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Committee on Regional Policy, Transport and Tourism

15 October 2001

OPINION

of the Committee on Regional Policy, Transport and Tourism
for the Committee on Fisheries

on the role of flags of convenience in the fisheries sector
(2000/2302(INI))

Draftsman: Carlos Ripoll i Martínez Bedoya

PROCEDURE

The Committee on Regional Policy, Transport and Tourism appointed Carlos Ripoll i Martínez Bedoya draftsman at its meeting of 20 March 2001.

It considered the draft opinion at its meetings of 12 September and 10 October 2001.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Konstantinos Hatzidakis, chairman Emmanouil Mastorakis and Rijk van Dam vice-chairmen; Carlos Ripoll i Martínez Bedoya draftsman; Emmanouil Bakopoulos, Rolf Berend, Hans Blokland (for Alain Esclopé pursuant to Rule 153(2)), Carmen Cerdeira Morterero, Luigi Cocilovo (for Francesco Musotto), Gerard Collins, Danielle Darras, Garrelt Duin, Giovanni Claudio Fava, Mathieu J.H. Grosch, Mary Honeyball, Juan de Dios Izquierdo Collado, Georg Jarzembowski, Dieter-Lebrecht Koch, Sérgio Marques, Erik Meijer, Karla M.H. Peijs, Wilhelm Ernst Piecyk, Samuli Pohjamo, Adriana Poli Bortone, Bartho Pronk (for Margie Sudre pursuant to Rule 153(2)), Alonso José Puerta, Reinhard Rack, Isidoro Sánchez García, Gilles Savary, Ingo Schmitt, Jürgen Schröder (for Theodorus J.J. Bouwman), Brian Simpson, Renate Sommer, Ulrich Stockmann, Ari Vatanen and Mark Francis Watts.

SHORT JUSTIFICATION

A. Introduction

This opinion sets out to examine the problem of flags of convenience and their impact on sea transport in general and safety at sea in particular. The effects of flags of convenience on the fisheries sector (unrestricted and illegal fishing, depletion of stocks and unfair competition) are just some aspects of a phenomenon that compromises the safety of sea transport and breaches the competition rules to which it is subject.

First and foremost, we must understand what motivates shipowners to register their vessels with the shipping registers of other countries (so-called open or convenience registers), rather than with those in their own countries. Clearly, such moves are a response to growing international competition that often has a disastrous impact on their financial interests. Taking advantage of the opportunity offered by flags of convenience may, in many cases, be the only way for shipowners to avoid financial ruin. The solution to the problem must therefore comprise the reforms and international rules that are needed to ensure that all those involved in maritime trade, by definition and of its very essence international, are subject to the same conditions of competition.

B. Legal position

1. Legal position at international level

Sea transport is regulated by international law and, specifically, by the 1982 United Nations Convention on the Law of the Sea (UNCLOS). This Convention regulates all aspects of the management of the seas. Concerning ships' nationality, Article 91 states that, 'Every State shall fix the conditions for the granting of its nationality to ships (...) and for the right to fly its flag (...) There must exist a genuine link between the State and the ship.' Article 94 provides, in addition, that the flag State shall 'assume jurisdiction under its internal law over each ship flying its flag (...) in respect of administrative, technical and social matters concerning the ship.' The same article stipulates, finally, that 'every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard to: (a) the construction, equipment and seaworthiness of ships; and (b) the manning of ships, labour conditions and the training of crews.'

Matters connected with ship registration are regulated by the 1986 United Nations Convention on Conditions for Registration of Ships. Among the matters covered by this Convention are the rights and responsibilities of flag States, ships' documentation, the rights of shipowners and crews, etc. On the question of a 'genuine link' between flag State and ship, the Convention stipulates that the shipping company must be established in the flag State or must have its principal place of business there.

2. Legal position at Community level

Aside from Article 80(2) (ex Article 84) of the Treaty, which provides that the Council, acting by qualified majority, may lay down appropriate provisions for sea transport, for the purposes

of this opinion the following are of particular interest: the legal reforms in connection with the transfer of ships from one register to another within the Community (Regulation (EEC) No 613/91), controls on ships calling at Community ports (Directive 95/21/EC), ship inspection organisations (Directive 94/57/EC), training for seafarers (Directive 94/58/EC) and, in general, with the free provision of services in the sea transport sector (Regulation No. 3557/92). The Union has produced a range of proposals for reform in the sea transport sector but, as demonstrated by recent accidents at sea, further improvements are needed.

C. Types of shipping register

In the interests of a greater understanding of the problem, the various types of shipping register that currently exist in the sector are outlined below.

a. Traditional national registers

These registers, the product of hundreds of years of experience, require the shipowner or operator to hold the nationality of the flag State.

b. Open national registers

Open registers do not impose particularly strict requirements for registration, and it is relatively easy to establish a 'genuine' link with the flag State. Some candidate countries, such as Cyprus and Malta, maintain this kind of shipping register. Interestingly, such registers also exist in some parts of Member States, including the Canary Islands, Gibraltar and the Netherlands Antilles.

c. Second (offshore) registers

Shipowners may enter their vessels in national registers, but have a high degree of flexibility with regard to the employment conditions of crews (a high percentage of crew members may be non-nationals of the flag State). Examples of this kind of shipping register may be found in Bermuda, the Cayman Islands and the Isle of Man (United Kingdom), the Kerguelen Islands (France), the Netherlands Antilles (Netherlands), Luxembourg (Belgium) and the Faroe Islands (Denmark).

d. International registers

In response to the trend away from national registers, some Member States have created international registers which, in effect, are second national registers. The conditions governing management and crew are strict, but not as strict as those laid down in the original national registers. The Danish international register, for example, covers 92% of the national fleet, whereas the equivalent figure for the German register is 76%.

CONCLUSIONS

The Committee on Regional Policy, Transport and Tourism calls on the Committee on Fisheries, as the committee responsible, to incorporate the following points in its motion for a resolution:

Paragraph 1

Points out that the use of flags of convenience is generally motivated by a desire to minimise costs and circumvent certain tax regulations by means of complex legal devices and results in numerous difficulties with regard to the attribution of responsibility in the event of illegal fishing, accidents at sea and, in general, with regard to compliance with the competition rules to which sea transport is subject.

Paragraph 2

Calls on the European Union to draw up and implement, as soon as possible, a regulation designed to prevent ships flying flags of convenience from circumventing strict rules and controls with regard to safety at sea, the protection of the marine environment in general and fish stocks in particular, and Community rules, compliance with which is also a guarantee of safety and compliance with international competition rules.

Paragraph 3

Calls on the Commission and the Council to look again at the possibility of establishing a European system for the registration of ships (a European shipping register), to operate in tandem with port State control.

Paragraph 4

Calls for a strict reinforcement of control measures and Community compulsory minimum safety rules.

Paragraph 5

Calls on the EU and the Member States to ask the IMO to review, as a priority and a matter of urgency, control measures on the application of international rules, both with respect to flag States and port States, in line with the measures proposed by the Commission that are about to be adopted in the Erika I and II packages.

Paragraph 6

Calls on the European Commission, in the context of the accession negotiations, to ensure that the candidate countries incorporate into their national law Community rules on safety at sea.

Paragraph 7

Recalls that, although a year and a half has passed since the Erika accident and despite the acceleration of the relevant process by the European Parliament, the Erika I package of measures on safety at sea and, in particular, the directives on shipping registers and port State control, have still not been implemented. Calls, therefore, on the Council, in cooperation with

Parliament, to adopt and implement these measures as soon as possible.