



## Shipping: EU policy

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This Note provides an overview of the attempts by the European Union to develop an overarching Common Maritime Transport Policy (CMTTP) and the Integrated Maritime Policy.

The expansion of the EU competencies into various maritime policy areas since the 1970s is certainly marked. In 1974 there were no EU competencies in the thirteen key areas; by 1990 this had risen to four areas and by 2000 to ten out of the thirteen. The only areas remaining with sole national competency were registry, manning rules and state aids. In all other areas – Liner Code, competition issues, trade agreements, opening up on intra-EU market, liberalisation of cabotage, short sea shipping, safety and environment, crew conditions, maritime infrastructure and R&D – the EU had sole or joint competency by 2000.

This note is focused on the transport-related implications of EU maritime policy and does not cover environmental issues. Information on other areas of shipping, such as UK policy, the tonnage tax and piracy can be found on the shipping topical page of the [Parliament website](#).

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## 1 Background, 1957-1985

In the 1950s the six original European Economic Community (EEC) Members considered creating a European Transport Community based on the model of the European Coal and Steel Community. However, they decided instead to establish the EEC (and the European Atomic Energy Community), with a common transport policy as one of its aims. The European Economic Community, now commonly called the European Community or EC,<sup>1</sup> was formed under the *Treaty Establishing the European Communities* (the Treaty of Rome), signed on 25 March 1957.

Article 3(f) of the *Treaty Establishing the European Communities* (TEC) on the activities of the Community states that they shall include “a common policy in the sphere of transport”. Detailed provisions are set out in Title V TEC, Articles 70-80, and Title XV on Trans-European Networks, Articles 154-6.<sup>2</sup> Since 1973, when the UK joined the then EEC, the wording has changed only in so far as the earlier Treaty stated (in Article 3(e)) that its activities included “the *adoption* of a common policy in the sphere of transport”. The adoption of the common transport policy was initially very slow and in 1982 the European Parliament (EP) took the Council to the European Court of Justice (ECJ) for its failure to act in adopting the common policy. Following the ECJ ruling in 1985<sup>3</sup> there was more progress, and in recent years the pace of action in this area has been rapid.

In the *Treaty of Rome* there were few specific requirements, with Article 71 referring only to the need for “common rules applicable to international transport, rules on the provision of transport services by non-residents in the Member States”, “measures to improve transport safety” and “any other appropriate measures”. The *Single European Act* amended the original Article 84 (now Article 80) to allow the Council of Ministers to decide whether to extend the transport provisions to sea and air transport, as well as to the existing rail, road and inland waterways. Gillian Ledger describes how:

... the Treaty implied that the transport market must be organised in accordance with a market economy and that public intervention should occur only where it is otherwise impossible to proceed. The Community must ensure that restrictions to freedom to provide services are removed. At the same time the aim was to harmonise the overall framework in which modes and companies operate. Therefore the EEC was not to lose sight of the objective of optimising the transport process with a view to increasing competitiveness of the EEC, and improving service to the public.<sup>4</sup>

Anna Bredimas, a former legal adviser on EEC affairs at the Union of Greek Shipowners, states that the Dutch initially “aimed at excluding any Community intervention in shipping”.<sup>5</sup> Ms Bredimas further outlined how the phrasing of the original Article 84 was somewhat unusual when looked at in the context of similar articles on other common policies:

[Articles on other common policies] provide that in order for an act to be issued, the proposal of the Commission, the opinion of the European Parliament, the opinion of the

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<sup>1</sup> the European Economic Community, EEC or Common Market, was established in 1957 by the *Treaty of Rome* and came into being in 1958; the European Community, which replaced the EEC in 1993, forms one part of the European Union or EU; the EU is the over-arching structure, comprising the Community and two inter-governmental ‘Pillars’; for more information, see: [HC Library Standard Note SN/IA/3689](#)

<sup>2</sup> [OJC 321](#), 29 December 2006

<sup>3</sup> [Case 13/83](#), 22 May 1985

<sup>4</sup> “Maritime policy in the European Community and the United Kingdom: Contrasts and conflicts” by Gillian Ledger from *Shipping Policy in the European Community*, 1993, p9

<sup>5</sup> “The Common Shipping Policy of the EEC” by Anna E. Bredimas from *Common Market Law Review*, Vol 19, no. 1, February 1981, p9

Economic and Social Committee are needed; moreover, they provide for a timetable and the transition from unanimity to majority voting. None of this is provided in Article 84, para.2 shipping seemed to be in a watertight compartment isolated from the rest of the Treaty. In fact, the phrasing of Article 84, para.2 lent itself to various interpretations. According to the restrictive view, propounded by most Member States until the Council decided otherwise, air and sea transport were excluded not only from the application of the transport provisions of the Treaty, but from the application of the rest of the Treaty. According to the extensive view propounded by the Commission such an idea was untenable: if for the time being the transport provisions were inapplicable, the rest of the Treaty provisions did apply.<sup>6</sup>

Consequently, between 1957 and 1977 there was no EC shipping legislation. The first moves towards such agreements began when three traditional maritime nations joined the EC in 1973 – Denmark, the UK and Ireland – and a test case was brought before the European Court of Justice (ECJ) in 1973 which found that the general rules of the Treaty applied to shipping. Athanasios A. Pallis describes the impact of the judgement:

The ECJ confirmed the EU policy making authority, a judgement with legal and political implications: it incorporated [shipping] in the process of European integration, hence considered as the most important ECJ case in the field of maritime transport. In 1975, and reacting to the ECJ decision, the French government presented a memorandum on the development of EU action on shipping and the Commission chaired a Working Group composed by representatives of the EU ports, which investigated the management of various ports from institutional, structural, and administrative angles. In 1976, the Dutch Presidency of the Council opened discussions on competition rules and shipping, the Commission submitted a communication on shipping matters and relationships with third countries, and an interim EP report emphasised the need for further EU coordination in the field.<sup>7</sup>

The first major Council decision in the shipping arena was taken in 1977 and concerned the introduction of a consultation procedure in shipping matters pursuant to Article 84, para 2 of the Treaty. [Decision 77/587/EEC](#) set up a consultation procedure designed “to facilitate confidential discussion by the Member States and the Commission of the relationship on shipping matters between Member States and third countries”.<sup>8</sup> The Council’s consultative document, published in July 1976, set out the difficulties it was designed to address:

The Community shipping companies are experiencing serious problems at two levels: at the cyclical level because of the effects of the economic crisis on these companies, especially in the oil transport sector, and on the political level because of the increasingly restrictive practices adopted by the governments of certain non-member countries in the field of international shipping relations...

