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REPORT

on the proposal for a European Parliament and Council regulation on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures
(COM(2000) 802 – C5-0701/2000 – 2000/0326(COD))

Committee on Regional Policy, Transport and Tourism

Rapporteur: Alain Esclopé

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 8 December 2000 the Commission submitted to Parliament, pursuant to Article 251(2), Article 80(2) and Article 175(1) of the EC Treaty, the proposal for a European Parliament and Council regulation on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures (COM(2000) 802 - 2000/0326 (COD)).

At the sitting of 15 January 2001 the President of Parliament announced that she had referred this proposal to the Committee on Regional Policy, Transport and Tourism as the committee responsible and to the Committee on Budgets, the Committee on Industry, External Trade, Research and Energy and the Committee on the Environment, Public Health and Consumer Policy for their opinions (C5-0701/2000).

The Committee on Regional Policy, Transport and Tourism appointed Alain Esclopé rapporteur at its meeting of 24 January 2001.

It considered the Commission proposal and draft report at its meetings of 21 March, 25 April and 29 May 2001.

At the last meeting it adopted the draft legislative resolution by 39 votes to 3, with 1 abstention.

The following were present for the vote: Konstantinos Hatzidakis, chairman; Rijk van Dam and Helmuth Markov, vice-chairmen; Alain Esclopé, rapporteur; Emmanouil Bakopoulos, Rolf Berend, Theodorus J.J. Bouwman, Michael Cashman (for Mark Francis Watts pursuant to Rule 153(2)), Carmen Cerdeira Morterero, Gerard Collins, Giovanni Claudio Fava, Jacqueline Foster, Robert Goodwill (for Francis Decourrière), Mathieu J.H. Grosch, Ewa Hedkvist Petersen, Juan de Dios Izquierdo Collado, Georg Jarzembowski, Elisabeth Jeggle (for Karla M.H. Peijs), Dieter-Lebrecht Koch, Efstratios Korakas (for Alonso José Puerta), Brigitte Langenhagen (for Reinhard Rack), Giorgio Lisi, Sérgio Marques, Erik Meijer, Emilio Menéndez del Valle (for Mary Honeyball), Reinhold Messner, Francesco Musotto, Camilo Nogueira Román, Juan Ojeda Sanz, Josu Ortuondo Larrea, Giovanni Pittella (for Wilhelm Ernst Piecyk), Samuli Pohjamo, Carlos Ripoll i Martínez Bedoya, Marieke Sanders-ten Holte, Dana Rosemary Scallon, Agnes Schierhuber (for Luigi Cesaro), Ingo Schmitt, Brian Simpson, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Margie Sudre, Ari Vatanen and Jan Marinus Wiersma (for Demetrio Volcic).

The opinions of the Committee on Industry, External Trade, Research and Energy and the Committee on the Environment, Public Health and Consumer Policy are attached; the Committee on Budgets decided on 24 January 2001 not to deliver an opinion.

The report was tabled on 31 May 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council regulation on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures (COM(2000) – C5-0701/2000 – 2000/0326(COD))

The proposal is amended as follows:

Text proposed by the Commission ¹

Amendments by Parliament

Amendment 1

Title

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

on the establishment of a fund for the compensation of pollution damage in European waters ***caused by oil, hazardous and noxious substances*** and related measures

Justification

This regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented.

Amendment 2

Recital 1

(1) There is a need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil ***from tankers*** in European waters.

(1) There is a need to ensure that ***the fullest and most*** adequate compensation possible is available to persons who, ***directly or indirectly***, suffer damage caused by pollution resulting from the escape or discharge of oil, ***hazardous or other noxious substances*** in European waters.

¹ OJ C 120, 24.4.2001, p. 79.

Justification

The current level of compensation is to a certain extent already adequate, even though it is at times insufficient. All persons and organisations who have obviously been adversely affected by marine pollution must be compensated, whatever type of damage they have suffered.

This regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented.

Amendment 3

Recital 2

(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.

(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 ***but serious deficiencies arise. In addition, the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 and the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by sea, 1996 cannot be operational owing to non-ratification.***

Justification

Self-explanatory

Amendment 4

Recital 3

(3) The maximum compensation afforded by the international regime is deemed insufficient to fully cover the costs of foreseeable *oil tanker* incidents in Europe.

(3) The maximum compensation afforded by the international regime is deemed insufficient to fully cover the costs of foreseeable *(2 words deleted)* incidents in Europe.

Justification

Pollution does not occur exclusively as a result of accidents caused by oil tankers..

Amendment 5 Recital 4

(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 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.

(4) A first step to improve the protection of victims in case of *a* spill in Europe *caused by oil, hazardous or other noxious substances* is to *raise considerably* the maximum amount of compensation available for such spills. *Ideally this should be done by complementing the current international CLC/IOPC regimes through the establishment of an international third tier. Meanwhile, a* European Fund *must be established* 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.

Justification

This regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented.

The Legal Committee of IMO has agreed an increase of about 50% in the existing 1992 CLC and 1992 IOPC Fund limits. Other perceived deficiencies in the CLC and Fund Conventions are being addressed by the IOPC Working Group, set up in July 2000, for the expressed purpose of identifying and seeking internationally acceptable solutions. It would be regrettable if the highly successful international regime were to be distorted or ultimately

destroyed by regional initiatives, no matter how well intentioned.

Amendment 6

Recital 5

(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.

