

## **Sounding the final warning**

**Reacting to a groundswell of public opinion, the European Union has taken the high ground on maritime safety as a result of the Prestige sinking. Many of the responses from Brussels have been rushed and poorly conceived, highlighting the fact that the tanker industry can ill afford another such incident**

Good industry safety records count for little when thousands of tonnes of black sludge from a damaged tanker are washing up on pristine shorelines. The sinking of the ageing, single-hull Aframax-size tanker Prestige in November 2002, mirroring the loss of Erika in a similar location just three years earlier, brought that message home with a bang.

In the case of Erika the European Union reluctantly agreed to channel the region's antipathy for older tankers through the IMO rulemaking process. Pushing ahead on a fast-track basis, IMO adopted a raft of post- Erika measures in record time, many of which are currently being implemented.

### **Prestige is different**

The fallout from Prestige has shown that, in the eyes of Europe's transport ministers, fast-track IMO is still too slow. Within days of the sinking new draft legislation was on the table in Brussels that will introduce much stricter requirements for tankers operating in European waters than those in place internationally.

Such is the political momentum behind these new measures that all but the most onerous will be implemented at a speed that would be impossible at IMO. Inevitably in such haste, there are proposals amongst this new EU package of measures that the tanker industry believes to be ill-conceived and that will entail costs disproportionate to any benefit likely to be gained.

So, Prestige is another wake-up call for industry but this time the alarm bells are ringing at a decibel level an order of magnitude greater than the Erika klaxon. The tanker shipping industry has one final chance to squeeze out the substandard operator from its ranks. If it fails and if a third Prestige occurs, politicians would hold full sway and the industry would be in a straitjacket.

### **Tighter EU regulations**

On December 20, 2002 the European Commission issued a proposal for a new Regulation to amend Regulation 417/2002 covering the phaseout of single-hull tankers. The proposal was prepared in response to the December 6 instructions from the European Council of Transport Ministers.

The Commission proposal consists of three parts:

1. An acceleration of the EU schedule for phasing out single-hull tankers, as laid down in Regulation 471/2002 which was adopted in February 2002 following decisions taken at IMO in the aftermath of the Erika sinking.
2. A provision that heavy grades of oil cannot be carried in single-hull vessels when visiting EU ports.
3. A broader application of the Condition Assessment Scheme.

The Commission proposal also focuses on other issues, including port state control, ports of refuge, oil spill compensation, penal sanctions, relationships with the international community and industry, and the recognition of seafarers certificates.

### **Council driving force**

The Council conclusion and mandate for action agreed on December 6 were made in some haste - only a few weeks after the Prestige sinking - and a rather ambitious

deadline of July 1, 2003 was set for the imposition of the new measures. Unfortunately, some of the Council decisions were made without detailed analysis of their consequences and are likely to cause disruption to the tanker market. Also, there is only limited room for manoeuvre as regards amending these measures, not least due to the tight implementation deadline.

In the Brussels corridors of power it is usually the Commission that is the most ambitious when it comes to rulemaking. On this occasion, however, the Commission had favoured a more cautious approach and it was the Council which was the more aggressive.

A European Commission Communication prompted by the Prestige sinking and issued earlier, on December 3, was relatively modest in its ambitions. It called for more rigorous implementation of existing regulations and the creation of the European Maritime Safety and Pollution Prevention Agency (EMSA) without further delay. The Communication also called for heavy fuel oil (HFO) to be carried in double-hull tankers but no mention was made of extending the requirement to cover all heavy grades of oil.

In the event, the Council decision of December 6 took matters out of the Commission's hands. As happened in the early 1990s, when the US introduced its unilateral 1990 Oil Pollution Act (OPA 90) in the aftermath of the Exxon Valdez oil spill, it looks like IMO could be playing catch-up in the development of any new international rules deemed to be necessary as a result of this new European Union initiative spurred by Prestige.

### **Single-hull phaseout**

The European Commission proposals of December 20 for an accelerated phaseout schedule for single-hull tankers are, in fact, basically the same as the original draft legislation put forward by Brussels in the immediate aftermath of the December 1999 Erika sinking. They are also close to what is mandated in the US by OPA 90.