The political difficulties are due to the determination of some foreign governments to gain a larger share of international maritime trade, by recourse to measures which create distortions in respect of the free supply of services on the market. They consist, in particular, of measures of flag discrimination, state financing of the deficits of national shipping companies, and dumping practices. Other difficulties are created by tax exemptions and the disregard of safety measures.<sup>9</sup>

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<sup>6</sup> op cit., “The Common Shipping Policy of the EEC”, pp9-10

<sup>7</sup> Athanasios A. Pallis, *The Common EU Maritime Transport Policy*, 2002, pp63-64

<sup>8</sup> op cit., “The Common Shipping Policy of the EEC”, p23

<sup>9</sup> [COM\(76\) 341 final](#), 30 June 1976, paras 4.1-4.2

In 1979 the EC produced a regulation related to the United Nations Conference on Trade and Development (UNCTAD) code of conduct for liner shipping. This so-called 'Brussels Package' obliged all Member States to ratify the Code subject to some reservations, which were: the cargo sharing formula envisaged by the Code would not apply to the liner trades between EU and other OECD countries; and the share allocated to the EU lines would be redistributed among them on the basis of commercial criteria.<sup>10</sup> It was agreed unanimously, despite earlier concerns expressed by some countries (including the UK). However, Pallis argues that the Brussels Package was more of a common response to the growing political turbulence in international shipping than a movement towards integration of national policies:

The second part of the 1970s was indeed a period when two successive oil crises resulted in major changes to maritime transport. Of the most critical economic phenomena were the stagnation of seaborne trade and the subsequent worsening of the surplus of world shipping tonnage. The employment of flag discrimination and other protectionist practices by many countries who wished to control their trade through state trading shipping, particularly in the liner trade, were expanded. West European and other traditional maritime nations, which had dominated world shipping saw this dominance challenged more intensively than ever by FoC [flags of convenience] and other third-world countries. In this context, an alteration of the shipowners', shippers', and trade unions' stands towards the EU administration and the potential of common EU measures became evident.<sup>11</sup>

All of these measures, and particularly the 1979 Brussels Package, made it possible, by the early 1980s to attempt to create a framework for an EC shipping policy. A further incentive came in 1982 when the European Parliament (EP) instituted proceedings against the Council, arguing that the Council had infringed the Treaty of Rome "by failing to introduce a common policy for transport and in particular to lay down the framework for such policy in a binding manner". The ECJ agreed with the Parliament.<sup>12</sup> Consequently, in March 1985 the Commission published policy papers on maritime transport.

## **2 Common Maritime Transport Policy, 1985-1991**

Since 1985 EC shipping policy has evolved in 2 stages.

### **2.1 Stage I**

In 1985 the Commission sent a communication to the Transport Council entitled *Progress towards a common transport policy – Maritime transport*.<sup>13</sup> This was the first attempt at an overall view of a Community shipping policy. The communication gave an analysis of the decline in Community-based shipping over the previous decade, set out a framework of principles for Community shipping policy and proposed a number of regulations aimed at providing Community trading and shipping interests. The Council of Transport Ministers held its first discussion of the Commission communication on 24 June 1985; however it was not possible to reach any initial position until well into 1986. The Economic and Social Committee of the Community delivered its opinion on the four priority areas (which produced the regulations outlined below) in November 1985.

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<sup>10</sup> op cit., *The Common EU Maritime Transport Policy*, p65

<sup>11</sup> ibid., pp65-66; [HC Library Standard Note SN/BT/595](#) gives some background on these issues in the context of the decline of British shipping

<sup>12</sup> ibid., p69

<sup>13</sup> [COM\(85\) 90 final](#), 14 March 1985

There was a debate on the Commission communication in the House of Commons on 11 March 1986. The then Secretary of State for Transport, Nicholas Ridley, set out the position on the four proposed regulations:

First, there is now a broad measure of agreement on the co-ordinated action regulation [see 4., below], with only a few detailed points still to be resolved. One of the points that concerned us originally was that a single member state could prevent action under the regulation if a unanimous decision of the Council was needed in order to instigate the joint action envisaged. However, one of the amendments to the treaty of Rome agreed at the Luxembourg summit last December was that the qualified majority voting procedures should apply to provisions for shipping. Although the summit decisions will have to be formally ratified by Parliaments of all member states, when they are, it will be possible for co-ordinated action under this draft regulation to be decided by qualified majority voting procedures, thus giving more flexibility and reducing the possibility of blocking by one member state.

The second regulation is the draft competition regulation [see 2., below]. This has been under negotiation in Brussels for over three years. It is common ground both within the United Kingdom and throughout the Community that a regulation in this area is necessary, if only to resolve the legal uncertainty which currently surrounds international liner shipping, particularly liner conferences. The regulation vitally affects both shipowners and shippers and in recent weeks a number of changes have been negotiated with points raised on both sides. I think that the balance struck between their disparate interests is now about right. We are a major shipping nation and an island that is more dependent on trade than on any other major industrial nation, and I am glad that the regulation upholds the conference system in a competitive environment, while adequately protecting the interests of shippers. There is now a broad measure of agreement on this draft regulation, although, as with the co-ordinated action regulation, there are still a few detailed points outstanding.

The third regulation [see 3., below] to the memorandum is the unfair pricing practices regulation. Negotiations on this too have gone well. This is the instrument which will enable the Community to deal with the unfair competition and distortions of the market by the Soviet and other state trading shipping lines whose subsidised operations unfairly undercut the rates of the commercial Community lines. This regulation is in fact an anti-dumping regulation.

... These three regulations are in an advanced state of negotiation. I believe that it will be possible for these to be approved by the Council within the next month or two. We have, however, made it clear to our Community partners that we want to see all four of the regulations brought into force together. This brings me to the fourth – the freedom to provide shipping services [see 1., below]. Here negotiations are proving altogether more difficult.

We are particularly anxious to see the cabotage markets of all our European partners opened up to ships of all member states. The United Kingdom cabotage market is already open but our shipowners have no access to the considerable trading opportunities along the coastlines of Italy, Greece and the Greek islands. Nor can a British ship delivering goods to Bordeaux and, going into Rotterdam, take on cargo from Bordeaux to Cherbourg en route as a French vessel can. This is a particularly wasteful loss of opportunity. I regret that there is still opposition to the principle of liberalisation of cabotage within the Community, particularly from Greece and Italy ... It is particularly intolerable that our cabotage should be open to all, whereas half the Community close their cabotage to us.

Soon we will have to decide whether to continue to fight for this regulation against such substantial opposition ... We must make our decision against the background that all the member states, including ourselves, want to agree the other three regulations and get this urgently needed Community shipping policy off the ground. There is much value in those regulations, particularly in the ability they will give the Community to stand together to resist protectionism and unfair practices.<sup>14</sup>

A report by the House of Lords Select Committee on the European Communities, published in March 1986, generally supported the Community's approach and recommended, in line with the Government, that the four main proposals for regulation be taken forward together.<sup>15</sup> However, the Labour Party Transport Spokesman, Robert Hughes, did not feel that the proposals were satisfactory and stated that: "We need a fully thought-out shipping policy and the EEC regulations go nowhere near to matching that need".<sup>16</sup>

The Transport Council finally agreed the package of four regulations in December 1986:

1. [Regulation EEC/4055/86](#) applied the freedom to provide services to maritime transport between member states and between member states and third countries;
2. [Regulation EEC/4056/86](#) applied the Competition Rules of the Treaty of Rome to shipping;
3. [Regulation EEC/4057/86](#) covered unfair pricing; and
4. [Regulation EEC/4058/86](#) provided for co-ordinated action by member states to safeguard free access to cargoes in ocean trades.

When the package was agreed the Transport Council instructed the Commission to bring forward proposals on a second stage of Community shipping policy with the aim of harmonising conditions and improving the competitiveness of Community fleets.