(5) A European (**1 word deleted**) 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.

Justification

This regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented.

Amendment 7

Recital 6

(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.

(6) In view of the principle that the polluter should pay, the costs of spills **caused by oil, hazardous or other noxious substances** should be borne by the industry involved in the carriage of **any of these substances** by sea. **In particular, shipowners, oil companies and receivers of hazardous and noxious substances should, in the overall compensation system, bear their share on an equitable basis.**

Justification

This regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented.

It is important to stress that it is shipowners, oil companies and the receivers of hazardous

and noxious substances who charter the ships who are responsible for providing proper compensation, and to recognise that one needs to look at the overall compensation system in practice before deciding on the respective contributors to the different elements of the scheme.

Amendment 8

Recital 7

(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.

(7) Harmonised Community measures to provide additional compensation for European spills will share the costs of such spills between all Member States.

Justification

This regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented.

The costs should be shared by all Member States of the Union on the principle of equity and common usage.

Amendment 9

Recital 8

(8) A Community-wide compensation Fund (COPE Fund) which builds upon the existing international regime is the most efficient way to attain these objectives.

(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.

Justification

Agreements on compensation for damage are most effective when entered into at (worldwide) international level (IOPC). This regulation should therefore only apply during the period for which the provisions referred to therein have not been adopted in (worldwide) international regulations. Stressing the provisional nature of the regulations at the same time enables (possible) tensions among other participants within the IOPC to be avoided.

Amendment 10

Recital 13

(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** 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 protect a number of other key players involved in **the** 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.

(13) A revision of the existing international **(1 word deleted)** 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 **(1 word deleted)** transport **(4 words deleted)** 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 protect a number of other key players involved in **(1 word deleted)** transport **(4 words deleted)** 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.**

Justification

In the explanatory memorandum to the proposal for a regulation, the Commission referred to the need to achieve progress with regard to an international liability and compensation regime for damage in connection with the transport of noxious substances, as well as a Europe-wide maritime pollution liability and compensation regime should efforts at international level fail. This should also be referred to in the regulation.

Amendment 11 Recital 13 a (new)

(13a) Whereas, depending on possible developments and negotiations at the International Maritime Organisation, it may be necessary for this Directive to be

amended to be compatible with international solutions, which, of course, will be consistent with the spirit of this Directive;

Justification

There should be some flexibility in the event that the International Maritime Organisation agrees to a third tier of liability, so that there may be an international solution which is acceptable to all parties.

Amendment 12
Article 1

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.

The purpose of this regulation is to ensure adequate compensation of pollution damage in EU waters resulting from the transport of oil, **hazardous and noxious substances excluding nuclear material** 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 a pollution incident by his wrongful intentional or grossly negligent acts or omissions.

Justification

This regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented. Nuclear material is excluded because it is already covered by the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material 1971 (Nuclear Convention) which has been ratified and implemented.

Amendment 13
Article 3, paragraph 2a (new)

2a. "Bunker Convention" shall mean the

***International Convention on Civil Liability
for Bunker Oil Pollution Damage, 2001.***

Justification

To recognise that this regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented.

Amendment 14
Article 3, paragraph 2b (new)

***2b. "HNS Convention" shall mean the
International Convention on Liability and
Compensation for damage in connection
with the carriage of Hazardous and
Noxious Substances by sea, 1996.***

Justification

Compensation for tanker pollution in European waters caused by oil, hazardous and noxious substances - this regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented.

Amendment 15
Article 3, paragraph 5

5. "Ton", ***in relation to oil***, shall mean a metric ton.

5. "Ton" shall mean a metric ton.

Justification

This definition should apply not only to oil but also hazardous and noxious substances.

Amendment 16
Article 3, paragraph 6

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.

6. "Terminal installation" shall mean any site for the storage of oil, ***hazardous and noxious substances*** in bulk which is capable of receiving oil, ***hazardous and noxious substances*** from waterborne transportation, including any facility situated off-shore and linked to such site.

Justification

This regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented.

Amendment 17
Article 4, Title

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

Establishment of a Fund for Compensation for *Tanker* Pollution in European waters caused by oil, hazardous and noxious substances

Justification

This regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented. Article 6, paragraph 5.

Amendment 18
Article 4, first paragraph

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

A fund for Compensation for ***Tanker*** Pollution in European waters ***caused by oil, hazardous and noxious substances*** (hereinafter 'the COPE Fund') is hereby established with the following aims:

Justification

See Amendment 40.

Amendment 19
Article 5, paragraph 4

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. *deleted*

Justification

There is no justification or explanation for this paragraph, which reveals the Commission's desire to have the power to take decisions.

Amendment 20
Article 5, paragraph 6a (new)

6a. The COPE Fund shall provide for the possibility of making an advance provisional payment within a period of six months.

Justification

The intention here is to provide for emergency payments to victims of marine pollution who are often left in very difficult circumstances whilst waiting for the first payments to come through.

Amendment 21
Article 6, Title

Contributions by oil receivers

Contributions by operators involved in the transport of oil, hazardous and noxious substances.

Justification

It is important to stress that it is shipowners, oil companies and the receivers of hazardous and noxious substances who charter the ships who are responsible for providing proper compensation, and to recognise that one needs to look at the overall compensation system in practice before deciding on the respective contributors to the different elements of the scheme.

Amendment 22
Article 6, paragraph 1

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.

