

World Maritime University

# The Maritime Commons: Digital Repository of the World Maritime University

---

World Maritime University Dissertations

Dissertations

---

1999

## The new maritime transport strategy of the European Union : opportunities for the Republic of Lithuania

Robertinas Tarasevicius  
WMU

Follow this and additional works at: [https://commons.wmu.se/all\\_dissertations](https://commons.wmu.se/all_dissertations)

---

### Recommended Citation

Tarasevicius, Robertinas, "The new maritime transport strategy of the European Union : opportunities for the Republic of Lithuania" (1999). *World Maritime University Dissertations*. 1095.  
[https://commons.wmu.se/all\\_dissertations/1095](https://commons.wmu.se/all_dissertations/1095)

This Dissertation is brought to you courtesy of Maritime Commons. Open Access items may be downloaded for non-commercial, fair use academic purposes. No items may be hosted on another server or web site without express written permission from the World Maritime University. For more information, please contact [library@wmu.se](mailto:library@wmu.se).

**WORLD MARITIME UNIVERSITY**  
Malmö, Sweden

**The New Maritime Transport Strategy of the European  
Union: Opportunities for  
the Republic of Lithuania**

By

**ROBERTINAS TARASEVICIUS**  
Republic of Lithuania

A dissertation submitted to the World Maritime University in partial  
fulfillment of the requirements for the award of the degree of

**MASTER OF SCIENCE**

in

**MARITIME SAFETY AND  
ENVIRONMENTAL PROTECTION**  
(Administration)

1999

## Declaration

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The content of this dissertation reflects my own personal views, and is not necessarily endorsed by the University.

..... (Signature)

..... (Date)

Supervised by:

Name: Professor Fernando Pardo

Office: Maritime Safety and Environment Protection

Institution: World Maritime University

Assessor:

Name: Professor Günter Zade

Office: Vice-Rector and Academic Dean

Institution: World Maritime University

Co-assessor:

Name: José Jorge Diaz del Castillo

Office: Maritime Safety Unit. Directorate-General VII - Transport

Institution: European Commission

## **Acknowledgements**

I would like to express my gratitude and appreciation to the Global Foundation for Research and Scholarship for giving me the opportunity, by awarding me a fellowship, to study at the World Maritime University (WMU). I am also grateful to the Ministry of Transport of Lithuania for nominating me to attend the studies at the WMU.

I hereby express my sincere appreciation to Professor Fernando Pardo, who as my supervisor, has given me valuable and continued guidance in assuring that my research was focusing on the right track. Also I wish to thank all the staff of WMU whose invaluable experience and support have helped in completing this work.

My thanks also extend to all my colleagues at the WMU for their support and encouragement during my stay in Malmö. A special thanks goes to Mr. Sydney and Mrs. Jacqueline Innis for their assistance in the language correction of my dissertation.

Special thanks to my colleagues at Water Transport Department of the Ministry of Transport and Communications whose support in providing me with relevant material on recent developments in the field of maritime transport have been beneficial in finalising the dissertation.

Finally I would like to express my deepest gratitude to my family for their patience and great support during all my stay far away from home.

## Abstract

Title of Dissertation: **The New Maritime Strategy of the European Union:  
Opportunities for the Republic of Lithuania**

Degree **M.Sc**

This dissertation is a study of the development of the maritime transport policy in the European Union. The attention is given on the recently developed maritime transport policy documents, namely on the maritime safety policy document, adopted by the European Council in 1993, and on the document issued by the Commission for European Communities in 1996 describing the new strategy towards maritime transport. This dissertation also focuses on the measures, aimed to develop the fleet and enhance safety standards in shipping, recently adopted by the Republic of Lithuania as a result of changes of the policy in European Union.

This paper is composed of four main chapters, the introduction, and the summary and conclusion. In the Introduction, a brief look is taken into the maritime situation in Europe and on the background of the main principles with regards to safety and fair competition.

Chapter Two deals with the historical development of maritime transport policy in the European Union indicating main events which brought about changes in scope and content of issues with regards to shipping matters. Chapter Three is dedicated to the European policy on safety and the protection of marine environment. This Chapter focuses on measures adopted by the European Council as an action plan to ensure compliance with internationally agreed standards for all ships entering European waters. In Chapter Four, the new comprehensive approach towards maritime policy, which includes maritime safety and fair

competition world-wide, and the framework for enhancing the competitiveness of the European shipping sector, is discussed. Chapter Five focuses on the role of Lithuania as a flag and port/coastal State, which has already started the process of harmonisation of the maritime policy with the policy of the European Union. Finally, the concluding Chapter summarises the results of the study on the above-described topics.

**Keywords:** European Union, Maritime Policy, Safety, Competitiveness, and Quality.

## Table of Contents

Declaration	ii
Acknowledgements	iii
Abstract	iv
Table of Contents	vi
List of Abbreviations	x
<b>1 Introduction</b>	<b>1</b>
1.1 General Description of the topic	1
1.2 European Union and maritime transport	3
1.3.Aims and objectives of the dissertation	5
<b>2 Historical development of maritime transport policy in the European Union</b>	<b>7</b>
2.1 Principle of freedom of the sea, and free and fair competition	7
2.2 Maritime transport policy development in pre-1980's	8
2.2.1 Shipping policy development	8
2.2.2 Measures relating to safety and pollution prevention at sea	10
2.2.2.1 Council Recommendation of 26/06/1978	10
2.2.2.2 Council Recommendations of 21/12/1978	10
2.3 Maritime transport policy development in the 1980's	11
2.3.1 1985 Commission Memorandum and proposals for a common maritime policy	12
2.3.1.1 Proposals for maritime policy with respect to competitiveness of the EC fleet	12
2.3.1.2 Proposals for maritime policy with respect to safety, environmental protection and social matters	14
2.3.2 The 1986 package	14

2.3.3	The 1989 package	15
2.3.3.1	A Future for the Community Shipping Industry: measures to improve the operating conditions of Community shipping	16
2.3.3.2	Financial and fiscal measures concerning shipping operations with ships registered in the Community	17
2.3.4	Measures relating to safety and pollution prevention at sea	18
2.4	The 1990's and onwards	19
<b>3</b>	<b>EC policy on safety of navigation and environmental protection</b>	<b>21</b>
3.1	The need for a policy	21
3.2	EC common policy on safe seas	23
3.2.1	Convergent implementation of international rules	24
3.2.1.1	Convergent application of generally defined rules of IMO Conventions	25
3.2.1.2	Harmonisation of safety requirements for shipborne equipment	26
3.2.1.3	Convergent implementation of IMO Resolutions	26
3.2.1.4	Adoption of common standards for non-convention vessels	27
3.2.1.5	Action concerning the human element	28
3.2.2	Uniform enforcement of international rules	28
3.2.3	Development of maritime infrastructure	29
3.2.4	International rule making	31
3.3	Conclusion	32
<b>4</b>	<b>The new EC strategy on maritime transport</b>	<b>33</b>
4.1	The need for re-examination of the policy framework	33
4.2	Towards a new maritime strategy	34
4.2.1	Actions to ensure safety and fair competition in international open markets	35
4.2.1.1	Safety and fair competition	35
4.2.1.2	Maintaining open markets	37



4.2.2 A policy for competitiveness	38
4.2.2.1 Training and employment	39
4.2.2.2 Research and development	40
4.2.2.3 State aid to shipping	41
4.3. Conclusion	42
<b>5 Opportunities for the Republic of Lithuania</b>	<b>44</b>
5.1 Elements of a national maritime transport policy	44
5.2 Shipping in the economy of the Republic of Lithuania	45
5.3 The economic regulation of the shipping sector	48
5.3.1 Strengthening the role of Lithuania as a maritime state	49
5.3.2 Development of the economy of Lithuania through development of maritime transport	50
5.3.3 Integration of Lithuanian maritime transport into global maritime transport market	51
5.3.4 Strengthening the social policy in the sector of maritime transport	53
5.4 National legislative measures	53
5.4.1 Flag State and port State control procedures	55
5.4.2 Standards for training, certification and watchkeeping for seafarers	56
5.4.3 Ship reporting system	57
5.5 Strengthening of the administrative measures	57
5.5.1 Strengthening of the role of flag State and enhancing port State control	58
5.5.2 Development of marine infrastructure and aids to navigation	60
5.6 Conclusion	61
<b>6 Summary and Conclusion</b>	<b>64</b>
<b>Bibliography</b>	<b>68</b>

<b>Appendices</b>		71
Appendix 1	List of legislative measures adopted by Council/ Commission with regards to freedom to provide services, competition rules and external relations	71
Appendix 2	List of legislative measures adopted by Council/ Commission with regards to maritime safety	73
Appendix 3	List of IMO Conventions and Protocols to which Lithuania is a Contracting Party	76

## **List of Abbreviations**

EA	Europe Agreement establishing an association between EC and the Republic of Lithuania
CEC	Commission for European Communities
CIS	Commonwealth of Independent States
CLC	International Convention on Civil Liability for Oil Pollution Damage, 1969
CTP	Common Transport Policy
EC	European Community
ECU	European Currency Unit
EDI	Electronic Data Interchange
EEA	European Economic Area
EEC	European Economic Community
EU	European Union
EUROREP	European Ship Reporting System
FUND	International Convention on Establishment of International Fund for Compensation for Oil Pollution Damage, 1971
GDP	Gross Domestic Product
GLR	Government of the Republic of Lithuania
GMDSS	Global Maritime Distress and Safety System
HELCOM	Helsinki Commission
HMO	Harbour Master Office
HNS	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and

	Noxious Substances by Sea, 1996
ILO	International Labour Organisation
IMDG	International Maritime Dangerous Goods Code
IMO	International Maritime Organisation
ISL	Institute of Shipping Economics and Logistics
ISM Code	International Safety Management Code
KSS	Klaipeda State Seaport
KSSA	Klaipeda State Seaport Authority
LISCO	Lithuania Shipping Company
MARPOL	International Convention for the Prevention of Pollution from Ships, 73/78
MoTC	Ministry of Transport and Communications
MoU	Memorandum of Understanding on Port State Control
NMD	Norwegian Maritime Directorate
O J	Official Journal
OECD	Organisation for Economic Co-operation and Development
OPRC	International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990
P&I	Protection and Indemnity
PSC	Port State Control
R&D	Research and Development
SALVAGE	International Convention on Salvage, 1989
SAR	International Convention on Search and Rescue, 1979

SBTs	Segregated Ballast Tanks
SOLAS	International Convention for the Safety of the Life at Sea, 1974
STCW	International Convention on Standards of Training, Certification and Watchkeeping of Seafarers, 1978
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea, 1982
USA	United States of America
USD	United States Dollar
VTS	Vessel Traffic Services
WG	Working Group

## **Chapter 1**

### **Introduction**

#### **1.1 General description of the topic**

Maritime transport is an international industry to which there are relatively few entry barriers. In principle, any shipowner can, regardless of his nationality and the location of his company, provide international shipping services. Moreover, any shipowner can, regardless of its nationality and the location of its company, choose a State for the registration of its vessels and to be entitled to fly the flag of that State provided that all requirements are observed. This decision is mostly based on the maritime policy of the State in question, which could be defined as a totality of economic, legal and administrative measures.

The shipowner prior to deciding to fly the flag of a State want to be sure that the policy of that flag State will provide an economic environment that will not decrease his ability to be competitive in the market world-wide. It is obvious, that the shipowner will not keep a flag for reason of national security, pride or job creation if this threatens the company's commercial position. Therefore, the policy to keep shipping under a State flag has to be economically viable and have to create conditions to keep or attract shipowners.

The other two elements which influence the shipowners decision to choose the flag State for registration of his vessels are the quality of the State's administration of overall maritime activities and legal environment. The State should comply with the criteria concerning flag State control agreed on IMO/ILO level and be able to assure that standards on safety, environmental protection, seafarers working and living conditions are observed in the entire fleet registered under the flag of this State. At the same time, the State should be able to

facilitate effective monitoring and, to avoid unfair competition, create the legal environment for elimination of non-compliance with the internationally agreed safety, environmental and social standards on ships flying its flag and entering its ports. In addition, the legal environment should facilitate the shipowners relations with financial and commercial entities, such as banks, insurance companies, charterers, brokers and other shipping intermediators providing such or similar services.

Thus, the flag, being a visual manifestation of the ship nationality, is closely linked to the reputation of the flag State in a maritime society and, definitely, reputation of the shipowner. In turn, the flag of a State, in aiding in defining the reputation of the shipowner, clearly identifies the maritime policy of that State and its attitude towards the shipping industry.

The maritime policy of the State in question is of great importance. If the State does nothing - national flag shipping may disappear. If it tries to protect the national flag shipping then there is a danger of retaliation, loss of efficiency and increased operating costs. The final result of such protection could be the end of a free shipping market. On the other hand, if the State does not pay attention to the implementation of the internationally agreed standards on safety and environmental protection, national shipping will be threatened by the rigorous port State control procedures and, most probably, unavoidable delays in ports. At the same time, too much regulations could tempt the shipowner to seek for an avenue of escape, to avoid some of these regulations.

Much of the problem could be reduced, therefore, if there were more international co-operation in defining national shipping policies, and the synergy between market forces and optimum regulations.

Thus, the title of this paper, 'The New Maritime Transport Strategy of the European Union: Opportunities for the Republic of Lithuania' has been chosen by the author due to the following reasons.

Firstly, the Member States of the European Union for centuries have been the great maritime nations, with shipping playing an important role in the development of their maritime industry.

Secondly, the European Union and the Member States are playing the leading role in setting the standards on safety of navigation and environmental protection in the international forum, although the Union is a relatively young body in the international arena.

Thirdly, by defining its maritime strategy, the European Union influences changes of attitude towards shipping not only in Member States policies, but also in the policies of the other States. Therefore, the aim of Lithuania as an Associated Member State of the European Union is to follow the European maritime strategy and to find opportunities to develop its own maritime industry as primary goals.

Finally, this topic is relevant to the field of study as the author is undertaking the course on Maritime Safety and Environmental Protection, Administration stream. In addition, there are personal interest to analyse this topic due to the fact that after graduation at the WMU, the author will continue his activities within the Water Transport Department of the Ministry of Transport and Communications of the Republic of Lithuania.

## **1.2 European Union and maritime transport**

For centuries maritime shipping has been of great political and economical importance for Europe and nowadays the importance for the European Union, hereinafter EU, could not be overestimated when the following facts are taken into account.

Firstly, seas surround the territory of Europe on three sides. Secondly, the EU is a major trading and economic power. Almost 90% of its external trade and over 30% of its intra-Community trade are carried by sea (Haralambides, 1997). Cross-trade between non-Member States is also important for ships registered in Member States. Finally, with the accession of Greece, Spain, Portugal and the Scandinavian countries, the EU's share in the world merchant fleet is estimated to be around 25%. Thus, to have an economically strong,



efficient and competitive fleet, which provides safe and high quality services, and not depend on other world trading and economic powers, is of main importance for the European Union.

