



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.6.2002
COM(2002) 313 final

2000/0326 (COD)

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the establishment of a fund for the compensation of oil pollution damage in European
waters and related measures

(presented by the Commission pursuant to Article 250 (2)
of the Treaty)

EXPLANATORY MEMORANDUM

During its Plenary Session on 14 June 2001, the European Parliament approved, subject to a number of amendments, the Commission's proposal for a Regulation of the European Parliament and of the Council on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures¹. The Economic and Social Committee and the Committee of the Regions have supported the proposal in their opinions.²

The European Parliament supports the Commission's initiative to establish a fund to improve compensation of victims of oil pollution damage in European waters and to apply a financial penalty for persons who have caused or contributed to the damage by their grossly negligent conduct. The Commission agrees to a number of amendments which would or clarify the text or the scope of the regulation or otherwise constitute editorial improvements. Similarly, several amendments would provide useful additions to the text. This concerns clarification of the nature and activities of the COPE fund, its link to the IOPC Fund, the facility to provide advance payment and the preparation of a progress report on the developments in maritime liability and compensation at the international level.

The Commission can however not accept:

- the amendments seeking to extend the scope of the COPE Fund to cover other forms of pollution than oil pollution by tankers. While the improvement of the compensation regime for pollution damage caused by hazardous and noxious substances in itself is an objective which is supported, the Commission considers that the present regulation is inappropriate to serve that function. The purpose of the COPE Fund is to place an additional compensation layer on the existing international compensation regime, and in this way to ensure compensation for expensive accidents in EU waters. It complements and builds upon the international regime by creating a third layer which is closely linked to the two existing ones (CLC and IOPC Fund). Since the international regime only covers pollution from oil tankers, the COPE Fund also needs to do so. In the absence of an international regime for bunker oil and other hazardous substances, such as chemicals, it is not possible to build a similar system for those types of pollution. The Commission does, however, agree that there is a need to put in place a regime ensuring proper compensation for marine pollution caused by other substances than oil as soon as possible.
- the amendments aiming at introducing an obligation for shipowners to pay at part of the compensation. These amendments raise problems of international law. The existing international legal regime (the CLC convention) does not allow additional compensation claims to be placed on the shipowner. While the Commission agrees with the longer term aim that owners should make a more substantial contribution in the payment, in particular if the accident is due to his gross negligence (the Commission has proposed to address this issue at the revision of the international system), requiring shipowners to participate in the compensation of damage would be in conflict with the international rules as they stand at present. In order to make shipowners more responsible and subject to penalties in case of negligence, the Commission's proposal includes a financial penalty to be placed on any party which has caused or contributed to the accident by gross negligence.
- The amendments proposing to increase the participation and role of the local representatives of the polluted region in the procedures of the COPE Fund Committee,

¹ COM(2000) 802final – 2000/0326 (COD) of 6 December 2000.

² OJ C , , p. and OJ C , , p. .

which is a Management Committee under Decision 1999/468/EC. Advisors or prior hearing of non-committee members are not foreseen in a management committee under the decision, which is composed of representatives of Member States exclusively. In view of the tasks of the Committee, which include taking part in the decision-making-process in issues with significant legal and financial consequences, it is important that well-established procedures with a solid basis in Community law are followed.

- the amendment aiming at extending compensation of environmental damage. The Commission's view is that the international regime (and thus the COPE Fund) shall be amended to broaden the scope of coverage for environmental damage. Having two different definitions in the international regime and in the COPE Fund, which is intended to complement the former, would give rise to severe practical and legal complications. It would also require considerable resources to have the COPE Fund assessing the validity of claims and it would require detailed guidelines of what environmental damage should be compensated and how. The COPE Fund is not equipped to perform such functions. Therefore, the efforts should be directed at improving the compensation of environmental damage in light of comparable regimes to be established under Community law through amendments to the international regime and, thus, also in the COPE Fund.
- The amendment proposing to limit the period of collection of the funds to the COPE Fund from one year to six months. The underlying idea is that this would help speeding up compensation. However, the Commission does not believe that the amendment would have such effects. No claim can be compensated before it is assessed and no claim can be assessed before it is submitted. Claimants usually require some time before they can evaluate their losses. In light of the time required for these processes, the Commission has considered that a one year deadline is sufficient and is indeed very strict compared to the international regime. The limited added value of this amendment also has to be evaluated in light of the difficulties for oil receivers to make potentially considerable amounts of funds available on a short notice.
- The amendment defining the term 'bunker oil'. The term 'bunker oil' is not used in the regulation and such a definition is therefore unnecessary.