The original Erika I package requirements were toned down in European Union Regulation 417/2002 as a result of decisions taken at IMO. On that occasion EU member states agreed that tanker safety matters are international in scope and that IMO was the correct forum to discuss a tightening of the relevant parts of the maritime safety regime.

In the December 20 Commission proposals single-hull tankers of Category 1 would not be able to operate beyond 23 years of age or after 2005 (currently 2007). Category 2 tankers will be allowed to operate until 28 years of age or up until 2010 (currently 2015). Category 3 tankers, the smaller tankers of below 20 000/30 000 dwt, will be allowed to operate until 28 years of age or 2015.

The prohibitions apply to tankers visiting EU ports and the tankers flying the flags of EU member states. It is estimated that the new requirements for Category 1 ships would require the removal of 400 tankers of 40 million dwt earlier than otherwise would have been the case. The new Category 2 requirement would necessitate earlier removal of 70 million dwt of tanker shipping.

### **Ban on HFOs in single hulls**

The Commission is concerned that, although heavy fuel oil (HFO) is one of the most polluting types of oil, it is often carried in older tankers nearing the end of their economic lives. This is because of the oil's relatively low commercial value and the fact that such heavy oil poses only a comparatively small fire or explosion risk.

The Commission believes that, because of the nature of heavy oils as persistent pollutants and the fact that older ships are often nominated for their carriage, tankers carrying heavy fuel and similar viscous oils pose the greatest tanker safety risk.

Brussels had originally proposed that oil tankers carrying HFO will only be allowed to enter EU member states' ports, terminals or anchorage areas if they are double-hulled, irrespective of flag.

However, as mentioned, the Transport Council went further, adding a prohibition on "heavy crude, bitumen and tar". The proposal is that this ban will apply to oil tankers of 600 dwt and above and will enter into force 20 days after the Regulation has been published in the Official Journal of the European Union.

"Heavy grades" of oil have been defined in the proposal as oils with a density of up to 30\_ API. Under such a definition, as much as 20 per cent of Europe's crude oil imports could be subject to the proposed new rule. The oil and shipping industries have expressed serious concerns about this API definition, not least the insufficient tonnage available to enable compliance.

Notably, the International Oil Tanker Owners Pollution Fund (ITOPF) and the International Association of Independent Tanker Owners (INTERTANKO) have stated that viscosity would be a more appropriate parameter than density (API) as an indicator of the persistency of the oil pollutant. This heavy oil issue is the subject of debate in Brussels and amongst EU member states.

### **Possible relaxation**

The extension of the definition of heavy oils by the Council has been one of the most controversial of the post- Prestige proposals emanating from Brussels. It would encompass not only bunkering barges but also those substantial volumes of heavy oil carried by all large ships as bunker fuel.

Speaking at the Tanker Operator conference in London last month, Willem de Ruiters from the European Commission's Transport Directorate and newly appointed head of EMSA said that the proposal on heavy oils is the only area where Brussels is likely to give ground and accept some relaxations to the measures as currently drafted.

First, as regards the carriage of heavy oils in small tankers, including bunker barges, there might be an extension of a further two years before bunker barges would have to comply. Also, in a recent speech to the European Parliament, Commissioner Loyola De Palacio signalled that the Commission is likely to increase the lower limit of 600 tonnes of heavy oil to 5,000 tonnes.

Furthermore, the API limit may be lowered to 28 deg or 26 deg, ensuring that some of the less viscous of the so-called heavy crudes are not covered by the requirement. The European Parliament has called for an analysis of the capacity of the existing double-hull tanker fleet in order to ensure that the proposal does not give rise to a shortage of tanker tonnage. Of particular concern is the fear that there will be a shortage of the right type of tanker in the smaller tonnage categories.

### **CAS for all single hull vessels**

Following the Erika sinking, a Condition Assessment Scheme (CAS) was introduced as a necessary pre-condition for extending the life of single-hull tankers beyond 2005 for Category 1 tankers and beyond 2010 for Category 2 tankers.