Although the Member States' ships registries have always been considered as reputable, European shipping has been experiencing a very dramatic decline to its size throughout the 1980's and into the 1990's. The reduction of the number of the ships flying Member States' flags was accompanied by the decline in the shore-based activities of maritime transport. One of the factors that influences the shifting of the shipping industry from Europe was found mainly in EU shipping's high operating costs and subsequently its low competitiveness versus the shipping industries of some third countries. The other factor that decreases the competitiveness of EU shipping, to a great extent, can be attributed to the aggressive and unfair business practices of some third countries. Finally, some flag States developed attractive economic conditions for the registration of ships. Some of these states however, set the requirements for compliance with internationally agreed safety, environmental and social standards at the level lower than the minimum, or left them to the discretion of the shipowner.

Bearing in mind all possible consequences of these changes, the EU adopted two policy documents and described the framework of the actions necessary to control the development of shipping activities in the EU and make an influence world-wide. The first document called, 'A Common Policy on a Safe Seas', was adopted in early 1993 and has been focused at the set of measures to improve the compliance with safety, environmental and social requirements for all ships entering EU waters. The second document dated in 1996 is aimed on the action plan with regards to the competitiveness of the EU fleet, development of free and open markets and safeguarding safe and fair competition world-wide.

### **1.3 Aims and objectives of the dissertation**

The prime target of this research paper is to analyse the effect of those two documents on the development of the European maritime transport policy on various fronts such as the

national shipping policies of Member States, international maritime relations and national policies of other States having its aim to follow European developments. To this purpose the dissertation attempts to analyse, firstly, historical development of the maritime policy in Europe. The analysis, through the examination of different issues, is focused on two basic elements, namely EU policy with regards to liberalisation of the shipping sector worldwide and with regards to enhancing safety standards in shipping. In this respect the attention is given to the 1986 and 1989 packages, and on attempt to create a port State control regime by the Union.

The analysis is followed by the examination of two recent documents, the 1993 'A common Policy on a Safe Seas' and the 1996 'Towards New Maritime Strategy'. The paper examines accidents and other events influencing the changes in the EU approach towards shipping and its related issues.

Particular attention is given to the development of the Lithuanian maritime policy. Analysis is made of the recently adopted document called 'Economic Regulation Concept of the Shipping Sector'. It highlights the development of the shipping sector since independence was restored and the role of the shipping sector in the overall transportation chain. Further, for the purpose of obtaining full insight into the process of integration of the maritime transport in the world market, the dissertation brings attention on other policy measures, namely legislative and administrative, which are on the way of improvement.

As a research method, the author has chosen the analysis of several documents issued by the International Maritime Organisation, the EU and other sources such as books, periodicals, magazines and materials from international conferences, which focused their objectives on the development of maritime activities in the EU as well as in Lithuania. The statistical data, used in Chapter five, was collected from the annual reports of the appropriate authorities of the Republic of Lithuania.

Finally, it is important to note that in this dissertation, shipping industry and maritime transport is viewed as an activity related to sea-going merchant shipping and not related to

other maritime activities, such as shipbuilding, ports and inland navigation. Hence, the study is mostly related to the relations between shipowner/operator and a state, and any reference to other maritime activities should be seen as only supportive.

## **Chapter 2**

### **Historical development of maritime transport policy in the European Union<sup>1</sup>**

#### **2.1 Principle of freedom of the sea, and free and fair competition**

The principle of freedom of the sea was used by the shipping community as a defense by the western industrialised countries, European Community (Community or EC), International Chamber of Commerce and shipowners associations against discrimination and protectionism.

When, in 1947, the Marshall Plan provided aid for the reconstruction of Europe's economy, a Committee of European Countries compiled a declaration of principles that laid down the criteria for the most advantageous use of this money in reconstruction of European shipping.

The Maritime Transport Committee of the Organisation for Economic Co-operation and Development, hereinafter OECD, declared in 1961 that seaborne trade between member countries has to be based on principles of free movement of international merchant shipping and on principle of free and fair competition (Beth, 1984). This declaration is the basis of the objects of the Maritime Transport Committee of the OECD and of the Liberalisation Code, which deals with duties and obligations in sea traffic.

Moreover, the Liberalisation Code defines in detail which actions constitute infringements of the “principle of free movement and of free and fair competition”, and actions

---

<sup>1</sup> Originally the Treaty of Rome established the European Economic Community also called European Community. Later on, in 1993 the Maastricht Agreement laid down the notion of European Union, where the European Community became a constituent part of the Union. Although the term of European Union is being used officially, for the sake of uniformity the author will use the term European Community throughout the text.

collectively termed as discrimination and protectionism. Ultimately, the Community supported this position taken by the OECD.

Since the coming into force of the Treaty of Rome on 1 January 1958<sup>2</sup>, the further development of the EC's shipping policy has passed through three distinct periods: pre-1980's, 1980's and 1990 onwards.

## **2.2 Maritime transport policy development in the pre-1980's**

The maritime transport policy of the EC has come about at a very late stage and its development was reactive rather than proactive. In the pre-1980 period, the EC's involvement in maritime transport policy measures was extremely low; though the EC issued some documents (Bredima, 1990). This was mainly due to the fact that there was no real attempt to establish a Common Transport Policy (CTP) and as an additional factor, there was absence of an island Member State in the Community.

### **2.2.1 Shipping policy development**

A more prominent role for shipping in the EC was given with the accession of Denmark, Ireland and of the United Kingdom in 1973. Due to the fact that the United Kingdom and Ireland were islands, for the first time part of the territory of the European Community was only accessible by air or sea (Greaves, 1997). In addition, since 1973 the following series of events occurred, which gave impetus to the development of the EC approach on shipping matters (Bredima, 1990):

- the world wide shipping crisis and the concomitant tonnage surplus getting worse since 1973,
- the expansion of flag discrimination and protectionist practices,
- the expansion of state-trading countries shipping, particularly in the liner trade,
- the relative decline of the EC shipping industry,

---

<sup>2</sup> The treaty of Rome originally was signed on 25 of March, 1957

- several tanker disasters, which led to extensive oil spillage such as of the *Amoco Cadiz* in March 1978 and to sensitising of public opinion on maritime pollution matters.

However, the initiatives to establish a common shipping policy were still few. The basis for that was only two papers presented by the Commission of the European Communities, hereinafter Commission or CEC, namely a 1973 ‘Memorandum on the Development of a Common Transport Policy’ and a 1976 ‘Communication on the Scope and Content of a Maritime Transport Policy’. The main reasons why maritime transport was viewed as different from other types of transport and exempted from normal application within the Common Transport Policy<sup>3</sup> were a long history of world-wide regulations in this sector and the very international nature of maritime transport. The EC, as a relatively young community of States, was unwilling to destroy established international norms, including international conventions to which most of the Member States were signatories prior to the creation of the Community. Thus, by exempting maritime transport from obligations of the Common Transport Policy, the EC could avoid conflicts between Community and international law.

The main objective of the 1976 Communication was to bring about a discussion within the Community on the scope and likely content of a maritime transport policy. The objective, both internal and external, were identified as follows (Greaves, 1997):

- to promote fair competition in the world shipping market which would guarantee, in a long term, the availability of the entrepreneurial skills required (i.e. competition in the shipping industry should be fair and on a commercial basis),
- to promote the competitiveness of the EC fleet, which alone would guarantee its survival in the free world market,
- to promote social progress for EC seamen by improving their employment and working conditions,
- to maintain and improve safety standards and the protection of the environment.

---

<sup>3</sup> Article 84 (2) of the Treaty of Rome, as amended by the Single European Act in 1986, provides that “Council may, acting by a qualified majority, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport.”

In addition to the 1976 Communication, several EC Council regulations, decisions and recommendations were adopted. They could be broadly classified into three areas: consultation, encouragement to Member States to accede to international conventions and safety and pollution prevention.

### **2.2.2 Measures relating to safety and pollution prevention at sea**

During this period several instruments as a Community response to a number of tanker accidents causing pollution in Community waters were adopted.

#### **2.2.2.1 Council Recommendation of 26 June 1978**

On 26 June, the Council adopted a Resolution, which urged Member States to ratify leading conventions in the field of maritime safety and environmental protection such as the 1974 International Convention for the Safety of Life at Sea (SOLAS), the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL) as modified in 1978 and International Convention on Merchant Shipping minimum standards (ILO C 147).

The Council also adopted a declaration on the need for better enforcement of international measures to prevent marine pollution by ships and to ensure the safety of ships and competence of crew.

#### **2.2.2.2 Council Recommendations of 21 December 1978**

On 21 December 1978, other measures related to the safety of shipping were adopted, namely:

- recommendation on the ratification of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW),
- concerning pilotage vessels by deep-sea pilots in North Sea and English Channel,
- concerning minimum requirements for certain tankers entering or leaving Community ports.

Notwithstanding that the issues related to the safety and environmental protection were of the primary concern of the International Maritime Organisation (IMO), the EC decided to contribute to its work in several ways: by acting as a joint group in IMO, by urging Member States to ratify and enforce the IMO conventions and by taking actions on matters which are not being dealt with by IMO.

### **2.3 Maritime transport policy development in the 1980's**

In the beginning of the eighties the focus on a common maritime transport policy was brought about mainly by the following reasons:

- by the second enlargement of the EC in 1981 with the accession of Greece,
- by the third enlargement of the EC in 1986 with the accession of Spain and Portugal,
- by the continuous decline of the merchant fleets of Member States by the flagging out to the registries of third countries.

Also, in the early eighties the Council was taken before the European Court of Justice by the European Parliament in an attempt to put pressure on the Council to act and adopt a CTP as required by the Treaty of Rome. In addition, an effective transport policy, with a common policy in the maritime sector, was an essential factor in the strategy to create the single European market.

#### **2.3.1 1985 Commission Memorandum and proposals for a common maritime policy**

In 1984 the Commission published a Memorandum on maritime transport, laying down the main lines of action for a Community shipping policy. On the basis of this Memorandum, the paper, entitled 'Communication and proposals by the Commission to the Council on Progress towards a Common Transport Policy - Maritime Transport', was officially realised on 14 March 1985 (CEC, 1985).

The proposal on progress towards a maritime transport policy was based on four elements:

- to promote freedom to provide services,



- to promote a system of protection against unfair practice and enhance competitiveness of the EC fleet,
- to promote social progress for EC seamen by improving their employment and working conditions,
- to maintain and improve safety standards and the protection of the environment.

The view was clearly expressed in the Memorandum that the best way of serving the interests of the EC fleet and achieving the Treaty objectives was to develop a coherent approach to a trade-oriented multilateral policy (Ledger, 1993). Several proposals for measures, which were found to be necessary to protect the EC's trade and shipping interests, were put forward alongside the Memorandum.

### **2.3.1.1 Proposals for maritime policy with respect to the competitiveness of the EC fleet**

Thereafter, the Memorandum proceeds to an analysis of the development of the Community's fleet in recent years. The following were the reasoning behind the Commission's proposals. It was recognised that between 1975 and 1983 the Community's share of world tonnage had fallen from 29% to 23.3% in 1983 (Bredima, 1990). This decline was contrasting with the growth of the fleets of developing countries and to a lesser extent of open registry fleets. Moreover, it was stated that the proportion of world trade carried by the Community's fleet in 1983 was still about 40%. Thus, opinion expressed in the Memorandum was that the relative decline of the Community's fleet had not reached a critical point.

However, the Commission identified the long term causes of the relative decline of the Community's fleet as follows (Graves, 1997):

- the slump in world demand had imposed financial strains on Community shipowners which had caused them to sell off ships to buyers in third countries,

- technological innovation, greater specialisation and higher quality services are becoming increasingly costly, and this has stimulated “flagging out”, i.e., registration of ships under non-EC flags,
- the situation in the liner trades had become worse as a result of competition from State-trading countries and cargo reservation by developing countries.

Analysing the importance of maritime transport for the Community, the Commission stated that in 1982 the fleet belonging to EC Member States earned net incomes of approximately 9.1 thousand million USD. About 95% of the total quantity of EC trade with third countries and about 30% of inter-Community traffic were carried by sea (Bredima, 1990). Thus, considering what policy to adopt, the Commission argued that a protectionism policy would encourage reciprocal action in the United States of America (USA) and most other countries. In view of the Community’s dependence on world trade and international shipping market, the Commission was of the opinion that the multilateral market-economy oriented maritime transport policy is still in the interest of the EC shipping industry. This liberal, free trade approach became the key element that permeates the Memorandum and the further legislative proposals.

### **2.3.1.2 Proposals for maritime policy with respect to safety, environmental protection and social matters.**

In the field of maritime safety and environmental protection, the Commission proposed to reinforce the system of port State control established by the 1982 Memorandum of Understanding on Port State Control (Paris MoU). In addition, the Commission invited for consideration of Member States, the need for a network of shore-based navigation aids in order to improve safety, and for the establishment of common standards for the training of the Vessel Traffic Services (VTS) staff.

Analysing the social situation of seafarers, the Community stated that due to the overall reduction of the fleet, the number of EC seafarers declined by one third between 1960 and 1980. At the same time the percentage of the seafarers from non-EC countries increased from 15% to 20% for the same period. In addition, there were differences in the wages paid to seafarers and in the social security systems. However, the Commission has limited itself to the elaboration of a study in the context of an *ad hoc* Consultative Committee on Maritime Matters. The emphasis for that study was giving of a favourable direct tax system for Community seafarers and to mutual recognition of diplomas and certificates of competency.

### **2.3.2 The 1986 package**

Four documents, constituting the first phase of the development of the EC maritime transport policy and intended to give legal force to the flexible approach outlined in the Commission's Memorandum, were adopted in 1986 and presented in a form of regulations to the Council of the European Communities, hereinafter Council (Ledger, 1993).

The first document, applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, was adopted to assist Community shipowners to fight restrictions imposed by non-Member States for shippers established in their own country, in an EC Member State or in another non-Member State.

The second document laid down detailed rules for the application of Articles 85 and 86 on the Treaty to maritime transport. It also laid down the procedure by which the Commission was able to investigate and apply the competition rules to the maritime sector.

The third document on unfair pricing practices in maritime transport, laid down similar procedures for those acting on behalf of the Community shipping industry who consider themselves injured or threatened by unfair pricing practice to lodge a complaint. In addition, this Regulation enabled the Community to respond to the unfair pricing practices pursued by certain shipping lines outside the Community.

The fourth measure in the 1986 package was the regulation concerning co-ordinated action to safeguard free access to cargoes in ocean trades. This regulation was found to be necessary to ensure a free competitive environment in dry and liquid bulk trades (Ledger, 1993).

In general, the 1986 package focused in particular on the threat to Community shipping from the protectionist policies and practices of non-Member States. Free and non-discriminatory access to cargoes for EC shipowners and fair competition were the main principles of the Community's maritime transport policy.

