



22nd June 2007

Commissioner Joe Borg
European Union Commissioner for Fisheries and Maritime Affairs
European Commission –Maritime Policy Task Force
“Maritime Policy Green Paper”
B- 1049
Brussels

Dear Commissioner Borg,

RE: *Green Paper on a future Maritime Policy for the EU*

1. Introduction

- 1.1 Soon after the Green Paper was published in June of last year, the Malta Maritime Law Association, through its Maritime Law Advisory Council, had resolved that it was appropriate and desirable to contribute to the consultation process which was called for in the Green Paper. Moreover, due to the diversity of maritime issues raised in the Green Paper, it was deemed proper to set up a number of subcommittees, each comprising a number of experts and stakeholders from both the public and private sector, to deal with specific issues touched upon by the Green Paper.
- 1.2 A sub-committee was set up specifically with the task of considering whether Directive 2005/35/EC on Ship Source Pollution and Framework Decision 2005/667/JHA of 12th July 2005 commonly referred to as the directive on the “Criminalisation of Sea Farers” which have caused a great deal of controversy in international Shipping circles seen in the context of Salvage, was consistent with aim of the green paper of developing a holistic maritime policy for Europe as advocated by yourself..
- 1.3 The sub-committee was called: “*The sub-committee on EU Directive on Ship Source Pollution in the Context of the Green Paper and Salvage*” and was made up of myself as Chairman, and Mr. John Sullivan, Capt. Joe Gabriele, Mr. Paul Pisani, Mr. Mario Mifsud, Mr. Jonathan Pace, Dr. Matthew Brincat, Dr. Ivan Vella, Dr. Alison Vassallo and Dr. Larry Gauci as members all serving in a personal capacity. The members of the committee come from various sectors within the shipping and related industries. All of them were invited to present their thoughts and considerations on:

- (i) The potential effects of the Directive and the Framework Decision on seafarers, in particular salvors; and
 - (ii) A proposal to the European Commission to recognize the important role of Salvage and Salvors as Europe's first line of defence against marine pollution in a future integrated maritime policy, and to support the concept of Environmental Salvage.
- 1.4 In addition to the above the sub-committee also organised a public seminar in order to disseminate information on the role of the salvage industry in protecting the marine environment and how this might be effected by the European Directive On Ship-Source Pollution and to solicit the views of those present on the Commission's proposal to develop a holistic maritime policy for the Union seen from this perspective. The seminar held at the Chamber of Commerce Malta was a huge success with standing room only. The seminar was introduced by myself and the speakers were Mr. Archie Bishop, legal adviser of the International Salvage Union, Mr. John Sullivan – Managing Director of Tug Malta Ltd and Mr. Mario Mifsud from the Malta Maritime Authority.
- 1.5 This communication is intended to outline in a clear and concise manner, some of the issues raised and the ideas expressed by the members in the course of deliberations at the meetings of the subcommittee as well as ideas which came out of the above mentioned seminar.
- 1.6 The subcommittee certainly welcomes the Commission's proposal to develop a holistic maritime policy for the Union, since such an approach would ensure the development of meaningful and sustainable policies aimed at protecting and enhancing our seas and coasts and, moreover, would avoid inconsistencies and contradictory policies within the EU legislative framework. This approach, however, in the view of the subcommittee should aim at achieving a fair and just balance between the social, economical and environmental pillars to create the optimal outcome – sustainable growth .

The two questions identified in paragraph 1.2 (i) and (ii) will be discussed in the next two sections.

2. The Effects of the Directive & Framework Decision on Seafarers, in Particular Salvors.

- 2.1 One of the Commission's most commendable efforts is to be found at Paragraph 2.5 of the Green Paper which, in tackling the serious reality of the declining number of European seafarers, provides that *'recruiting well trained and competent seafaring crews and other professionals in sufficient number is crucial for the survival of the maritime industry, for safety reasons and to maintain Europe's competitive edge.'*

- 2.2 While the recruitment of seafarers is rightly associated with the promotion of EU maritime safety policy, the Green Paper ranks amongst the efforts made to improve maritime safety '*the partial harmonization of penal sanctions for marine pollution.*' In the opinion of the subcommittee, this may in a number of important cases give rise to a serious contradictory situation.
- 2.3 The Union has already sought '*the partial harmonization of penal sanctions for marine pollution*' by enacting controversial Directive 2005/35/EC and Council Decision 2005/667/JHA. As is well known, the EC Directive is *sub judice*, being challenged on different grounds, relating to conflict with international law, human rights and lack of legal certainty.
- 2.4 In this respect, the sub-committee found that the failure of the Directive to make a distinction between ship source pollution and pollution resulting from accident to be a particularly serious flaw. It further found that since the shipping industry demands certainty, the uncertainty now created by the new and undefined concept of "serious negligence" would be a severe problem caused by the directive. It is submitted by the subcommittee that the criminalization of seafarers and the prospect of imprisonment in cases relating to pollution after a casualty, as envisaged by the aforementioned legal instruments, may discourage seafarers from continuing their maritime career and will certainly have the effect of discouraging new recruits. Moreover, it will also discourage seafarers from cooperating in the accident investigations for fear of finding themselves criminally liable and punished.
- 2.5 Moreover, the enforcement of the Directive and Framework Decision may act as a disincentive to potential salvors from responding effectively and in a timely fashion to a developing casualty situation, since, apart from the commercial risk which such an operation entails, they would also be potentially exposing themselves to criminal liability should pollution damage accidentally occur as a result of their intervention.
- 2.6 Salvage operations are inherently risky and it is not easy to convey the extreme conditions under which very complex operations at times need to be planned and executed within a short time. Legislation which could lead to the incrimination of salvors can only have a detrimental effect on the salvage operation and quite possibly on the marine environment itself, as salvors may desist from undertaking the salvage operation, knowing the criminal implications involved over and above the commercial risk. This can have a disastrous effect on Malta as an island which will in the case of a major pollution incident depend totally on the rapidity and speed with which Salvors would tend to the casualty.
- 2.7 The subcommittee strongly believes that, whilst regional measures may greatly assist in the implementation and enforcement of internationally agreed rules and standards, any other unilateral regional measures, which go beyond or are in

conflict with international law, may have a negative impact on the harmonization and uniformity of international maritime law.