## 2.2 Stage 2

No further progress was made on developing stage 2 of the CMTF until June 1989 when the Commission attempted to deal with some of the more difficult issues the Community faced. The Commission's proposals, presented to the Council on 5 June 1989, were published on 3 August 1989. The stated objectives were to maintain the EU shipping fleet and to maximise the number of European seafarers who could serve on that fleet. However it was recognised that the EU fleet could not be completely restored to previous levels or totally manned by EC nationals.<sup>17</sup> Pallis states that the stage 2 proposals were necessary as the EU fleets continued to experience significant losses of capacity, employment, and a slow rate of modernisation. As such, it was recognised that the first stage had failed to achieve its objectives.<sup>18</sup> The August 1989 proposals set out the need and scope for Community action in this area:

In a situation where the Community is completing its internal market for goods and services in general it cannot allow a fading away of its presence on the world shipping market and a drifting apart of Member States' own national policies of assistance to

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<sup>14</sup> [HC Deb 11 March 1986, cc819-820](#)

<sup>15</sup> Select Committee on the European Communities, *European Maritime Transport Policy* (ninth report of session 1985-86), HL 106, 18 March 1986

<sup>16</sup> [HC Deb 11 March 1985, c825](#)

<sup>17</sup> op cit., "Maritime policy in the European Community and the United Kingdom: Contrasts and conflicts", p16

<sup>18</sup> op cit., *The Common EU Maritime Transport Policy*, p73

their fleets, with the consequent danger of increasing disparities inside the Community and distortion of competition between Community shipowners. The question as to how the Community should contribute, beyond trying to secure free and fair competition in the world shipping market through the implementation of the package of Regulations adopted in December 1986, needs further consideration.<sup>19</sup>

The communication stated that any proposed action programme must meet a number of criteria, including:

- it must be in line with the Community's non-protectionist shipping policy;
- be effective and capable of rapid introduction;
- prevent any divergence between policies in individual Member States;
- maintain Community employment in the sector;
- support internationally agreed safety standards;
- not drive up freight rates; and
- be financially viable.<sup>20</sup>

The Commission concluded that such action should be taken in three ways. The centrepiece was the establishment of a Community register of ships flying the European flag in addition to their national flag (called EUROS) which, it was hoped, would help both the retention of community ships under EU flags and the employment of EU nationals, as well as facilitate the solution of other controversial issues.<sup>21</sup> It also proposed a "clarification of the Commission's approach to fiscal and financial measures taken by the Member States" and various other measures to improve the fleet such as liberalisation of cabotage, mutual recognition of technical equipment, mutual recognition of seafarers' qualifications and enforcement of international safety standards for third country ships in EU waters.<sup>22</sup>

A briefing note prepared by the Department of Transport for the UK members of the EP in November 1989 gave the UK Government view of the proposals:

HMG questions the Commission's analysis of seaborne trade. Community ownership – a more economically relevant measure than the number of flagged vessels – has declined, but Community ownerships represents nonetheless approximately 25% of world shipping. It is well represented in all sectors of the market and all trade routes. More generally, the market has also moved on since the Commission started their analysis: rates of return are improving and European companies are investing in replacement and new vessels.

HMG is considering carefully the Commission's proposals. HMG is concerned to see an efficient, entrepreneurial Community fleet. It believes this will be best achieved in a free market, without subsidy. The Commission's cabotage liberalisation proposals are generally welcome: HMG has consistently attached priority to this objective. HMG also welcomes the Commission's proposal to address state aids. However, HMG does not accept that the creation of a Community ship register would improve the

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<sup>19</sup> COM(89) 266 final, 31 July 1989, para 49

<sup>20</sup> *ibid.*, para 53

<sup>21</sup> *op cit.*, *The Common EU Maritime Transport Policy*, p74

<sup>22</sup> *ibid.*, paras 5 and 54

competitiveness of the European fleets. Shipowner interests have expressed similar concerns.

In early discussions on the proposals there has been little enthusiasm from Member States and a growing recognition that they have missed their target. HMG will continue to press for the adoption of the positive parts of the proposals e.g. on cabotage liberalisation. The current French Presidency has indicated its intention to draft a Council Resolution to provide a workplan on the handling of the proposals and to give an indication of the weight attached to each proposal by the Council.<sup>23</sup>

Pallis asserts that, in the end, the EUROS proposal – in particular, its provisional manning requirements – proved to be “too ambitious an idea” and that “neither shipowners detected any economic incentive from such an establishment, nor were trade unions convinced that the recommended EUROS structure would create jobs”.<sup>24</sup>

In July 1990 the Department of Transport published a further briefing note for the UK members of the EP. It stated that the 1989 proposals were still ‘on the table’ but that the Transport Council had agreed that progress should be made separately on “a number of relatively uncontentious items including easing the transfer of vessels between member states registers and on the mutual recognition of seafarers’ certificates”.<sup>25</sup> On the subject of the EUROS, the briefing paper stated:

We, along with most other member states, have opposed the Commission’s proposal for a Community ship register on the grounds that rather than improve the competitiveness of the Community fleet it would lessen operational flexibility and increase costs.

Mr Sarlis [then EP rapporteur for the Committee on Transport and Tourism] agrees with the Commission’s objectives but argues that the present EUROS proposals are not attractive for Community shipowners. He proposes amendments to the Commission’s proposals including:

- A special tax regime for shipowners and an exemption from income tax liability for seafarers;
- That the lower threshold for registration on EUROS should be raised from 500grt to 3,000grt [gross register tonnes];
- That the Commission should issue safe manning certificates for each EUROS-registered vessel; and
- That the requirement to have a certain number of EC nationals in crews on EUROS-registered vessels should differ depending on the type of trade it operates in.

The report also proposes that Community aid should be given to owners of vessels registered on EUROS to subsidise loans for shipbuilding in the Community and to subsidise contributions to seamen’s pension funds.<sup>26</sup>

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<sup>23</sup> Department of Transport, *Briefing for UK members of the European Parliament: Commission Communication COM(89) 266 Final*, 1 November 1989, paras 8-10

<sup>24</sup> op cit., *The Common EU Maritime Transport Policy*, p74

<sup>25</sup> Department of Transport, *Briefing for UK members of the European Parliament: Commission Communication COM(89) 266 Final*, 6 July 1990, para 3

<sup>26</sup> *ibid.*, paras 4-6



This view was supported by an October 1990 report from the House of Lords Select Committee on the European Communities which stated that:

International law requires a genuine link between a State and a ship flying its flag. But this rule is not observed in practice, and flags of convenience have proliferated. The Community should not compound the mischief. The Committee see the proposed Community Ship Register (EUROS) as a new kind of flag of convenience, based on its financial attraction rather than on legal responsibility for enforcing standards. A single Community flag could have symbolic value, but would be a distraction from the real problems. The advantages associated with it in the EUROS package should be examined independently.<sup>27</sup>

On cabotage, the UK Government had been pushing consistently for progress separate from the EUROS proposal. Mr Sarlis proposed that the link with EUROS be maintained, meaning that:

...the lower weight threshold was raised to 3,000grt; that mainland/island and island/island services be excluded from the scope of the Regulation on the grounds of defence and public service; and that passenger transport cabotage should not be liberalised until 1998.<sup>28</sup>

The Department of Transport's July 1990 briefing note stated that in the Government's view, this continued linkage was 'inconsistent' with the argument put forward by Mr Sarlis that EUROS should essentially be about deep sea vessels in the first instance:

Raising the lower weight threshold to 3,000grt will greatly reduce the usefulness of the proposed liberalisation as it will remove the vast number of short sea vessels operating in cabotage trades. The proposal for a permanent exclusion for island services is not in accordance with the view of the Commission's legal services who have ruled out permanent derogations from the application of the freedom to provide services provisions of the Treaty.<sup>29</sup>

A further briefing note, dated 31 August 1990, stated that the Transport Committee had broadly accepted Mr Sarlis' draft report though with some differences in emphasis. Regarding the non-fiscal proposals, the Government welcomed the Committee's rejection of the proposal for the Commission to issue safe manning certificates and agreed with the Committee's view that the revised proposals for crew nationality requirements were impracticable. The Government also welcomed the Committee's more flexible approach to cabotage but rejected the proposal that Member States should have discretion in the application of the scope of the Regulation, particularly in relation to cruise services.<sup>30</sup>

