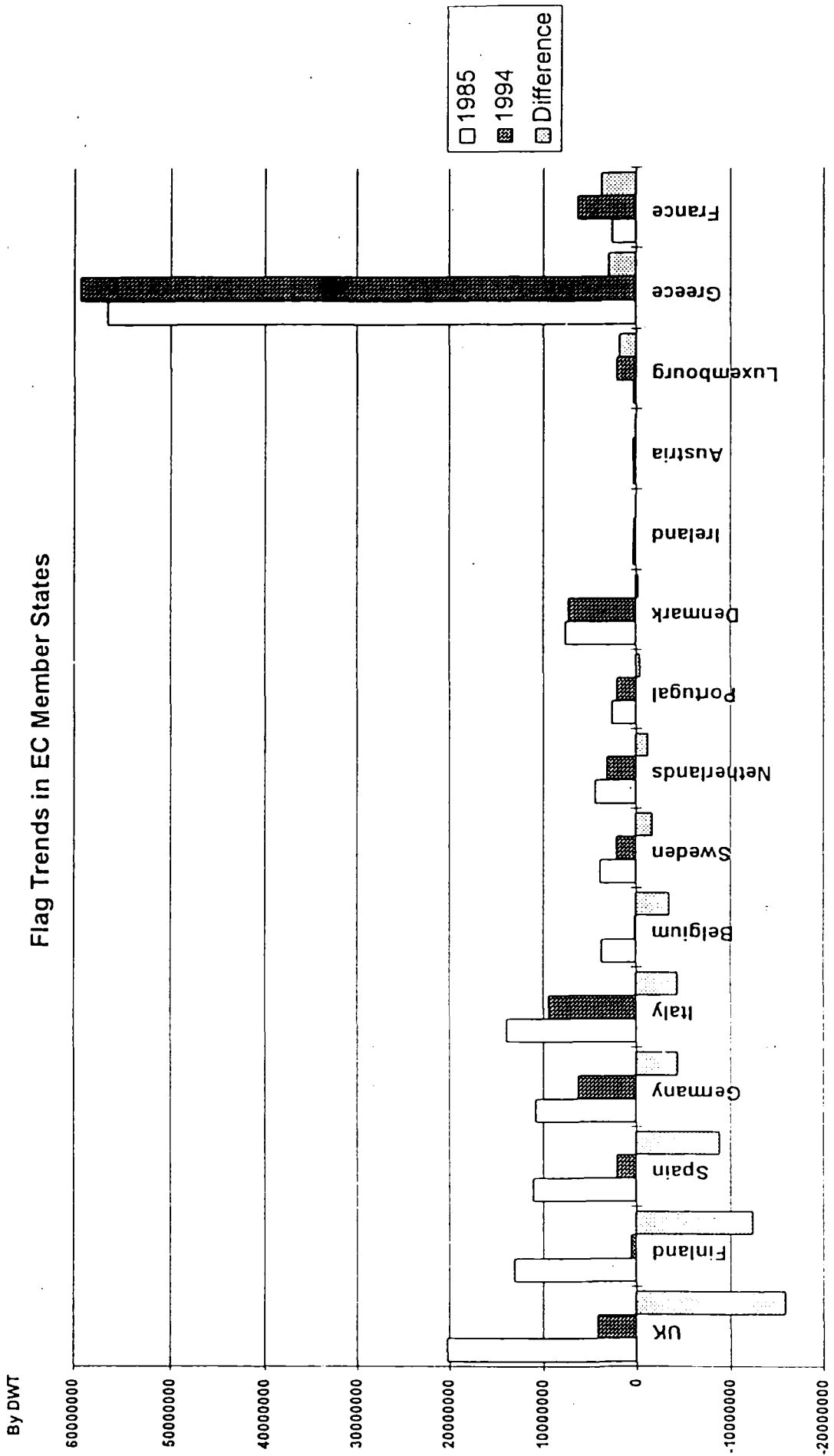
ANNEX 2



Controlling Interest of Certain Member States
in Specific Ship Types as Percentage of World Fleet (in DWT, 1994)