### **2.3.3 The 1989 package**

Although the 1986 package worked reasonably well for improving the competitiveness of EC shipping, the decline of the industry in terms of reduction in market share and accelerated flagging-out has been not stopped. The decline of the fleet was seen as a matter of concern for both the Member States and the Community. An assessment of the facts by the Community led to the conclusion that the downward trend in ownership, flag and crew of the Community's fleet, could only be stemmed by active policies. The main concerns of the community were to maintain an EC shipping fleet and to maximise the number of European seafarers who could serve on that fleet (Ledger, 1993). Thus, in 1989 the Commission submitted to the Council two further proposals to complement the four 1986 measures. These proposals were, 'A Future for the Community Shipping Industry: measures to improve the operating conditions of Community shipping', and 'Financial and fiscal measures concerning shipping operations with ships registered in the Community'.

#### **2.3.3.1 A Future for the Community Shipping Industry: measures to improve the operating conditions of Community shipping**

Several maritime transport policy initiatives, which sought to improve the operating conditions of Community shipping, were proposed in this paper (CEC, 1989a):

- Council regulation establishing a Community ship register (EUROS) and providing for the flying of the Community flag by sea-going ships,
- Commission recommendation on improving the effectiveness of port State control in the Community,
- Council regulation providing for a common definition of a Community shipowner,
- Council regulation regarding the transfer of the ships from one register to another within the Community,
- Regulation for shipping consortia to be granted block exemption from EC competition rules,
- Council regulation applying the principle of freedom to provide services to maritime transport within Member States (cabotage).

Some of these proposals were very controversial, affecting various national interests; therefore it was not possible to adopt the measures as a package. Only in the early nineties were the 1989 proposals adopted<sup>4</sup>, except proposals on creating Community ship register and on definition of a Community shipowner (Greaves, 1997).

### **2.3.3.2 Financial and fiscal measures concerning shipping operations with ships registered in the Community**

In this paper, the Commission stated that much Community shipping was already heavily subsidised, and it was grossly distorting the market. However, the Commission agreed to approve subsidies to shipping operations under some circumstances and within a number of constraints. Moreover, it was decided that any State aid should not exceed a limit defined by the relevant cost difference. A cost difference method was devised with the aim that the global impact of the State aids would not exceed a ceiling defined by the cost handicap, which arises by operating low-salary Member State fleet compared with the world market. The calculation was based on the hypothetical operating cost of vessel under Portuguese

---

<sup>4</sup> List of legislative measures adopted by Council/Commission with regards to freedom to provide services, competition rules and external relations is provided in Appendix 1.

and Cypriot flags, as the former was the cheapest EC flag and the latter was counted as a flag of convenience.

In addition, state aid had to be transparent - with all details made public, time limited and should not contribute to increasing or maintaining capacity in sectors where there was already a surplus (CEC, 1989b). Finally, only three types of subsidy were allowed:

- those involving social security payments,
- those for training, and
- different tax regimes.

In spite of the fact that this paper was only advisory, each country had to submit subsidies plans and have them approved by the Commission before they could be implemented (Ledger, 1993).

#### **2.3.4 Measures relating to the safety and pollution prevention at sea**

During the period of the eighties, additional initiatives relating to the enhancement of safety at sea and environmental protection were put forward. The most important was draft Council Directive of 2 July 1980, concerning the enforcement, in respect of ships using Community ports, of international standards for shipping safety and pollution prevention.

The purpose of this draft was to harmonise ship inspection and port State control procedures at Community level and to introduce Community rules for the frequency and criteria of such inspections. However, this proposal was not adopted. The basic reason for such non-transference of this proposal into Community law was due to the reluctance of several Member States to transfer competence of ship inspection to the Community. Any transfer of sovereignty from the national authorities to community faces a considerable degree of opposition.

Notwithstanding this, on 26 January 1982 the second ministerial conference was convened in Paris to discuss port State control matters, at which 14 European countries signed the Paris MoU. This memorandum is based largely on the proposal of the Commission submitted in 1980.

Further measures in this field included the following:

- adopting a concerted action project for the European Economic Community in the field of shore-based navigation aid systems ,
- the conclusion of a Community COST agreement on a concerted action project in the field of shore-based marine navigation aid systems (COST project 301),
- urging Member States to ratify, or accede to the 1979 International Convention on Maritime Search and Rescue (SAR).

It is noteworthy that all decisions concerning the shore-based navigation aid systems were not based on Article 84 paragraph 2 of the Treaty of Rome but on Article 235.

#### **2.4 The 1990's and onwards**

In the nineties the main concern of the Community was safety at sea. A number of disasters in Europe, such as the *Herald of Free Enterprise* in 1987, the *Scandinavian Star* in 1990 and the *Braer* in 1993, forced the Community to focus on safety (Greaves, 1997). The most important steps towards a comprehensive maritime transport policy were made with the presentation of two papers for the adoption of the Council in 1993 and in 1996.

In 1993 the Commission issued 'Communication on a Common Policy on Safe Seas'. This policy document contained detailed action plan, which aimed on elimination of substandard vessels and operators from Community waters and from Member States' fleets, and on the establishment of the high requirements for training of seafarers. The following instruments<sup>5</sup> were adopted in the early nineties with respect:

---

<sup>5</sup> List of legislative measures adopted by Council/Commission with regards to maritime safety is available in Appendix 2

- to the minimum health and safety requirements for improved medical treatment onboard vessels,
- to the minimum standards of training for seafarers,
- to common rules and quality standards for ship inspection and classification societies,
- to the implementation of IMO rules on tonnage measurements of ballast spaces in more environmentally friendly segregated ballast oil tankers (SBTs).

In addition, the Council passed a resolution on passenger ferry safety, which called on Member States, in their capacity as members of IMO and of the Paris MoU, to press for urgent identification, elaboration, adoption and implementation of means which will improve the safety of passenger ferries on an international basis.

After two years, in 1995, the Commission came back to the further elaboration and re-examination of the common maritime policy. The Communication called, 'Towards a New Maritime Strategy', adopted on 13 March 1996, was prepared with the focus on the competitiveness of EC shipping and on combinations of various components of the maritime policy, namely safety and fair competition.

Both documents, namely 'Communications on a Common Policy on Safe Seas' and 'Towards a New Maritime Strategy', will be further analysed in the forthcoming Chapters 3 and 4, respectively.



## Chapter 3

### EC policy on safety of navigation and environmental protection

#### **3.1 The need for a policy**

Although the issue of improvement of safety standards and protection of the marine environment was included in the scope and content of a common maritime transport policy in the 1976 Communication, the real initiatives to co-ordinate actions of Member States in this field were few. It was mainly due to the following reasons.

Firstly, the concept of globally applicable rules on safety standards, agreed upon within the IMO and enforced through flag states legislation, was the main objective of the international shipping community. Any attempts made by single countries or regions to introduce regional rules were fought fiercely.

Secondly, from the very beginning of the creation of a common maritime policy the majority of Member States were against the inclusion of safety issues into a common maritime transport policy. Perceiving those issues as a matter of principle, Member States were handling safety at sea through their sovereign participation in the IMO. Expressing his opinion on EC maritime safety policy matters, Mr. Ketil Djonne, Administrator of the European Free Trade Association, stated at the 17th Nordic Maritime Law Conference that “...due to Member States’ reluctance to incorporate the subject matter into Community policy, the drafting remained, however, for a long time in the Commission drawers<sup>6</sup>” (Djonne, 1997, page 251).

---

<sup>6</sup> The commission started the drafting the policy paper on the safety of navigation and environmental protection at the beginning of 1990s after two accidents, namely the *Harold Free Enterprises* and the *Scandinavian Star*.

Therefore, the role of the Council the issues relating to safety at sea and pollution prevention was brought mainly about by:

- urging Member States to adhere to the relevant IMO conventions,
- promoting improvement of social conditions onboard vessels,
- recommending improvement of ship inspections and control,
- recommending improvement of the maritime navigation aid system.

However, at the same time maritime transport activities in Member States were constantly shrinking due to the flagging-out phenomena. According to Prof. H E Haralambides, flagging-out is an operational decision of certain shipowners aimed at reducing operating costs and other conditions to those prevailing in competing third countries (Haralambides, 1997). As a consequence, this phenomenon has affected economies of Member States adversely by reducing employment, fiscal revenues and know-how. Moreover, reduction in employment of EC seafarers mean declining of professional standards and lack of qualified and experienced staff in the entire industry: former seafarers make up a substantial number amongst employees in national maritime administrations, companies providing harbour services, shipping agencies, forwarding companies, classification societies, educational and similar institutions.

In the beginning of the nineties, a series of fatal accidents, which caused considerable loss of human lives and oil spills of thousands' of tonnes, occurred in Community waters or in close vicinity. It is worthwhile to mention the pollution incidents, notably *Haven*, which occurred close to the coast of Genoa, Italy in 1991 and *Aegean Sea*, which occurred in the vicinity of La Coruna, Spain in 1992, where the amount of 223 and 74 thousand tons were spilled respectively (Pardo, 1999).

Ultimately, changes were brought about after the *Braer* disaster off Shetland in January 1993. The oil tanker *Braer* was stranded on the shores of the environmentally sensitive Shetland Islands and spilled her 85 thousand tonnes cargo. The damages to all parties concerned were calculated to be millions of dollars and the general public - through media

and politicians - demanded action (Djonne, 1997). For example, the United Kingdom Labour Party in its response to the *Braer* accident urged the Commission to adopt unilateral long-term measures to minimise pollution of European coasts. Among others, the calls for the establishing of the European Maritime Policy so ensuring high safety standards and reversing the decline of EC flag fleet have been put forward (Guest, 1993a).

The European Parliament, responding to the public concerns on 21 January 1993 adopted a resolution, which asked for the total ban on entry to European ports by tankers older than 15 years. In respect to maritime safety legislation, British Member of European Parliament Ken Collins expressed his opinion that there is a need to press IMO to ensure that flag states meet high standards on safety and, if they will not, to ban their ships from EC ports and waters. And he added: "... I don't think we need to wait on the IMO - we should take unilateral actions" (Guest, 1993b).

Notwithstanding those tendencies to turn European shipping policy on full regionalism approach, the Commission managed to present to the Council ahead of its meeting in June 1993 the document under the title 'A Common Policy on Safe Seas'. Characterising this document Mr. Ketil Djonne (1997, page 252) said:

"To my mind fortunate coincidences open up for a well founded, balanced but ambitious Community safety at sea policy in a situation which had all the potential of sending it out on a wrong course."

### **3.2 EC Common Policy on Safe Seas**

At the meeting of the Council, in June 1993, the document on the safety policy was adopted. Recognising the Community's dependence on reliable, cost effective and safe shipping services, the Council has set future course for the present maritime transport policy. This policy should ensure that shipping services provided are "...at a minimum level of risk for all directly or indirectly concerned and for the marine environment"(CEC, 1993).

The Council, moreover, stated in this document that the existing high levels of risk of casualties in the shipping industry is not determined by the absence of adequate international rules, but rather by lack of application and enforcement of those rules. Two main factors have been distinguished, which intervene to a large extent, namely unsatisfactory performance of a number of shipping operators and flag States, and human errors. However, further causes of accidents should not be lost from sight by focusing only on those issues. Thus, the policy has been based mainly on elimination of substandard vessels and operators from Community waters and from Member States' fleets, and on the establishment of the high requirements for training of seafarers. The proposed action plan to achieve those goals contained four basic elements, such as convergent implementation of international rules, uniform enforcement of international rules, development of maritime infrastructure and international rule making.

### **3.2.1 Convergent implementation of international rules**

Although the present internationally agreed rules on safety of navigation and environmental protection cover almost 99% of world tonnage vessels, there is a consistent pattern of substandard vessels flying the flags of countries, which are contracting parties of the international conventions. This is caused by the following factors.

Firstly, some instruments adopted by IMO in the form of resolutions are not legally binding, others allow for different interpretation or even derogation, which may be of considerable importance. Very often the new rules, which have been adopted to remedy these deficiencies, are enforced by Member States only voluntarily.

Secondly, not all ships involved in maritime transportation are covered by existing international rules. An example could be vessels below convention size and vessels involved in domestic voyages.

Thirdly, the detailed safety rules are left to be defined by national administrations, which in turn delegate this work to classification societies. Traditionally, the classification societies

had adequate staff and facilities to develop and interpret the rules. However, during the past decades the number of classification societies has increased. Not all of them have traditional characteristics to justify their experience and professional quality to act on behalf of the national administration. On the other hand, national maritime administrations have not established adequate working relations with the organisations acting on their behalf. Thus, lack of control, adequate training, experience and technical knowledge of employees of both national administration and classification societies could put at risk all parties involved in shipping and, more important, it could cause loss of life and damage to the marine environment.

Furthermore, the Council stated that those divergences “...not only have an adverse effect on safety, they can and do fragment the international market for the maritime supply industry and create competitive disadvantage...” (CEC, 1993, page 17).

To tackle those issues the Council set up the following five main groups of measures.

### **3.2.1.1 Convergent application of generally defined rules of IMO Conventions**

By the first measure the Council decided to adopt the legally binding instrument, which “...secure the direct and tighter involvement of the national administrations in the ships certification and survey process” (CEC, 1993, page 25). Even though a Member State decides to delegate statutory surveys to organisations acting on behalf of the administration, the following procedure should be observed:

- Those duties should be entrusted only to organisations, which meet an “...established set of criteria, demonstrating their ability and commitment to perform at highly reliable and efficient level” (CEC, 1993, page 25).
- The formalised agreement between the parties, namely national maritime administration and organisation acting on its behalf, should be the basis for working relationship. This relationship should “...ensure quality and consistency of rules, surveys and certification” (CEC, 1993, page 26).

- The control procedures for the work performed by the organisation should be included in this agreement, specifying periodical audits, checking procedures and random inspection of ships.

By this instrument the goal, to ensure that all ships flying EC states' flag comply with precisely defined requirements for safe construction and operation, would be achieved.

### **3.2.1.2 Harmonisation of safety requirements for shipborne equipment**

By the second measure the Council decided to adopt the legally binding instrument, which established the same level of safety performance of the shipborne equipment for which SOLAS and MARPOL require the approval by national administrations. As far as standards for marine equipment are developed within the relevant Conventions, the Council's approach is to ensure that "...the margin of interpretation left to administrations or testing organisations converges as far as reasonable and that they are effectively applied in a consistent manner in all Member States" (CEC, 1993, page 28).

### **3.2.1.3 Convergent implementation of IMO Resolutions**

By the third measure the Council decided to adopt the legally binding instruments which affect implementation throughout the Community of the following IMO resolutions and Codes:

- IMO Resolution A. 713(17) On the safety of ships carrying solid bulk cargo,
- IMO Resolution A. 680(17) IMO Guidelines on Management for the Safe Operation of Ships and Pollution Prevention,
- IMO Resolution A. 722(17) Application of tonnage measurement of ballast spaces in segregated ballast oil tankers,
- International Maritime Dangerous Goods Code (IMDG),
- Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk Code.

