



NGO
SHIPBREAKING
PLATFORM



Mr. Phil HOGAN
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To: EU 27 Environment Ministers

CC: 27 Member States' Permanent Representations to the EU; European Parliament Rapporteur MEP SCHLYTER; and the European Commission

Attached reports: PROFUNDO *Financial mechanisms to ensure responsible ship recycling 2013*; Ludwig KRÄMER *The Commission Proposal for a Regulation on ship recycling, the Basel Convention and the protection of the environment 2012*; CIEL *Legality of the EU Commission proposal on ship recycling 2012*

CONCERNING: The trilogue negotiations for a European Regulation on ship recycling

Dear Minister HOGAN,

Brussels, 24 May 2013

It comes with great disappointment that the NGO Shipbreaking Platform (NGO Platform), the European Environmental Bureau (EEB), and the more than 160 environmental, human and labour rights organisations we represent, cannot support the proposed new Regulation on ship recycling, dated 23 March 2012, in its current form. We urge you to address the serious concerns and recommendations outlined in this letter and substantiated in the attached independent reports during your current negotiations with the European Parliament.

The NGO Platform is a global coalition of 17 environmental, human and labour rights organisations working to reverse the environmental and human rights abuses of current shipbreaking practices and to ensure the safe and environmentally sound dismantling of end-of-life ships worldwide. The EEB is Europe's largest coalition of grassroots environmental organisations and represents the demands of European citizens.

Our organisations, stand ready to support the development of an improved Regulation that 1) has an expanded scope that covers more end-of-life ships without discriminating against the EU fleet, 2) incorporates an enforcement mechanism that holds ship owners accountable to the Regulation, and 3) reconciles the legal obligations of the EU to current legally binding EU Regulations and international obligations.

We are not only concerned with the shortcomings of the proposed Regulation that stand to make it ineffective, but worse still, we are concerned that the proposed Regulation may in fact have a *negative* impact on current European Union maritime policies intended to strengthen the EU Member States ship registries. A proposed regulation that is not only ineffective, but also potentially harmful to existing EU efforts, certainly deserves careful reconsideration.

We have outlined our primary concerns with the proposed Regulation, and we also offer a way forward in the proposal below.

PROPOSAL

1) Enlarging the scope - financial incentives

Without the creation of a parallel financial incentive, ship owners will continue to avoid extra costs by circumventing rules and increasing their use of substandard shipbreaking yards. The proposed scope of the new Regulation is limited to EU flagged vessels only – at end-of-life this represents less than 10% of the vessels sent for breaking. In 2012, 143 ships that were registered under an EU Member State's flag were broken. Of these vessels, 102 were broken on the beaches of South Asia, while the vast majority (76 ships) were registered under either the Greek, Cypriote or Maltese flag. Already, the vast majority of European owned vessels broken on the beaches of South Asia are registered under non-EU flags such as Panama, Liberia and Bahamas. Just as ship owners circumvent the current export prohibition under the Waste Shipment Regulation by not declaring their intent to dispose the vessel whilst at a European port, it is very likely that more ship owners will circumvent the proposed EU rules by simply flagging out to non-EU flags at end-of-life to avoid extra costs of using safe and environmentally sound ship recycling facilities as required by a proposed EU Regulation. Unless an economic incentive is introduced, circumvention of the law will persist, and ships with close economic ties to Europe and where the beneficial owners are domiciled in the EU will continue to be sold to substandard shipbreaking yards in developing countries.

We hence ask you to **support a binding commitment to adopt a financial incentive** based on individual producer responsibility in order to meet the following three objectives:

- internalise the costs for proper ship recycling and the management of hazardous wastes;
- discourage the reflagging of end-of-life vessels to avoid European regulations;
- implement an individual ship owner responsibility scheme to encourage the shipping industry to procure green ship design and pre-clean ships during operational use.

Such a financial instrument will provide a strong incentive to prevent ship owners from reflagging as the costs for proper end-of-life management will already have been pre-paid. Recent studies have proposed an array of possible mechanisms and have clearly shown that a financial incentive for proper ship recycling is **legally feasible, enforceable, and necessary**. We attached the study prepared by Profondo, entitled *Financial mechanisms to ensure responsible ship recycling (2013)*. This study outlines possible options and recommendations taking into account scope, calculations of contributions, collection of dues, beneficiaries, and enforcement.

In addition to the introduction of an economic incentive as described above, the EU ship recycling Regulation should require that grants and loans to the shipping industry be linked to proper ship dismantling. As a precedent, in the 'Guidelines to State Aid to Ship Owning Companies', the Commission asks Member States to attach certain conditions before granting ship companies exemption from general tax rules. These include the recruitment of European seafarers, adherence to international safety standards and an increase in registration of vessels under European flags. Each Member State is required to notify the Commission on a regular basis – proving that these policy goals are met. If not, the tonnage tax benefits are withdrawn. **Safe and environmentally sound ship**

recycling should be included as a prerequisite for allowing Member States to grant state aid to ship owners operating out of Europe.