1. The COPE fund, which would be set up on top of the existing IOPC 1992 Fund, shall consist of two layers:

Layer 1: shall establish higher limits of compensation to be paid by the shipowners where the cost of pollution damage exceeds or threatens to exceed the aggregate compensation limit under the existing CLC 1992 and IOPC 1992;

Layer 2: shall establish a supplementary fund to be paid by the cargo receivers where the cost of pollution damage exceeds

or threatens to exceed the aggregate compensation limit under the existing IOPC 1992 as supplemented by the shipowner's contribution under Layer 1 of the COPE Fund or the HNS Convention 1996 once ratified. For these purposes "cargo receivers" shall be defined as follows:

Any person who receives contributing oil, hazardous and noxious substances 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.

Justification

The 1992 Civil Liability Convention deliberately channels liability through the registered shipowner and his liability insurers and this has proved to be very workable. Reasons why cargo interests are not made directly liable for oil pollution damage include their inability to inspect or otherwise check the internal condition of the ship that will carry their cargo and that they have no direct control over the care or operation of the vessel. Breaking the existing division of responsibility, which was progressively achieved over the years, will ultimately lead to a dilution of the shipowner's responsibility and will be a disincentive for insurers to take a pro-active interest in the condition and operation of the vessels they insure. It could even lead to a lowering of standards.

Compensation for Tanker Pollution in European waters (COPE) caused by oil, hazardous and noxious substances - this regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented.

Amendment 23 Article 6, paragraph 1a (new)

1a. The shipowner concerned with the tanker operation responsible for a marine pollution incident shall contribute to the compensation of the victims on the same basis as the cargo receivers. To this end, each ship sailing in European territorial

waters or marine economic interest zones must be able to prove it holds a financial guarantee or must pay a heavy financial penalty.

Justification

Shipowners, who bear primary responsibility for the condition of their vessels, and who must share the risks just as they share in the profits, must be made liable. In addition to having the advantage of ensuring that shipowners are solvent, this financial guarantee certificate could be used for preventive measures in the field of maritime safety.

Amendment 24 Article 6, paragraph 2

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.

2. Contributions ***from receivers of oil, hazardous and noxious substances in Layer 2 of the COPE Fund*** 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 ***as supplemented by the shipowner's contribution under Layer 1 of the COPE Fund***. The total amount of contributions to be levied ***from receivers of oil, hazardous and noxious substances*** for each such incident shall be decided by the Commission in accordance with Article 9, paragraph 2 ***after taking into account the shipowner's contribution under Layer 1 of the COPE Fund***. 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.

Justification

The 1992 Civil Liability Convention deliberately channels liability through the registered shipowner and his liability insurers and this has proved to be very workable. Reasons why cargo interests are not made directly liable for oil pollution damage include their inability to

inspect or otherwise check the internal condition of the ship that will carry their cargo and that they have no direct control over the care or operation of the vessel. Breaking the existing division of responsibility, which was progressively achieved over the years, will ultimately lead to a dilution of shipowner's responsibility and will be a disincentive for insurers to take a pro-active interest in the condition and operation of the vessels they insure. It could even lead to a lowering of standards.

Compensation for tanker pollution in European waters caused by oil, hazardous and noxious substances - this regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented.

Amendment 25
Article 6, paragraph 3

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.

3. The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions by the total amount of contributing oil, ***hazardous and noxious substances*** received in all Member States in the relevant year, ***after taking into account the shipowner's contribution under Layer 1 of the COPE Fund.***

Justification

The 1992 Civil Liability Convention deliberately channels liability through the registered shipowner and his liability insurers and this has proved to be very workable. Reasons why cargo interests are not made directly liable for oil pollution damage include their inability to inspect or otherwise check the internal condition of the ship that will carry their cargo and that they have no direct control over the care or operation of the vessel. Breaking the existing division of responsibility, which was progressively achieved over the years, will ultimately lead to a dilution of shipowner's responsibility and will be a disincentive for insurers to take a pro-active interest in the condition and operation of the vessels they insure. It could even lead to a lowering of standards.

Compensation for tanker pollution in European waters caused by oil, hazardous and noxious substances - this regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented.

Amendment 26
Article 6, paragraph 4

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.

4. Member States shall ensure that any person who receives contributing oil, ***hazardous and noxious substances*** 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.

Justification

Compensation for tanker pollution in European waters caused by oil, hazardous and noxious substances - this regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented.

Amendment 27 Article 6, paragraph 6

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.

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, ***hazardous and noxious substances*** 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.

Justification

Compensation for tanker pollution in European waters caused by oil, hazardous and noxious substances - this regulation should encompass additionally bunker oil, hazardous and noxious substances because the Bunker Convention 2001 and Hazardous and Noxious Substances Convention 1996 have not been ratified or implemented.

Amendment 28 Article 6, paragraph 7

7. The contributions shall be made to the Commission and the collection shall be fully completed no later

7. The contributions shall be made to the Commission 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.

than **six months** after the decision to levy the contributions has been made by the Commission.

Justification

Compensation for victims lies at the heart of these arrangements, and so it follows that the necessary funding ought to be collected within as short a time as possible.

Amendment 29
Article 9, paragraph 1

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.

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.

The chosen local representatives of the area in respect of which the decisions listed in Article 8 (2) are to be made shall take part in meetings of the committee in an advisory capacity.

Justification

Representatives of regions hit by an oil spill disaster must be able to give an opinion before decisions are taken on compensation arrangements.