It was noted, furthermore, that these instruments should be seen from the point of view of flag State and port State as well. Acting as a flag State, each national administration should ensure that all these instruments are implemented. Acting as a port State, each national administration should ensure that “...other flags’ vessel do respect these international recommendations” (CEC, 1993, page 31) and would not constitute an unacceptable threat to the safety and environment of EC coastal waters<sup>7</sup>.

### **3.2.1.4 Adoption of common standards for non-Convention vessels**

With the fourth measure, the Council proposed to introduce common standards for passengers and cargo vessels involved in domestic voyages, cargo ships of less than Convention size and fishing vessels below 45 metres. Bearing in mind that passenger and

---

<sup>7</sup>There the Council refers to term of “no more favourable treatment”, which was introduced in the Protocol of 1978 to SOLAS ‘74, MARPOL 73/78 and STCW 78 regarding to ships of non-Parties of such conventions. In addition, the IMO Resolution A.787(19) on procedures for Port State Control, adopted later, on 23 November 1995 provides that “all parties should apply the procedures set out in this resolution to ships of non-Parties and ships below conventional size in order to ensure that equivalent surveys and inspection are conducted and an equivalent level of safety and protection of the marine environment are ensured”.

cargo vessels involved in domestic voyages and cargo ships of less than Convention size represent a real threat to the environment, the tightening of safety standards could be seen as justifiable measures, particularly looking ahead. However, bearing in mind the economic impact of such measures, the Council decided to introduce such measures to new ships and only after phasing-in period to existing ships.

With regards to fishing vessels below 45 metres, the Council, basing its opinion on the 1993 Protocol to the Torremolinos Convention, will seek to extend the regional agreement with the other European countries in order to promote as wide as possible acceptance of high level safety standards.

### **3.2.1.5 Action concerning the human element**

The Council expressed its concern that according to the data provided by the United Kingdom Protection and Indemnity Club, human error either by crew or shore-based personnel, constitutes “...about 60% of all claims following an accident, and over 80% of the incidents” (CEC, 1993, page 35). As a remedy the Council proposed to introduce minimum training requirements within the Community “...to ensure that EC seafarers receive an appropriate level of training and enjoy freedom of movement within the Community” (CEC, 1993, page 36).

With regards to crew from non-EC countries, the Council expressed its opinion that Member States should, acting as a port States, take appropriate steps to ensure that all members of crew do possess adequate professional qualification and training.

With regards to shore based personnel, the Council urged Member States, acting as members of IMO, to take all actions for application and enforcement of IMO Resolution A. 680(17) on a world-wide basis.



### **3.2.2 Uniform enforcement of international rules**

Understanding the importance of convergent implementation of international rules by Member States, the Council however pointed out that those measures are “...insufficient to guarantee an adequate level of safety and environmental protection in Community waters” (CEC, 1993, page 18). According to statistical data presented by the Paris MoU secretariat, many substandard ships flying non-EC States flags are still operating in Community waters. Moreover, the data shows that the number of deficiencies found by port State control (PSC) authorities are constantly increasing. Furthermore, Member States, which rigorously apply safety and environment protection standards to ships irrespective of the flag they are flying, also pay in loss of trade, while their coasts continue to be threatened by the possibility of pollution.

Bearing in mind that the progress cannot be achieved only at national level, the Council stated that “...the Community approach should be based upon uniform and binding application of common criteria for intensification of controls over certain types of ships and for evaluation of deficiencies and sanctions, including detention or possibility to refuse access to Community ports to ships found below internationally agreed standards, and further which refuses to be upgraded or repaired, and the rapid adoption of EDI system as a transparent data exchange mechanism” (CEC, 1993, page 19).

Thus, as a remedy the Council adopted the following further actions, which concentrate:

- on establishing a common set of criteria for intensification of inspections of certain ships,
- on harmonising inspection and detention criteria,
- on establishing adequate national inspection structures and training programme for inspectors,
- on setting up an effective mechanism to control and evaluate the effectiveness of the PSC measures (CEC, 1993, par 70).

By this action plan the Council managed to adopt measures for harmonisation of ships inspection and PSC procedures at the Community level, which it had failed to be adopted in 2 July 1980<sup>8</sup>.

### **3.2.3 Development of maritime infrastructure**

As a supplement to the actions taken by port State, the actions taken by the coastal States to enhance the safety of navigation and environmental protection standards have to be seen as very important. Thus, the Council adopted, as a third component of the action programme, measures which “...focuses on the rights and duties of coastal States as regards the infrastructure and systems that ensure safety of navigation and the protection of the coastal resources from accidental and operational pollution” (CEC, 1993, page 49). With regards to protection of the coastal resources from accidental pollution and minimising risk of collision, the Council decided to introduce the following measures:

- traffic restrictions in environmentally sensitive areas,
- mandatory reporting system for ships carrying dangerous and noxious substances and bound to or leaving from Community ports, or going in transit through Community waters,
- development of harmonised system for aids to navigation, which includes harmonisation of measures for development of VTS and aids to navigation infrastructure.

In addition, the Commission has developed a Community Action Plan for supporting Member States’ efforts to improve their capabilities of response in cases of major pollution incidents at sea and to create the conditions for efficient mutual assistance. The Plan contained the four main elements, namely the Community Information System, the Training Programme, Studies and Pilot projects, and the Task Force.

With regards to operational pollution and illegal discharge into the sea, the Council decided to adopt measures, which ensure:

---

<sup>8</sup> See paragraph 2.2.4

- that all Community ports have installed adequate reception facilities,
- that all ships, after refusing to make use of the reception facilities, would be closely monitored on a basis of common system of PSC,
- that on the educational and training level of seafarers and of ship management, the reduction of illegal discharge should be promoted.

In addition, the Council expressed its opinion that “...the Community measures should also include both the development of a commonly agreed mechanism whereby users would contribute to the costs of providing the infrastructure required for the safety of navigation and the uniform implementation of the international commitment to prevent illegal discharges at sea and into the air” (CEC, 1993, page 20).

### **3.2.4 International rule making**

Although it was pointed out that IMO, as an international rule making body in the field of safety of navigation and environmental protection, is working slowly and not sufficiently for the needs of Community, the Council as a fourth measure of the action programme introduced as a measure to support IMO, enabling it to strengthen its primary role in setting standards.

The Council, moreover, has drawn the role of the Community in the international rule making in two ways, firstly ensuring “...that the IMO’s work develops in a way which will produce adequate solutions for ships sailing in its waters...” and secondly that “... the uniform application of international rules within the Community must have as its corollary action within the IMO with a view to ensuring similar developments elsewhere in the world where Community vessels operate in competition with third country vessels” (CEC, 1993, page 21).

Furthermore, the Council defined the areas in which the Community should concentrate its efforts, which are:

- to support the actions of IMO to support national maritime administrations which have difficulties in implementing international safety and pollution prevention standards,
- to reduce the risks of human error on ships flying Community flags and act on a world-wide basis in order to promote adoption and implementation of international instruments supporting elimination of this element of risk,
- to provide the required support to the initiatives of the IMO in introducing new technologies for shipborne equipment, systems for automatic transfer of data from ships to shore and vice versa, and other systems which could enhance safety at sea,
- to promote adoption of the Torremolinos Convention.

Finally, the Council decided to establish the Committee on Safe Seas which was defined as “...the forum for identifying and evaluating subjects of priority importance, including those for which solutions are best searched for at international level, and to co-ordinate the Member States’ contribution to these subjects in IMO” (CEC, 1993, page 71).

### **3.3 Conclusion**

In spite of the general public opinion to introduce more rigorous and regional based rules on safety in the EC maritime policy, the Council managed to follow the Commission’s proposals and set up a realistic and comprehensive action plan. At the same time the new elements and principles have been introduced into EC maritime policy (Djonne, 1997).

Firstly, the Council resolution defined the role of the Community in the work of the IMO. By establishing the Committee on Safe Seas the activities of the Community in the future work of the IMO has been explored in two ways: in promoting rigorous requirements for vessels serving in Community waters and enhancing safety standards internationally.

Secondly, the Community went a step forward by making mandatory for ships flying its flag and ships entering the Community waters compliance with several IMO Resolutions.

Thirdly, the EC shipping policy shifted from the traditionally flag State oriented policy towards a port and coastal State oriented policy. However, the Commission pointed out that

it is necessary “... to prevent further shifting of the responsibility for safety of construction and maintenance of ships from the flag States to the port and coastal States, a process already gradually under way, if it continues for too long, which would risk to reduce the effectiveness of internal rule-making” (CEC, 1993, page 65).

Finally, it should be noted that the document firstly established implicitly the link between safety and competitiveness. This link has been further elaborated in the Commission document entitled ‘Towards a New Maritime Strategy’.

## **Chapter 4**

### **The new EC strategy on maritime transport**

#### **4.1 The need for re-examination of the policy framework**

From the very beginning of EC maritime transport policy the Commission has applied a policy consisting mainly of a combination of actions concerning external relations, competitiveness of EC shipping and maritime safety. Analysing the EC maritime transport policy so far, Mr. N. Kinnock, the European Commission Transport Commissioner stated that "...maritime policy has succeeded in opening up markets, particularly in Europe, and giving the consumer a wide choice of shipping services. The application of EC competition rules to all market participants regardless of flag, has furthered consumer interests and ensures fair treatment for all liner shipping companies. The newly introduced safety policy<sup>9</sup> will enable the Community to ensure that safety and environmental standards are effectively applied, thereby also ensuring fairer conditions for competition" (LL, 1996). Further, he pointed out, however, that there still are areas, which require actions on the level of EC to be taken as re-examination of the policy framework.

Firstly, the success in enhancing productivity of the EC-owned fleet does not diminish the pressure to flag out the ships from Member States shipping registers. Thus, the combined share of the world fleet represented by the flags of Member States has been declining constantly. Comparing the share of the world fleet represented by the EC flag in 1985 with the data of 1996 the reduction of ships are of a magnitude of 29%, i.e. from 9,742 to 6,902 ships. Expressing those figures in terms of representation of EC-flag fleet in a share of

---

<sup>9</sup> Common Policy on Safe Seas (CEC, 1993)

world fleet in gross tonnage, the EC-flag fleet reduced from 27,7% in 1985 to 17,6% in 1996 (Haralambides, 1997).

Secondly, the liberalised shipping environment has not led to the creation or even maintenance of employment for EC seafarers. According to the EC Shipowners' Association Annual Report for 1995 - 1996, the number of EC seafarers employed onboard Member States<sup>10</sup> flag vessels has declined from 235,146 in 1983 to 138,341 in 1995. This trend of decline is attributed to flagging-out phenomena by 51%, to the loss of market share in general by 27% and the rest is due to increased number of non-European seafarers employed onboard EC-flag vessels (Haralambides, 1997).

In addition, the following events happened in the mid-nineties giving impetus for re-examination of the EC maritime policy framework. As from January 1, 1995, the Nordic countries have joined the EC. While Finland and Sweden joined as full members, Iceland and Norway opted to link up through the agreement of the European Economic Area (EEA). Secondly, some Member States have established second shipping registers besides its ordinary shipping registries. Those registries have been established in order to reduce manning costs by giving the shipowners the possibility to hire foreign crew (Schelin, 1997). Finally, the *Estonia* disaster gave strong impetus on strengthening the safety rules for ro-ro ships, enhance ships inspection procedures, education and training of seafarers.

#### **4.2 Towards a New Maritime Strategy**

After more than half a year of work of the Core Group, specially formed to provide advice for the Commission maritime strategy framework, the document called 'Toward a New Maritime Strategy' was adopted by the Commission on 13 March, 1996. This document was prepared to re-assess Community maritime policy and to set further goals towards establishing a common maritime purpose. Although there are still actions needed on improvement of maritime safety policy and external maritime relations policy, the strategy document has been prepared with focus on the "...problems of competitiveness of EC

shipping” (CEC, 1996, page1c) and on combinations of various components of the maritime policy, namely safety and fair competition. Thus, the Commission has highlighted a two-fold strategy in determining its future shipping policy. The priority has been given to the action on enhancing safety and ensuring fair competition in internationally open markets, and to the Community framework for enhancing the competitiveness of the shipping sector (Moloney, 1996).

#### **4.2.1 Actions to ensure safety and fair competition in international open markets**

In this respect the Commission proposed separate action programmes for two elements of the strategy, namely safety and fair competition, and maintaining open markets.

##### **4.2.1.1 Safety and fair competition**

Although the main coherent statement on maritime safety was introduced in 1993, and since then much has been achieved by strengthening port State control procedures and promoting the use of environmentally safe vessels, the Commission expressed its view that the important task ahead is improving the implementation of the EC and IMO/ILO rules that are in force. Furthermore, the successful implementation of the safety policy to a large extent depends on how the various interests of parties involved are reconciled. Those parties mainly are flag State and port State authorities, classification societies, charterers and marine insurers, and maritime labour unions. Due to the fact that the diligence of those parties in charge of ensuring and monitoring compliance with internationally agreed rules varies greatly, the ship operator to a certain extent could determine his vessels’ operating policy. This includes also the level of expenditure spent for maintaining its vessel in line with internationally agreed safety standards. This affects, however, not only safety and environmental protection standards, but also fair competition principles. Evidenced by surveys carried out by the OECD (OECD, 1996), the Commission stated that “...compliance with international standards leads to 10 - 50% higher costs than substandard operation.

---

<sup>10</sup> Those figures include statistical data of Norway



Good practice turns out to be 80 - 100% more expensive than substandard maintenance. Finally, maintaining a ship at maximum safety levels will require 300% more expenditure at maximum” (CEC, 1996, page 13). Thus, the Commission underlined its policy towards eradicating these unfair conditions both in trade to or from EC ports and, to all extent possible, in all other trades.

The first pillar on enhancing safety and eliminating unfair competition lies on the improvement of flag State performance through incorporating into binding international instruments the criteria for the establishment and operations of flag State administrations and registers. In addition, financial and technical assistance to upgrade flag State administrations of non-EC countries could be available provided that clear policy commitment is made by the government in question to strive for those objectives. Parallel with the efforts made internationally, the Community considered to define the common criteria for EC registers both for the main and those located off-shore.

The second pillar lies on further improvement of PSC. In spite of the fact that several fundamental measures<sup>11</sup> have been already adopted, the Commission decided that specific attention should be paid on targeting criteria and focusing attention on black-listed flags and certain types of ships. In addition, the Commission underlined the importance of training and education of inspectors, integration of financial sanctions for non-compliance in the national legislation and establishment of direct operational links between the EC and other countries striving to achieve similar goals.

The third pillar lies on encouragement of the use of quality shipping. By this the Community suggested a wide range of initiatives to foster shipping, which aim to supply a high quality transport product. This range of initiatives starts with suggestions to grant fiscal and financial benefits for ship operators striving to achieve high quality standards by different

---

<sup>11</sup> Directives and regulations have been adopted by the Commission on port State control procedures, rules for authorisation of organisations acting on behalf of Administration, requirements for qualification of seafarers and on-board communication. Also see paragraph 2.3.

port charges and arrives at suggestions to impose financial and economic sanctions on cargo owners for chartering or use "... unseaworthy or uninsured or underinsured ships" (CEC, 1996, page 19).