Ultimately, there was little support from Member States, including the UK, from the EUROS proposal and no agreement was reached. However, a number of items originally attached to the EUROS proposal were dealt with separately, for example the Regulation easing the transfer of vessels between Member States registries was adopted at the Council meeting on 5 March 1991. Further, the Commission and all Member States except Greece agreed that

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<sup>27</sup> Select Committee on the European Communities, *Community Shipping Measures* (twenty-eighth report of session 1989-90), HL paper 90, 30 October 1990, para 90; for a debate on the report, see: [HL Deb 14 February 1991, cc238-272](#)

<sup>28</sup> *op cit.*, *Briefing for UK members of the European Parliament: Commission Communication COM(89) 266 Final*, 6 July 1990, para 10

<sup>29</sup> *ibid.*, para 11

<sup>30</sup> *Briefing for UK members of the European Parliament: Commission Communication COM(89) 266 Final*, 31 August 1990, paras 5-6

cabotage liberalisation should take place as soon as possible, while recognising the possible need to agree transitional arrangements and with specific reference to the need to make provisions for island services. In December 1990 the Council gave the Commission a firm remit to prepare proposals for a two-stage approach to cabotage liberalisation, in which the main phase would be implemented by the end of 1993. The second phase, service between the mainland and islands and between islands would follow after an interval to be agreed. However, at the December 1991 Transport Council meeting no final decision was reached on cabotage liberalisation, though there was general support for the 'phased' approach.<sup>31</sup>

### **3 European Maritime Competitiveness, 1992-1993**

As stated above, at the beginning of the 1990s several initiatives were being undertaken or were under discussion regarding European shipping issues, without a comprehensive European strategy being in place. Pallis describes how the EU tackled the problem:

Against this background, the Commission pronounced the promotion of a coherent 'horizontal' EU answering to the challenges and prospects of the several interrelated maritime industries. In its own words this strategy 'does not follow the more traditional approach on concentrating on sector specific aspect...is a general and horizontal one, as it addresses the whole maritime dimension – which is of common concern to the different parties involved'. The EU became engaged in the development of a CMTF that tackles the contemporary challenges of the European fleets' competitiveness in combination with other critical policy issues. The latter include wider transport developments, the achievement of the internal market, the improvement of the sector's safety and environmental performance, personnel training, promotion of research and development (R&D), and aspects of competition. Essentially, the objective is a cohesive EU policy with real impact for the whole of Europe's maritime industries.<sup>32</sup>

The new approach was based on the September 1991 communication commonly referred to as *New Challenges for Maritime Industries*.<sup>33</sup> The objective of the Communication was to strengthen the competitiveness of the maritime industries via a global and horizontal approach. In order to flesh-out the approach, it was proposed that a 'discussion forum' of all concerned parties should be set up.<sup>34</sup> The forum was established and held its first plenary session in January 1992. There were two further sessions during the course of 1992 and the forum's report was presented to the Commission in October 1992, it recommended that the forum should subsequently be convoked once a year to decide on issues of major importance to maritime industries. The Commission reviewed the forum's report and issued a communication in response in November 1992. The November 1992 communication looked at proposals in two areas: industry actions; and Member States and Commission actions.

In terms of industry actions, the communication stated that "the main responsibility for competitiveness lies with the industries themselves" and that the maritime industries were aware of this. The Commission welcomed the forum's proposal to establish a working group to look at the commercial funding for maritime industries and plans to prepare a paper on the co-ordination of research facilities in the industry. In general, the Commission welcomed the fact that "the industries themselves are taking the initiative to proceed with the dialogue, started under the Forum launched by the Commission. This means less involvement for the

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<sup>31</sup> [HC Deb 20 December 1991, c400W](#)

<sup>32</sup> *op cit.*, *The Common EU Maritime Transport Policy*, p81

<sup>33</sup> [COM\(91\) 335 final](#), 20 September 1991

<sup>34</sup> to include representatives from all the major maritime industries such as shipping, shipbuilding, equipment, fishery, marine resources and the offshore oil and gas industry

Commission and the Member States”.<sup>35</sup> In terms of Member States and Commission actions, the Commission welcomed the industries pledge in the forum report to fair and open markets and free and fair trade. It also supported the forum recommendation to revive and amend the EUROS proposal to include “additional positive measures particularly with regard to social security provisions and company tax incentives to facilitate investment”.<sup>36</sup> The Commission also highlighted short sea shipping as an issue that might require further examination in the near future and welcomed the forum’s recognition of the need for international safety and environmental standards. Consequently, three panels were set up, organised by the maritime industries, to look at the issues of short sea shipping, maritime resources and ship financing.

The forum met again in June 1993 in Athens and in November 1993 the Commission issued another communication taking stock of the progress made to date under the Community maritime approach.<sup>37</sup> Generally, the Commission felt that the forum had been successful, both in terms of establishing a constant dialogue between the maritime industries and between the industries and the political level (the Commission and Member States). It also praised the way in which the maritime industry had improved its image, “presenting itself as a dynamic high-tech sector eager to face world-wide competition”.<sup>38</sup> Regarding short sea shipping, the Commission welcomed the ‘practical and constructive’ recommendations put forward by the forum to eliminate restrictive practices and to tackle port efficiency, and its role in multimodal interoperability.

The other issue of importance settled at this time was that of maritime cabotage following the Council’s instruction to the Commission in December 1990 to prepare proposals for a two-stage approach to cabotage liberalisation (see above). In July 1992 transport ministers agreed to the gradual liberalisation of maritime cabotage from 1 January 1993. Regulation 3577/92/EC, implementing the agreed measures, was adopted on 7 December 1992. This was finalised after years of discussion but represented a political compromise between northern and southern Member States and there were many derogations. The regulation provided a calendar for further liberalisation by southern states (France, Italy, Spain, Portugal and Greece) by sector or type of service up to 2004. The derogations applied to some mainland cabotage trades and all their island trades. Article 10 of the regulation requires the Commission to submit a report every two years on progress made by Member States in liberalising their cabotage trades and to make proposals as necessary.

In May 2006 the Commission published a communication with the intention of updating the 1992 Regulation on cabotage to increase the passenger threshold for small islands and to include ships registered in Gibraltar within the scope of the Regulation.<sup>39</sup> The Government indicated that this would have no material effect on services to the Scottish Highlands and Islands ferry services.<sup>40</sup>

#### **4 Towards a new maritime strategy, 1996**

The Commission published its next major shipping paper in April 1996. *Towards a New Maritime Strategy* was drawn up with a view to re-assessing Community maritime policy and setting further goals for the sector. It described the global shipping situation and examined

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<sup>35</sup> [COM\(92\) 490 final](#), 18 November 1992, p6

<sup>36</sup> *ibid.*, p7

<sup>37</sup> [COM\(93\) 526 final](#), 4 November 1993

<sup>38</sup> *ibid.*, p9

<sup>39</sup> [COM\(2006\) 196 final](#), 11 May 2006

<sup>40</sup> ESC, *Thirty-third report of session 2005-06*, HC 34-xxxiii, 7 July 2006, section 14

the sector's future in the Community, it also set out the policies followed by Member States and the Community since 1985 and proposed to map out a future Community shipping policy. The paper summarised the results to date of the Community shipping policy:

The maritime policy thus far has succeeded in opening up markets, particularly in Europe, and giving the consumer a wide choice of shipping services. The application of EC competition rules to all market participants regardless of flag has furthered consumer interests and ensures fair treatment of all liner shipping companies. The newly introduced safety policy will enable the Community to ensure that safety and environmental standards are effectively applied, thereby also ensuring fairer conditions for competition. The liberalised international shipping environment has, however, now led to the creation of more employment for EC seafarers.