Amendment 30
Article 9, paragraph 1a (new)

1a. The COPE Fund Committee shall submit an annual report on its activities to the Council of Ministers and the European Parliament.

Justification

In order to keep both Council and the European Parliament apprised of progress and activity.

Amendment 31
Article 9, paragraph 2, subparagraph 2

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

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

The chosen local representatives of the area which has suffered damage shall be given the opportunity, with regard to the decisions listed in Article 8 (2), to comment prior to decisions being taken.

Justification

Representatives of regions hit by an oil spill disaster must be able to give an opinion before decisions are taken on compensation arrangements.

Amendment 32
Article 9a (new)

In close cooperation with the IMO, the Commission shall establish clear administrative rules for interaction between management of the COPE Fund and management of the existing IOPC Fund, in accordance with the principles of transparency, efficiency, and cost effectiveness.

Justification

Clear rules need to be established regarding the procedures to be followed to ensure efficient interaction between the new COPE Fund and the existing international regime, so as to avoid imposing unnecessary administrative and cost burdens on either fund, and ensure a smooth transition from one fund to the other, when the ceiling of the International Fund is passed.

Amendment 33
Article 10 a (new)

1. By not later than July 2003 the Commission shall submit a report on efforts to improve the international liability and compensation regime at the level of the

International Maritime Organization, and, in particular, shall assess progress in respect of

(a) significantly increasing the liability of the shipowner under the Liability Convention;

(b) increasing compensation under the Fund Convention;

(c) extending the Liability Convention to all other players involved in the transport of oil and hazardous and noxious substances at sea, and in particular to charterers, managers and operators;

(d) widening compensation for environmental damage in the light of comparable compensation regimes established under Community law;

2. If the Commission considers that significant progress has been achieved within the meaning of paragraph 1, it shall propose to the European Parliament and the Council that the provisions of this regulation be adapted to the revised international regime.

3. If the Commission comes to the conclusion that no substantial improvements within the meaning of paragraph 1 have been achieved, it shall present to the European Parliament and the Council a proposal for Community legislation establishing a Europe-wide maritime pollution liability and compensation regime.

Justification

In principle, an improvement in the liability and compensation regime at worldwide level is preferable to unilateral action on the part of the EU. In the light of the Commission proposal, relevant improvements are currently also being discussed at international level. Reference should consequently expressly be made in this regulation to the possibility of its being adapted to a suitably improved international agreement.

At the same time, the Commission announces in the explanatory memorandum to the proposal for a regulation its intention to propose Community legislation if the improvements referred

to in the amendment are not achieved at international level. Logically, therefore, the option of introducing a Europe-wide liability and compensation regime should be explicitly referred to in this regulation.

That would also give a signal to the IMO that negotiations at international level should be concluded swiftly.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council regulation on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures (COM(2000) 802 – C5-0701/2000 – 2000/0326(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2000) 802¹),
 - having regard to Article 251(2) and Articles 80(2) and 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0701/2000),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Regional Policy, Transport and Tourism and the opinions of the Committee on Industry, External Trade, Research and Energy and the Committee on the Environment, Public Health and Consumer Policy (A5-0201/2001),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 120, 24.4.2001, p. 79.

EXPLANATORY STATEMENT

Introduction

The cost of the damage caused by the Erika disaster in France is thought to be about EUR 300 m. The victims of the oil slick have still not been compensated. The Commission wants to set up a European compensation fund (COPE Fund) in order both 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.

How the international fund operates now

At present, an international liability and compensation regime exists covering damage caused by oil pollution from ships, as established by the International Convention on Civil Liability for Oil Pollution (**Liability Convention**) and the 1971 International Convention setting up the Oil Pollution Compensation Fund (**Fund Convention**), both of which were amended by the 1992 protocols.

These two conventions have established a two-tier liability system, based on strict though limited liability for shipowners and on a fund to which oil receivers contribute and which provides additional compensation for oil pollution victims if they cannot be compensated fully by shipowners (exemption from liability, insolvency, excess liability).

The protocols to the Liability and Fund Conventions entered into force in 1996. All EU Member States which have a coastline are now parties to both 1992 protocols, except for Portugal, which has not yet completed the ratification procedures. The USA, which has its own compensation system (cf. the 1990 Oil Pollution Act) does not participate in this international liability and compensation regime.

The 1992 regime covers pollution damage caused by spills of persistent oil from tankers in the coastal waters (up to 200 miles from the coastline) of the participating States. The loss and damage covered by the regime includes property and, to some extent, economic losses and costs of environmental restoration as well as preventive measures, including clean-up costs.

The maximum compensation by the IOPC Fund is around EUR 200 m. The IOPC Fund is financed by contributions from companies or other entities receiving oil carried by sea. In the event of an oil spill, thus, all oil receivers world-wide which are established in the States parties to the Fund Convention will contribute to the compensation as well as to the administrative expenses of the Fund, wherever the pollution damage has occurred. The IOPC Fund will not pay compensation if the pollution damage resulted from an act of war or was caused by a spill from a warship. It also has to be proved that the oil originated from a tanker.

Victims of oil spills may present their claims directly against the IOPC Fund and, to the extent

claims are justified and meet the relevant criteria, the Fund will compensate the claimant directly. If the total of approved claims exceeds the maximum limit of the IOPC Fund all claims will be reduced proportionately. Claimants may also decide to pursue their claims before the courts of the State where the damage occurred.