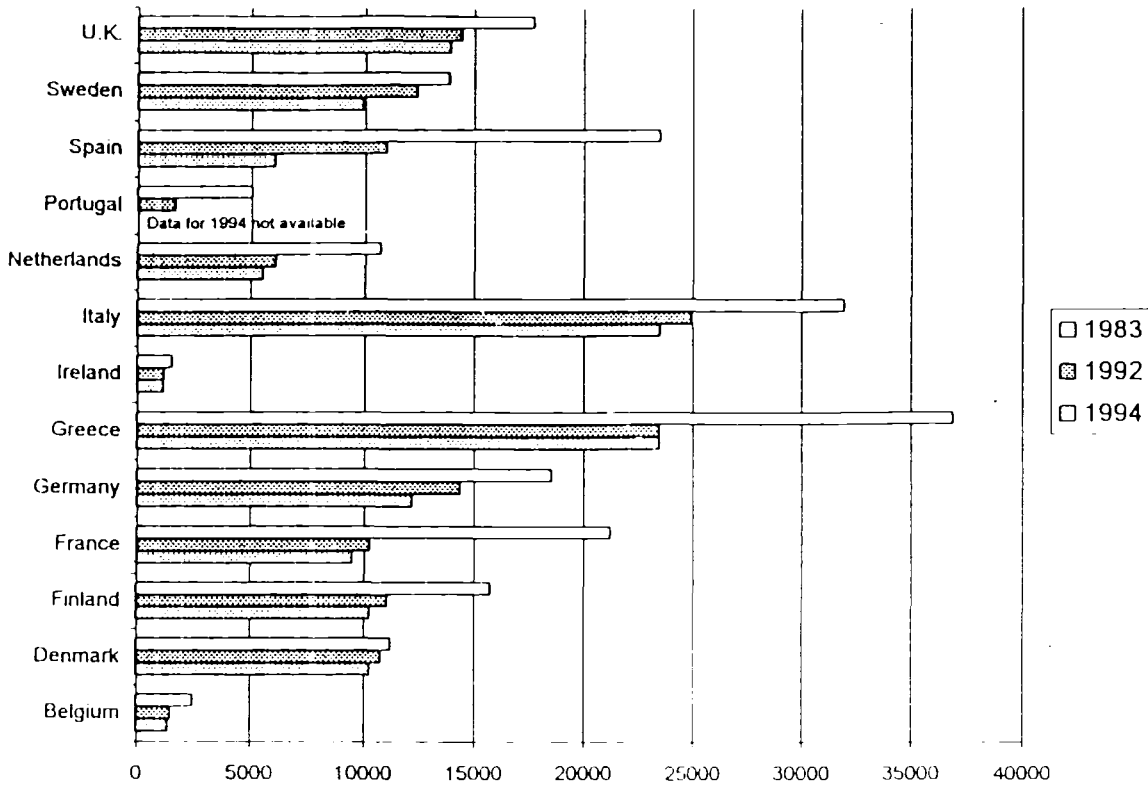
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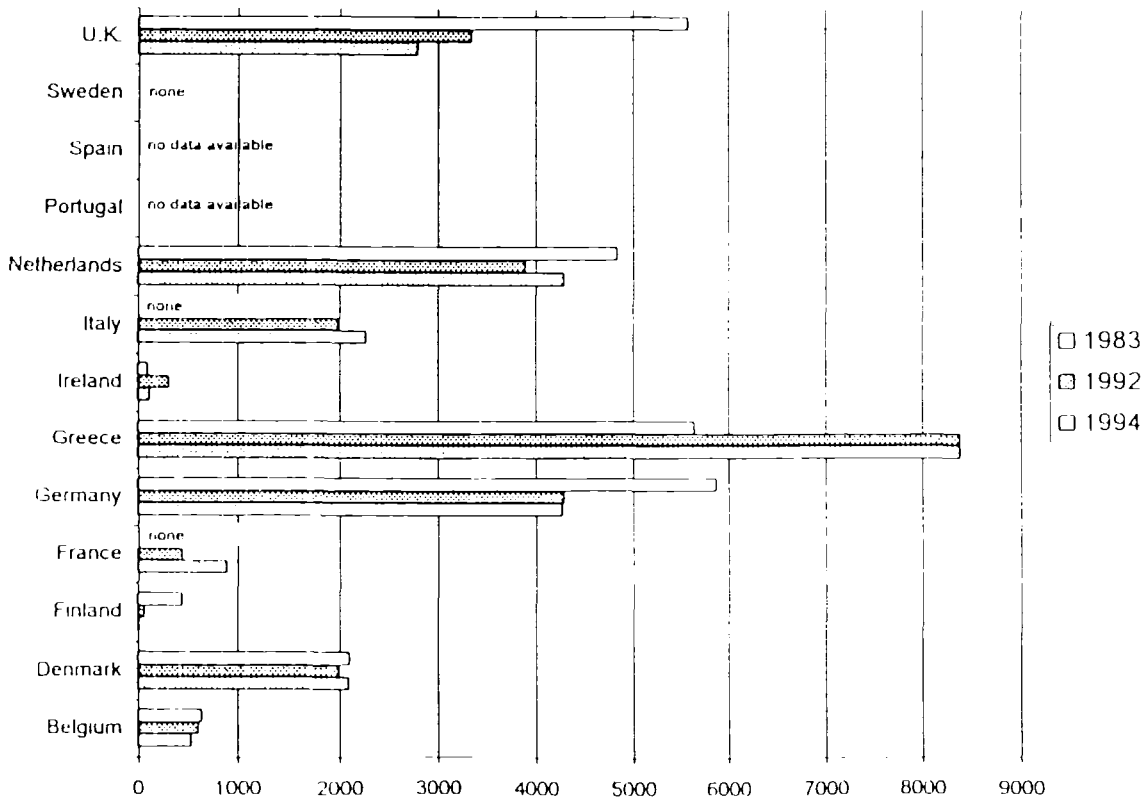
Source: LMIS Vessel Database (1995)