As the third element of its new post- Prestige phaseout proposal, the Commission proposed that all remaining categories of single-hull tankers shall comply with CAS from the age of 15 years. At the same time the Commission has acknowledged that such new requirements may place a strain on the available capacity of inspectors and therefore are

calling for implementation by 2005. This part of the proposal has not yet been discussed by the relevant Council working group.

### **New PSC proposals**

In its Communication on Prestige the European Commission included an indicative list of vessels which would have been refused access to European ports had the latest amendments to post-Erika Directive 95/21 concerning Port State Control (PSC) already been in force. The Commission established the list on the basis of information available within the Paris Memorandum of Understanding on Port State

Control and the Equasis database. It later had to withdraw the names of eight vessels after studying evidence provided by the owners.

The Commission hoped that publishing this list would prompt the owners and flag states of the vessels concerned to take the steps required, especially recruitment of port state control inspectors, to come into line with the maritime safety standards before the Erika I measures enter into force.

The Commission emphasised that the PSC Directive must be applied in all ports, in order to avoid the development of "ports of convenience". Vessels which called at European ports only for refuelling must be subject to the same level of control and inspection as vessels making "normal" commercial calls, as this is often the only opportunity to exercise effective control.

### **Co-ordinated PSC**

In order to remedy anomalies in inspection practice and in order to prevent the emergence of "ports of convenience", the Commission announced that it plans to propose new measures in the near future designed to produce a more even level of inspections in ports in the EU. The Council suggested that the intervals between the inspections of vessels of greater risk should be reduced from 12 to 6 months and the reporting requirements of pilots should be expanded to also include vessels in transit off the coast of Europe.

The new EMSA will play a crucial role in supervising member states' PSC performance and in coordinating the efforts of all coastal EU member states as they prepare measures aimed at assisting ships in distress. The latter measures are being mandated as Brussels attempts to get to grips with the ports of refuge issue.

### **Ports of refuge - expert opinion**

Spain's decision to order Prestige to be towed away from the shore when it first experienced problems, rather than bring it into sheltered waters, has attracted much criticism.

Many technical experts have pointed out that Prestige could have been saved and pollution minimised had it been given shelter in the first instance. Under the auspices of Greece's current term as president of the EU, the Greek Minister of Mercantile Marine, George Anomeritis, has stated that he believes much of the blame lies with Spain and Portugal. Spain's opposition parties have also been critical of their government on this issue.

On February 19 it was announced that the investigating magistrate in northwest Spain had placed three senior government representatives under official investigation for their role in the Prestige oil spill. The three included Jose Luis Lopez Sors, the director general of Spain's Merchant Marine Department. Such investigations are the legal equivalent of one step below being charged with a crime.

### **Mandating safe havens**

Under post-Erika Directive 2002/59, which establishes a European Community monitoring, control and information system for maritime traffic, EU member states were asked to inform the Commission by February 1, 2004 of the measures they have introduced to assist ships in distress.

The Council, in their conclusions on December 6, has brought the initiative forward. EU member states have been urged to establish as early as possible, and by no later than July 1, 2003, plans to identify places of refuge for ships in distress. The Commission has been called upon to develop the machinery for an obligatory system covering the accommodation of ships in distress in ports of refuge or in sheltered areas in all coastal member states. This needs to be accompanied by a compulsory system of compensation for any resulting damage.

Each government had been asked to provide status reports of the situation in their country to the Commission before the end of February 2003 for evaluation in

advance of the next meeting of member states on this issue this coming May. The agreement of a European common strategy is expected to take at least two or three more meetings.

**Most important issue**

Speaking at the Tanker Operator conference in London last month, Michael Everard, the current BIMCO president, said, "The places of refuge issue is far too important a matter to be left in the hands of politicians. The Erika and Prestige spills turned out to be as bad as they were because there were no contingency plans in place and, thus, no safe havens available.

Concluding his remarks, Michael Everard pointed out that "Places of refuge contingency planning is the single most important step that can be taken to improve maritime safety. Leadership is needed in this respect. What we do not need is politicians running around trying to protect their backs."