Functioning of the current system

Since it was first established in 1978, the IOPC Fund has dealt with some 100 cases, most of which have been within the limits of compensation and thus fully compensated according to the Fund's own assessment as to the validity of claims.

However, the slow pace of reimbursement, especially of sums of money that have to be paid out urgently, and the ceilings placed on the reimbursement of victims and the limits on liability come in for repeated criticism.

The Commission's proposals

- (1) In addition to the slow pace of reimbursement and the imposition of ceilings, other shortcomings in the international system need to be remedied in the context of the IMO, notably by raising ceilings, extending the scope of compensation for 'losses to the environment', removing the limits on a ship owner's liability in cases of gross negligence, extending liability to include charterers, managers and operators of ships and extending the coverage to include dangerous substances other than oil.
- (2) Introduction into Member States' legislation of criminal sanctions in the event of gross negligence on the part of carriers.
- (3) Creation of a compensation fund in Europe, modelled on the IOPC Fund, which would provide additional and quicker compensation for victims of maritime pollution in European waters (ceiling: EUR 1 billion). The Commission considers that the polluter-pays principle should be applied and that the costs of oil spills should therefore be borne by the industry involved in the carriage of oil by sea.

Such measures, harmonised at Community level, would spread the costs of spills amongst all Member States. The COPE Fund could thus, where entitled to do so under international law, ask the parties involved in oil pollution incidents to reimburse its costs (companies established in the Community and receiving more than 150 000 tonnes of heavy fuel oil and/or crude oil annually).

The Commission, as representative of the COPE Fund, would manage it and collect the contributions in accordance with existing IOPC rules. The time-limit for the collection of contributions would be one year, and compensation of victims would be based on the assessment made by the IOPC Fund. All contributions collected but not used for compensation purposes should be returned to the oil companies in line with the percentage they have contributed to the total revenue.

Problems

Is the current international system totally satisfactory in terms of speed and the amounts of compensation paid to victims?

Given that Europe has limited influence in IMO negotiations, is the creation of a third tier of compensation for victims of maritime pollution at Community level appropriate for ensuring improved compensation of the losses incurred? Is it not to be feared that the creation of such an additional tier would impede the upgrading of the IOPC Fund, which is in any case essential?

Could the creation of the COPE Fund make up for the IOPC's shortcomings, when it is modelled on the IOPC Fund?

Since the IOPC Fund is an independent body composed of international officials and has an annual operating budget, does the COPE Fund need to be permanent and levy an annual tax to finance its operation, incorporating a reserve which could be used immediately in emergencies, or should it, as the Commission advocates, operate and intervene selectively, merely supplementing, where necessary, what the IOPC Fund provides in the case of accidents?

Lastly, is the Commission the most appropriate body to manage and act as the Fund's sole representative? Could the committee of Member States' representatives which assists it not perform this role more effectively by directly involving the Member States (compare how the IOPC Fund operates: Articles 16-35 of the 1992 Protocol)?

Your rapporteur's comments and questions

Your rapporteur notes that the current compensation system is relatively satisfactory, even though it is in effect limited by virtue of the EUR 200 m ceiling (the Erika spill is going to cost about EUR 300 m) and is not speedy enough when it comes to releasing the money that is urgently needed on the ground as soon as disaster strikes.

Your rapporteur therefore considers that the creation of a third, additional tier at the European level with a EUR 1 billion ceiling makes sense as a way of improving the reimbursement of victims.

However, your rapporteur notes that a fully integrated COPE Fund which is dependent in terms of procedure on the IOPC Fund would experience the same difficulties as the latter when it came to problems associated with proof of pollution, the refusal of companies to pay, delays in notification by the Member States of the companies concerned or the difficulty of assessing the overall damage.

Nevertheless, the idea of extending the scope of liability to include all those involved, directly or indirectly, in the carriage of such products by sea, e.g. in the form of shared joint and several responsibility, and of amending the legislation so as to encompass all dangerous products in addition to oil is an interesting one, albeit it one which would be difficult to implement in the context of international negotiations. Your rapporteur would point out that such negotiations must be conducted by the Council in the IMO.

Without wishing to call into question this initiative for improved legitimate compensation of victims of maritime pollution, your rapporteur wishes to point out the need to tackle the problem at source and pursue a genuinely preventive policy (Erika I and II packages).

Your rapporteur thus observes that joint and several contributions by operators in the event of accidents could be counterproductive as regards investment in improved safety and that there could be repercussions for the consumer price of fuel.

Unlike the Commission proposal, your rapporteur considers a committee of Member State representatives to be more appropriate as far as the management of maritime pollution is concerned. A lightweight permanent administrative structure could act as a secretariat for such a committee, meeting once a year and also specially in the case of pollution incidents. As regards the aim of ensuring swift payment of the initial amounts of compensation, your rapporteur stresses the need to insist on the establishment, in the context of this fund, of precise procedures, without prejudging the practical difficulties.

The committee could be a tripartite committee, including representatives of the Member States and the Commission and local councillors from the regions affected. Your rapporteur thinks that such a committee could make genuine joint action and policy coordination a reality. Such joint action between Member States might enable solutions to be found to practical problems and facilitate their implementation at national level. The example which could be given is that of the strengthening of national criminal law cited by the Commission.

Your rapporteur wishes to stress, with regard to the Commission's proposals, the risk associated with environmental liability, and in particular the difficulties of defining it, especially as a framework directive which is currently being prepared will certainly be better able to define such liability.