Nationals on board EC Flag vessels



none

Non-national seafarers on board EC Flagged vessels



EFFORTS AND SUCCESSES SO FAR

I. Analysis of EC Policy so Far

The Commission has, for some years, applied a Community maritime policy consisting of a combination of actions concerning external relations, competitiveness of EC shipping and maritime safety. Progress in opening markets and eliminating substandard shipping through stringent application of safety regulations should lead to a better competitive position for EC flagged shipping. It does not, however, mean that temporary support measures for the EC flag fleet become immediately unnecessary.

While the impact of these policies was felt more strongly in deep-sea shipping, the Commission has recently proposed action to develop short sea shipping. Further, since 1987, the Commission has conducted an active competition policy with regard to liner shipping.

1. *Community maritime policy*

The European Court of Justice gave two judgments which provided the impetus to develop a Community maritime policy. First, in 1974, it stated that the general rules of the Treaty applied to maritime and air transport on the same basis as the other modes of transport.¹ Then, in 1985, it ruled that the Council had failed to fulfil its obligations because it had not enacted legislation for the freedom to provide services in the transport sector pursuant to Art. 75 of the Treaty.² In the same year, the Commission proposed a common maritime policy.³

a. *The 1986 package*

The ensuing 1986 package was based on an open market, non-protectionist philosophy to foster a competitive EC fleet and to further employment; at the same time, it provided measures to counter unfair competition.⁴ Overall, the Community decided that all intra-European trades except cabotage should be open and that there should be no further requirement than establishment in the Community to benefit from shipping opportunities within the EC. This policy was not conditioned upon any similar commitment to open markets from the Community's main trading partners.

¹ *French Seamen's Case*, 1974 (ECR) 359.

² *Parliament v. Council*, 1985 (ECR) 1513.

³ 'Progress towards a common transport policy - maritime transport', Bulletin of the European Communities, supplement 5/85.

