



A principled and practical solution for ship recycling:

NGO Shipbreaking Platform / Greenpeace Position on the European Commission Proposal for a Regulation of the European Parliament and of the Council on Ship Recycling (COM 2012/118)

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The Commission Proposal on ship recycling includes gaps and loopholes which, if not rectified by the Council and the European Parliament, will result in a legislative text unable to respond to the legal and political concerns related to the export of hazardous waste ships to developing countries. The three major concerns are:

1. Article 29 of the Commission Proposal removes hazardous waste ships from the scope of application of the 2006 Waste Shipment Regulation (No 1013/2006). This move is **a clear breach of existing EU legal obligations under the Basel Convention**, to which the EU and all its member states are individually bound.
2. Since 1998, the EU has prohibited the export of hazardous waste ships from the EU to non-OECD countries for dismantling. The Commission Proposal would change this moral and legal standing by authorising such an export simply to take advantage of cheaper labour despite these facilities being unable to provide environmental and labour protection on site and downstream, and no proper national monitoring and enforcement in place. The proposed policy presents an externalization of liabilities and costs, as well as a loss of European jobs. It would place **a disproportionate burden of the world's hazardous wastes on developing countries**, instead of introducing mechanisms to keep hazardous wastes within the EU as is required under the Basel Convention and the Ban Amendment.
3. The Commission Proposal claims that OECD countries do not have enough capacity for ship dismantling and recycling. However, this is far from the truth: **the OECD countries have capacity to dismantle all EU-flagged ships and further capacity would quickly develop if European recyclers had a steady supply of end-of-life vessels available.**

I. Implementation of the Basel and Hong Kong Convention to solve the global shipbreaking crisis

The Commission Proposal is based on the false assumptions that the Basel Convention provisions applying to end-of-life ships cannot be effectively implemented and that they cannot coexist with the Hong Kong Convention. Already the Commission Proposal intends to use the Basel regime for small vessels and government vessels. Thus coexistence of the Conventions is thus already assured. Yet, Basel can also be enforced for ships, regardless of flag state, when they are known to be destined for scrapping facilities while still in European waters. For example, it was the Basel Convention's application via the Waste Shipment Regulation that forced the French aircraft carrier *Clémenceau* back to Europe from India. It was finally dismantled in the UK, providing jobs and economic opportunities in a green ship recycling facility.

It is true that too many shipowners circumvent Basel, and therefore EU obligations, by not declaring their intention to recycle ships while those ships are still in European waters. But instead of lamenting the fact that the shipping industry finds its ways around the Basel rules, the EU should show a serious intent to enforce the WSR, close the loopholes and eliminate the double standard. (Already in its 2007 Green Paper, the Commission has discussed measures to enforce Basel, which it has not taken into account for this proposal). Finally, the Commission fails to note that while Basel has a loophole, Hong Kong has an even larger one as it relies on flag state jurisdiction, which can easily be avoided via reflagging. This must be addressed (see below).

The argument has been repeated that allowing two regimes to regulate one issue is duplicative, impracticable and overly burdensome. But this is not the case. While requiring two regimes *for one ship* might be impracticable, this is not what is required for the proper co-implementation of the Conventions. It is important to remember that under the Commission Proposal, the Basel Convention applies to ships less than 500 GWT, to government ships, and to ships operating in waters of its flagged territory – because these types of ships are excluded from the Hong Kong regime. Therefore, both the Waste Shipment Regulation (Basel) and the future Ship Recycling Regulation (Hong Kong) can apply in the EU, although they will not be applicable to the same ship at the same time.

The table below describes when each **Convention** and associated EU legislation should apply.

Hong Kong Convention Application (future Ship Recycling Regulation)	Basel Convention (OECD Decision) Application (Waste Shipment Regulation)
a. Ships flying EU flag located anywhere in the world	a. Ships containing hazardous materials flying EU flag less than 500 GWT
	b. Government ships of an EU country containing hazardous materials
	c. Ships containing hazardous materials of any flag or size in a port or territorial waters of an EU country when its intent to be disposed is known (hazardous waste under Basel)

It is recommended that the competent authority of both Basel and the Hong Kong Conventions shall be the same entity and understands the procedures of both the Waste Shipment Regulation and the Ship Recycling Regulation.

II. Avoiding the Double Standard / Complying with Basel Ban Amendment with EU Lists

Ships that fall under either regime should then only be directed to the EU List of facilities certified for offering environmentally safe and sound ship recycling. But, as the EU must not derogate from its Basel Convention and Basel Ban obligations and commitments, all ships carrying hazardous materials that would qualify as hazardous waste under Basel must only be allowed to be recycled in facilities located in the OECD/EU and which are on the EU List, as set forth in Art.12 of the Commission Proposal. On the other hand, ships (largely of the future or those that have been pre-cleaned) that do not contain hazardous wastes upon arrival in the ship recycling state (with the exception of readily removable residual oils, fuels, and safety equipment necessary to make a final voyage, and which can pre-cleaned on site prior to dismantling) should be allowed to be received in non-OECD/EU facilities that have been certified by the EU.

To make this possible, the European List will thus be split into two sub-lists:

- List A: OECD/EU green ship recycling and pre-cleaning facilities authorised to handle hazardous ships and non-hazardous ships; and

- List B: non-OECD/EU green ship recycling and pre-cleaning facilities authorised by EU to handle non-hazardous ships.

III. No Beaching

The Commission Proposal does not explicitly ban beaching. To remedy this, all facilities that want to be on the EU Lists must prohibit the landing of ships and operations on pebbly or sandy shores in the intertidal zone. In such “beaching” zones, containment of pollution is impossible and access to ships cannot be obtained at all times from cranes and emergency fire or ambulance equipment due to a lack of hard durable surfaces. In this way, beaching operations shall be explicitly prohibited by the Regulation and those facilities still using beaching will have to improve their standards dramatically.

