

The Community's other rules

Lawmakers in Brussels are pushing through a number of laws and conventions in addition to Prestige-inspired legislation

Recent interest in the European Union's maritime rulemaking activities has been centred on the repercussions stemming from the breaking up and sinking of the tanker Prestige. The Council of Transport Ministers has promised that Brussels will introduce a series of aggressive measures that will seek to minimise maritime pollution caused by accidents involving older, single-hull oil tankers. Furthermore, these measures, which were described in last month's issue of Tanker Operator, will be implemented on a unilateral basis, if need be.

Aside from Prestige, the European Union is currently involved in a number of other regulatory initiatives which will impact tanker shipping. Many of these are safety-related and were prompted by the sinking of the tanker Erika in December 1999. Others are aimed at minimising pollution of the marine environment.

Most of the initiatives described here are part of an ongoing effort to give international provisions agreed at IMO the force of law in European waters. However, with the intense focus on maritime safety measures by the European Union in the three years following the loss of Erika, perhaps not surprisingly, many of the initiatives have a unique, Europe-only element.

These "non- Prestige" initiatives are summarised in the following paragraphs.

Minimum skills of non-Community crews

On January 17, 2003 the European Commission proposed a Community-wide recognition system for certificates of competency issued to seafarers from outside the European Union. The aim is to ensure that non-Community seafarers working onboard ships flying the flags of EU member states are trained and certified according to the minimum international requirements.

The Commission proposes the improvement of the current procedure for the recognition of mariners' certificates of competency issued outside the Union through a system of Community-wide recognition of certificates from labour-supplying third countries. It is also recommended that the provisions of the existing EU Directive 2001/25 on seafarers' training concerning language requirements for certificates of competency and safety communications between the ship and land-based authorities are brought in line with the relevant international requirements.

Parliament omits pilots from port legislation

On March 11, 2003 the European Parliament held a second reading of the Commission's proposal to liberalise market access to port services, including towage, mooring, cargo-handling, pilotage and passenger services, in the EU. Although the Council of Transport Ministers had agreed in June 2002 to keep pilotage within the scope of the draft Directive, Parliament reiterated the position it took in the first reading, namely to exclude pilotage services from the scope of the proposed Port Services Directive.

Another area where there is conflict is that dealing with the transparency of financial relations between ports and EU member states. While the European Parliament has called on the Commission to publish guidelines on the public funding of EU ports, the Transport Ministers are opposed to tackling this issue through the Directive.

In light of the conflicting views on the liberalisation of pilotage services, it is unlikely that the Council will accept the decision taken by the European Parliament at its March 11 meeting. It is expected that the two parties will need to have conciliation discussions on this initiative sometime during the course of this year.

Criminal sanctions for polluting ships

On March 5, 2003 the European Commission adopted a proposal for a Directive calling for criminal sanctions to be imposed on those found to be responsible for pollution by ships. Under the proposal, any person, including the ship master, owner, operator, charterer or classification society, found to have been responsible for, or contributed to, illegal pollution will be liable to sanctions. Although such sanctions may include a prison sentence, most often they will be financial in nature.

Brussels believes that the existing civil liability regimes for pollution by ships do not provide sufficient financial disincentives for shipowners and others involved in the transport of dangerous cargoes by sea to behave in the most responsible way.

Because the Commission is keen that the new draft measure provides an adequate deterrent, it has been decided that it will not be possible to insure against it.

The Directive refers to both accidental and deliberate operational discharges of polluting cargoes, and will apply to pollution in not only the territorial waters of EU member states but also areas outside their jurisdiction, in international waters.

It has been proposed that the new European Maritime Safety Agency (EMSA) should assist the Commission and EU member states in setting up the information system required to implement the Directive.

Tanker owners have pointed out that one of the reasons for illegal discharges in contravention of the 1973/78 Marine Pollution (MARPOL) Convention is the lack of adequate reception facilities. In addition, the lack of success in bringing polluters to justice in the past is due to inconsistent international enforcement, including within the EU, and lack of detection. These are still major problems.

Port state inspections of ballast tanks

The EU Port State Control Directive (2001/106), which enters into force on July 22, 2003, will strengthen the European port state control (PSC) regime in a number of ways.

Amongst other things, the Directive stipulates that tankers larger than 3,000 gross tons (gt) and older than 15 years of age shall be subject to an expanded inspection after a period of 12 months since the last expanded inspection carried out in a port of one of the Paris Memorandum of Understanding on Port State Control (Paris MOU) countries. One of the requirements is that at least one of the ballast tanks within the cargo area should be examined from the tank manhole/deck access in the first instance and entered if the PSC inspector establishes clear grounds for further inspection.

The International Association of Independent Tanker Owners (INTERTANKO) has pointed out that this latter requirement raises certain important issues, not least the safety risks associated with tank entry; who will pay for the costs of delays due to ballast tank inspections; and the competence of PSC inspectors to carry out internal condition assessments.

Tanker owners believe that the requirement is overly onerous, especially in light of the work already carried out by class society surveyors in this respect.

Sulphur content in engine fuel

The European Commission has proposed changes to the EU Directive 1999/32 on ship engine emissions and the sulphur content of fuel as part of an attempt to further limit air pollution from shipping.

The first of the two principal changes that have been put forward aims to limit the sulphur content of marine bunker oil used in EU territorial waters falling within the IMO sulphur oxide (SOx) emission control areas to 1.5 per cent. As this proposal aligns with the IMO requirements under MARPOL Annex VI, it is supported by the shipping industry.

In the second part of the proposal the Commission has called for the sulphur content of the fuel used by the ship while it is at berth in port to be limited to only 0.2 per cent.

This is a more contentious issue since shipowners believe that such a regulation, if implemented, would give rise to serious operational and safety concerns. For a start, shipowners would be faced with the prospect of carrying three different grades of fuel oil - one for use in worldwide trading; the second for use when proceeding through European waters and IMO SOx emission control areas and a third for use when tied up in EU ports. The safety hazards associated with switching from one grade of oil to another within a short time frame have also been highlighted as an unnecessarily complicating factor. The EU initiative highlights the difficulties the world maritime community has encountered in recent years in securing the necessary number of ratifications to enable the entry into force of MARPOL Annex VI. In response to the Brussels initiative on air emissions from ships, the shipping industry has proposed that that part of the draft rulemaking calling for 0.2 per cent sulphur fuel be left out of the amended Directive.

European Maritime Safety Agency (EMSA)

The newly launched European Maritime Safety Agency (EMSA) was created in the aftermath of the Erika sinking to enhance the EU's maritime safety system, primarily by ensuring the proper implementation of applicable legislation by EU member states through agencies such as port state control authorities and class societies. The Agency is mandated to provide technical and scientific advice to the Commission in the fields of maritime safety and ship pollution prevention for use in the continuous processes of updating and developing new legislation; monitoring its implementation; and evaluating the effectiveness of the measures in place. More specifically, EMSA will work to strengthen the PSC regime; to monitor classification society performance; to develop a common methodology for maritime accident investigation; to establish a Community vessel traffic and information system; to disseminate best practices throughout the Community; and to assist the EU enlargement accession countries in the implementation of relevant Community legislation.