⁴ The 1986 package, O.J. No. L 378, 31 December 1986, consists of four regulations:

- Reg. 4055/86 applying the principle of freedom to provide maritime transport between Member States and between Member States and third countries;
- Reg. 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport;
- Reg. 4057/86 on unfair pricing practices in maritime transport;
- Reg. 4058/86 concerning coordinated action to safeguard free access to cargoes in ocean trades.

b. *Proposals to keep ships under EC flags and create the single market*

In 1989, the Commission proposed further measures to develop the common shipping policy.⁵ As in 1985, it pointed to further loss of employment and competitiveness of the EC fleet and specifically identified high labour and fiscal costs under EC flags as a main reason for flagging out. Consequently, the Commission proposed a dual-purpose measure to alleviate the financial burden of flying an EC flag and at the same time safeguard EC employment: the Euros Register. The amended proposal of 1991, based on one of the proposals of the European Parliament, foresaw that all Community shipowners with ships registered in Euros and meeting the mandatory minimum of EC seafarers would be entitled to reimbursement of seafarers' income tax. The proposal thus specified a form of State aid as compatible with the common market. Member States shrank away from the mandatory nature of this Community measure. The issue of mandatory crewing requirements also remained a large stumbling block throughout the discussion. The Council has therefore not been able to accept this proposal, although the Commission has tried different formulae to forge agreement.

The package of 1989 also included a proposal to liberalise domestic trades, adopted as Regulation 3577/92,⁶ and a proposed definition of the notion of Community shipowner. This developed criteria based on majority ownership and majority voting rights by EC interests which were deemed necessary for a shipping company to be considered a Community shipowner for the purposes of all relevant Community instruments (e. g. cabotage, registration in Euros, carriage of food aid).⁷ The proposal has not yet been adopted, and the Edinburgh Council of 1992 asked the Commission to review it.

Also in 1989, the Commission issued guidelines for the assessment of State aid to the shipping sector.⁸ The Commission decided that it could authorise, as in the Community interest, State aid measures to

- maintain ships under Community flags, modernise fleets and
- maintain employment of EC seafarers.

State aid could bridge the cost gap between operating under an EC flag and under a flag of convenience, but it also had to fulfil certain other conditions to be allowed:

⁵ 'A future for the Community shipping industry: measures to improve the operating conditions of Community shipping', COM (89) 266 final, 3 August 1989.

⁶ Council Regulation (EEC)No. 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), O.J. L No. 364, 12 December 1992, p. 7.

⁷ See COM 89(266) final; COM 91(54) final.

⁸ SEC (89) 921 final.

- it should be in line with the Commission's general State aid principles;
- it should not lead to maintenance or increase of capacity in sectors with overcapacity.

In 1991, the Commission issued a Communication on the challenges to the maritime industries⁹. This Communication was based on the application of the new industrial policy approach of 1990 and put shipping, shipbuilding, supply industries, fisheries, etc, in their industrial context. Again, this Communication pointed to the loss of ships and employment in EC fleets. This Communication led to the formation of the Maritime Industries Forum and is followed-up by a new Communication entitled "Shaping Europe's Maritime Future".

c. *The common policy on safe seas*

The Communication on a Common Policy on Safe Seas was adopted by the Commission in February 1993.¹⁰ This policy has been fully endorsed by the Council and by the European Parliament. It is based on:

- securing the convergent application of international safety standards in European waters;
- strengthening the role of the port State in inspecting ships of all flags;
- fostering an adequate and technologically advanced maritime safety infrastructure;
- supporting international organisations in their primary role in international standard-setting;

In less than three years several implementing measures have been finally adopted, and bind Member States administrations as well as the private to effective compliance from 1996 on. They establish a set of basic rules to be respected by all suppliers of maritime transport services. In essence, their aim is to prevent market participants from reducing safety of operations to improve their competitive position. Provided they are uniformly and rigorously applied and enforced in all Member States, the adopted measures could lead to a marked improvement in the safety and environmental operation of seagoing vessels. The Commission intends to monitor this implementation process and to act promptly to remedy non-compliance as an essential element of its future policy in this sector.

As of January 1996, the main measures are as follows:

The responsibilities of the flag state administrations and of the organisations acting on their behalf (Directive on Classification Societies 94/57)

Only those organisations meeting high quality criteria are recognized by the European Community and are allowed to carry out safety and environmental inspections on behalf of the national administrations. From 1 January 1996 ships certified by non-European

⁹ 'New challenges for maritime industries', Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee; COM (91) 335 final, 20 September 1991.