Therefore in compliance with Article 250 (2) of the Treaty, the Commission modifies its proposal.

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 80(2) and 175(1) thereof,

Having regard to the proposal from the Commission³,

Having regard to the opinion of the Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁶,

Whereas:

- (1) There is a need to ensure that **the fullest and most** adequate compensation is available to persons **or organizations** who, **directly or indirectly**, suffer damage caused by pollution resulting from the escape or discharge of oil from tankers in European waters.
- (2) The international regime for liability and compensation of oil pollution damage from ships, as established by the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 as amended by the 1992 Protocol thereto, provide some important guarantees in this respect.
- (3) The maximum compensation afforded by the international regime is deemed insufficient to fully cover the costs of foreseeable ~~oil tanker~~ incidents in Europe.
- (4) A first step to improve the protection of victims in case of an oil spill in Europe is to considerably raise the maximum amount of compensation available for such spills. **This could be done by complementing the existing international regime through the creation of an international supplementary fund. Until such an international fund is fully operational in all EU Member States concerned and provides adequate protection for accidents occurring in EU waters, a European Fund shall**

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ C , , p. .

be established to ~~This can be done by complementing the international regime through the establishment of a European Fund which~~ compensates claimants who have been unable to obtain full compensation under the international compensation regime, because the totality of valid claims exceed the amount of compensation available under the Fund Convention.

- (5) A European-oil pollution compensation fund needs to be based on the same rules, principles and procedures as those of the IOPC Fund in order to avoid uncertainty for victims seeking compensation and in order to avoid ineffectiveness or duplication of work carried out within the IOPC Fund.
- (6) In view of the principle that the polluter should pay, the costs of oil spills should be borne by the industry involved in the carriage of oil by sea.
- (7) Harmonised Community measures to provide additional compensation for European oil spills will share the costs of such oil spills between all coastal Member States.
- (8) A Community-wide compensation Fund (COPE Fund) which builds upon the existing international regime is **at present** the most efficient way to attain these objectives.
- (9) The COPE Fund shall have the possibility to reclaim its expenses from parties involved in the oil pollution incidents, to the extent that this is permissible under international law.
- (10) Since the measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁷, they should be adopted by use of the management procedure provided for under Article 4 of that Decision. **In due course the Commission will examine the possibilities of delegating the daily management of the COPE Fund to the European Maritime Safety Agency as established by Regulation/EC/XXX.**
- (11) Since the adequate compensation of victims of oil spills does not necessarily provide sufficient disincentives for individual operators in the seaborne oil trade to act diligently, a separate provision is needed providing for financial penalties to be imposed on any person who has contributed to an incident by his wrongful intentional or grossly negligent acts or omissions.
- (12) A Regulation of the European Parliament and the Council is, in view of the subsidiarity principle, the most appropriate legal instrument as it is binding in its entirety and directly applicable in all Member States and therefore minimises the risk of divergent application of this instrument in Member States.
- (13) A revision of the existing international oil pollution liability and compensation regime should be undertaken in parallel to the measures contained in this Regulation in order to achieve a closer link between the responsibilities and actions of the players involved in ~~the sea~~ transport of oil by sea and their exposure to liability. More particularly, the liability of the shipowner should be unlimited if it is proved that the pollution damage resulted from gross negligence on his part, the liability regime should not explicitly

⁷ OJ L 184, 17.7.1999, p. 23.

protect a number of other key players involved in ~~the sea~~ transport of oil at sea and the compensation of damage caused to the environment as such should be reviewed and widened in light of comparable compensation regimes established under Community law; **in addition, progress must be achieved with regard to a liability and compensation regime for damage in connection with the transport of hazardous and noxious substances.**

(13a) This Regulation should be amended in light of changes to the underlying international oil pollution compensation regime in order to avoid inconsistencies between the two regimes.

HAVE ADOPTED THIS REGULATION:

Article 1 **Objective**

The purpose of this regulation is to ensure adequate compensation of pollution damage in EU waters resulting from the transport of oil by sea, by complementing the existing international liability and compensation regime at Community level, and to introduce a financial penalty to be imposed on any person who has been found to have contributed to an oil pollution incident by his wrongful intentional or grossly negligent acts or omissions.