IV. Enough capacities for ship recycling within the OECD

The NGO Shipbreaking Platform, in its report of 6 November 2012, provided the real picture of the green recycling capacity that can be used for recycling EU-flagged ships in States belonging to the OECD. The Commission Proposal failed to consider the 13 ship recycling facilities in North America, which can legally manage European end-of-life ships. When North American capacity is included in the picture, available OECD capacity for the EU-flagged end-of-life fleet will by 2015 equate to 132% of the total EU ship inventory. This calculation is based on the assumption that no recycling capacity expansion is made in Europe and Turkey. However, if Europe was inclined to increase its recycling operations at dormant port facilities, shipbuilding sites and elsewhere, and at the same time promote the accompanying jobs, rather than sending much of the fleet and employment opportunities to North America, the total capacity would be far greater. In 2007, the Commission estimated that a total of 1 million light displacement tons (LDT) per year of dormant dry dock ship recycling capacity exists in Europe alone. This means that until 2030, the majority of the EU-flagged ships could be recycled in European shipyards.

V. A financial incentive: internalizing costs, preventing reflagging and promoting green ship design

With the current Commission proposal, which rightly seeks to go beyond the global norm to create more stringent requirements, a financial incentive must be put in place in order to meet the following **three objectives**:

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

Whatever form it takes, the financial mechanism should be based on individual producer responsibility.

Recent studies have proposed an array of possible mechanisms and have clearly shown that a financial incentive for proper ship recycling is legally allowed, enforceable, and effective.

The financial mechanism must operate with the following elements:

1. **Scope: All ships calling at EU ports are obliged to participate in the financial mechanism** in order not to discriminate against EU-flagged vessels and to level the global playing field. Most large commercial vessels, regardless of their flag, travel to the EU during their lives. There are various examples of legislation asking for higher environmental standards for foreign vehicles entering a certain territory, such as provisions under the US Oil Pollution Act, which later became international law; or the inclusion of international aviation in the EU Emissions Trading System in absence of a global agreement. The EU should likewise use the fact that ships call at its ports to push for higher standards for ship recycling.

2. **Calculation of contributions based on individual producer (owner) responsibility:** The contributions and later the disbursement of funds shall be calculated in a way in order to be roughly **equivalent to the differential in costs** between scrapping at the cheapest global facilities and the price of recycling at EU listed facilities (on both lists). The contributions paid by shipowners are based on the principle of individual polluter responsibility and are assessed by taking into account the design, age and inventory of hazardous materials: the **dues must be differentiated according to the level of hazardous materials on board** in order to trigger the demand for green ship design and pre-cleaning of ships still in operational use.
3. **Collection of dues:** The mechanism must be designed in a way that makes the collection of dues as simple as possible and avoids high institutional costs and bureaucracy. Therefore, a model based on annual premiums or dues may be preferable to the separate collection at every port call. Annual premiums also avoid the discrimination of ships with daily calls.
4. **Beneficiaries:** Funds from the financial mechanism are **disbursed to all shipowners participating in the scheme only if they choose a recycling facility on the EU Lists**. This means that EU-flagged vessels containing hazardous waste (and those flying the flag of other ANNEX VII countries under Basel) can only benefit if they are recycled in listed facilities within the OECD (including the EU), whereas vessels not containing hazardous wastes as well as ships flying the flag of a non-ANNEX VII country, can be recycled in EU listed facilities outside the OECD. For example, a Chinese flagged vessel operating in EU ports can therefore benefit from the financial mechanism if the vessel is recycled in a Chinese yard certified to be on the EU list. The distinction made between ships from OECD and non-OECD countries accommodates the distinction made in the Basel Convention with regards to the vulnerability of developing countries created by hazardous wastes and the particular responsibility of industrialised countries.
5. **Solidarity system for old ships:** In order to also cover ships which will be sent for recycling soon and might be difficult to integrate otherwise, the financial mechanism needs to include **a solidarity system to set up a transitional fund or any other model to include old ships**. To make the mechanism efficient immediately, it therefore needs to collect additional charges from all shipowners participating in the scheme. Funds which are not used because owners did not choose proper recycling can be used for the transitional fund or the recycling of abandoned ships.
6. **Enforcement:** The mechanism must be set up in a way that allows for proper enforcement and monitoring. If private entities such as insurance companies or banks are involved in the mechanism, these must be provided with an **accreditation by the EU** to provide services for the mechanism. The monitoring of these entities and of the guarantees they issue must be located in the same unit that certifies and monitors the ship recycling facilities on the EU list. **Adequate resources** must be allocated by the EU in order to enforce the mechanism properly.

Even with the scheme in place, reflagging of European ships might still be possible. Therefore, other means should be explored to further discourage it. However, the financial instrument will create a strong economic incentive to prevent reflagging as the costs for proper end-of-life management have been pre-paid.

VI. Green Ship Design and Building

While the Hong Kong Convention mentions the Substitution Principle in its preamble, nothing is included in the text to implement it. The Substitution Principle, wherein a constant review of hazardous materials is required of owners and manufacturers and safer alternatives are examined and deployed as they become available, should likewise be instituted and put in place by ship manufacturers, owners and importers of ships. Linkage between the Ship Recycling Regulation hazardous materials inventories and the REACH Regulation (EC) 1907/2006 should be institutionalised, and a replication of the model used in the ROHS directive (Restrictions on the use of Hazardous Substances) must be required in Article 4 to ensure application of the substitution principle for the shipping sector.

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