

Press Release – EC Breaches International Law on Ship Recycling File, Independent Lawyers Say

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NGO Platforms Calls for Public Disclosure of European Council Legal Analysis

17 December 2012 (Brussels) – The European Commission’s proposed regulation on ship recycling is illegal, according to two independent legal experts whose legal opinions were publicly released today. The NGO Shipbreaking Platform, a global coalition of environmental, human rights and labour rights organisations, prompted two legal analyses, one by the Center for International Environmental Law (CIEL) and the other by Dr. Ludwig Krämer, the former chief counsel to the European Commission. Both reports conclude that the European Commission has greatly overstepped its authority by attempting to unilaterally depart from its international legal obligations under the Basel Convention. The NGO Platform has also written a letter to the European Council asking that their legal analysis be released in the public interest [1].

The proposed regulation seeks to remove end-of-life ships from the European Waste Shipment Regulation, which is the EU’s implementing legislation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and the Basel Ban Amendment, which prohibits the export of all forms of hazardous waste from EU Member States to non-OECD countries. The Basel Convention includes ships under its regime when they are to be recycled or disposed of and when they contain hazardous materials. Both the EU and each EU Member State have ratified the Basel Convention and the Basel Ban.

The legal opinions released today both find that the European Commission’s proposal not only undermined the Basel Ban, which Europe has implemented and championed, but that it is also illegal under the Basel Convention. Dr. Krämer’s legal analysis [2] concludes that “any proposal to remove ships from the Waste Shipment Regulation is in breach of EU and EU Member States’ legal obligations under the Basel Convention.” CIEL’s legal analysis authored by David Azoulay,[3] was also in agreement, concluding that “the EU’s Proposed Legislation attempting to unilaterally exempt a certain category of hazardous waste covered by the Basel Convention, namely end-of-life ships, from the control mechanisms of the Convention is illegal under international law and EU law.”

With two independent legal analyses concluding the same, the Platform assumes the European Council Legal Services must hold similar concerns over legality. The legal opinion was already distributed to EU Member States and is expected to carry some weight in the EU co-decision making process, both in the EU Council and the EU Parliament. According to EU legislation, and existing case law, Council Legal opinions that are in the public interest should be released.

“The European Commission’s disregard for their legal obligations under the Basel Convention is inexplicable, as this move by the EC would further facilitate the export of our toxic end-of-life ships to Asia,” said the NGO Shipbreaking Platform’s Executive Director, Patrizia Heidegger. *“But now there is growing resistance against this possible breach of international law.”*

The EC proposal on ship recycling was published on 23 March 2012. Members of the European Parliament have to send by today their amendments to the proposal. The Parliament is expected to hold the first plenary discussion on this file early next year. The NGO Shipbreaking Platform secretariat in Brussels and its 17 member organisations call on the European Parliament and the European Council to amend the proposed regulation to strictly adhere to EU Basel obligations.

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[1] Letter to the European Council Legal Services requesting public release of their legal opinion, available here: <http://bit.ly/UD0WVV>

[2] Dr. Ludwig Krämer’s Legal Opinion is available here: <http://bit.ly/T3Oile>

[3] The Center for International Environmental Law Legal Opinion is available here: <http://bit.ly/WH98os>