



NGO SHIPBREAKING PLATFORM

A PRINCIPLED & PRACTICAL APPROACH

Making sure the EU SHIP RECYCLING REGULATION will be a driver for change

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The NGO Shipbreaking Platform has actively contributed to the legislative process which in June 2013 ended with an agreed text for a new EU Regulation on Ship Recycling. The new Regulation will demand the use of Inventories of Hazardous Materials for ships and has made clear that the beaching method is considered neither safe nor environmentally sound. It also only allows ships registered under the flag of an EU Member State to be dismantled in listed facilities that meet the requirements set out in the Regulation. However, to ensure that the Regulation has a positive impact on improving ship recycling practices globally, the EU needs to make sure that the listed facilities are properly audited and certified to guarantee Environmentally Sound Management (ESM) of hazardous wastes, and that ship owners do not simply flag out to a non-EU flag prior to selling the vessel for dismantling in an attempt to circumvent EU law.

In 2012, three quarters of European owned vessels broken on the beaches of South Asia were registered under non-EU flags such as Panama, Liberia and Bahamas. With the new Regulation being a further incentive to flag out, the amount of vessels still registered under a flag of an EU Member State at end-of-life is likely to decline even further to a disillusioning number of ships, rendering the impact of the Regulation non-existent for the purpose of improving ship recycling practices.

The EU must therefore aim at affecting a much larger share of the shipping industry without discriminating its own fleet and include lessons learnt on waste policy such as the need for economic incentives and independent controls using a set of clearly defined standards. With focus on the text and the scope of action that lies within the new Regulation, the NGO Shipbreaking Platform recommends the following to make sure the Regulation will effectively provide the “radical change” in current shipbreaking practices promised by former Environment Commissioner Stavros DIMAS and called for by the European Parliament:

- The EU needs to establish a financial incentive to ensure compliance with the Regulation and the principle of “polluter pays”. Without an economic incentive circumvention of European law covering end-of-life vessels will persist and the European shipping industry will continue to be at the heart of scandals involving severe pollution of coastal zones and exploitation of vulnerable workers in developing countries.
- The EU needs to revise the Environmental Crimes Directive (2008/99/EC) to include violations of the Ship Recycling Regulation. Without such revision, it will lack equivalence of provisions related to infringements of the Waste Shipment Regulation (1013/2006).
- The EU needs to issue technical guidelines for ship recycling facilities, including guidelines for a robust mandatory certification and auditing scheme. Without an auditing scheme and guidance it will be impossible for the Commission to ensure that the recycling facilities included on the EU List indeed operate in an safe and environmentally sound manner.

BACKGROUND

The new EU Regulation on ship recycling transposes the requirements of the IMO Hong Kong Convention to European law – and with that removes ships from the scope of the European Waste Shipment Regulation (EC) 1013/2006. This legalises the export of toxic European ships to developing countries - an act that deliberately ignores the recent decision BC-10/17 of the Parties to the Basel Convention that maintained Basel competency over end-of-life ships. It also ignores that the Basel Convention allows no reservations. The EU will inevitably be forced to address these legal dilemmas¹, and all EU Member States, which are also independent Basel Parties, will likewise have to reconcile the possible illegality of unilaterally acting in non-compliance with the Basel Convention.

Keeping the above concern in mind and focusing on the text of the new Ship Recycling Regulation, there are several elements that could contribute to ensuring a more robust legislative framework that are left open for further development – such as a financial mechanism (article 29a); amendment of the Environmental Crimes Directive (art 30); and the elaboration of technical guidelines for certification of ship recycling facilities outside the EU (art 15).



IN SHORT - THE NEW SHIP RECYCLING REGULATION

- Covers commercially owned vessels above 500 GT
- Establishes a list of ship recycling facilities
- Only allows EU flagged vessels to use EU listed facilities
- Disqualifies the beaching method from being listed
- Requires an IHM from all vessels visiting European ports
- Invites EC to propose a financial mechanism
- Application earliest in 2016 / latest in 2019