Finally, the fourth pillar lies on establishing higher safety and working standards for ships, whatever their flag, providing services exclusively in EC waters, such as regular ferry lines between EC ports.

#### **4.2.1.2 Maintaining open markets**

Analysing the Commission proposals in the area of maintaining open markets and creating fair competition, it is possible to state that the main line of the Community policy remains the same: the liberalisation of the world shipping market.

Firstly, it attaches great importance to the negotiations with the Negotiating Group on Maritime Transport Services in order to achieve multilateral agreement on the liberalisation of maritime transport services and removal of trade barriers. At the same time, together with the Community approach towards liberalisation of world-wide shipping, another main target for a future external relations policy is ensuring coherent bilateral approach of the Community and of the Member States in their relations with certain third countries.

Secondly, actions to reduce unfair competition are of great importance for the EC both in Community trades and world-wide (Toll, 1997a). Thus, the Commission called for internationally agreed competition standards and encouraged "...other States to co-operate in the development of international standards of fair competition, outlawed practices and forbidden abuses for maritime and port services" (CEC, 1996, page 22).

Finally, the Commission considered that Regulation 4057/86 designed to combat unfair pricing practices in liner shipping should be reviewed, taking into account progress in the on-going negotiations of liberalisation of trade in services.

#### **4.2.2 A policy for competitiveness**

The final element of the proposed maritime strategy by the Commission is the enhancement of competitiveness of the EC shipping. The Commission once again highlighted that EC maritime activities suffer from constant declining of its fleet and the number of EC seafarers employed onboard due to the flagging out phenomena. However, flagging out of vessels is not the end of the problem. The flagging out in recent years has tended to be followed by relocation of ancillary services, mainly ship management, to the countries outside EC. This relocation has led to an even greater loss of employment in the shipping industry, both onboard ship and ashore. A link between the seafaring experience and shore-based carrier has been explicitly developed in the study undertaken by the University of Wales. Apart from shipping companies themselves, shore-based activities requiring seafaring experience include maritime administrations, ports and ports' ancillary services, banking and finance, marine insurance, dredging companies, ship building and ship repair, chartering and shipbroking, shipping agencies, P&I Clubs, classification societies. This study shows that in the United Kingdom alone there are around 17,000 jobs with preference for employment for ex-seafarers. For 70% of these jobs seafaring experience was considered essential (Gardner, 1996).

In addition to this trend, there was constant decline of the number of students in maritime training institutes and in the recruitment of young seafarers, which in turn created lack of the seafarers to be employed on board. The Commission, expressing its concern in this respect stated that (CEC, 1996, page 24):

“If there is a lack of students, training facilities may have to close down. The consequences are not only further job losses for teachers and personnel, but also the loss of knowledge and research capability which their institutes provide”.

Finally, although the Commission proposed a series of positive measures<sup>12</sup> for increasing the competitiveness of the EC-flag ships in 1989, the result was not as was expected. Thus, in the absence of Community measures providing a degree of harmonisation, Member States took initiatives to preserve their maritime interests independently. The measures such as developing second or international registers with favourable conditions for shipowners, or using State aid measures or combination of these, have been introduced to slow down the trend of flagging out, but no approach however, has been wholly successful.

Therefore, taking into account all these trends affecting the EC maritime transport, the Commission drew the strategy lines towards increasing the competitiveness of the EC fleet by improving training and employment for seafarers, launching research and development programmes and harmonising of the State aid to shipping.

#### **4.2.2.1 Training and employment**

In order to improve training and employment, the Commission decided to encourage the Member States, by facilitating and increasing access to maritime employment by their citizens, to develop training schemes and incentives in the employment of seafarers. Particular attention should be paid on involvement of the Member States in the “...absorption of training costs within national education and training systems ... the direct assistance to seafarers during training ... and financial support by Member States for shipping companies which provide onboard training facilities for cadets”(CEC, 1996, page 25). As a second step forward, the Commission decided to prepare amendments to the Council Directive 94/58/EC on minimum standards of training for seafarers with regards to establishment of common criteria based on IMO standards for recognition of certificates issued by non-EC countries<sup>13</sup>. The third step towards improvement of training and

---

<sup>12</sup> The 1989 package. See also paragraph 2.2.3.

<sup>13</sup> This Directive has been amended by the Commission Directive 98/42/EC of 19 June 1998. See also Appendix 2.

employment was a decision of the Commission to contribute to IMO efforts to improve and upgrade the quality and qualification of the seafarers at world level. Firstly, assistance to the IMO could be shown by organising a series of regional seminars in light of the revised STCW 1995, and secondly, evaluation of the maritime education and training systems of major labour supplying countries could be found helpful for defining the further course of improvement of these systems.

Finally, as a long term action, the Commission highlighted the importance of research and development (R&D) programmes, particularly on quality, productivity, safety and environmental protection, to safeguard the existing maritime expertise in EC, and encouraged Member States to consider those issues during the preparation of the 5th Framework R&D Programme.

#### **4.2.2.2 Research and development**

The 4th Framework R&D Programme was developed in 1993 and covered the period from 1994 to 1998. The part for the waterborne transport allows expenditure of 50 million ECU and covers the issues related to the “...competitiveness and efficiency of the shipping sector, the improvement of the maritime sector and the protection of the environment, as well as addressing the impact of human factors on the safety and efficiency of the maritime transport system” (CEC, 1996, page 26). The Commission gave the role of promoting the co-ordination of all research programmes undertaken by the Community and by Member States that relate to the maritime sector to the Commission Task Force called “Maritime Systems of the Future”. By this, the Commission expects that co-ordinated R&D actions currently being developed under the 4th Framework R&D Programme and actions, which are under consideration for the future research programmes will bring about changes for better integration of the maritime sector in the whole transport chain.

#### 4.2.2.3 State aid to shipping

Although State aid is defined in the Treaty of Rome as incompatible<sup>14</sup> with the common market, the Commission expressed its view that state aid to the shipping sector could be justified, firstly, by the economical and employment reasons, and, secondly, by the particular nature of international competition and that Article 92(3) could be applicable<sup>15</sup>. Thus, the Commission explicitly stated that support measures to maintain and develop Community shipping are still required.

The first attempt to bring about harmonisation of the schemes of State aid to shipping was done in 1989 by establishing the guidelines defining the conditions under which State aid to shipping may be provided. The main objectives of the guidelines were the maintenance of the fleet under Member States' flag and maintenance of the employment of the Community seafarers. To limit an aid to the Member's State shipping company, the cost difference method was introduced. However, this method was found very difficult in practical application due to difference of the vessel types and sizes, the composition of the crew, technology available on board, productivity and the economic performance of the operator (Toll, 1997b).

Taking into account those difficulties in developing the Community's fleet and general developments in international competition, the Commission concluded that maritime State aid guidelines required revision. Defining the general framework of the new policy of State aid to shipping, the Commission underlined that State aid may generally be granted only to ships entered in Member States' registers and for the purpose of:

- safeguarding EC employment, both onboard and ashore,
- preserving maritime know-how in the Community and developing maritime skills,

---

<sup>14</sup> Article 92 provides that "...any aid granted by the Member State or through state resources in any form whatsoever ... shall be incompatible within the common market".

<sup>15</sup> Further, Article 92, par. 3c provides that State aid may be considered compatible within the common market provided that this aid will "...facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest".

- improving safety and environmental protection.

Nevertheless, in some cases where the economic link with, and clear benefit to the Community could be demonstrated, State aid may be provided and to companies operating non-EC flag vessels.

Finally, the approach of the Commission to State aid has been clarified as serving a common interest, being transparent and accessible not only for the State itself, and not introducing unacceptable distortion of competition in all transport modes<sup>16</sup>.

### **4.3 Conclusion**

Generally, the document called ‘Towards New Maritime Strategy seems to suggest that the Commission sent a clear political message in continuation of an already established policy with some new elements in it.

The first new element introduced in this document was related to safety and competitiveness issues. The three pillars of this element were designed to fit the goal, namely to promote safety as an element of competition, to strengthen the role of flag State both in Community and world-wide, and to tighten the port State control system by harmonising control procedures under the MoU and establishing relations with other similar organisation.

The second element, which goes throughout the document, is the importance of the maintenance of the employment of the EC seafarers and EC flag fleet itself. Although the reliance of the Community on a safe, reliable and efficient fleet was expressed in other documents and earlier, the document contain warning that by losing the fleet under EC flag the Community to a great extent is losing experienced people and which can in turn lead to loss in maritime knowledge, know-how and research capability. Using an example of the study at the University of Wales, the Commission provided a parallel between the

---

<sup>16</sup> Community Guidelines on State aid to maritime transport have been revised on 5 July 1997. Also see Appendix 1.

diminishing number of EC seafarers and shortage of employees with a seafaring experience ashore. This trend will definitely have an impact not only on the safe operation of the shipping companies, but will also affect the safety and efficiency of the many related industries and activities based ashore.

Finally, as a consequence of the new approach to State aid to shipping, the Commission decided to withdraw the earlier submitted proposals for establishing a Community Register (EUROS) and defining the notion of Community shipowner<sup>17</sup>.

In conclusion, the Commission's new maritime strategy provided the opportunity to continue the movement of Community shipping towards a safe, reliable and efficient mode of transport. Using its strong political power and for decades accumulated experience in shipping, the Commission put its effort to keep the niche for Community shipping in a fair and free market. The process of re-examination of national policies is currently underway in a number of countries, both in the EC and outside, but sharing the same perspective for national fleets. This process will hopefully complement and enrich the liberalisation of the shipping market and will contribute to the common goal of the whole maritime community, which is - safer seas, cleaner oceans.

---

<sup>17</sup> These draft Regulation have been included in the 1989 package. Also see par. 2.2.3.



## **Chapter 5**

### **Opportunities for the Republic of Lithuania**

#### **5.1 Elements of a national maritime transport policy**

Analysis of the development of the EC's maritime policy in previous chapters shows clear enlargement of the Commission's involvement in this process, and, what is most important, widening of the scope of objectives of the policy itself. From the very beginning of the creation of its maritime policy, the EC efforts were concentrated mainly on the issues related to the liberalisation of the maritime activities, fair competition and free access to market. Only recent development in the EC gave the Commission the possibility to enlarge its role as a body primarily with the aim of safeguarding the effectiveness of the Community's shipping industry. Thus, the Commission set the framework of furthering the policy of Community shipping through enhancing safety, fostering fair competition, further developing external relations and ensuring competitiveness. By highlighting its policy, the Commission also gave a framework to the Member States to develop or adjust their national policy headed towards achieving a common goal.

It is important to note that the Member States of the EC have different maritime traditions. Some have a tradition of State-owned fleets and strong links between industry and Government, while others have adopted an essentially liberal approach to shipping. Depending on geography, trade and historical development, Member States also have varying interests in the development of different types of transport. For some States the priority is the development of short sea shipping, while others focus on fostering their deep sea shipping, where their shipping companies are involved in cross trading.

Describing a national shipping policy for a state, Mr. P. Alderton stated:

“National shipping policy, an element of overall economic policy, expresses the attitude of the State to shipping. Shipping policy can be understood as the totality of economic, legal and administrative measures by means of which the State influences the position of its national fleet, i.e., its place and role in the national economy and international freight markets...” (Alderton, 1995, page 156).

Thus, each Member State and each State trying to join the EC should adopt its national economic, legal and administrative measures to implement its own policy, however, the framework of priorities should be kept as defined by the Community.

## **5.2 Shipping in the economy of the Republic of Lithuania**

The geographical location of the Republic of Lithuania, hereinafter Lithuania, has determined its historical role of an intermediary in economic relations between East and West. This role is gaining primary importance now, since Lithuania has every opportunity to become an important regional centre on the eastern coast of the Baltic Sea. The well-balanced and developed system of all transport modes ensures transit services for goods and passengers whose flow have been increasing lately.

Transport is one of the most important sectors of the Lithuanian economy. Its contribution to the Gross Domestic Product (GDP) amounts to 7 percent. The employment in the transport sector reaches 5 percent of the overall working force of Lithuania engaged in economic activities. The most important part of this sector is related to the provision of international trading and transit services.

Thus, the transport sector’s modernisation and harmonisation with EC regulations and standards, especially on the improvement and development of an infrastructure, safety of transportation and environmental protection are the Lithuanian transport policy priorities (MoTC, 1997).

After Lithuania regained its independence on 11 March, 1990, the decision to maintain its own shipping registry was taken on 3 September, 1991 by the Government Decree No. 373. Since 1 January 1994, the sea-going (including fishing ships) fleet flying the Lithuanian flag consisted of 308 vessels with gross tonnage of more than 640 thousand tonnes. The merchant fleet amounted to 71, mainly dry cargo vessels with a gross tonnage of 369 thousand tonnes. During this period through to 1 January 1998, the sea-going fleet decreased in numbers by 32 vessels and in gross tonnage by 128 thousand tonnes mainly due to the reduction of the fishing fleet; however, the number of the merchant fleet reached 99 vessels with a carrying capacity of 392 thousand tonnes (MoT, 1998).

The rise in the number of the merchant fleet has occurred due to favourable conditions provided by the Government to the national shipowners. Firstly, the Government granted a reduction of all dues for using the Klaipeda State Seaport, hereinafter KSS, to all ships flying the Lithuanian flag of up to 75%. Secondly, the Law on Natural Person's Incomes Taxation made provision that all members of the crew were entitled to receive daily allowances for all period of voyages. Those allowances according to the law were not subject to taxation.

Both measures resulted in increased competitiveness of the Lithuanian merchant fleet and allowed an accumulation of the necessary resources for fleet renovation. Thus, according to world fleet statistics the Lithuanian fleet's average age amounted to 18.6 years as of 1 January 1998 in comparison to 20.9 years in 1994. By renovation of the fleet the goal of safeguarding of economic potential, introduction of new technologies and enhancing safety has been achieved (ISL, 1994-1998).

The composition of the fleet allowed shipowners and operators to participate in cross-trade as well as in short-sea shipping, joining the KSS with other ports in the Baltic. The amount of cargo carried by the ships flying the Lithuanian flag stabilised throughout the period from 1994, and in 1998 constituted 4,165 thousand tonnes. The cross-trade amounted to 3,167 thousand tonnes. During the same period the passenger traffic in KSS increased almost

from zero to 76,1 thousand passengers in 1998. The number of passengers carried by the Lithuanian fleet in 1998 formed a part of 57.4% or 43.7 thousand passengers.

The Memorandum of Understanding on Common Principles in Maritime Transport, hereinafter Memorandum, signed in 1993 between the Republic of Lithuania and the OECD, provided for an elimination of all unilaterally created barriers and flag discrimination principles. The grace period was initially agreed as three years from the date of signing of the Memorandum. At a later stage it was agreed that the grace period for the implementation of principles stated in the Memorandum would cease to continue after the Europe Agreement<sup>18</sup> (EA) establishing an association between EC and Lithuania comes into force.