Lastly, your rapporteur would ask the Commission what progress has been made with the current negotiations with the international body, aimed at integrating this new fund, and what the results have been. Has the Commission already launched negotiations with the IOPC Fund and, if so, are they moving towards the drafting of a memorandum of understanding to regulate all the issues of cooperation between the two funds? We consider this to be essential if the procedure is to be clear and precise enough to avoid any misinterpretation in emergencies.

All the problems highlighted above can be resolved satisfactorily if a number of amendments are made to the Commission's proposal, given that its aim, namely that of rendering the compensation system more efficient, is one that should be supported.

28 May 2001

OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY

for the Committee on Regional Policy, Transport and Tourism

on the 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
(COM(2000) 802 – C5-0701/2000 – 2000/0326((COD)))

Draftsman: Dominique Vlasto

PROCEDURE

The Committee on Industry, External Trade, Research and Energy appointed Dominique Vlasto draftsman at its meeting of 13 February 2001.

It considered the draft opinion at its meetings of 11 and 24 April and 28 May 2001.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Peter Michael Mombaur, vice-chairman; Konstantinos Alyssandrakis, Gérard Caudron, Giles Bryan Chichester, Elisa Maria Damião (for François Zimeray), Harlem Désir, Francesco Fiori (for Umberto Scapagnini), Christos Folias, Jacqueline Foster (for Roger Helmer), Neena Gill (for Glyn Ford), Norbert Glante, Alfred Gomolka (for Angelika Niebler), Cristina Gutiérrez Cortines (for Concepció Ferrer), Michel Hansenne, Malcolm Harbour (for Paul Rübig), Werner Langen, Rolf Linkohr, Eryl Margaret McNally, Nelly Maes, Hans-Peter Martin (for Erika Mann), Giuseppe Nisticò (for Guido Bodrato), Reino Paasilinna, John Purvis, Imelda Mary Read, Mechtild Rothe, Christian Foldberg Røvsing, Konrad K. Schwaiger, Esko Olavi Seppänen, Helle Thorning-Schmidt (for Elena Valenciano Martínez-Orozco), Astrid Thors, W.G. van Velzen, Alejo Vidal-Quadras Roca, Anders Wijkman, Myrsini Zorba and Olga Zrihen Zaari.

SHORT JUSTIFICATION

The Commission wishes to establish a European compensation fund (the Fund for Compensation for Oil Pollution in European waters, or COPE Fund) to supplement the existing international liability and compensation regime for damage caused by pollution by oil from ships.

The international regime was established by the 1969 International Convention on Civil Liability for Oil Pollution (CLC) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (the Fund Convention), which were later amended by the 1992 protocols. These protocols to the CLC and Fund Conventions entered into force in 1996, and all the EU Member States with a coastline are now parties to them with the exception of Portugal, which has not yet completed the ratification procedures.

The United States does not subscribe to this international liability and compensation regime, as it has its own separate system set up by the Oil Pollution Act of 1990; the European Union is now proposing, in its turn, to set up its own system.

Although the Commission proposes to model the operation of the COPE Fund on the existing international regime, the fact remains that part of the compensation provided will no longer draw on international solidarity, but will be financed from European sources alone.

This being so, your rapporteur does not entirely see the point of the Commission proposal. For, while emphasising the need to provide victims of oil spills with better and faster compensation, the Commission proposes that the COPE Fund should be based on the same assessment and other procedures applied under the international system, the ineffectiveness of which has already been highlighted. So the Commission does not go as far as the United States in setting up an autonomous system and, while noting the limitations of the international regime, does not propose any significant departure from it.

So, despite its good intentions and the sensible decision to increase the maximum ceiling for compensation, the proposal does not appear to provide a means of remedying the problem of the slow workings of the international compensation regime which it would supplement.

Your rapporteur fears, consequently, that the introduction of the COPE Fund, as outlined in this proposal, will not make it possible to compensate victims more effectively. Admittedly, the COPE Fund will offer the possibility of providing compensation in excess of the existing ceiling of EUR 200 million, which is the positive aspect of the proposal, but the right to compensation and the speed of its provision are problems which will remain to be solved.

Only in the case of the Erika disaster of 13 December 1999 has the compensation ceiling appeared to be obviously inadequate; in 25 years, this is the only example that might justify the urgent nature of the Commission's proposal. According to the figures available one and a half years after that disaster, to date the International Oil Pollution Compensation (IOPC) Fund has disbursed only FF 40 million, whereas the total cost is estimated at some FF 3 billion. That figure alone illustrates the problems besetting the IOPC fund in terms of prompt and effective compensation. Yet the Commission proposal does not appear to offer the

prospect of speeding up compensation procedures. It is, therefore, very important for the Community to maintain its efforts to improve the operation of the existing international regime, given that the COPE Fund will provide only a very partial solution to the problems of victims seeking compensation for damage due to oil pollution.

With regard to the funding of the COPE Fund, your rapporteur endorses the Commission's approach while emphasising the risks involved. It would be inappropriate for the financial burden placed on the industry involved in the carriage of oil by sea to be passed on to consumers in the form of increased fuel prices.

Your rapporteur also wishes to emphasise that oil pollution is not the only threat to Europe's coastline; although fair compensation for damage caused by oil spills is important, it should not distract attention from the problems created by accidents to or the sinking of other ships transporting polluting or hazardous goods, such as chemical carriers. The European Union cannot afford to ignore the need for a broader debate on the compensation of victims of maritime disasters in general.