¹⁰ A Common Policy on Safe Seas, COM(93)66 final, 24 February 1993.

recognised organisations shall be targeted, whatever their flag, for priority inspections by the authority of the State of the port.¹¹

The training and qualifications of seafarers employed on sea-going ships flying the flag of a Member State (Directive 94/58)

Based on the STCW Convention, this directive imposes also effective communication requirements on board all vessels entering an EC-port, whatever their flag. In particular on oil, chemical and gas tankers one common working language is required for both on board and ship-shore communications.¹²

Port State Control (Directive 95/21)

The effective and uniform control of ships entering EC ports, whatever their flag, is the corner stone of a policy aimed at drastically reducing substandard shipping from operating in European waters. The Directive requires, as of 1 July 1996, the targeting of blacklisted flags as well as certain types of potentially dangerous ships, such as ageing bulk carriers or oil tankers. Ships with important deficiencies shall be detained until all defects have been remedied.¹³

Notification obligations (Directive 93/75)

Since September 1995, shippers and shipowners involved in the carriage of dangerous or polluting cargo are subject to notification obligations specified in Directive 93/75. This should permit more effective remedial action in case of accidents. To this end Member States have to ensure an effective structure to provide at once relevant information if requested by another Member State.¹⁴

Segregated ballast tanks (Regulation 2978/94)

From 1 January 1996 port entities and pilotage services are obliged to charge lower fees to tankers with segregated ballast tanks or double hull lower than the ones for tankers without segregated ballast of the same gross tonnage. This Regulation is designed to give an incentive and to reward shipping companies to use more environmentally friendly ships.¹⁵

ISM Code Regulation (Regulation 3051/95)

As of 1 July 1996, companies operating Ro-Ro passenger ferries to or from a port of the Community are subject to auditing and certification of their Quality and Safety Management System covering both their shore based and on board activities.¹⁶

¹¹ O.J. No. L 319, 12 December 1994, p. 20.

¹² O.J. No. L 319, 12 December 1994, p. 28.

¹³ O.J. No. L 157, 7 July 1995, p. 1.

¹⁴ O.J. No. L 247, 5 October 1993, p. 19.

¹⁵ O.J. No. L 319, 12 December 1994, p. 1.

¹⁶ O.J. No. L 320, 30 December 1995, p. 14.

d. *External relations*

Since the adoption of the 1986 package, the Community's external relations policy in maritime transport has been to secure free access and fair competitive conditions throughout the global market. In the pursuance of this policy, the Community has pressed for further liberalisation as well as rolling back existing restrictions. Thus, the Lomé Conventions with the African, Caribbean and Pacific (ACP) countries and the Europe Agreements with several East and Central European countries contain provisions securing free access to maritime markets. Clauses relating to liberalising shipping markets are also included in the Partnership and Cooperation Agreements with a number of former USSR countries and Association Agreements with countries from the Mediterranean.

The 1992 Agreement on the European Economic Area (EEA) provides for the general application of the Treaty freedoms to this area. Within this framework, EC maritime legislation is largely applicable to the the contracting EFTA States, including Norway.

Finally, the Community also strives for multilateral liberalisation of maritime transport services within the GATS framework.

Besides such action, the Commission has also enforced the freedom to provide services in trades to and from the Community. It has taken action against unilateral cargo reservation of Member States and bilateral agreements between Member States and third countries which restrict this freedom.

e. *Relations with IMO/ILO*

The Commission is convinced of the necessity to assist the International Maritime Organisation (IMO) and the International Labour Organisation (ILO) in their task to set international standards for safety and labour rules. The Commission is recommending a strong stand by the EC with regard to improving working conditions, safety and training standards in IMO and ILO.

The Commission co-ordinated the positions of Member States at the recent IMO Conferences on the Revision of STCW and SOLAS. This contributed to the successful outcome of the Conferences.

Regarding ILO, the Commission is of the opinion that the separate maritime structure of the Organisation put in place from the very beginning of its creation should be preserved. The specific characteristics of the maritime industry is recognised worldwide, Over 30 Conventions and Recommendations dealing with the employment conditions of seafarers have been adopted.

ILO activities devoted to seafarers' problems are becoming increasingly important in the light of the globalisation of the market, seafarers' health and safety and higher requirements on safety at sea and prevention of maritime pollution. Maritime expertise will continue to be needed in the ILO for adopting efficient instruments and upgrading existing international maritime labour standards.