Thus, in implementing the provision of EA, Lithuania has abolished the granted reduction of KSS dues and charges as from the 1 st of July, 1998 to its flag vessels. Those changes in the Government's attitude towards shipping, resulted in increasing the operational costs of the shipping companies registered in Lithuania. An example could be taken from the Lithuanian Shipping Company (LISCO) operating both in cross-trade and providing services in regular shipping lines to and from KSS. The increase in operational costs already resulted in declining of profit by 700 thousand USD. (LISCO, 1999).

In spite of that process, the Lithuanian fleet did not start large-scale flagging-out. The reason being that the major part of the fleet is still under control of the Government. As of 1 January 1998, only a part of the fleet constituting 4.6%, controlled by Lithuanian citizens, were flying foreign flags (ISL, 1998).

The flagging-out phenomena taking place in the EC and in neighbouring countries have revealed the threat for the Lithuanian fleet being flagged-out after privatisation. For example in Latvia, where privatisation of the shipping companies started earlier, the flagging-out process has reached a critical point. According to data provided by the Institute of Shipping

---

<sup>18</sup> Similar provisions on eliminating unilaterally created barriers and flag discrimination has been embodied into EA.

Economics and Logistics only 29% of the fleet controlled by Latvian shipowners is flying Latvian flag, where in 1994 this figure was more than 76% (ISL, 1994-1998).

Bearing in mind the recent development of the EC policy towards increasing the competitiveness of EC shipping, and safeguarding safety and fair competition, the Government decided to create the Working Group<sup>19</sup> (WG) to prepare the Economic Regulation Concept for the shipping sector.

### **5.3 The economic regulation of the shipping sector**

The 'Economic Regulation Concept for the Shipping Sector' (the Concept) was adopted by the Government in 29 July, 1998. This Concept was prepared in accordance with the recently issued EC's new maritime strategy document and guidelines on State aid to maritime transport. Particular attention has been given to the experience of EC Member States such as the Netherlands, Denmark and Sweden, as well as the EEA states such as Norway.

The Government highlighted its policy to continue the preparation process for joining the EC, which covers *inter alia* integration of maritime transport, as a constituent part of the entire transport system. The most of the Member States have already witnessed a decline of the national shipping sector due to the flagging-out phenomena resulting in a reduction of employment of EC seafarers on board and ashore, as well as a loss of know-how. Recognising this, it is therefore necessary that Lithuania follows the recommendations of the Commission and strengthens the State participation and State aid in the fiscal, social, economic and safety of navigation areas.

Having as its goal, to outline the long-term prospects for the development of the maritime transport sector, the Government adopted four aims of the concept, namely strengthening the role of Lithuania as a maritime State, developing the economy of Lithuania through development of maritime transport, integrating the Lithuanian maritime transport sector into

---

<sup>19</sup> The Working Group has been established by the Government Decree Nr.68 of 4 April 1998.

the global maritime transport market and strengthening the social policy in the sector of maritime transport (GRL, 1999).

### **5.3.1 Strengthening the role of Lithuania as a maritime State**

From ancient times Lithuania has been known as a maritime State. The key indication of a maritime State, *inter alia*, is the presence of the national fleet. A State that enjoys a favourable geographic position (seacoast and harbours) but has no ships flying its flag may not be considered as a maritime State. As of 1 January 1998, 276 sea-going vessels with the capacity of 512 thousand tonnes had been registered in the Ships Register of Lithuania. Although ships' operational costs during the last years have increased resulting in a decrease of the companies' financial capability to renew its fleet and to maintain safe shipping practices, the flagging-out process has not started as yet.

However, it could hardly be expected that the fleet will be maintained under Lithuanian flag if the appropriate measures are not be taken through harmonisation of Lithuanian laws and regulations with EC recommendations. Several EC Member States have already adopted measures for supporting national fleets and have reported on progress achieved. For example, Mr. Ger Nieuwpoort, Head of Maritime Transport Division of the Dutch Ministry of Transport, addressing the Oslo Conference in 1998, stated that after introducing the new maritime transport policy in 1996, the Dutch merchant fleet had grown from 386 to 489, more than 100 ships. Approximately 50% of this figure constituted newly built ships and the next 50% - flagging-in (Nieuwpoort, 1998).

Therefore, striving to retain and develop its position as a maritime State, the Government emphasised that further actions should be taken towards preventing flagging-out and, most importantly, towards the stimulation of the development of the national fleet and marine related activities, through creating favourable economic conditions for shipping companies registered in Lithuania. The favourable conditions should be available only for shipping companies where the concept of "genuine link" with the State is assured.

This Concept provides that:

- the shipping company is registered in Lithuania,
- the vessel or vessels of that company are flying Lithuanian flag,
- the citizens of Lithuania are serving in the capacity of the master and chief engineer of those ships, and
- at least 50% of the rest of the crew are citizens of Lithuania.

Finally, attention should be given to the promotion of the profession of the seafarer. In this context, the involvement of the non-governmental organisations and educational institutions are of great importance.

### **5.3.2 Development of the economy of Lithuania through development of maritime transport**

The importance of maritime transport to the national economy cannot only be estimated by incomes of the shipping companies or taxes received from those companies, but also according to the importance of this transport mode in the overall transportation chain. Lithuanian territory is crossed by two international corridors<sup>20</sup>, namely, corridor No 1 (motorway and railway line) in the North-South direction joining Tallinn (Estonia), Riga (Latvia), Kaunas (Lithuania) and Warsaw (Poland); and corridor's No 9 branches in the East-West direction: 9B, from Kiev (Ukraine) via Minsk (Belarus) Vilnius, Kaunas to Klaipeda (Lithuania), and 9D - Kaunas to Kaliningrad (Russia). Branch 9B services the main East-West transit flows between Russia, Ukraine, Belarus, other CIS countries and their western trade counterparts through KSS. To maintain and develop transport infrastructure on those corridors over, 1.4 billion Litas (333 Million Euro) have already been invested during the period 1995 to the end of 1998 (Sakalys, 1999).

---

<sup>20</sup> The Pan-European Conference of March 1994, held in Crete with participation of Transport Ministers, analysed the structure of Trans-European Networks and agreed on a limited number of corridors in Central and Eastern Europe that should be given high priority.

Based on a number of studies, cargo volumes through the KSS are estimated to increase from 15 million tonnes in 1998 to 22.6 million tonnes in 2000, 28 million tonnes in 2005 and 35 million tonnes in the year 2015. Moreover, it is estimated that between 70 and 75% of cargo will be transiting. Thus, in order to be able to handle such an amount of cargo in the port and to transport this further to the east by road or railways, or to tranship using maritime transport, huge investments in the reconstruction and maintenance of transport infrastructure as well as border crossing points are needed (Sakalys, 1999). At the same time, Lithuania is dependent on reliable, efficient and safe maritime transport service, joining KSS with other ports by regular shipping lines.

The Government decided, therefore, to stimulate the establishment of new, regular shipping lines between KSS and other ports in the region, and to encourage the development of short-sea shipping and multimodal transport services.



### **5.3.3 Integration of Lithuanian maritime transport into global maritime transport market**

In the Concept, the Government highlighted the importance of further integration of Lithuanian maritime transport into the global maritime transport market through the development and modernisation of the national fleet, increasing the quality of education and training of seafarers and further harmonisation of the Lithuanian legislation by integrating it into the international maritime legislation system.

According to the statistics, the average age of Lithuanian flag fleet was 18.6 as of 1 January 1998. At the same time the overall average of the age of ships registered in 20 of the biggest ships registries, was 17 years (Smailys, 1999). Thus, modernising the national fleet, introducing high technology and enhancing safety and environmental protection standards are of great importance. Therefore, the combination of two measures has been proposed to stimulate renovation and modernisation of the national fleet. As the first measure, it was proposed that investments and special funds accumulated by the shipping companies for renovation or modernisation of the fleet were not to be subject to taxation. The second measure proposed was to encourage renovation of the fleet by reducing the ship depreciation period.

In the field of education and training of seafarers, the Government expressed its concern that renovation and modernisation of fleet demanded that professional and trained crew served onboard. With the introduction of new technologies in navigation and reduction of the number of crew members, the quality of the performance has been increased. During the last years there was not enough state aid directed towards modernisation of the training facilities both ashore and onboard. Recognising the need to increase the quality of education and training and to meet requirements stipulated in the revised STCW in 1995, the Government highlighted a necessity to allocate financial resources, and provide support and technical advice for seafarers' educational and training institutions.

With regards to further harmonisation of Lithuanian legislation<sup>21</sup>, the government decided to propose for the adoption of Parliament, the package of internationally agreed instruments dealing with the minimum requirements for social conditions and welfare onboard a ship, establishing common regime for limitation of liabilities of the shipowners, developing a system of penalties and civil liability regime for environmental pollution and developing international co-operation on search and rescue at sea.

#### **5.3.4 Strengthening the social policy in the sector of maritime transport**

According to the data provided by the Department of Maritime Documentation of Klaipeda State Seaport Authority, hereinafter KSSA, there are more than 13 thousand citizens who hold certificates as seafarers. Nevertheless, not everyone is serving onboard a ship. A number of seafarers have chosen their career working ashore in different companies and positions, a number has found employment on vessels flying foreign flags. However, the importance of maintaining a maritime social policy, making the profession of seafaring attractive from a financial point of view, cannot be overestimated. Furthermore, inadvertent policy towards the social welfare of seafarers could be detrimental to the entire cluster of the Lithuanian maritime transport.

Therefore, the Government expressed the need to accept appropriate measures to encourage the employment level being maintained in the national fleet by Lithuanian citizens. Moreover, it was stated that State aid to shipping companies mentioned in paragraph 5.3.1. and 5.3.3. could be granted, provided that not less than 50% of the crew on board a ship are Lithuanian citizens. Finally, the Concept provides for applying reduced rates of natural person's income tax and payment to the Social Guarantee Fund.

---

<sup>21</sup> National legislative measures will be further elaborated in paragraph 5.4

Summarising the incentives provided in the Concept, it is possible to distinguish a framework of measures headed to increase competitiveness of the Lithuanian fleet. Nevertheless, the national legislative measures, in parallel with the economic incentives, are needed to implement the Concept.

#### **5.4 National legislative measures**

As was mentioned above, the Concept provides for the State's participation in the field of maritime safety by enhancing safety requirements and strengthening control procedures. Thus, in parallel with the preparation of legal instruments for the implementation of the Concept, the Government decided to adhere to the IMO/ILO documents related to the establishment of civil liability regime for the pollution of sea by oil and other hazardous substances, to create a uniform regime for salvage, search and rescue operation and to establishment of minimum requirements for welfare and living conditions for seafarers serving on board ships flying Lithuanian flag. Therefore, a new set of laws necessary for the ratification of 1990 OPRC, 1979 SAR, 1969 CLC and 1971 FUND as amended in 1992, 1996 HNS, 1989 SALVAGE and ILO C147 Merchant Shipping (minimum standards) have already been drafted and presented for the consideration of interested institutions.

After the restoration of the independence of Lithuania, the main scope of IMO international instruments concerning maritime safety and pollution prevention from ships were addressed through adherence to the various IMO conventions<sup>22</sup>. The global aims of those international treaties were incorporated into Lithuanian laws, namely into the 1996 Law on Klaipeda State Seaport, 1996 Merchant Shipping Law and 1997 Law on Sea Protection.

Maritime safety of vessels, pollution prevention and enforcement requirements are largely based on a set of international treaties, rules and standards. On a global basis, these are in particular, the UN Convention on the Law of the Sea, 1982 and the body of IMO conventions, rules and standards. On a regional basis concerning Europe and the Baltic Sea, the Paris MoU and the 1992 Helsinki Convention on the Protection of the Marine

Environment of the Baltic Sea (Helsinki Convention) are of significant importance. To this body of laws EC legislation is supplementary.

The most significant impact of EC legislation on Lithuania's maritime legal framework is related to technical and ship safety conditions and marine environmental protection requirements concerning vessel pollution.

Since the EA came into force on 1 January, 1998, the process of adjustment of legal norms to match the legislation of the EC is being accelerated. The majority of legal acts defining maritime transport activities, which were prepared and adopted recently, in principle, do not contradict the EC laws and regulations in force. Nevertheless, there still exist many inconsistencies with the legal framework of the EC. For that reason harmonisation is being carried out, especially in preparing legal instruments in the fields of enhancing the role as a flag State, development of PSC procedures, strengthening the requirements for education and training of seafarers and harmonisation of ship reporting procedures.

#### **5.4.1 Flag State and port State control procedures.**

The key EC legislation in respect to safety of ships in the Republic of Lithuania is the Council Directive 95/21 of 19 June 1995 on PSC that is particularly significant on institutional, procedural and enforcement requirements by a harmonised PSC system. It defines and strengthens the regime on PSC as established in international legal instruments and applies to all merchant ships and crews. A particular obligation is placed on all Member States to establish and maintain national maritime administrations ("competent authorities") for the inspections of ships in their ports or in the waters under their jurisdiction. To ensure institutional competence of the authorities and the effective application of the international Conventions, the Council issued Directive 94/57 of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations. The latter shall only co-operate with recognised survey organisations as named in Commissions Decision

---

<sup>22</sup> List of the IMO instruments and date of accession by the Lithuania is provided in Appendix 3.

96/587 of 30 September 1996. The ship inspection procedure was amended by the Commission Directive 97/58 of 26 September 1997 in order to take into consideration the provision set out in the Annex to IMO resolution A. 789, on the specification of the survey and certification functions of recognised organisations acting on behalf of the administrations. The Commission Directive 96/40 of 25 June 1996 sets out standards for the identity card of inspectors. Due to international requirements, the EC's PSC system was amended by Council Directive 98/25 of 27 April 1998 and Commission Directive 98/42 of June 1998.

The EC has also taken actions concerning vessels, crews and vessel management conditions in Member States, acting as flag States, which shall be observed and simultaneously applied in PSC. Again, the underlying concept is uniform application of international obligations and, to some extent, setting up higher standards. Lithuania, adjoining the Baltic Sea and having substantial ferry services calling at KSS, requires particular attention. By Resolution of 22 December 1994 the Council expressed its concern on the safety of ro-ro passenger ferries and asked for more attentiveness by the flag States concerned. Council Regulation 3051/95 of 8 December 1995, amended by Commission Regulation 179/98 of 23 January 1998, provides conditions for the mandatory application of the International Safety Management Code (ISMC) to all ro-ro ferries operating in the Community. A further step in the field of passenger safety was taken recently by Council Directive 98/18 of 17 March 1998 on safety rules and standards for passenger ships operating as ro-ro ferries or high-speed crafts. It aims to enhance safe operation, conduct of investigations and compliance with safety requirements. As a further measure, but applicable to all ships carrying passengers, the Council issued Directive 98/41 of 18 June 1998 on the registration of persons sailing on board passenger ships.