Article 2 **Scope**

This Regulation shall apply:

1. to pollution damage caused:
 - (a) in the territory, including the territorial sea, of a Member State, and
 - (b) in the exclusive economic zone of a Member State, established in accordance with international law, or, if a Member State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
2. to preventive measures, wherever taken, to prevent or minimize such damage.

Article 3 **Definitions**

For the purpose of this Regulation, the following definitions shall apply:

1. "Liability Convention" shall mean the International Convention on Civil Liability for Oil Pollution Damage, 1992.

2. "Fund Convention" shall mean the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 as amended by the 1992 Protocol thereto.
3. "Oil" shall mean means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.
4. "Contributing Oil" shall mean crude oil and fuel oil as defined in points (a) and (b) below:
 - (a) "Crude Oil" shall mean any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as "topped crudes") or to which certain distillate fractions have been added (sometimes referred to as "spiked" or "reconstituted" crudes).
 - (b) "Fuel Oil" shall mean heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D 396-69)", or heavier.
5. "Ton", in relation to oil, shall mean a metric ton.
6. "Terminal installation" shall mean any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.
7. "Incident" shall mean any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence.
8. "Person" shall mean any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
9. "IOPC Fund" shall mean the fund established by the Fund Convention.

Article 4

Establishment of a Fund for Compensation for Oil Pollution in European waters

A fund for Compensation for Oil Pollution in European waters (hereinafter 'the COPE Fund') is hereby established with the following aims:

- (a) to provide compensation for pollution damage to the extent that the protection afforded by the Liability Convention and the Fund Convention is inadequate; and
- (b) to give effect to the related tasks set out in this Regulation.

Article 5
Compensation

1. The COPE Fund shall pay compensation to any person who is entitled to compensation for pollution damage under the Fund Convention but who has been unable to obtain full and adequate compensation under that Convention, because the totality of valid claims exceed the amount of compensation available under the Fund Convention.
 2. The assessment as to whether a person is entitled to compensation under the Fund Convention shall be determined under the terms of the Fund Convention and carried out in accordance with the procedures foreseen therein.
 3. No compensation shall be paid by the COPE Fund until the relevant assessment referred to in paragraph 2 is approved by the Commission, acting in accordance with Article 9 paragraph 2.
 4. Notwithstanding paragraphs 1 and 2, the Commission may decide not to pay compensation to the shipowner, manager or operator of the ship involved in the incident or to their representatives. Similarly, the Commission may decide not to compensate any person in a contractual relationship with the carrier in respect of the carriage during which the incident occurred or any other person directly or indirectly involved in that carriage. The Commission, acting in accordance with Article 9 paragraph 2, shall establish which claimants, if any, fall under these categories and shall decide accordingly.
 5. The aggregate amount of compensation payable by the COPE Fund shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention and the Fund Convention for pollution damage within the scope of application of this regulation shall not exceed EUR 1,000 million.
 6. Where the amount of established claims exceeds the aggregate amount of compensation payable under paragraph 5, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this regulation shall be the same for all claimants.
- 6 a. Without prejudice to article 6, the COPE Fund shall provide for the possibility of making advance payments to claimants within a period of six months after the claim has been approved in accordance with paragraph 2.**

Article 6
Contributions by oil receivers

1. Any person who receives contributing oil in total annual quantities exceeding 150,000 tons carried by sea to ports or terminal installations in the territory of a Member State and is liable to contribute to the IOPC Fund shall be liable to contribute to the COPE Fund.
2. Contributions shall only be collected following an incident falling under the scope of this regulation which exceeds or threatens to exceed the maximum compensation

limits of the IOPC Fund. The total amount of contributions to be levied for each such incident shall be decided by the Commission in accordance with Article 9, paragraph 2. On the basis of that decision, the Commission shall calculate for each person referred to in paragraph 1 the amount of his contribution, on the basis of a fixed sum for each ton of contributing oil received by such persons.