The measures taken by the EC and Member States to increase the competitiveness of EC flags have thus far not been able to reverse the flagging out and loss of employment in most cases, although some alternative registers seem to show promising features.<sup>41</sup>

The main portion of the paper was dedicated to setting out options for a policy for the future, and asked for responses to the proposals by September 1996. It focused on three key areas: safety and fair competition; maintaining open markets; and a policy for competitiveness.

In the first of these areas, safety and fair competition, the Commission proposed the development and enforcement of international rules on safety and environmental protection, both through flag State quality and control and through port State action. The paper stated the Commission view that the crucial instrument for putting the safety policy into practice would be the regime governing the conditions for entry to a ship register and the administration of the register itself. The paper proposed that efforts should be made in international forums to adopt register conditions and that, in parallel, the Community should consider defining common criteria for registers to be laid down in a Community legal instrument. However, it was at pains to emphasise that such a proposal would not introduce an EC ship register modelled on EUROS. Further the Commission announced in the paper that the EUROS proposal would be withdrawn.<sup>42</sup>

In the second area, maintaining open markets, the Commission proposed to ensure that "the EC uses its full political and economic weight to further fairer and more open markets through adopting a coordinated approach and stance, using, as appropriate, its trading and political, as well as shipping, power". To this end, the paper announced the Commission's intention to propose to the Council that it grant a mandate to engage in shipping negotiations with certain third countries. The paper also made clear that it would be crucial that there was a coherence of action by the Community and Member States in their relations with third countries. Further, in the context of creating open markets and fair competition, the Commission considered it important that state aid schemes be transparent and that this could be achieved by global initiatives such as the OECD drawing up a full inventory of state aid given by member countries.<sup>43</sup>

In the third and final area, a policy for competitiveness, the Commission proposed the introduction of measures for further training and employment, the launch of R&D initiatives for the shipping sector and a possible revision of the state aid policy. In terms of training and

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<sup>41</sup> COM(96) 81 final, 13 March 1996, p11

<sup>42</sup> *ibid.*, pp13-20

<sup>43</sup> *ibid.*, pp20-23

employment, the paper proposed the absorption of training costs within national education and training systems; direct assistance to seafarers during training; financial support by Member States for shipping companies which provide on board training facilities for cadets; the adoption of a modular framework of certification in line with the Revised International Convention on Training; and facilitating and increasing access to maritime employment by citizens of Member States by increasing awareness and understanding of national education and training systems.<sup>44</sup>

The paper argued that in order for the shipping policy it outlined to be successful, the “various interests at play must be reconciled” (i.e. Member States, shipowners and their financial backers, labour and users):

Member States have different maritime traditions. Some have a tradition of State-owned fleets or strong links between industry and Government, others have adopted an essentially laissez-faire approach to shipping. Member States also have varying interests in types of transport, depending on geography, trade ties and historical development. For some States, the development of short sea shipping is a priority; others may focus on fostering their deep sea shipping where their shipping companies are heavily involved in cross-training. A Community policy must be aware of these different priorities and take them into account.

Shipowners will in the first place look at their own balance sheets and prospects. They will not keep a flag for reasons of national security, pride or for job creation if this damages their commercial position. A policy to keep shipping under EC flags must therefore be economically viable. It must create conditions to keep or attract shipowners to EC flags.

EC labour will want to maintain living standards while having job security and a safe working environment. Investment in human skills and resources such as continuing training and education is also being demanded by employees to secure their future. EC labour is not likely to accept a lowering of wages and social standards in order to increase the competitiveness of EC shipping. Competitiveness is not an end in itself. It should lead to a better life for citizens of the Union.

Users are primarily interested in efficient and reliable transport systems rather than maritime strategy, job creation and competitiveness. The market price they pay should reflect the full costs of maritime transport. Regardless of the flag of the ship they are using. Safety and quality of ships should be viewed as essential elements in the negotiation and conclusion of contracts between users and providers in maritime transport.

In addition, ancillary industries which depend on shipping activities for their own survival and growth will want to ensure that shipping flourishes. They will have a preference for ships which require and use their products or services.<sup>45</sup>

The Select Committee on European Legislation recommended in its June 1996 report that the paper be forwarded to the European Standing Committee for further consideration. This took place in July 1996.<sup>46</sup> Opening the session, the then Minister for Transport, Steve Norris, emphasised that the Government had not yet finalised their response to the document, however he went on to outline the Government’s ‘preliminary views’:

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<sup>44</sup> *ibid.*, pp23-33

<sup>45</sup> *ibid.*, pp12-13

<sup>46</sup> Select Committee on European Legislation, *Maritime Policy* (twenty-first report of session 1995-96), HC 51-xxi, 5 June 1996

In general, we welcome the emphasis on free and fair competitions, open markets and the importance of enforcing safety standards at the international level. We believe that competitiveness is best achieved by offering customers the service that they want at the right price. Any strategy for competitiveness must put the interests of the customers first.

We strongly support international action against substandard registers. I emphasise international action. Indeed, we have taken initiatives in the IMO to that end. We would, however, advise caution against regional safety initiatives, which could lead to retaliation against European ships elsewhere.

We are open to discussion as to how registers can be made more attractive to shipowners, but we would not welcome any proposal to impose higher burdens that are not justified on safety grounds – for instance, through requirements involving crew nationality, wages or working conditions that would make ships on the register uncompetitive with others. I underline a crucial point in the debate: in an international market, shipping lines should not be restricted in their choice of suitable crew on grounds of nationality.

We are not convinced that there is a case for renegotiating the Community's 1986 regulations that govern open markets in shipping. The Community's efforts would be better aimed at making more use of the powers in the regulations to remove remaining obstacles to community shipping in third countries.

There are attractions in the principle of imposing sanctions on cargo owners who knowingly use substandard ships. That approach has precedents in the international oil pollution compensation fund and the proposed hazardous and noxious substances fund. Both funds are based on the principle of shared responsibility between shipowner and cargo owner. However, putting the idea into effect presents a number of practical and legal difficulties, which would need thorough investigation and close consultation with those likely to be affected.

We are sympathetic to programmes to promote training. The provision of qualified seafarers should be a matter for the market, but where that fails, we recognise that some form of intervention may be necessary. European seafarers must be competitive in terms of the quality and reliability of their work. We are therefore less sympathetic to the case for promoting employment, if that means subsidising shipowners to employ European crews where third country crews could do the job as well.

We find the section in the document that deals with state aids disappointing. Operating subsidies are far too prevalent in the sector, both within the Community and elsewhere. Levels of subsidy are spiralling, as shipowners urge their Governments to match the aid given to their competitors. They are against the interests of the customers and the long-term interests of the shipping industry. We shall press the Commission to apply the full rigour of the state aid provisions in the Treaty of Rome to the shipping sector. Where state aids are sanctioned, they should be transparent, narrowly targeted, time-limited and declining, and they should avoid the possibility of distorting competition.

We are also disappointed that the Commission document does not propose any extension to shipping of the 'user pays' philosophy. There is growing recognition in the Community and elsewhere of the validity of the principle that users rather than taxpayers should fund infrastructure. The infrastructure of so inherently a commercial activity as shipping – that is, ports and navigation aids – are prime examples of the sort of infrastructure that should be paid for by users.