#### **5.4.2 Standards for training, certification and watchkeeping for seafarers.**

To ensure that the requirements of the STCW 1978 Convention as modified in 1995, are applied, improved and controlled, the Council issued Directive 94/58 of 22 November

1994, recently amended by Directive 98/35 of 25 March 1998 to cover the 1995 amendments. The topics particularly addressed are common language, rest periods, detention of ships, recognition of seafarer certificates<sup>23</sup> and more efficient PSC.

#### **5.4.3 Ship reporting system.**

The intention for establishing a ship reporting system (EUROREP), pursued by IMO on a global base (e.g. Global Maritime Distress and Safety System - GMDSS), is now pursued with staggered measures. Lithuania has undertaken considerable efforts to meet GMDSS requirements. While the EC had to postpone EUROREP for international, legal and practical technical reasons, the Council Directive 93/75 of 13 September 1993 on minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods, concentrates on more narrow matters. HELCOM, responsible for the application and improvement of the Helsinki Convention issued a similar document to be applied in the Baltic Sea area in March 1998 (Recommendation 19/15). The implementation of the required conditions is an urgent matter in the maritime legislation of Lithuania.

#### **5.5 Strengthening of the administrative measures**

Since the restoration of independence of Lithuania, the overall responsibility for the implementation of the requirements stated in the international and national regulations with regards to safety of navigation and environmental protection has been dedicated to the Harbour Master's Office of the KSS. In 1993, The Harbour Master Office, hereinafter HMO, being under the supervision of the Ministry of Transport and Communications (MoTC), became a part of the (KSSA). The Harbour Master has been appointed as a Deputy Director of KSSA, responsible for maintenance of the maritime infrastructure, safety of navigation in the port and Lithuanian territorial sea, prevention of pollution, co-ordination of the actions related to search and rescue, and salvage. At the same time the

---

<sup>23</sup> According to reg. I/7 of STCW' 95 the Ministry of Transport and Communications has already presented to the IMO necessary documentation for confirmation that full and complete effect is given to the provisions of the Convention.

responsibilities for the registration of vessels and issuance of the statutory certificates, as well as the registration of seafarers, have been delegated to the HMO. Although marine pollution control is regulated by the Ministry of Environment and the fishing industry is regulated by the Ministry of Agriculture, matters relating to ships' construction and operations remain with the HMO.

Although the year 1999 was a year for removing the Lithuanian flag from the target list by the US Coast Guard and Paris MoU countries, the number of detention of the Lithuanian flag vessels increases constantly. According to the data provided by the HMO, 8 of Lithuanian flag vessels in 1996, 9 vessels in 1997 and 11 vessels in 1998 were detained by port State control officers. The main reason for the detentions was lack of documents and life saving appliances.

The Commission, evaluating Lithuanian progress towards accession to the EC stated that Lithuania made progress in implementing the *acquis* in particular in the waterborne and civil aviation sector. Maritime safety supervision bodies and inspectors have reinforced their activities. However, concluding its report, the Commission stated that although Lithuania has made progress in adopting and implementing the *acquis* in the transport field, nonetheless maritime safety, which is slowly beginning to improve, must be strengthened (CEC, 1998).

Therefore, in order to improve maritime safety, the MoTC started to draft a law on the Safety of Navigation and amendments to related laws, where the creation of an independent maritime administration is foreseen. The draft law lays down, *inter alia*, responsibilities of the maritime administration with particular attention on strengthening flag State implementation, enhancement of PSC and, further development of maritime infrastructure and aids to navigation.

### **5.5.1 Strengthening of the role of flag State and enhancing port State control**

There are two main types of obligations of the Lithuanian Government, under the conventions dealing with maritime safety and environment protection. Firstly, as a flag State it must ensure that ships flying its flag meet the standards of the conventions and that it carries out certain other duties concerning safe construction, equipment, manning, investigating ships' casualties and reporting to the International Maritime Organisation accordingly. Secondly, as a port State it must ensure that foreign ships visiting its ports are safe to proceed to sea and are not likely to cause severe pollution (Vanchiswar, 1996). As it is common for most maritime nations, the Government of Lithuania has delegated the survey of ships flying its flag to classification societies, such as the Russian Register of Ships, Polish Register of Ships, Lloyd's Register of Shipping, Det Norske Veritas, and Bureau Veritas.

Regarding delegation of authority for the survey of ships, it is very important to mention that such delegation does not relieve the Lithuanian Government of its responsibilities and obligations. Thus, in order to ensure that the services rendered by classification societies are of high quality and are in line with the international and national regulations, the maritime administration should carry out regular audits (system, vertical audits and onboard inspections) by checking all documentation and practical condition of ships. Those regular audits could be a part of flag State inspections (NMD, 1999).

The HMO is responsible for all surveys and inspections carried out in the port. The surveyors are employed for inspection without clear distinction between actual flag State (only in Klaipeda port) control and PSC. Most inspections are related to vessels' overloading, securing of cargoes and similar matters. The number of surveyors employed seems sufficient for the number of vessels registered in Lithuania's Ships Register and those only within the port. However, due to a preponderance of nautical surveyors very little attention is given to engineering matters. This is very important when dealing with operations relating to MARPOL (IMO, 1995).



Recognising the importance of PSC, in 1997 the MoTC started the process of co-operation with the other Baltic States, such as Latvia and Estonia, with regards to the improvement of the control procedures on a mutual basis. The Protocol on the creation of common basis for enhanced PSC was signed in July 1997. However, due to a lack of an information system joining all three Baltic States and a low number of ships subject to this Protocol, only minor results have been achieved. Nevertheless, there was a great possibility to train ships' inspectors on the extended PSC according to the IMO and EC recommendations. Thus, the main goal to join the countries of the Paris MoU remains of great importance for Lithuania.

### **5.5.2 Development of marine infrastructure and aids to navigation.**

The relevant Articles<sup>24</sup> of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) allow that the rules on ship reporting and notification may be established by the States and applied to all ships flying the flag of that State, to all ships destined to the port of that State and to all ships navigating in the territorial sea of that State. These rules may cover the provision of information such as identity, position, cargo and designation of ships. In order to monitor these establishments, the harmonisation and development of the maritime infrastructure could be broken into components such as ships reporting system and further development of VTS, and adequate pollution prevention facilities and monitoring of compliance.

The coastline of Lithuania consists of more than 100 km of sensitive ecological environment with the facilities for tourism of the Baltic Sea. However, the intensive vessel traffic bound to call at KSS and going in transit to and from ports of Latvia and Estonia requires that the Government take the necessary measures to protect the Lithuanian coast from accidental oil spills and discharges related to the operation of ships. Although according to MARPOL<sup>25</sup> the Baltic Sea is defined as a Special Area and it has protection by the Helsinki Convention,

---

<sup>24</sup> There the reference is made to the articles 21(1), 21(1)(f), 22, 24, 56, 192, 211(2) and 211(3) of UNCLOS.

<sup>25</sup> The Baltic Sea Area is designated as a Special Area under Annex I, II and V of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78)

the pollution caused by inadequate ship operating practice are still of great importance. The assessment of oil spill reports over ten years indicates an annual rate of approximately 600 - 700 illegal discharges (HELCOM, 1998).

At this time, traffic of vessels is managed by the VTS installed in KSS. The additional information and radio-navigation services are available through lighthouses installed in

Klaipeda, Nida and Sventoji. Mandatory ship reporting system is applicable only for ships calling at KSS. For ships going in transit through territorial sea these requirements are not applicable. Pursuant to the HELCOM Recommendation concerning requirements for ships bound for, or leaving the ports of the Baltic Sea Area and carrying dangerous or polluting goods (Recommendation 19/15), the Government started modernisation of the existing VTS system by extending the ability of the management of the traffic on all sensitive areas where the traffic of dangerous or polluting cargo are prevailing. In addition to the expansion of the VTS, the Automatic Vessel Identification System will be installed early in the year 2000.

The other important issue in the development of maritime infrastructure and eliminating illegal oil spillage is adequate pollution prevention facilities and monitoring of compliance.

To eliminate these spillages, the HELCOM developed a complex of measures known as a Baltic Strategy for Port Reception Facilities for Ship-generated Wastes and Associated Issues<sup>26</sup>. Follow-up work to create uniform requirements for the operation and availability of reception facilities in the Baltic region has now been completed (HELCOM, 1998).

## **5.6 Conclusion**

Summarising the incentives provided in the Concept, it is possible to distinguish a framework of measures aimed to increase the competitiveness of the Lithuanian fleet. The

---

<sup>26</sup> The Baltic Strategy consists of the HELCOM Recommendations 19/7 (Amendments to Annex V of the Convention), 19/8 (no-special-fee system), 19/9 (installation of garbage retention appliances, etc.) 19/10 (holding tanks and oily water separating or filtering equipment for ships), 19/11 (notification of ships' wastes), 19/12 (waste management plans for ports), 19/13 (ashore handling of ship-generated wastes), and 19/14 (harmonised system of fines in case of violations).

Government, highlighting the importance of a reliable, effective and strong fleet, underlined the further policy towards creating favourable conditions and, in some cases, providing State aid to the Lithuanian national fleet. At the same time, the main conditions for that aid has been set down. First of all, the shipping company's structure should correspond with the requirements of the national fleet. Secondly, the activities of such a company should be important to the development of the national economy. Finally, the shipping company should maintain the level of employment of Lithuanian seafarers.

In spite of the general statement of the Government that this Concept serves, *inter alia*, for strengthening of the safety of navigation, much still remains to be done. First of all, economic incentives do not guarantee that State aid will be channelled towards the development of safety and quality practices onboard and ashore. There are no provisions for financial and economic sanctions for those shipowners who, even though having enough resources, still maintain their fleet below internationally agreed standards.

To support the action programme provided in the Concept, the other two measures, namely improvement of a legal basis for the enhancement of the safety of navigation and environmental protection, and strengthening the role of the maritime administration for the observance of those instruments, have been launched in parallel.

Development of the maritime infrastructure based both offshore and ashore is increasingly becoming an essential feature of a maritime safety policy of Lithuania. VTS, in particular, responds to the need to acquire in real time an image of the traffic in adjacent waters and to organise the passage of vessels or the development of other activities in the safest and most expeditious ways.

Nevertheless, the achievement of the goals set by the Lithuanian Government is possible with the involvement of the Lithuanian shipping industry in such a program. As experience shows, the use of rigorous sanctions and flag State control may lead only to flagging-out of the fleet. On the other hand, fiscal incentives themselves are not only helpful to prudent

---

shipoperators but also for the unscrupulous shipowner/operator seeking only for the short term profit and not interested in the maintenance of its fleet in line with the internationally agreed standards as a minimum. Therefore, a combination of the measures which motivate shipowners/operators to maintain their fleet in line with the safety standards, and which penalise those who, in detriment to safety, still continue to operate sub-standard ships, and the involvement of the shipping related industry in a decision-making process could lead to the achievement of the goals set by the Government.

## **Chapter 6**

### **Summary and Conclusion**

Over three decades the Commission has actively participated in the development of the maritime transport policy of the European Community. The policy started in 1976 with the preparation of the 'Communication on the Scope and Content of a Maritime Transport Policy'. The Communication identified the objectives of the future EC maritime transport policy such as promotion of fair competition in the world shipping market, enhancement of the competitiveness of the EC fleet, improvement of working conditions for the EC seafarers, and maintenance and improvement of safety standards.

Although these four objectives have been identified as equally important, the further development of the policy was mainly oriented towards development of a free shipping market, promotion of fair competition and enhancement of the competitiveness of the EC fleet. This was due to reluctance of the Member States' to incorporate issues related to social welfare and safety standards into the Community policy.

In the beginning of the nineties the situation has completely changed due to a series of fatal accidents, which occurred in Community waters, such as *Haven*, *Aegean Sea* and finally *Braer*. The general public, through media and politicians, demanded action. The European Parliament, responding to these public concerns, passed a resolution where amongst other things asked for a total ban on entry to European ports by tankers older than 15 years. Several Member States started to adopt their own measures for preventing similar catastrophes to occur.

To avoid the shifting of the EC shipping policy towards fully-fledged regionalism and to harmonise action taken by the individual Member State, the Commission, in 1993, issued the

document called a 'Common Policy on Safe Seas'. The safety and environmental protection policy defined in this document was aimed towards the enforcement of the existing internationally agreed regulations and on improvement of the PSC regime by each Member State. It contained a set of major guiding principles supported by an extensive and detailed action plan. So far, all adopted measures by EC with regards to safety and environmental protection could be traced directly back to those guiding principles referred to in the policy document.

After two years, in 1995, the Commission, headed by the new transport Commissioner Mr. N. Kinnock, announced the re-examination of the common maritime policy. The need for re-examination was based on the recent developments world-wide, such as the continuous flagging-out process and decrease in the competitiveness of the EC fleet, and necessity to revise the guidelines issued by the Commission in 1989 with respect to the State aid to shipping. The Communication called 'Towards a New Maritime Strategy', adopted on 13 March 1996, has been prepared with the focus on the competitiveness of EC shipping and on combinations of various components of the maritime policy, namely safety and fair competition. Later on, in 1997, the Commission issued revised guidelines on State aid to shipping.

Defining the EC common maritime transport policy at the Quality Shipping Conference in Lisbon, Mr. N. Kinnock stated:

“I believe, less emphasis needs to be put on developing requirements relating to new regulatory standards for ships and crews, and more resources, time and energy needs to be given to fair and effective enforcement. Part of the purpose of action in pursuit of quality should be to close the gap between responsible operators who comply with the rules and the irresponsible companies with substandard operations. This should be done not by reducing the performance of the best, but by insisting by all legal means on the better performance from those who are inferior” (Tutt, 1998).

Thus, the common maritime policy of the EC is defined as having two aspects: domestic policy or policy oriented towards EC-registered ships and containing elements such as ensuring quality of shipping through enhancing flag State participation and State aid measures, and foreign policy or policy oriented towards foreign fleets and their flag States and containing elements such as safeguarding fair competition through PSC measures and compliance with the minimum safety standards world-wide.

Lithuanian involvement in the process of re-examination of its own maritime policy started in early 1998. Since the restoration of independence, the main measures to develop the Lithuanian flag fleet was directed towards creation of more favourable financial conditions for Lithuanian shipping. Therefore, different port dues and charges were used for Lithuanian flag vessels and vessels flying flags of other countries. The EC and the OECD countries saw those measures as measures distorting free and fair competition and providing flag discrimination. At the same time, those favourable conditions diminished incentive for shipowners to carry on their activities in the market according to market demand and resulted in companies becoming more dependant on governmental protection every year.

The re-examination of the Government's policy towards enhancing competitiveness of the Lithuanian shipping industry and increasing the State's participation is definitely a step forward. However, every change in policy should be carried out with the support of all industries involved in shipping activities. There must be synergy between market forces and optimum regulations. The shipowners, shippers, banks and insurance companies should also play their active roles in development of the safety culture in shipping and in eliminating sub-standard ships and operators.