- 2.8 If the Commission feels that there are certain gaps in the applicable international regimes, then it should seek a concerted effort by all the member States as plenipotentiary members of the IMO and contracting parties to the respective international conventions, in order to push for any necessary amendments within the Convention mechanism itself. Otherwise, by enacting conflicting legislation, the Union would be undermining IMO's authority in the shipping world.
3. The role of Salvage and Salvors as Europe's first line of defence against marine pollution in a future integrated maritime policy and the concept of Environmental Salvage.
 - 3.1 The protection of the marine environment cannot be overemphasised, with the drafters of the Green Paper giving it central stage in a future integrated maritime policy for the Union. This stance should be encouraged and supported further. However, one thing which is conspicuous by its very absence is the omission of the mention of the crucial and vital role which salvage plays in the prevention of major oil pollution disasters, and thence the protection of the marine environment.
 - 3.2 Unfortunately whilst we all get to know of a pollution disaster within minutes of it occurring, we are not equally informed about the fact that it is only thanks to professional salvors that so much more oil and other pollutant does not end up in the sea and on the beaches but is either recovered or securely contained in the vessel through very complex, challenging and normally very dangerous salvage operations.
 - 3.3 The worth and value of professional salvors to the environment cannot be over emphasised, and one can only start to appreciate the significance of their work when one looks at the statistics produced by the International Salvage Union for the year 2005.
 - 3.4 Therefore it becomes all the more apparent that one cannot have a Maritime Policy for Europe without putting firmly on the agenda - Salvage and Salvors. Maritime states in Europe have a very real interest to ensure that there is the right atmosphere, the right encouragement and enough resources to ensure that these professional salvors are able to maintain the levels of experienced service which they give in the face of all odds and great danger
 - 3.5 The members of the subcommittee are in full agreement with the proposals submitted by the ISU to the Green Paper in which it stresses that there must be a recognition of salvage as Europe's first line of defence against marine pollution and on the need for there to be international support for the new concept of environmental salvage and environmental awards whenever the risk of pollution is prevented or minimized.

- 3.6 There can be no doubt that, the speed with which these persons should be appointed and deployed is crucial to the success or otherwise of a salvage operation and unfortunately on a number of occasions precious time is lost. The developing concept of environmental salvage proposes the idea that in certain urgent situations the coastal State facing a potential pollution situation, could take it upon itself to engage professional salvors and then seek compensation from the existing compensation funds available. Hence immediate action is taken and little time is lost.
- 3.7 This becomes all the more important seen from a Maltese perspective. The chances of a pollution disaster hitting our shores are unfortunately not so remote. According to statistics provided by the Regional Marine Pollution Emergency Centre (REMPEC) and the European Union, 65% of the oil and gas consumed in Western Europe passes through the Mediterranean, 800 tankers ply Mediterranean waters at any given time and although the Mediterranean contains only 0.7% of the world's oceans, yet it handles 22 % of global shipping trade. Needless to say a severe pollution incident anywhere around Malta would cause havoc to our fishing industry, tourism industry and our water supply.

4. Conclusion

- 4.1 The marine environment is a global common asset and the Union should continue to strive for its protection, more so when considering the potentially devastating impact which its degradation/demise could have on the economies of coastal States generally and the quality of life of the coastal communities in particular. In this regard, the subcommittee opines that a future holistic maritime policy would be a commendable endeavour by the Union to strike the right balance between the social, economic, and environmental pillars of the Union in the maritime arena.
- 4.2 The Union must, however, avoid certain knee-jerk and unilateral measures which are in violation of internationally agreed rules and regulations, given that such measures may contribute little, if any at all to the overall objective of marine environmental protection in an integrated maritime policy for the Union. Instead, such unilateral actions may have an opposite and equally negative impact on the quality of life of those whose livelihood depends on the sea. In furtherance of its policy objectives to protect the marine environment, the Union should promote and support the development of ideas such as environmental salvage, which, once realized, would surely bring about an added value in marine environmental protection both at the Member State and European levels.
- 4.3 With the above in mind the sub-committee would like to recommend to the Commission that the Directive on Ship Source Pollution is reconsidered and the position reassessed, with a view to eradicating from it those ingredients which will not in real terms do anything to produce cleaner seas and safer oceans but

which will only act as a disincentive to attract more Europeans to take on a seafaring career.

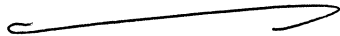
- 4.4 Also with the above in mind the sub-committee would like to suggest to the Commission that the Commission takes a leading role in the creation and formulation of the new concept of Environmental Salvage as is currently being proposed by the International Salvage Union.

Finally Commissioner Borg, on behalf of the sub-committee, I would like to congratulate you on your initiative. A holistic maritime policy for Europe is indeed a very ambitious aim and one which could not have been launched at a more appropriate moment. It has been our great pleasure to be able to focus on just one issue which we believe is of importance and to be able to come together with our limited resources to present to you our humble opinion and views on this issue.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ann Fenech', with a long horizontal flourish extending to the right.

Ann Fenech LL.M. LL.D

A simple horizontal line drawn in black ink, positioned below the name 'Ann Fenech'.