At end-of-life, the scope of the new Regulation is limited to EU flagged vessels only – this represents less than 10% of the world fleet². Unscrupulous ship owners have long used Flags of Convenience (FOCs) to evade tax rules, licence regulations, safety standards and social requirements for the treatment of crew. Similarly, end-of-life vessels can re-flag several times before reaching the dismantling yard, a practice known as "flag hopping", with the aim of avoiding stricter rules on ship recycling. Backed by shell companies, joint-ventures and hidden owners, FOCs are considerable constraints to combating illegal toxic waste dumping as they make it extremely difficult to locate and penalise the real owners of FOC vessels. The majority of end-of-life vessels already fly FOCs when arriving at the South Asian shipbreaking yards. In 2012, three quarters of European owned vessels broken on the beaches of South Asia were registered under non-EU flags such as Panama, Liberia and Bahamas: out of the 380 European-owned ships that were broken on a South Asian beach, less than 100 used the flag of an EU Member State¹. With the new Regulation being a further incentive to flag out, vessels still registered under a flag of an EU Member State at end-of-life is likely to decline even further to a disillusioning number of ships, rendering the impact of the Ship Recycling Regulation non-existent for the purpose of improving ship recycling practices and even negative with regards to EU policies aimed at strengthening the EU fleet.

¹ Three independent legal assessments find legal problems with the ship recycling Regulation – in addition to the European Council's own legal service, the following reports outline reasons for illegality: Ludwig KRÄMER *The Commission Proposal for a Regulation on ship recycling, the Basel Convention and the protection of the environment* 2012; and CIEL *Legality of the EU Commission proposal on ship recycling* 2012.

² Impact Assessment accompanying the EC's legislative proposal on ship recycling.

A FINANCIAL INCENTIVE

Without a strong incentive to ensure proper enforcement, the EU Regulation in effect *rids* the EU with its responsibility – and opportunity – to provide solutions to the ship breaking crisis. Whilst not addressing the pressing issue of a boom in number of vessels to be broken by 2015 as most of the measures will only be applicable at the earliest in 2017³, the Regulation should aim at setting ambitious aims in the long term that could effectively alter current practices. To achieve the “radical change” the Commission has declared a political priority an economic incentive that ensures that the polluter pays needs to be included in the new Regulation. A mandatory financial mechanism that ensures the internalisation of costs based on an individual ship owner scheme; discourages reflagging prior to dismantling; and promotes green design and pre-cleaning during the operational life of a ship will significantly increase the chances for successful implementation of the new Regulation.

In the Regulation, the Commission is invited to report on the possibilities for a financial incentive, accompanied if appropriate by a legislative proposal (article 29a). Recital 3a further states:

In the interest of protecting human health and the environment and having regard to the "polluter pays" principle, the Commission should assess the feasibility of establishing a financial mechanism applicable to all ships calling at Union ports and anchorages, irrespective of the flag they are flying, to generate resources that would facilitate the environmentally sound recycling of ships without creating an incentive to out-flag.

As mentioned, the Regulation only applies to a very small percentage of the world’s end-of-life fleet and that owned by shipping companies domiciled in Europe. At end-of-life less than 10% of vessels are sailing under a EU flag compared to more than 40% being owned and controlled by European companies.⁴ Selling a vessel and/or changing its flag prior to dismantling is further common practice and will allow easy circumvention of the new Regulation. The Ship Recycling Regulation should therefore be amended to include a financial mechanism where all ships calling at European ports must provide input to a ship recycling fund or bond; give evidence of a dedicated recycling savings account; or hold a compulsory insurance⁵. By involving all ships that use EU ports or enter EU waters – regardless of flag – in a mandatory financial scheme, the playing field will be levelled globally as most large commercial vessels – regardless of flag – travel to the EU during their operational lives. The incentive encourages compliance with the Regulation without discriminating the EU-flagged fleet, thus eliminating any fears (or threats) of massive flagging out because stricter rules are proposed.

A financial instrument that further creates a compensating financial incentive not to reflag will ensure that the polluter indeed pays as the costs of clean scrapping can be recovered. Redistribution of the collected funds would then be made conditional to safe and environmentally sound recycling and would close the financial gap between substandard and safe and green recycling facilities.

³ Vessels sailing under the flag of an EU Member State and which are destined for dismantling are required to hold an IHM upon the publication of the EU List – however it is up to the discretion of Member States to enforce the rules laid down in the Regulation prior to general application which is not expected before 2019 (5 years after entry-into-force) due to the exclusion of new facilities in the calculation of capacity (art 31a).

⁴ Figures according to the European Community of Shipowners' Associations (ECSA).