2) Improving enforcement – high standards and controls

The current Commission proposal, which rightly seeks to go beyond the Hong Kong Convention to create more stringent requirements for ship recycling facilities, requires the “*containment of hazardous materials*” and “*the handling of hazardous materials and waste generated during the recycling only on impermeable floors with effective drainage systems*”. According to most interpretations, including the Commission’s, the current substandard beaching practice would not be granted EU approval. The shipping industry, however, do not interpret the Commission proposal as banning the beaching method, just as the Hong Kong Convention does not ban the beaching method despite guidelines outlining the need for “*adequate containment and spill clean-up equipment [...] to prevent discharged Hazardous Materials from contaminating soil and water*”. **We would encourage you to clarify in the recitals of the Regulation that the beaching method is not to be considered safe and environmentally sound as suggested by the EP.** This would **effectively remove all doubt regarding the EU’s disapproval of the current substandard beaching method** and send a strong signal that proper infrastructure is indeed needed to become an EU approved facility.

Further, if Europe intends to support the creation of needed safe and environmentally sound ship recycling capacity by increasing its recycling operations at dormant port facilities, shipbuilding sites and elsewhere, and at the same time promote the accompanying jobs, this must be reflected in the entry-into-force requirements. **To encourage the development of compliant ship recycling facilities a rapid fixed date for entry- into-force or an entry-into-force requirement including the capacity of new ship recycling facilities should be supported.** In 2007, the Commission estimated that a total of 1 million light displacement tons (LDT) per year of dormant dry dock ship recycling capacity existed in Europe alone.

Any EU Regulation on waste, including ships as waste, needs also to **ensure that waste streams can be traced and accounted for by including a traceability system.** Without such a mandatory tracking system, there is a real risk that especially hazardous wastes with high disposal costs will not be dealt with in a safe and environmentally sound manner. Any traceability system should be transparent on amounts of hazardous materials, methods of waste management, as well as listing all subcontractors involved.

Finally, while the EC proposes to establish an EU list of dismantling facilities that meet the requirements set out in the Regulation, the proper enforcement of these measures at the facility level cannot be ensured in the current proposed Regulation. **Mandatory on-the-ground checks of the conditions at ship recycling yards – especially those outside the EU – must be incorporated into the new Regulation.** These mandatory audits should be held by independent third parties, which are agreed upon by both the EU and the ship recycling state.

3) Ensuring legality

Article 29 of the Commission Proposal removes hazardous waste ships from the scope of application of the 2006 Waste Shipment Regulation (No 1013/2006). There is clear and compelling legal opinion demonstrating that this move is a breach of existing EU legal obligations under the Basel Convention, to which the EU and all its Member States are individually bound. Indeed, both independent legal experts and the European Council Legal Services have warned of the illegality of the proposed Regulation and the fact that it defeats both the intent and purpose of the Basel Ban Amendment.

EU legal expert, Prof. Dr. Ludwig Krämer, the former head of the EU Commission’s Waste Management Unit, concluded in his legal review as follows: “*The Commission Proposal constitutes a unilateral departure from the provisions of the Basel Convention that is not allowed by the*

Convention. The adoption of the Commission Proposal by the European Parliament and the Council would thus constitute a breach of the EU's obligations under the Basel Convention and would therefore be illegal."

The Center for International Environmental Law (CIEL) conclude in their analysis similarly : *"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."*

Finally, the Council Legal Services highlighted several legal problems with regard to the European Commission's proposed Regulation, the most important concern raised relates to the Basel Ban Amendment and the EU's breach of its obligation to the Ban. The opinion states: *"Legal Service considers that there is a serious risk that the simple exclusion of ships from Regulation 1013/2006 in the manner being proposed could amount to a breach of the obligation not to defeat the object and purpose of a treaty prior to its entry into force. As the Court has consistently held, "The European Union must respect international law in the exercise of its powers...and the Legal Service is therefore of the opinion that it would be prudent, at the very least, to seek a form of words that would not prejudice the application of the Ban Amendment as regards ships."*

Not only does the EU as a political integration organisation have a legal dilemma, now each Member State, which are also all independent Basel Parties will have to reconcile the illegality of unilaterally acting in non-compliance with the Basel Convention. This legal limbo cannot be ignored and **each Member State must clarify how they intend to seek legal coherence with their national governments.**

In closing, the NGO Platform and the EEB wish to reiterate our view that the proposed Regulation does not set ambitious aims in the long term that could effectively alter current practices. Worse still, due to the extremely limited scope and weak enforcement mechanisms, the EC proposal, if not strengthened, will in effect rid the EU with its responsibility – *and opportunity* – to provide solutions to the ship breaking crisis.

If the proposal is not significantly improved by the Council and Parliament, European shipping industry will continue to be at the heart of scandals involving severe pollution of coastal zones and exploitation of vulnerable workers in developing countries.

We remain of course available should you have any questions or wish to discuss the above-mentioned issues further with us.

Yours sincerely,

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Jeremy WATES
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