The Commission as well as trade union and shipowner organisations expressed concern when, for financial reasons, the ILO Governing Body postponed the Maritime Conference which was due to be held at the beginning of 1996. The conference will now be held in October 1996 and its agenda will include the revision of Convention No. 109.¹⁷

The Commission attaches great importance to the successful revision of this Convention and its prompt entry into force. It will have a direct impact on the discussion between the EC social partners, represented in the Joint Committee on Maritime Transport, on working time in this sector. This subject was excluded from the Directive 93/104 on working time. The Commission encouraged the social partners to make recommendations to the Commission on how best to ensure that this sector is appropriately covered with regard to the protection of health and safety. The Commission will examine with Member States the possibility of convincing the Conference to decide on the enforcement of Convention No. 109 through port State control.

f. *Short sea shipping*

As mentioned above, the Commission recently adopted a Communication on short sea shipping.¹⁸ It includes an action programme with proposals for initiatives which can most appropriately be undertaken at Community level as well as recommendations addressed to Member States, their regional and local authorities, to ports and the maritime industries themselves.

The Communication focuses on three areas:

- *The improvement of the quality and efficiency of short sea shipping services*
It emphasises the importance of R&D activities under the Community's 4th Framework Programme. Measures such as support for short sea pilot-schemes, the implementation and monitoring of the G-7 MARIS project and the promotion of more widespread use of Electronic Data Interchange are considered necessary for a better integration of short sea shipping into intermodal transport chains.
- *The improvement of port infrastructure and port efficiency*
The development of short sea shipping will be one of the main objectives of port and port-related projects supported under the trans-European network plan. There is also need for transparency in port tariffs and in State aid to ports. Application of the competition and State aid rules of the Treaty should lead to improvements in efficiency and to the provision of customer-oriented services.
- *The preparation of short sea shipping for a wider Europe*
This policy derives from the new economic and political framework of relations between the Community and States in adjoining regions, such as the Baltic Sea, the Black Sea and the Mediterranean Sea areas. For each of these regions, Waterborne Transport Working Groups have already been created on the initiative of the

¹⁷ Wages, Hours of Work and Manning (Sea) Convention (1958).

¹⁸ "The development of short sea shipping in Europe: prospects and challenges", COM (95) 317 final.

Commission. The objective is that each of the groups establishes a multi-annual work programme. This will provide a context for examination of proposals for assistance under the relevant Community programmes.

The European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions have already reacted positively to the action proposed in the Short Sea Communication.

g. *Competition rules*

Council Regulation 4056/86 lays down detailed rules for the application by the Commission of Articles 85 and 86 of the Treaty to maritime transport services to or from one or more Community ports. It grants a block exemption from the cartel prohibition contained in Article 85(1) to conferences for their traditional liner shipping activities, including the fixing of a common or uniform tariff for the provision of maritime transport services. A number of conditions and obligations are attached to the group exemption which may be withdrawn in the absence of effective competition on the trade in question. The scope of the group exemption does not extend to collective inland price fixing by liner shipping companies nor does it permit capacity non-utilisation agreements.

On 8 June 1994, the Commission adopted a Report on the application of EC competition rules to liner maritime transport.¹⁹ In its Report, the Commission explained that the current practice of conferences of fixing common prices for the inland leg of a multimodal transport operation was in breach of the EC's competition rules and, in its current form, could not benefit from group or individual exemption.

At the same time as condemning current conference practices of joint inland rate fixing, the Commission indicated in its Report a new approach which could pave the way for shipping companies to obtain individual exemption for inland cooperation and inland price fixing. In the same way as they cooperate on the maritime leg, they should cooperate on the land transport in such a way that significant benefits are brought to shippers. They should demonstrate that inland price fixing is indispensable to that cooperation and to attain the benefits resulting from that cooperation.

In July 1995, a Committee of Wise Men under the name "Multimodal Group" was given the task of examining how the Commission's policy on multimodal transport price fixing could best be implemented in order to achieve the objective set out in the Commission's Report of 8 June 1994. The Multimodal Group has presented its preliminary views and recommendations to the Commission in the form of an Interim Report and will present a Final Report during the course of 1996.

Moreover, in April 1995, the Commission adopted a second group exemption regulation for the liner shipping sector.²⁰ The regulation concerns agreements between liner shipping companies to bring about cooperation in the joint operation of a maritime transport operation (liner consortia).

