



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 417/2002 on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers and repealing Council Regulation (EC) No 2978/94

(presented by the Commission)

EXPLANATORY MEMORANDUM

The purpose of Regulation (EC) No 417/2002 as adopted is to introduce double-hull or equivalent design requirements for single-hull oil tankers in order to reduce the risk of oil pollution.

As part of the urgent initiatives taken following the sinking of the Prestige oil tanker, on 20 December 2002 the Commission decided to propose an amendment to Regulation (EC) No 417/2002 to accelerate the initial timetable for phasing out single-hull oil tankers and immediately to prohibit the carriage of heavy grade oil products in single-hull oil tankers bound for or leaving ports in a Member State of the European Union.

By June 2003 most of the Commission's proposal had been approved by the European Parliament and the Council. As a result, Regulation (EC) No 1726/2003 of the European Parliament and of the Council of 22 July 2003 amending Regulation (EC) No 417/2002 entered into force on 21 October 2003.

At the same time, the Commission and the Member States made every effort to ensure these new rules could be adopted internationally by amending the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78).

In December 2003 the Marine Environment Protection Committee (MEPC) of the International Maritime Organisation (IMO) consequently adopted amendments to Annex I to MARPOL 73/78 based on the measures adopted by the European Union. However, these amendments contain certain exemptions which are given in paragraph 7 of Regulation 13G¹ concerning the timetable for phasing out single-hull oil tankers, and in paragraphs 5, 6 and 7 of Regulation 13H² concerning the ban on the carriage of heavy grade oil products in single-hull oil tankers.

Under the amended Regulation (EC) No 417/2002, ships flying the flag of a Member State may not make use of the exemptions from Regulation 13G.

However, a ship flying the flag of a Member State could take advantage of the exemptions from Regulation 13H if it operated outside ports or offshore terminals under Community jurisdiction and still comply with the amended Regulation (EC) No 417/2002.

The Italian delegation representing the Presidency of the European Union made a statement on behalf of the 15 Member States and the European Commission during the MEPC's plenary session, announcing to all the other Contracting Parties to MARPOL 73/78 that the Member States will not authorise tankers flying their flags to make use of any of these exemptions. It also stated that the Member States intend to make use of the provisions of paragraph 8(b) of both Regulations 13G and 13H so that tankers which had been temporarily allowed to derogate from the world-wide standard would be denied entry to their ports or offshore terminals³.

¹ Regulation 20 in the new numbering of Annex I to the amended MARPOL 73/78.

² Regulation 21 in the new numbering of Annex I to the amended MARPOL 73/78.

³ Report by the Marine Environment Protection Committee on the work at its fiftieth session, doc. MEPC 50/3, Annex VI, p. 1.

As a result, since the amendments to Annex I to MARPOL 73/78 entered into force on 5 April 2005, Community legislation is similar to the international standards which are binding on all ships, irrespective of their flag and destination. But it leaves the option open for single-hull oil tankers flying the flag of a Member State operating outside European Union ports to take advantage of the exemptions from Regulation 13H.

The Commission considers that this legal possibility is not acceptable from a political point of view *vis-à-vis* third countries which are Contracting Parties to MARPOL 73/78 to which the Member States of the European Union have made a formal commitment not to make use of these exemptions. It must be stressed that ships flying the flag of a third country do not have access to ports or offshore terminals under Community jurisdiction if they operate under these exemptions.

The position adopted in December 2003 on behalf of the Member States reflected, moreover, the political desire reiterated on several occasions by various configurations of the Council and the European Council.

Indeed, the Transport Council of 6 December 2002, *“acknowledging the determined efforts in the European Community and the International Maritime Organisation (IMO) since the ERIKA accident, emphasising the full responsibility of the flag State, including the effective supervision of classification societies working on their behalf, and considering the effective application of enhanced port State control measures, including the banning of ships, to be of the utmost importance in eliminating sub-standard ships”*, agreed that *“heavy grades of oil⁴ shall only be transported in double-hulled tankers”*.

The Environment Council reaffirmed on 9 December 2002, *“the conclusions on Ship’s Safety and Pollution Prevention adopted by the Council (Transport) on 6 December 2002, which aim at reinforcing both maritime safety and the prevention of pollution”*, and welcomed *“in particular the actions to accelerate the phasing out of single-hull tankers, to ban the use of single hull tankers for the transport of heavy grade oils ...”*.

Lastly, the Copenhagen European Council of 12 and 13 December 2002 confirmed that *“the Union is determined to take all necessary measures to avoid a repetition of similar catastrophes and welcomes the rapid responses by the Council and the Commission. The Union will also continue to play a leading role in international efforts in pursuit of this objective, in particular within the IMO. The conclusions of the Transport Council on 6 December 2002 and the Environment Council on 9 December 2002 should be implemented in all their aspects without delay.”*

It would therefore appear that the Community standard which allows ships flying the flag of a Member State to apply derogations outside Community waters is not in line with these political positions.

As a result, Regulation (EC) No 417/2002 must be amended both to ensure compliance with political commitments made by Member States at international level and to ensure that Community policy on maritime safety is coherent.

⁴ This includes heavy fuel, tar, bitumen and heavy crude oils.

Article 1 amends Article 4(3). This amendment extends the scope of the requirements for the carriage of heavy grade oil laid down in the said Regulation to ships sailing under the flag of a Member State of the European Union. It prohibits the carriage of heavy grades of oil in all single-hull tankers flying the flag of a Member State irrespective of the jurisdiction governing the ports, offshore terminals or the maritime area in which they operate.

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission⁵,

Having regard to the opinion of the European Economic and Social Committee⁶,

Having regard to the opinion of the Committee of the Regions⁷,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁸,

Whereas:

- (1) Regulation (EC) No 417/2002 of the European Parliament and of the Council⁹ provides for the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers laid down in the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (“MARPOL 73/78”), in order to reduce the risk of accidental oil pollution in European waters.
- (2) This Regulation introduced measures prohibiting the carriage of heavy grade oil in single-hull oil tankers leaving or bound for ports in the European Union.
- (3) Following action by the Member States and the Commission within the International Maritime Organisation (IMO), this ban has been imposed world-wide through an amendment to Annex I to MARPOL 73/78.

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

⁷ OJ C [...], [...], p. [...].

⁸ OJ C [...], [...], p. [...].

⁹ OJ L 64, 7.3.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 2172/2004 (OJ L 371, 18.12.2004, p. 26).

- (4) Paragraphs 5, 6 and 7 of Regulation 13H of this Annex concerning the ban on the carriage of heavy grade oil in single-hull oil tankers contain exemptions from this Regulation. The statement by the Italian Presidency of the European Union, recorded in the official report of the IMO's Marine Environment Protection Committee (MEPC 50), expresses a political commitment to refrain from making use of these exemptions.
- (5) Under Regulation (EC) No 417/2002, a ship flying the flag of a Member State could apply the exemptions from Regulation 13H if it operated outside ports or offshore terminals under Community jurisdiction and still comply with Regulation (EC) No 417/2002.
- (6) Regulation (EC) No 417/2002 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

The following paragraph 3a is inserted in Article 4 of Regulation (EC) No 417/2002:

“3a. No oil tanker carrying heavy grade oil products shall be allowed to fly the flag of a Member State unless such tanker is a double-hull oil tanker.”

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President