⁵ Examples of models for such a financial incentive can be found in the following reports: Milieu/COWI (2009): *Study in relation to options for new initiatives regarding dismantling of ships. Note on the ship dismantling fund. Pros and cons of the three options.* http://ec.europa.eu/environment/waste/ships/pdf/fund_note.pdf
ProFundo (2013): *Financial mechanisms to ensure responsible ship recycling* http://www.shipbreakingplatform.org/shipbrea_wp2011/wp-content/uploads/2013/01/Financial-mechanisms-for-responsible-ship-recycling-22_01_2013-FINAL.pdf

>>> **RECOMMENDATION 1:** introduce a funding system based on the polluter pays principle applicable to all ships upon entry into European ports and waters. The requested fee, bond, insurance or savings amount should further be differentiated allowing cleaner vessels free of certain hazardous materials to benefit from reduced charges. Such a differentiated charging system should be supplemented by a system giving financial support to using safe and environmentally sound ship recycling facilities and to the pre-cleaning of ships during their operational life.

>>> **RECOMMENDATION 2:** in addition to a mandatory financial mechanism EU grants and loans to the shipping industry should be streamlined with a link to proper ship dismantling. In the Commission's 'Guidelines to State Aid to Ship Owning Companies', the Commission attaches as series of strings to the eligibility of Member States to grant exemptions from general tax rules to shipping companies. These include the recruitment of European seafarers, adherence to international safety standards and an increase in registration of vessels under European flags. Each Member State is required to notify the Commission on a regular basis – proving that these policy goals are met. If not, the whole tonnage tax regime can fall. Safe and environmentally sound ship recycling should be included as a prerequisite for allowing Member States to grant state aid to ship owners. Environmentally sound and safe ship recycling could also be made an explicit condition for European Investment Bank loans.



SANCTIONS

Whilst the new Regulation legalises traffic in hazardous waste to developing countries that would never be allowed for any other industry - and thus makes it perfectly legal to export a toxic ship whilst it will remain a criminal act to export an old computer - there is no reason why ships should be exempted from internationally accepted penalty schemes that aim at ensuring environmentally sound management of hazardous wastes. The sanctions imposed to breaches of the new Regulation are currently limited to a civil or administrative nature and thus much less stringent than those under the Waste Shipment Regulation. Illegal traffic is under the latter is considered a criminal act.

In the Ship Recycling Regulation the Commission is asked to assess bringing infringements of the Regulation under the scope of the Environmental Crimes Directive (article 30).

>>> **RECOMMENDATION 3:** amend the Environmental Crimes Directive to include as a minimum infringements of the Ship Recycling Regulation related to using non-EU listed facilities and false declarations on hazardous materials on board a ship.

CLEAR STANDARDS & A ROBUST CERTIFICATION AND AUDITING SCHEME

The mechanisms and requirements for inclusion on the EU List of ship recycling facilities needs clarification and backing by a proper auditing scheme. Means to conduct obligatory on-the-ground checks of the conditions at ship recycling yards – especially those outside the EU – must be introduced.

The Platform has developed green standards for ship recycling facilities that include, among others, the following criteria:

1. Testing and Inventory: Under no circumstances shall a Green Ship Recycling Facility begin operations on a ship without there having been a full evaluation and testing of materials on board and the establishment of a comprehensive inventory of hazardous wastes/materials.

2. Full pollution containment/no beaching operations: Under no circumstances can a Green Ship Recycling Operation take place on tidal beaches. This is unacceptable due to the impossibility of a) providing access and platforms for mechanical lifting devices, e.g. cranes, b) providing access by emergency response vehicles, and c) preventing oils, leaked residues, and particulate matter from falling into marine environment in a retrievable manner.

3. Proper Asbestos Remediation and Disposal: All forms of asbestos removed from vessels by a Green Ship Recycling Facility will be removed, isolated and managed as hazardous wastes under the conditions and in downstream disposal facilities as outlined by relevant national law and guidelines. The facility must dispose of special asbestos removal unit in order to ensure that no asbestos fibres are released to the surrounding environment. Under no circumstances can asbestos in any form be allowed to be directed toward reuse or recycling operations or destinations, but must be disposed of in a secure landfill designed for asbestos without possibility of airborne or other releases.