Finally, the Commission proposal provides for related measures including the recognition of the concept of environmental liability. Your rapporteur would highlight the need for a perfectly clear legal definition of any such liability, to ensure that the operation of the future fund is not impeded by inadmissible applications for compensation submitted on the basis of misguided conceptions of the scope of any such liability.

Your rapporteur considers, however, that this subject should be dealt with in the context of the Commission's proposals on environmental liability. The White Paper adopted by the Commission on 9 February 2000 is, therefore, a much better basis for work on the question than the present proposal for a directive.

AMENDMENTS

The Committee on Industry, External Trade, Research and Energy calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
Amendment 1 Recital 3	
(3) The maximum compensation afforded by the international regime is deemed insufficient to fully cover the costs of foreseeable oil tanker incidents in Europe.	(3) The maximum compensation afforded by the international regime is deemed insufficient to fully cover the costs of foreseeable oil tanker incidents in Europe. <i>The EU should endeavour to strengthen the</i>

¹ OJ C 120, 24.4.2001, p. 79.

IMO, a UN organisation, which is responsible for international maritime safety, and not restrict itself to adopting the strictest legislation like the US which exclusively protects the American coastline. The significant number of vessels flying flags of convenience in international maritime transport must be seen as a potential safety problem. It is in the interests of the Union that more countries should join the IMO and that the latter adjust its conventions in order to guarantee fair conditions in maritime transport.

Justification

Given the US position in this matter, the Union must promote a policy of complementarity in respect of the international policies developed at the IMO (a UN organisation) which maintains a rapid and effective European system.

Amendment 2
Recital 6a (new)

(6a) The Commission shall ensure that the costs of oil spills due to pollution resulting from the escape or discharge of oil from tankers in European waters are not passed on by the industry concerned via the price of oil for European consumers, since the COPE Fund is not based on a consumer liability scheme.

Justification

It would not be acceptable for fuel prices to sustain sudden increases in connection with the activation of the COPE Fund in the event of maritime disasters.

Amendment 3
Recital 8

(8) A Community-wide compensation Fund (COPE Fund) which builds upon the existing international regime is ***the most efficient way to attain*** these objectives.

(8) A Community-wide compensation Fund (COPE Fund) which builds upon the existing international regime is ***only one means of attaining*** these objectives. ***In particular, the Community should continue negotiating with the States party to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage and propose measures to make the existing international regime more effective and expeditious.***

Justification

The setting up of the COPE Fund does not provide a solution to the various problems of compensating victims, but a response to the problem of the maximum ceiling for compensation laid down under the international regime. It is necessary to continue negotiations under the aegis of the IOPC with a view to improving the effectiveness of the international system.

Amendment 4 Article 6(4)

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.

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 ***updated at least once a year*** by the Commission in accordance with the subsequent provisions of this article.

Justification

The list of the bodies liable to contribute to the COPE Fund must be updated at least once a year, as that list constitutes adequate prima facie evidence of the facts recorded therein.

As the speed with which victims are compensated is a crucial problem, it is not acceptable for the period that elapses between the Commission's decision to levy contributions to the COPE Fund and the collection of all due contributions to exceed six months. It should be possible to complete this operation more swiftly if the contributors and the relevant amounts are known in advance.

Amendment 5
Article 6(7)

7. The contributions shall be made to the Commission 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.

7. The contributions shall be made to the Commission and the collection shall be fully completed no later than **six months** after the decision to levy the contributions has been made by the Commission.

Justification

The list of the bodies liable to contribute to the COPE Fund must be updated at least once a year, as that list constitutes adequate prima facie evidence of the facts recorded therein.

As the speed with which victims are compensated is a crucial problem, it is not acceptable for the period that elapses between the Commission's decision to levy contributions to the COPE Fund and the collection of all due contributions to exceed six months. It should be possible to complete this operation more swiftly if the contributors and the relevant amounts are known in advance.

Amendment 6
Article 10(1)

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.

1. Member States shall lay down a system for **criminal** 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.

Justification

The introduction of criminal penalties will make it possible to extend the scope of penalties which the Member States may impose. In some cases, financial penalties might not prove severe enough in relation to the nature of the infringement or have a sufficiently deterrent effect. The obligation to introduce a system of criminal penalties will enable Member States to adjust the penalty to the gravity of the offence.

Amendment 7
Article 10(2)

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.

No change required in English version.

Justification

The introduction of criminal penalties will make it possible to extend the scope of penalties which the Member States may impose. In some cases, financial penalties might not prove severe enough in relation to the nature of the infringement or have a sufficiently deterrent effect. The obligation to introduce a system of criminal penalties will enable Member States to adjust the penalty to the gravity of the offence.

15 May 2001

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER POLICY

for the Committee on Regional Policy, Transport and Tourism

on the 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
(COM(2000) 802 – C5-0701/2000 – 2000/0326(COD))

Draftsman: Roseline Vachetta

PROCEDURE

The Committee on the Environment, Public Health and Consumer Policy appointed Roseline Vachetta draftsman at its meeting of 12 March 2001.