As I said earlier, the responses that we have so far received from industry are few and preliminary. Most potential respondents are concerting their responses with their

counterparts in Europe and are working to the Commission's September timetable, but the main lines of opinion are clear. British shipowners and seafarers trade unions favour additional subsidies, while British shippers – that is, the users of shipping – are firmly opposed to them. However, both shipowners and shippers – that is, both the suppliers and the customers – want open international markets with free and fair competition. Both support our efforts to tackle substandard shipping.<sup>47</sup>

The then Minister for Aviation and Shipping, Lord Goshen, managed agreed a compromise with other Member States about the removal and revision of the state aid proposals at the European Transport Council meeting in December 1996.<sup>48</sup>

The Opposition Transport Spokesman at the time, Graham Allen, gave Labour's view of the proposals in the July 1996 European Standing Committee debate. In particular, and in contrast to the Government, the party supported the extension of state aid:

We agree with the Commission document that state aid for the shipping industry is, in some cases, still justifiable in the interests of maintaining and developing the shipping sector, for economic and employment reasons, because of the particular nature of international competition. We are also in favour of revising the guidelines on state aid to include conditions such as genuine involvement in the European Union economy, paying taxes or making commitments to employing European seafarers, for example. Above all, we want practical guidelines, discussed and negotiated with employers and employees in the United Kingdom and the European Union. It will not be a fantasy imposed by the European Union but something on which we want to work closely with the industry to devise clear, practical guidelines.

As other European nations have shown, the shipping industry is a special case because a small investment can produce a significant multiplier effect and enable the British fleet to compete in international shipping markets, which are low-tax and low-cost, while maintaining essential businesses and skills in Britain.

In Government, we will enter urgent discussions with the European Union about the way forward. That could include the proposals outlined by the Minister that are evident in other countries – for example, the waiving of employers' national insurance contributions for British seafarers working for British shipping companies, with no loss of benefit, to bring the United Kingdom into line with many of its European Union competitors. It is better to assist people to remain in the seafaring business than for them to be thrown on to the dole queue and make no contribution to the nation's income tax and VAT revenues. It would be a small price to pay to recoup large amounts of taxation benefits to the Exchequer as well as maintaining people in their current employment.<sup>49</sup>

In March 1997 the Commission put forward a proposal for a Council decision on setting up a consultation procedure on relations between Member States and third countries in shipping matters, on action relating to such matters in international organisation, and an authorisation procedure for agreements concerning maritime transport, as set out in the 1996 paper.<sup>50</sup> The proposal stalled in Council.

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<sup>47</sup> ESC (A) 10 July 1996, cc2-4; the UK Government published its official response to the Commission's paper in September 1996, broadly on the same lines as had been set out by Mr Norris in July

<sup>48</sup> DoT press notice, "Lord Goshen speaks out against state aids for shipping...", 13 December 1996

<sup>49</sup> ESC (A) 10 July 1996, cc20-21

<sup>50</sup> COM(96) 707 final, 14 March 1997

## 5 Maritime Transport Competition Rules, 2004-

On 13 October 2004, the Commission adopted a White Paper on the review of Regulation [4056/86/EEC](#), for applying EC competition rules to maritime transport. The intention behind the paper is to end the sector's exemption from competition rules. The Commission asked for submissions on the proposals by 15 December 2004. The then Department of Trade and Industry (DTI)<sup>51</sup> produced an explanatory memorandum on the proposal in November 2004 which summarised the main issue in the paper – whether to maintain, modify or repeal the block exemption for liner conferences:

The block exemption is primarily concerned with certain categories of agreements by shipping carriers in the maritime transportation of cargo who are members of liner conferences. Subject to certain conditions and obligations, the block exemption exempts such agreements from the prohibition of anti-competitive agreements in article 81(1) of the EC Treaty. Liner shipping refers to freight shipping services that depart on a regular, scheduled basis, to predetermined ports. Liner conferences operate under uniform or common freight rates and other agreed conditions in relation to the provision of liner services.

The block exemption allows liner conferences to engage in certain restrictive practices, in particular price fixing and supply regulation within liner conferences that would otherwise be prohibited by article 81(1) of the EC Treaty. The justification for the block exemption ... is that rate-setting and capacity regulation discussions of liner conferences would lead to:

- Stable freight rates; and
- Assure shippers of supply stability through reliable scheduled maritime transport services.<sup>52</sup>

The White Paper also looked at other, smaller, issues. Firstly, whether tramp shipping<sup>53</sup> and cabotage services should be brought within the scope of the Community implementing regulations; secondly, that the provision which allows maritime transport providers to conclude technical agreements be repealed; and third, whether the procedure in the event that a conflict of laws should arise with the laws of a third country should be retained.

The explanatory memorandum included the Government's response to the proposal. In summary, the Government's view was that there was no justification in competition terms, for retaining the liner shipping block exemption and it should be repealed. In principle, the Government was content for the Commission to consider alternative forms of co-operation not involving tariff fixing, provided their aim was to maximise competition and provide legal certainty. However, the Government indicated that it would be premature to settle on any one suggestion without thoroughly considering the alternatives.<sup>54</sup>

In December 2005 the Commission proposed to repeal Regulation EEC/4056/86 and end the liner conference block exemption.<sup>55</sup> The repealing regulation was published in September 2006 in which it was confirmed that the block exemption would end in October 2008.<sup>56</sup>

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<sup>51</sup> now the [Department for Business Innovation & Skills \(BIS\)](#)

<sup>52</sup> DTI, *Explanatory Memorandum – White Paper on the review of Regulation 4056/86*, 11 November 2004

<sup>53</sup> 'tramp vessel services' are those that do not generally operate to a fixed regular schedule

<sup>54</sup> *ibid.*

<sup>55</sup> [COM\(2005\) 651 final](#), 14 December 2005, para 8

<sup>56</sup> [Regulation 1419/2006/EC](#), 25 September 2006



## 6 Integrated Maritime Policy, 2006-

All of the relevant documents related to the IMP are available on the [European Commission website](#).

Following a Commission decision in March 2005 to launch a consultation on the future of Europe's seas, the Commission published its green paper, *Towards a future Maritime Policy for the Union*, for consultation in June 2006. A press notice accompanying the green paper said:

Commission President José Manuel Barroso, who initiated the process said: "Europe has long benefited from its maritime activities. However, much more could be made of our seas and oceans to increase the prosperity and well being of European citizens. Today's Green Paper gives us all the opportunity to put our heads together to see how best to do it. I encourage everyone to have their say on how they see a future maritime policy for the Union which would boost jobs while protecting the marine environment" (...)

The Green Paper seeks to highlight the interconnections and interdependence of these different domains – the linkages which are often ignored by existing procedures. It points out how, for example, the development of port infrastructure has to be weighed against the protection of local ecosystems, the promotion of coastal aquaculture and tourism development, as well as on the benefits of economic growth through foreign trade. It shows how fishing vessels, container ships, pleasure boats, oil companies and wind farms, for example, have to jostle for position in our increasingly crowded waters. It also underlines the fact that this convergence of myriad different issues is not the exception, but the norm, for it reflects the underlying wealth and diversity of Europe's seas.