4. Proper PCBs Remediation and Destruction: PCBs found in both liquid and solid matrices in any on board materials found in concentrations greater than 50ppm, will be removed and isolated and managed as hazardous waste under the conditions and in facilities as described in the relevant guidelines. The removed PCBs will be subject to destruction technologies that destroy the PCB molecule with a total Destruction Efficiency (DE) of 99.9999%. Under no circumstances can PCBs be allowed to be directed toward reuse or recycling operations or destinations.

5. Environmental Monitoring: environmental monitoring must be conducted at least once a year. This will include soil sampling, air sampling, and workplace dust sampling for heavy metals, asbestos and PCBs. If problems are discovered, all efforts will be made to abate the problem and address the occupational health concern as a matter of urgency. All such information should be available to workers, trade unions, and officials at any time.

6. Health Monitoring: All workers should have obligatory health checks at least once a year including blood sample. All occupational diseases have to be recorded. Moreover, the facility documents all accidents, injuries and casualties and makes this documentation accessible.

7. Worker's Rights: All workers employed at a Green Ship Recycling Facility shall have the right to assemble, form trade unions, bargain collectively with their employer, have access to medical and occupational health personnel as requested and shall be able to request and conduct such rights and business without fear of retribution or other prejudice.

**IMPORTANT QUESTIONS THAT NEED TO BE
ADRESSED WHEN DEALING WITH WASTE
EXPORTS TO DEVELOPING COUNTRIES:**

What guarantees are possible that enforcement and monitoring of the technology and compliance with national laws will be assured? What guarantees are possible so that workers have the right to assemble, to bargain collectively for better conditions, and have access to occupational health clinics? What guarantees are there that the tort law is such that victims of occupational disease or injury can be adequately compensated? What assurances are there that the emergency response and medical infrastructure in a community can come to the aid of workers? What guarantees are there that downstream waste management infrastructure and hazardous waste legislation is adequate to prevent further contamination and exposure to workers from toxic paints, asbestos, PCBs etc.?

8. Personal Protective Equipment: Green Ship Recycling Facility owners must provide appropriate gloves, boots, uniforms, respirators, hard hats, and other protective equipment at the employer's expense to all workers and proper use of such equipment shall be enforced in accordance with the aforementioned guidelines.

9. Fire Fighting Equipment: Green Ship Recycling Facilities must have their own fire fighting capacity to put out all types of fires on the ships and on the premises. Emergency response vehicles capable of moving along roads and highways at high speed must be able to approach within 25 meters of at least one side of a ship without delay on hard standing for heavy vehicles.

10. Onsite / Offsite Medical and Emergency Facilities: Green Ship Recycling Facilities must possess emergency eye-wash, showers, and first aid equipment, and at all times of operation persons trained in such First Aid operations and equipment must be on site and when work on ships is taking place, located on the ship. Hospitals capable of managing severe injury must be located within 30 kilometres of a Green Ship Recycling Facility with a means of rapid transport always available.

11. Lifting Equipment: A Green Ship Recycling Facility must have ship-side cranes and lifting equipment to minimize injury and accidents to workers. Under no circumstances should objects weighing more than 40 kilograms be lifted by hand and workers should never be denied use of mechanical lifting equipment when it is desired.

12. Training and Communications: Interactive safety and health training prior to full employment and a regular on-going interactive OSH training program must be carried out. Training must be consistent with and cover main issues found in the relevant guidelines including management of toxic materials and emergency response. Safety information must be made available by posting or other means in the workplace. All training and workplace postings must be made available in languages or other means to ensure understanding by the workers involved.

13. Transparency: The yard should permit third party and independent audits.

>>> RECOMMENDATION 4: technical guidelines for ship recycling facilities should be issued and include standards that are equivalent to EU policies and rules on hazardous waste management.

>>> RECOMMENDATION 5: technical guidelines for certification of non-EU ship recycling facilities and the procedure for these facilities to seek inclusion on the EU List should be issued and made transparent.

>>> RECOMMENDATION 6: mandatory on-the-ground audits of ship recycling facilities on the EU List should be ensured by independent third parties.

The NGO Shipbreaking Platform is a global coalition of environmental, human rights and labour organisations that works for the safe and environmentally sound recycling and disposal of end-of-life vessels. www.shipbreakingplatform.org

ⁱ Figures based on the NGO Shipbreaking Platform's own research tracking end-of-life vessels.