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Editorial: Recent EU developments

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EDITORIAL

Recent EU developments

In maritime matters the European Commission's interest has recently been largely concentrated on three fields – protection of the environment, maritime safety and protection of the shipping industry in the EU.

As regards the first, a controversial legislative programme on the control of air pollution from ships is the subject of discussion and debate amongst the institutions of the EU. The technical details are examined on pages 533–536, but it is however of some interest to look at this development from a policy perspective. There is general consensus that something needs to be done to limit the emission of pollutants by ships into the air, but that is where the consensus ends. There is no agreement between the Commission and the European Parliament as to the caps on emissions. The Council, initially, too had difficulties with the Commission's proposal. On top of that, there have been influential interventions from national and international organizations on the caps suggested by the Commission. Some parts of the maritime industry see the proposals as being too stringent and disproportionate to the reduction anticipated; on the other hand, environmental protection organizations (for example, the European Environmental Bureau) argue that the measures are too timid and should go much further. This tussle is by no means new but what is interesting is how the debate is being conducted between the different limbs of the EU – with the European Parliament calling for much stricter controls than those recommended by the Commission and all this pending a full cost-benefit analysis. It could be suggested that much of the fervour from the European Parliament is driven by political interests. The ongoing debate also indicates that the European Parliament has become more mature in its dealings with the Commission and is prepared to exercise its powers under the legislative procedures introduced following the Treaty of Amsterdam. It will be interesting to see in what way the proposal is taken further at the Parliament's second reading in April 2005 and at conciliation negotiations, if the Commission's proposals are rejected a second time. The Council seemed generally content to leave the law making to the Commission, and this must surely be a sign that Member States see this area of legislative action as being best left to the EU.

As far as maritime safety is concerned, the legislative action plan presses on. Since the *Erika* and the *Prestige* incidents, there has been a hive of activity within the EU to promote higher standards of maritime safety. In recent weeks, the Commission has published a list of ships banned from entering EU ports. The list is published in conjunction with the new EU rules on port state control to ensure transparency and to deter those who already fall short of the standards laid down by the EU. The list relates to the period 1 November 2003 to 31 August 2004. Most of the blacklisted ships were bulk carriers; although perilously there were also four ro-ro passenger-carrying ships, two chemical tankers and one oil tanker. It might be recalled that a ship will be placed on the list if it flies the flag of a State appearing in the black list (as published in the annual report of the Paris Memorandum of Understanding), and has been detained more than twice in the course of the preceding 24 months in a port of a State signatory to the MOU. Similarly if it flies the flag of a State described as 'very high risk' or 'high risk' in the black list as published in the annual report of the MOU, and has been detained more than once in the course of the preceding 36 months in a port of a State signatory of the MOU, it too will be refused entry into an EU port. Readers might also be

interested to know that the list of banned ships is regularly updated on the European Maritime Safety Agency's website.

The third domain of legislative and policy activity is the increasingly staunch position taken by the EU actively to prevent a loss of shipping business to the shipping industry in the EU. The Commission has permitted the provision of state aid in a number of ways. In Finland, the Commission has approved a new proposal by the Finnish Government to extend certain tax advantages to prevent out-flagging of ships to third countries. Under the current Finnish Foreign Merchant Shipping Registry Act, passenger vessels operating between EU ports and regularly calling at Nordic ports have been, from 2002 up to now, eligible for specific state aids. The Commission has now approved further aid in favour of these passenger vessels for all seafarers who are nationals from the European Economic Area. The amendments relate to a technical exemption for Finnish shipowners from paying the income taxes of seafarers working on passenger vessels, as well as a compensation for all social contributions and charges borne by Finnish shipowners. Such a move should make Finland more attractive to shipowners for registration purposes. A scheme proposed by Denmark to provide that, from the 2004 tax year onwards, entities which operate shops or kiosks on board passenger ships and are subject to normal corporation tax would not be fiscally penalised by the application of the flat-rate tax scheme to the revenue of the company operating the ship. Although in time, Denmark will have to bring its flat-rate tonnage tax provision in line with the new EU guidelines on maritime aid, its proposal for 2004 was approved without demur by the Commission. Incidentally, flat rate tonnage tax schemes are now so popular amongst EU Member States that eleven states have now been permitted by the Commission to apply it: (they are Greece [whose scheme was introduced prior to its accession], the Netherlands, Denmark, the United Kingdom, Germany, Spain, Finland, Ireland, Belgium, France and most recently, Italy).

Port aid has also been given positive treatment by the Commission. Belgium's proposed financial aid to construct and maintain maritime access routes leading up to the ports of Antwerp, Bruges-Zeebrugge and Ostend, as well as sea-locks and internal access routes (channel docks and turning basins) inside those ports, was approved on the basis that it did not constitute state aid. The Commission considered, very much as a matter of construction, that the activity of ensuring adequate access to and inside the ports did not constitute an economic activity liable to distort competition between Member States but was rather a public task undertaken in the general interest and benefiting the Union as a whole. The state financing was also being directed at building port infrastructure. With such an aim, the financing was very much a state aid as public funds were being made available by the Flemish region to support an economic activity carried out by the Port Authority in question thereby potentially providing it with an economic advantage over its competitors. That said, the Commission emphasised that the development of maritime ports was not only crucial for a sustainable and 'intermodal' transport system but maritime ports are also considered under EU transport and territorial policy as centres of regional economic and social development. The Commission also stated in its Decision that the measure complied with the criteria established by the Commission's legal practice with regard to infrastructure financing in that it would not distort competition to an extent contrary to the common interest. All this was very much a matter of interpretation but clearly, the Commission had in mind the policy of the EU to protect its ports and shipping industry.

The EU has to maintain a very difficult balancing act when it comes to maritime policy – on the one hand, the EU seeks to protect shipowners and the members of the shipping industry generally from unfair competitive practices from non-EU states whilst on the other, it must ensure that the standards of maritime safety and environmental protection are subject to strict controls. On the whole, the EU is proceeding along the right paths.

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