¹⁹ See Maritime Transport Report, Sec(94) 933 final, 8 June 1994.

²⁰ Commission Regulation No. 870/95 of 20 April 1995, O.J. No. L 89, 21 April 1995, p. 7.

2. *The Member States*

As the competition from non-EC flags became keener, many Member States offered various kinds of aid to shipping. Different Member States adopted different strategies and provided different budgets for their support measures. This in part reflected their general attitude towards State aid or their assessment of the relative importance of the shipping sector for their economy and society. Many Member States have long traditions as maritime nations which influence their attitudes towards shipping. Further, since the Member States have not to date been able to agree on a Community approach, they have sought national answers to the problems of their flag fleet.

As flagging out and loss of employment continued in the late 1980s despite State aid, some Member States decided to create specific registers for ships flying their flag in international trade to alleviate competitive disadvantages. Irrespective of their denomination, these registers were created to exclude ships flying the flag of the Member State from certain costs inherent in the fiscal and labour regime of the first register.

Currently, the following Member States provide specific registers for their fleets:

- Denmark (the DIS);
- France (especially the Kerguelen Register);²¹
- Finland (the List of Merchant Vessels in International Trade);
- Portugal (the MAR);
- Spain (the Canary Island Register);

Germany's shipping register includes an international section (ISR), and shipowners of ships listed in this section may conclude deals with foreign seafarers at home country wages, which leads to considerable reduction in labour costs.

Dutch owners tend to use the Netherlands Antilles register to improve their competitive position. The register is administered autonomously and should therefore not be regarded as a second or alternative register of the Netherlands.

The United Kingdom does not possess an alternative register. British and other shipping interests can use the registers of various Crown and dependent territories to have access to local tax regimes, while still enjoying, through flying the Red Ensign, diplomatic protection by the United Kingdom.

Austria, Belgium, Greece, Ireland, Italy, Luxembourg and Sweden do not for the time being have second registers, although Italy is reported to be considering one.

In many Member States with alternative registers, the majority of ships in international trade are registered in the alternative register: for example, in Denmark, 92% of the total tonnage operating in international trades is registered in the DIS; the figure for the German ISR is 76%; in Finland, 50% of the fleet is on the List of Merchant Vessels in International Trade. The first register often has thus become of secondary regulatory importance for international shipping and the alternative regime becomes the real standard.

²¹ The current Kerguelen register has been declared unlawful by the *Conseil d'Etat* on constitutional grounds in 1995.

II. Results

The maritime policy thus far has succeeded in opening up markets, particularly in Europe, and giving the consumer a wide choice of shipping services. The application of EC competition rules to all market participants regardless of flag has furthered consumer interests and ensures fair treatment of all liner shipping companies. The newly introduced safety policy will enable the Community to ensure that safety and environmental standards are effectively applied, thereby also ensuring fairer conditions for competition. The liberalised international shipping environment has, however, not led to creation of employment for EC seafarers. On the contrary, employment on-board has dropped. While the liberalisation measures taken may have resulted in enhanced productivity of the EC owned fleet, they have not diminished the pressure to flag out from the more onerous EC shipping registers, as the figures mentioned in part A clearly show.

The success of Member States' alternative registers and aid schemes has been mixed. The Danish International Register (DIS) stipulates a nationality requirement only for the captain; it has nevertheless, mainly through the exemption from income tax of seafarers' income, attracted 80% EC employment on ships listed in this register. Some other Member States' registers have been successful in reversing or at least slowing the flagging out trend. Thus, since the introduction of the Finnish Alternative Register in 1992, tonnage under Finnish flag has risen by 50%. Interestingly, Finland has been able to re-attract bulk tonnage, which is a prime target for flagging out. Through the introduction of the ISR in 1989, Germany has been able to stabilize tonnage under its flag, as has Sweden through the introduction of tax rebates and reduced employers' social security charges. In certain Member States, national government action has not stemmed the overall decline of the flag fleet.

In summary, the measures taken by the EC and the Member States to increase the competitiveness of EC flags have thus far not been able to reverse the flagging out and loss of employment, although some alternative registers seem to show promising features.

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