Although much is left to be done to develop the Lithuanian fleet and to ensure a high quality of shipping, in the authors opinion, the content of the Concept adopted in 1999 and recent changes in the field of maritime legislation and administration could be seen as a golden opportunity for the Government and the entire shipping industry to achieve their goals: to ensure that a safe, efficient and reliable maritime transport is playing its role in

strengthening the position of Lithuania as a maritime State, and hence the flag of Lithuania be seen as a flag of quality of shipping world-wide.



## Bibliography

Alderton, P M (1995). *Sea Transport: Operation and Economics*. Fourth edition, UK: Thomas Reed Publications.

Beth, H L (1994). *25 Years of World Shipping*. London: Fairplay Publications Ltd.

Bredima-Savopoulou, A and Tzoannos, J (1990). *The Common Shipping Policy of the EC*. Netherlands: Elsevier Science Publishers.

CEC (1985). *Progress towards a Common Transport Policy - Maritime Transport*. 14 March. Brussels: Commission of the European Communities.

CEC (1989a). *A future for the Community Shipping Industry: Measures to improve the operating conditions of community shipping*. COM (89) 266 Final, 3 August. Brussels: Commission of the European Communities.

CEC (1989b). *Financial and fiscal measures concerning shipping operations with ships registered in the Community*. COM (89) 921 Final, 3 August. Brussels: Commission of the European Communities.

CEC (1993). *A Common Policy on Safe Seas*. COM (93) 66, 24 February. Brussels: Commission of the European Communities.

CEC (1996). *Towards a New Maritime Strategy*. COM (96) 81, 13 March. Brussels: Commission for the European Communities

CEC (1998). *Regular Report from the Commission on Lithuanian's Progress towards Accession*. Brussels: Commission for European Community.

Djonne, K (1997). 'EU Maritime Policy: Safety and Environmental Regulations'. In *EC Shipping Policy. The 17th Nordic Maritime Law Conference 2-4 September 1996*. Edited by H J Bull and H Stemshaug. Oslo: Juridisk Forlag.

Gardner, B M and Pettit, S J (1996). *A Study of the UK Economy's Requirements for People with Experience of Working at Sea*. Cardiff: University of Wales.

Greaves, R (1997). 'EC's Maritime Transport Policy: a Retrospective View'. In *EC Shipping Policy. The 17th Nordic Maritime Law Conference 2-4 September 1996*. Edited by H J Bull and H Stemshaug. Oslo: Juridisk Forlag.

GRL (1999). *The Economic Regulation Concept of the Shipping Sector*. Lithuania: Government of the Republic of Lithuania. (available in Lithuanian only).

- Guest, A (1993a). 'EC is urged to act on pollution'. In *Lloyd's List*, January 13.
- Guest, A (1993b). 'Euro MPs vote for age ban on tankers'. In *Lloyd's List*, January 22.
- Haralambides, H E (1997). *The Shipping Policy of the European Union*. Handout. Rotterdam: Erasmus University.
- HELCOM (1998). '*Overview on activities 1997: Baltic Sea environment proceedings*'. Helsinki, Finland: Helsinki Commission.
- IMO (1995). *Sectoral Support Needs Assessment and Programming Mission: Lithuania and Estonia*. London: International Maritime Organisation.
- ISL (1994). *Shipping Statistics Yearbook 1994*. Bremen: Institute of Shipping Economics and Logistics.
- ISL (1995). *Shipping Statistics Yearbook 1995*. Bremen: Institute of Shipping Economics and Logistics.
- ISL (1996). *Shipping Statistics Yearbook 1996*. Bremen: Institute of Shipping Economics and Logistics.
- ISL (1997). *Shipping Statistics Yearbook 1997*. Bremen: Institute of Shipping Economics and Logistics.
- ISL (1998). *Shipping Statistics Yearbook 1998*. Bremen: Institute of Shipping Economics and Logistics.
- Ledger, G (1993). 'Maritime Policy in the European Community and the United Kingdom: contrast and conflicts'. In *Shipping Policy in the European Community*. Edited by P Hart, G Ledger, M Roe and B Smith. Brookfield USA: Ashgate Publishing.
- LISCO (1999). *Annual financial report - 1998*. Lithuania: Lithuanian Shipping Company, Division of Statistics.
- LL (1996). 'Europe plots shipping strategy based on quality and co-operation'. In *Lloyd's List*, March 14.
- Moloney, S (1996). 'Transport Commissioner Neil Kinnock's maritime strategy document is the most tangible'. In *Lloyd's List*, March 18.
- MoTC (1997). *Lithuania in the Trans-European transport system*. Lithuania: Ministry of Transport and Communications.
- MoTC (1998). *Sea Transport in Lithuania: statistical report*. Lithuania: Ministry of Transport and Communications, Water Transport Department.

Nieuwpoort, G (1998). 'Going Dutch: the Netherlands' new approach'. *Is There a Better Way to Regulate the Shipping Industry?* (Oslo Conference 1998: Folkets Hus Conference Centre). Oslo: Folkets Hus Conference Centre.

NMD, (1999). *Introduction to the Norwegian Maritime Directorate. Organisation, staff and tasks*. Hand-out. Norway, Oslo: Norwegian Maritime Directorate.

OECD (1996). *Non-observance of international rules and standards: competitive advantage*. Paris: Organisation on Economic Co-operation and Development.

Pardo, F (1999). 'Pollution by Hydrocarbons'. In *Principles of Ship Source Pollution Prevention*. Handout. Malmö, Sweden: World Maritime University.

Sakalys, A (1999). 'Examining the current state and future development of Transport Infrastructure'. *International Conference on Regional Integration of Transport* (15-16 April 1999, Klaipeda) Klaipeda, Lithuania.

Schelin, J (1997). 'State Aids and the Operation of Ships: International Ship Registers'. In *EC Shipping Policy. The 17th Nordic Maritime Law Conference 2-4 September 1996*. Edited by H J Bull and H Stemshaug. Oslo: Juridisk Forlag.

Smailys, V (1999). 'Prospects of Development of the Lithuanian Sea Transport and Environmental Problems'. In *Transport*. Vilnius, Lithuania: Science and Arts of Lithuania (available in Lithuanian only)

Toll, B (1997a). 'The Competitiveness of European Shipping - Policy Issues: The European Commission's Paper 'Towards a New Maritime Strategy''. In *EC Shipping Policy. The 17th Nordic Maritime Law Conference 2-4 September 1996*. Edited by H J Bull and H Stemshaug. Oslo: Juridisk Forlag.

Toll, B (1997b). 'State Aid and Shipping: A General Overview'. In *EC Shipping Policy. The 17th Nordic Maritime Law Conference 2-4 September 1996*. Edited by H J Bull and H Stemshaug. Oslo: Juridisk Forlag.

Tutt, N (1998). 'Kinnock in call to enforce safety rules'. In *Lloyds List*. June 5, 1998.

Vanchiswar, P R (1996). 'Establishment/Administration of maritime matters with particular reference to developing countries.' *Maritime Administration/Maritime Safety Administration*. Hand-out. World Maritime University, Malmo, Sweden.

## Appendix 1

### List of legislative measures adopted by Council/Commission with regards to freedom to provide services, competition rules and external relations

1. Council Regulation (EEC) 954/79 of 15 May 1979 concerning the ratification by Member States of, their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences (OJ N. L.121 of 17/05/1979).
2. Council Decision 77/587/EEC of 13 September 1977 setting up a consultation procedure on relations between Member States and third countries in shipping matters and on action relating to such matters in international organisations (OJ N L.258 of 21/09/1978), as amended by Council Decision 89/242/EEC of April 1989 (OJ N. L.97 of 11/04/1989).
3. Council Decision 78/774/EEC of 19 September 1978 concerning the activities of certain third countries in the field of cargo shipping (OJ N L.258 of 21/09/1978), as amended by Council Decision 89/ 242/EEC of 5 April 1989 (OJ N. L.97 of 11/04/1989).
4. Council Decision 83/573/ EEC of 26 October 1983 concerning counter-measures in the field of international merchant shipping (OJ N. L.332 of 28/11/1983).
5. Council Regulation 4055/86/EEC of 22 December 1986 applying the principle of freedom to provide services to maritime transport between the Member States and third countries (OJ N. L.378 of 31/12/1986).  
  
Amended by Council Regulation 3573/90/EEC of 4 December 1990 as a result of unification of Germany (OJ N. L.353 of 17/12/1990).  
  
Applied in the Council Decision 87/475/EEC of 17 September 1987. (OJ N. L.272 of 25/09/ 1987)
6. Council Regulation 4056/86/EEC of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 on the Treaty to maritime transport (OJ N. L.378 of 31/12/1986).
7. Council Regulation 4057/86/EEC of 22 December 1986 on unfair pricing practices in maritime transport (OJ N. L.378 of 31/12/1986).
8. Council Regulation 4058/86/EEC of 22 December 1986 concerning co-ordinated action to safeguard free access to cargoes in ocean trades (OJ N. L.378 of 31/12/1986).

9. Council Regulation (EEC) 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (OJ N. L.364 of 12/12/1992).

Applied in:

Commission Decision 93/125/EEC of 17 February 1993 (OJ L.49 of 27/02/93);

Commission Decision 93/396/EEC of 13 July 1993 (OJ N. L.173 of 16/07/93).

10. Community Guidelines on State aid to maritime transport of 5 July 1997 (OJ C205 of 5/07/1997).

## **Appendix 2**

### **List of legislative measures adopted by Council/Commission with regards to maritime safety**

1. Council Recommendation 78/548/EEC of 26 June 1978, concerning ratification of conventions in the field of maritime safety and environmental protection (OJ No. L.194 of 19/07/1978).
2. Council Recommendation 79/114/EEC of 21 December 1978 on ratification, or accession to, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) (OJ N. L.33 of 8/02/1979).
3. Council Directive 79/115/EEC of 21 December 1978, concerning pilotage of vessels by deep-see pilots in the North Sea and English Channel (OJ N. L.33 of 8/02/1979).
4. Council Directive 79/116/EEC of 21 December 1978 concerning minimum requirements for certain tankers entering or leaving Community ports (OJ N. L.33 of 8/02/1979).
5. Council Decision 82/887/EEC of 13 December 1982 adopting a concerted action project for the European Economic Community in the field of shore-based navigation aid systems.
6. Council Decision 83/124/EEC of 28 March 1983 on the conclusion of a Community COST concertation agreement on a concerted action project in the field of shore-based marine navigation aid system (COST project 301).
7. Council Recommendation 83/419/EEC of 25 July 1983 on the ratification, or accession to, the 1979 International Convention on Maritime Search and Rescue (SAR).
8. Council Regulation 613/91/EEC of 4 March 1991 on the transfer of ships from one register to another within the Community (OJ N. L.068 of 15/03/1991), as amended by Commission Regulation 2158/93/EEC of 28 July 1993 (OJ N. L.194 of 3/08/1993).
9. Council Decision 92/143/EEC of 25 February 1992 on radionavigation systems for Europe (OJ N. L.59 of 4/03/1992).

10. Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels (OJ N. L.113 of 30/04/1992).

11. Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods (OJ N.L.247 of 5/10/1993).

Amended by:

Commission Decision 96/127/EC of 22 January 1996(OJ N. L.29 of 7/02/1996);

Commission Directive 96/39/EC of 19 June 1996(OJ N. L.196 of 7/08/96);

Commission Decision 96/513/EC of 29 July 1996 (OJ N. L.215 of 24/08/1996);

Commission Decision 96/710/EC of 27 November 1996 (OJ L.326 of 17/12/96);

Commission Directive 97/34/EC of 6 June 1997 (OJ N. L.158 of 17/06/1997);

Commission Directive 98/55/EC of 17 July 1998 (OJ N. L.215 of 1/08/1998);

Commission Directive 98/74/EC of 1 October 1998 (OJ N.L.276 of 13/10/1998).

11bis. List of competent authorities designated by Member States to which the information and notification provided for in Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound or leaving Community ports and carrying dangerous or polluting goods, shall be addressed (OJ N. C.65 of 01/03/1997 and modification of the list in OJ N. C.150 of 16/05/1998).

12. Council Regulation 2978/94/EC of 21 November 1994 on the implementation of IMO Resolution A.747(18) on the application of tonnage measurement of ballast spaces in segregated ballast oil tankers (OJ N. L.318 of 12/12/1994).

12. Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ N. L.319 of 12/12/1994).

Amended by:

Commission Decision 96/58/EC of 30 September 1996 (OJ L.257 of 10/10/96);

Commission Directive 97/58/EC of 26 September 1997 (OJ L.274 of 7/10/97).

Applied in:

Commission Decision 98/29/EC of 22 April 1998(OJ N. L.131 of 5/05/98);

Commission Decision 98/403/EC of 12 June 1998 (OJ N. L.178 of 23/06/98).

13. Council Directive 94/58/EC of 22 November 1994 on the minimum level of training of seafarers (OJ N. L.319 of 12/12/1994), as amended by Council Directive 98/35/EC of 25 May 1998 (OJ N. L.172 of 17/06/1998).

14. Council Resolution of 22 December 1994 on the safety of roll-on/roll-off passenger ferries (OJ C.379 of 31/12/1994).

15. Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State Control) (OJ N. L.157 of 7/07/95).

Amended by:

Council Directive 98/25/EC of 27 April 1998 (OJ N. L.133 of 7/05/1998);

Commission Directive 98/42/EC of 19 June 1998 (OJ N. L.184 of 27/06/98).

16. Council Regulation 3051/95/EC of December 1995 on the safety management of Ro-Ro passenger vessels (OJ N. L.320 of 30/12/1995), as amended by Commission Regulation 179/98/EC of 23 January 1998 (OJ N. L. 19 of 24/01/ 1998).

17. Commission Directive 96/40/EC of 25 June 1996 establishing a common model for an identity card for inspectors carrying out port State control (OJ N. L.196 of 7/08/96).

18. Council Directive 96/98/EC of 20 December 1996 on maritime equipment (OJ N. L.46 of 17/02/ 1997).

19. Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over (OJ N. L.34 of 9/02/1998).

20. Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships (OJ N. L.144 of 15/05/1998).

21. Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships (OJ N. L.188 of 2/07/1998).



### **Appendix 3**

#### **List of the IMO Conventions and Protocols to which Lithuania is Contracting Party**

##### **Adhered in 1991, by the Government Decision Nr. 416 of 12 October 1991**

International Convention for the Safety of the Life at Sea, as amended (SOLAS 1974)

Protocol of 1978 relating to the International Convention for the Safety of the Life at Sea, 1974, as amended (SOLAS PROT 1978)

Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 1972)

International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto (MARPOL 73/78)

International Convention on Load Lines, 1966 (LL 1966)

International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 1969)

International Convention for Safe Containers, 1972, as amended (CSC 1972)

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 1978)

##### **Adhered in 1995, by the Decision of the Parliament Nr. I-873 of 4 April 1995**

International Convention on International Maritime Organisation, 1948 (IMO).