3. The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Member States in the relevant year.
4. Member States shall ensure that any person who receives contributing oil within its territory in such quantities that he is liable to contribute to the COPE Fund appears on a list to be established and kept up to date by the Commission in accordance with the subsequent provisions of this article.
5. Each Member State shall communicate to the Commission the name and address of any person who in respect of that State is liable to contribute to the COPE Fund pursuant to this article, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year.
6. For the purposes of ascertaining who are, at any given time, the persons liable to contribute to the COPE Fund and of establishing, where applicable, the quantities of oil to be taken into account for any such person when determining the amount of his contribution, the list shall be prima facie evidence of the facts stated therein.
7. The contributions shall be made to the ~~Commission~~ **COPE Fund** and the collection shall be fully completed no later than one year after the decision to levy the contributions has been made by the Commission.
8. The contributions referred to in this article shall be used solely for the purpose of compensating pollution damage as referred to in Article 5.
9. Any potential surplus of contributions which have been levied for a particular incident and have not been used for the compensation for damage in relation to that incident or any immediately related purpose, shall be returned to the person who made the contribution, no later than 6 months after the completion of the compensation proceedings of that incident.
10. Where a Member State does not fulfil its obligations relating to the COPE Fund and this results in a financial loss for the COPE Fund, that Member State shall be liable to compensate the COPE Fund for such loss.
- 11. The financial responsibility of the COPE Fund with respect to any incident shall be limited to the contributions collected and received for that incident in accordance with this article.**

Article 7 **Subrogation**

The COPE Fund shall, in respect of any amount of compensation paid by it in accordance with Article 5, acquire by subrogation the rights that the person so compensated may enjoy under the Liability Convention or the Fund Convention.

Article 8
Representation and management of the COPE Fund

1. The Commission shall be the representative of the COPE Fund. In this respect, it shall perform the tasks presented by this Regulation or otherwise necessary for the proper operation and functioning of the COPE Fund.
2. The following decisions relating to the operation of the COPE Fund shall be made by the Commission, acting in accordance with the procedure in Article 9 paragraph 2:
 - a. fixing the contributions to be levied in accordance with Article 6;
 - b. approving the settlement of claims in accordance with Article 5.3 and taking decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article 5.6;
 - c. taking decisions in respect of payment to claimants referred to in Article 5.4; and
 - d. determining the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims are compensated as promptly as possible.

Article 9
Committee

1. The Commission shall be assisted by a COPE Fund Committee composed of representatives of the Member States and chaired by the representative of the Commission.
2. Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Articles 7 and 8 thereof.

The period provided for in Article 4 paragraph 3 shall be one month.

2 a. The Commission shall submit an annual report on its activities to the Council and the European Parliament.

Article 9 a
Co-operation with the IOPC Fund

The COPE Fund shall, in close co-operation with the IOPC Fund, establish clear administrative rules for the co-operation between the two funds. These rules shall be based upon the principles of transparency, efficiency and cost-effectiveness.

Article 10
Penalties

1. Member States shall lay down a system for financial penalties to be imposed on any person who has been found by a court of law to have contributed by his wrongful intentional or grossly negligent acts or omissions to an incident causing or threatening to cause oil pollution in an area referred to in Article 2, paragraph 1.
2. The penalties awarded in accordance with paragraph 1 shall not affect the civil liabilities of the parties concerned as referred to in this Regulation or elsewhere and shall be unrelated to the damage caused by the incident. They shall be set at a level high enough to dissuade the person from committing or persisting in an infringement.
3. Penalties referred to in paragraph 1 shall not be insurable.
4. There shall be a right for the defendant to appeal against penalties referred to in paragraph 1.

Article 10 a
Evaluation

1. The Commission shall submit a report no later than three years after the entry into force of this regulation on the progress at an international level to improve the international liability and compensation regime. In particular, the report shall assess the progress made in:
 - a. increasing the liability of the shipowner under the Liability Convention;
 - b. removing the prohibition of compensation claims for pollution damage against the charterer, manager and operator of the ship from Article III.4.c of the Liability Convention;
 - c. increasing the compensation available under the IOPC Fund;
 - d. widening the compensation for environmental damage in the light of comparable compensation regimes established under Community law;
 - e. bringing into effect effective regimes for the liability and compensation of pollution damage which is not covered by the existing regime, notably on damage caused by hazardous and noxious substances other than oil and by oil used for the operation or propulsion of ships, irrespective of the type or size of the ship.
2. Should the Commission conclude that the progress referred to in paragraph 1 is insufficient, it shall submit to the European Parliament and to the Council a proposal for Community legislation establishing a Europe-wide maritime pollution liability and compensation regime.

Article 11
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*. It shall be applicable on [12 months after its entry into force date].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President