The question is asked: is it really possible to continue to manage and develop all these different and frequently overlapping activities independently of one another? Or has not the time now come for Europe to invest in a truly integrated policy approach, if we are to succeed in creating a vibrant and sustainable maritime economy for the 21st century, and beyond?<sup>57</sup>

In line with other Member States the UK Government consulted on the green paper in late 2006 to early 2007.<sup>58</sup> The House of Commons European Standing Committee debated the issue in March 2007. The Conservative spokesman, Julian Brazier, asked for some guarantees about the preservation of the UK's national maritime policy; the then Minister for Transport, Dr Stephen Ladyman, sought to assure him on all his points regarding national independence:

**Mr. Julian Brazier** (Canterbury) (Con): ... Will he guarantee that he will fight to preserve Britain's independent voice at the International Maritime Organisation? Will he vouchsafe that no EU maritime policy will trump our own policy? After all, our reputation as one of the world's leading flag states cannot simply be held to ransom by other EU countries, some of which have little experience in this area.

**Dr. Ladyman:** (...) I can give the hon. Member for Canterbury the assurance that he seeks. There is no way that we will agree to the United Kingdom's position at the IMO being taken by the EU. I found no stomach for such a proposal in any other EU state

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<sup>57</sup> European Commission press notice, "[Oceans and seas: Commission sets a new vision for Integrated Maritime Policy](#)", 7 June 2006; the green paper is also available to view: [COM\(2006\) 275 final](#), *Towards a future Maritime Policy for the Union*, June 2006

<sup>58</sup> DfT, [Consultation on the EU Maritime Green Paper](#), 11 December 2006

during my discussions with European Maritime Ministers—why would we want to give up 25 votes in the IMO and replace them with one vote? That is one of the simple points that many of its members will make. Other EU member states, such as Greece, have incredible experience of maritime issues, and they therefore want to make their own views known in that forum.<sup>59</sup>

The UK Government response to the Commission was published in July 2007. In summary, the Government's view was as follows:

We are supportive of the development of an integrated Maritime Policy that provides better coordination of existing Community policies and assists in the development of a healthy, sustainable maritime economy that delivers both socio-economic benefits and environmental protection. There are some key principles that we would expect to see reflected in the EU Maritime Policy and any proposals that result from it:

- The need for EU Maritime Policy to clearly add value to existing national EU and international measures;
- The need for subsidiarity to be respected in all cases and for any proposals to be directed at the appropriate level;
- The importance of the Policy being underpinned by ecosystem-based management. The UK sees this as key to the sustainable use of marine resources, including addressing the particular issue of climate change. This approach needs to be integrated across economic sectors and the Community's institutions;
- The importance of the international dimension in the maritime sector and the need to respect the existing international and EU legal and policy frameworks;
- A recognition of the important role that the maritime sector and particularly offshore renewable energy can play in addressing climate change.
- The recognition that some fragile coastal communities are reliant on the sustainable, economic utilisation of marine resources;
- The need to respect the limits of marine resources and to protect the marine environment for future generations; and
- The need for the proposed Maritime Policy to deliver co-ordination between proposals originating in the EC to ensure that the Lisbon Strategy objectives of sustainable growth can be delivered in a stable regulatory climate.

As part of a holistic review of EU Maritime Policy and noting Europe's dependence on maritime trade, the UK would also wish for the inter-agency and multinational nature of maritime security to be acknowledged as an important tenet of future work. It will be imperative not to break down existing competencies, but rather to ensure the necessary mechanisms are in place to allow improved co-ordination.<sup>60</sup>

The European Parliament broadly welcomed the green paper and supported the 'integrated' approach of combining various policies, such as maritime transport, harbour policy, tourism, fishing and marine environmental protection in one.<sup>61</sup> The Commission published its final

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<sup>59</sup> [ESC Deb, 19 March 2007, cc4-5](#)

<sup>60</sup> DfT, *Government response to the EU Maritime Green Paper*, 27 July 2007; there was a debate on the European maritime policy in June 2008, see: [HC Deb 3 June 2008, cc713-735](#)

<sup>61</sup> "Parliament supports Commission's green paper", *Europolitics*, 17 July 2007

proposals on 10 October 2007 as the 'blue book', along with draft regulations and a response to the consultation on the green paper. The press notice accompanying the publication stated:

Today the Commission adopted a Communication setting out its vision for an Integrated Maritime Policy for the EU, together with a detailed action plan setting out an ambitious work programme for the years ahead. Scientific discoveries, huge strides in technological development, globalisation, climate change, and marine pollution are rapidly altering Europe's relationship with the seas and oceans, with all the opportunities and challenges that this presents. An integrated maritime policy will enable the Union to meet the challenges head on. This proposal is grounded in an extensive public consultation which ended last June, and represents the work of a Steering Group of 10 Commissioners chaired by Joe Borg. The Communication and Action Plan are accompanied by a report on the results of the consultation which revealed strong stakeholder support for the Commission's initiative.

Commission President, José Manuel Barroso, who initiated the new approach to maritime policy, said, "I am convinced that a great part of our future lies in the untapped potential of the oceans. Our proposal for an integrated maritime policy has been designed to generate growth, jobs and sustainability. We conceived it to promote our common European interest and to seize all opportunities that the oceans offer, while acting in a sustainable manner. It is part and parcel of our strategy to modernise Europe and prepare it for the globalised world".

Commissioner for Fisheries and Maritime Affairs, Joe Borg, added: "Our stakeholders have spoken and we have listened. This is a crucial first step for Europe's oceans and seas – unlocking the potential and facing the challenges of a Maritime Europe will be our common goal. It will allow us to make the most of our maritime assets and will help Europe face some of the major challenges before it".

Until now, the different activities and policies relating to the seas have been managed on largely sectoral lines. An integrated maritime policy will change the way policy is formulated and decisions taken in the maritime sectors, in full respect of the principle of subsidiarity. It will enable the relevant authorities to analyse interactions between the various sectors and policy areas concerned and to take them into account at every level so as to develop common tools to exploit synergies and avoid conflicts.

The new policy will build on Europe's strengths in marine research, technology and innovation. It will be anchored in the Lisbon agenda for more and better jobs and growth, and in the EU's overarching commitment to ensuring that economic development does not come at the price of environmental sustainability.

The Communication and accompanying Action Plan list a range of concrete actions to be launched during the mandate of this Commission. These actions cover a wide spectrum of issues ranging from maritime transport to the competitiveness of maritime businesses, employment, scientific research, fisheries and the protection of the marine environment. They include:

- A European Maritime Transport Space without barriers
- A European Strategy for Marine Research
- National integrated maritime policies to be developed by Member States
- An integrated network for maritime surveillance
- A Roadmap towards maritime spatial planning by Member States

- Elimination of pirate fishing and destructive high seas bottom trawling
- Promotion of a European network of maritime clusters
- A review of EU labour law exemptions for the shipping and fishing sectors
- A European Marine Observation and Data Network
- A Strategy to mitigate the effects of Climate Change on coastal regions.<sup>62</sup>

The Commission recommended that Member States take further steps to embrace a more integrated governance approach, and invited them to draw up their own integrated national maritime policies, based on a series of common principles and working closely with their stakeholders, in particular the coastal regions. To this end, the Commission issued a set of guidelines on common principles and stakeholder involvement for maritime policies in June 2008.<sup>63</sup>

In January 2009 the Commission published an action plan with a view to establishing a 'European maritime transport space without borders', focusing on: maritime employment; quality shipping (safety, environment and security); international co-operation; exploitation of short sea shipping; and research and innovation.<sup>64</sup> In March 2009 the European Scrutiny Committee examined the action plan and reported the Government's view on the proposals as follows:

...this Communication is not, in itself, a formal proposal for Community legislation and so gives rise to no immediate and specific policy considerations ... in broad terms the Government can welcome the document. Its aims are largely (though not exclusively) commensurate with the Government's policy objectives — sustainable development, economic growth, reducing burdens on business, open markets, fair competition and high environmental and social standards are all aims embraced by the Government and then it would be pleased to see become the norm in a wider global context.<sup>65</sup>

## 7 Motorways of the Sea

Trans-European networks (TENs) are infrastructure networks in transport, telecommunications and energy.<sup>66</sup> The aim was to establish a series of European transport networks that were "interconnected" and "interoperable." Bottlenecks were to be removed and missing links filled in. The 1992 Treaty of Maastricht made the Community responsible for a policy promoting the interconnection and interoperability of networks to enable Europe to derive full benefit from an area without frontiers. The Community was given the task of establishing a series of guidelines covering the objectives, priorities and broad lines of action envisaged in the sphere of trans-European networks. The Commission's view is that the gaps in the networks are due primarily to the fact that, until recently, networks were planned on a national basis.