It considered the draft opinion at its meetings of 26 April and 14 May 2001.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Caroline F. Jackson (chairman); Guido Sacconi and Alexander de Roo (vice-chairmen); Roseline Vachetta (draftsman); Per-Arne Arvidsson, Maria del Pilar Ayuso González, Hans Blokland, David Robert Bowe, Niels Busk (for Karl Erik Olsson), Martin Callanan, Dorette Corbey, Chris Davies, Avril Doyle, Carlo Fatuzzo (for Marialiese Flemming), Anne Ferreira, Cristina García-Orcoyen Tormo, Laura González Álvarez, Robert Goodwill, Françoise Grossetête, Anneli Hulthén, Marie Anne Isler Béguin, Christa Klauf, Eija-Riitta Anneli Korhola, Bernd Lange, Peter Liese, Torben Lund, Jules Maaten, Minerva Melpomeni Malliori, Jorge Moreira da Silva, Rosemarie Müller, Riitta Myller, Giuseppe Nisticò, Béatrice Patrie, Marit Paulsen, Jean Saint-Josse, Jacques Santkin (for Carlos Lage), Karin Scheele, Inger Schörling, Jonas Sjöstedt, Renate Sommer (for John Bowis), Bart Staes (for Hiltrud Breyer), Catherine Stihler, Robert William Sturdy (for Marielle de Sarnez), Nicole Thomas-Mauro, Antonios Trakatellis and Phillip Whitehead.

SHORT JUSTIFICATION

In the 1970s the international community drew up international conventions under the auspices of the International Maritime Organisation (IMO) on civil liability for oil pollution damage and on the establishment of an International Oil Pollution Compensation Fund (IOPCF). The sinking of the Erika and the resultant oil spill in December 1999 highlighted the shortcomings and limits of compensation and liability. The cost of this incident is expected to come to FRF 3 000 million, towards which the IOPCF has released FRF 40 million thus far; TotalFina has pledged FRF 1 800 million, whilst the FRF 1 400 million advance from the French Government covers half of the provisional cost. To date, the majority of the victims are still awaiting compensation.

The Commission has decided to take action on both matters, and envisages introducing criminal penalties for polluters. However, it has given priority under the proposal for a regulation to compensation arrangements for victims of pollution incidents by creating a supplementary fund (the COPE Fund).

Improving the liability and damage compensation schemes in force

The Commission proposal complements the existing international two-tier system on liability and compensation for oil pollution damage by tankers by creating a European supplementary fund, the COPE Fund.

Compensation from the COPE fund will thus be based on the same principles and rules as the current international fund system, but subject to a ceiling which is deemed to be sufficient for any foreseeable disaster, i.e. EUR 1 000 million.

The COPE fund will be financed by European oil receivers. Any person in a Member State who receives more than 150 000 tonnes of crude oil and/or heavy fuel oil per year will have to pay into the COPE Fund a contribution proportionate to the amounts of oil received.

The proposed regulation, in addition to the provisions on liability set out above, includes an article introducing financial penalties for grossly negligent behaviour by any person involved in the transport of oil by sea. This penalty will be imposed by Member States outside the scope of liability and compensation and will thus not be affected by any limitation of liability.

Conclusion

Although the COPE Fund makes for an improved response to emergencies by offsetting the limits of the IOPCF, it remains inadequate, insofar as it merely pushes back the limits of the system without removing its perverse effects, such as the pooling of risks by polluters. This regulation should, however, be seen as a transition measure towards root and branch reform of the liability scheme. There is a pressing need to break the vicious circle in which charterers and operators emerge as the sole beneficiaries, whilst seamen see their working conditions deteriorate and safety requirements for ships are gradually undermined.

The Commission should pursue its work towards an unlimited liability scheme for shipowners and charterers, above all by means of the obligation to take out insurance providing unlimited

coverage for the damages incurred by the sinking of a ship, so as to give practical expression to the 'polluter pays' principle.

AMENDMENTS

The Committee on the Environment, Public Health and Consumer Policy calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
Amendment 1 Recital 8	
(8) A Community-wide compensation Fund (COPE Fund) which builds upon the existing international regime is <i>the most efficient</i> way to attain these objectives.	(8) A Community-wide compensation Fund (COPE Fund) which builds upon the existing international regime is <i>but one</i> way to attain these objectives.

Justification

Establishing the COPE Fund is not the sole means of dealing with the problems related to compensation for victims.

Amendment 2 Recital 13 a (new)

(13 a) Given the key principle enshrined in the Montego Bay Convention on the Law of the Sea, the genuine link between the nationality of the shipowner and the flag of the ship concerned ought to be restored.

Justification

The genuine link between the shipowner and the flag State ought to be restored.

Amendment 3 Recital 13 b (new)

¹ OJ C 120, 24.4.2001, p. 79.

(13 b) Provision should be made whereby the various transport operators (shipowners and charterers) are made liable under criminal law.

Justification

The various maritime transport operators ought to be made subject to criminal liability.

Amendment 4
Article 6, paragraph 7

7. The contributions shall be made to the Commission 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.

7. The contributions shall be made to the Commission and the collection shall be fully completed no later than **six months** after the decision to levy the contributions has been made by the Commission.

Justification

Compensation for victims lies at the heart of these arrangements, and so it follows that the necessary funding ought to be collected within as short a time as possible.

Amendment 5
Article 9, paragraph 1

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.

1. The Commission shall be assisted by a COPE Fund Committee composed of representatives of the Member States, **the European Parliament, associations for the protection of marine environments and organisations for the defence of the rights of seamen** and chaired by the representative of the Commission.

Justification

The COPE Fund Committee ought to include representatives from the European Parliament and civil society.