Guidelines specifying the aims and outlining a flexible framework of action were first proposed in March 1994 and agreed in 1996. The main objective of the policy was – and still

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<sup>62</sup> European Commission press notice, "[An ocean of opportunity: Commission proposes Integrated Maritime Policy for EU](#)", 10 October 2007

<sup>63</sup> [COM\(2008\) 395 final](#), 26 June 2008

<sup>64</sup> [COM\(2009\) 10 final](#), 21 January 2009

<sup>65</sup> ESC, *Twelfth report of session 2008-09*, HC 19-xi, 27 March 2009, section 3, para 3.12; also debated in the House in May 2009, see: [European Committee A, 11 May 2009, cc3-18](#)

<sup>66</sup> for more information on TENs, see: [HC Library Standard Note SN/BT/478](#)

is – to fill in the gaps in the major infrastructure networks that hamper the free movement of goods and persons. The Commission proposed amendments to the guidelines in October 2001 but the Council was not able to accept the proposal. A high-level group was set up and reported in June 2003. As a result further amendments were made to the Commission's proposal and published in October 2003. Amongst the amendments were additions to the list of 'priority projects' proposed in 2001, including new forms of support for the development of transnational projects for motorways of the sea. The projects listed under 'motorways of the sea' were:

- Motorway of the Baltic Sea (linking the Baltic Sea Member States with Member States in Central and Western Europe) (to be achieved by 2010);
- Motorway of the sea of Western Europe (leading from the Iberian peninsula via the Atlantic Arc to the North Sea and the Irish Sea) (2010);
- Motorway of the sea of south-east Europe (connecting the Adriatic Sea to the Ionian Sea and the Eastern Mediterranean to include Cyprus) (2010); and
- Motorway of the sea of south-west Europe (western Mediterranean), connecting Spain, France, Italy and including Malta, and linking with the motorway of the sea of south-east Europe (2010).

A map of these routes is available on the [EC website](#).

In December 2003 the Council voted to amend [Decision 1692/96/EC](#) on Community guidelines for the development of the TEN and insert new section 12(a):

#### **Motorways of the sea**

1. The trans-European network of motorways of the sea shall aim to concentrate flows of freight on sea based logistic routes in order to improve existing or to establish new viable, regular and frequent maritime links for the transport of goods between Member States in order to reduce road congestion and/or improve access to peripheral and island States. Motorways of the sea should not exclude the combined transport of persons and goods, when freight is predominant.
2. The trans-European network of motorways of the sea shall consist of facilities and infrastructure concerning at least two ports in two different Member States. These facilities and infrastructure shall include elements, at least in one Member State, such as the port facilities, electronic logistics management systems, safety and security and administrative and customs procedures, as well as infrastructure for direct land and sea access, including ensuring all-year navigability, in particular the availability of facilities for dredging and winter access with icebreakers.
3. The projects of common interest of the trans-European network of motorways of the sea shall be proposed by at least two Member States. The projects proposed shall in general combine the public and private sectors in accordance with procedures allowing, before aid granted from the national budgets is supplemented, if necessary, by aid from the Community, a tendering process in one of the following forms:
  - a) a public call for proposals organised jointly by the Member States concerned, intended to establish new links from the category A port, as defined in Article 12(2), which they select in advance within each maritime region, as defined in project No 21 in Annex III;

- b) insofar as the location of the ports is comparable, a public call for proposals organised jointly by the Member States concerned and targeting consortia bringing together at least shipping companies and ports located in one of the maritime regions, as defined in project No 21 in Annex III.
- 3a. The projects of common interest of the trans-European network of motorways of the sea:
- shall focus on facilities and infrastructure which make up the network of motorways of the sea;
  - may include, without prejudice to Articles 87 and 88 of the Treaty, start-up aid if, as a result of the tendering process referred to in paragraph 3, public support is deemed necessary to make up for the financial viability of the project. Start-up aid shall be limited to two years and shall be granted only in support of duly motivated capital costs. The aid may not exceed the minimum estimated amount required to start up the links concerned. The aid may not lead to distortions of competition in the relevant markets contrary to the common interest;
  - may also include activities which have wider benefits and are not linked to certain ports, such as the availability of facilities for ice-breaking and dredging operations, as well as information systems, including traffic management and electronic reporting systems.
4. [merged with new paragraph 3a]
5. The projects of common interest shall be submitted to the Commission for approval.<sup>67</sup>

The Department for Transport subsequently sought views on the proposals in October 2003. It published a summary of responses in April 2004 which stated:

The main concern raised, particularly by the ports sector, relates to the risk of distortion of competition where subsidy is introduced into a regime where private ports and operators compete with each other.

The Government shares these concerns, and expressed them to the Commission while the proposal was being developed. The Commission's proposal attempted to address the issue by allowing for competitive tenders from consortia of shipping operators and ports.

In December the Council of Ministers considered the proposals and agreed a general approach. Some amendments were made; the relevant text on sea motorways is attached. This text still has to be agreed with the European Parliament.

In accepting the text the Government recognises that there is no obligation on the UK to implement sea motorways, and no obligation on UK ports and operators to bid for EU funding. It also recognises that the potential benefits of the sea motorway approach are probably greater for other member states than for us. The Government strongly supports the underlying objective of encouraging sea transport where this is a sensible alternative to road. We will work constructively with the Commission and other member states in helping to define the concept and implement it, to the extent that this is consistent with maintaining free competition for UK ports and operators.

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<sup>67</sup> DfT, *Trans-European Transport Network Guidelines*, December 2003

The Government recognises that some ports and operators may wish to link up with partners in other member states to work up bids for funding. The Government will have to consider, on a case by case basis, whether to endorse such bids. I would note that a good deal of work is still needed to clarify exactly what constitutes a sea motorway project, and the Government's views may evolve as this work develops.<sup>68</sup>

In July 2007 the UK Government, along with those of the Netherlands, Belgium and the Flemish region of Belgium, Germany, Denmark, Sweden, and Norway issued a joint call for Motorways of the Sea project proposals for the North Sea Region. The call for proposals focuses on the time frame 2008-2013. The total indicative amount allocated to Motorways of the Sea projects by the European Commission is €310 million.<sup>69</sup>

In December 2008 the Commission issued new guidance on State aid for the launching of motorways of the sea.<sup>70</sup>

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<sup>68</sup> DfT, *Motorways of the Sea: Letter to respondents*, 13 April 2004

<sup>69</sup> DfT, *Notification of a joint call for proposals for Motorways of the Sea projects in the North Sea Region*, 9 July 2007

<sup>70</sup> COM(2008) 7713 final, 15 December 2008