



Dear Minister,

Subject: 25th October, European Council, orientation debate on the Commission Proposal on ship recycling - COM (2012) 118

On behalf of the NGO Shipbreaking Platform,¹ an umbrella organisation representing 18 global environmental, human and labour rights organisations working together to prevent the damage to human health and the environment from shipbreaking operations around the world, I am writing to bring to your attention loopholes and legal contradictions included in the Commission Proposal on ship recycling.

The Commission Proposal seeks to have most end-of-life ships (the ones covered under the Hong Kong Convention²) removed from the Waste Shipment Regulation thereby effectively unilaterally removing ships from Basel Convention³ treaty application in Europe.

The Proposal makes explicit reference to the need for Member States to ratify the Hong Kong Convention and it is clear that the Commission wishes only the Hong Kong Convention apply to ships and not the Basel Convention. The International Maritime Organization's Hong Kong has yet to enter into force and is not expected to for another 8-10 years. But even when the Hong Kong Convention enters into force in the future, and all 27 Member States agree to ratify it, it will still not be legally possible for the European Union to unilaterally derogate from the Basel Convention by refusing to apply its rules to ships. The Basel Convention allows no exceptions or reservations to its definitions, provisions and obligations (Basel Art. 26). And because the Hong Kong Convention is not largely duplicative of the Basel Convention, and both provide separate layers of environmental protection and rights to Member States, it is not necessary to embark on the illegal exercise of removing ships from Basel application.

Each year, approximately 800 ocean ships reach the end of their service life and are broken down to recover primarily steel. Yet, only a fraction is handled in a safe, sustainable manner. About 70% of all ships are simply run ashore on tidal beaches in developing countries such as Bangladesh, India and Pakistan, often ignoring the Basel Convention obligations, where unscrupulous companies exploit minimal enforcement of environmental and safety rules to maximize profits.

¹ <http://www.shipbreakingplatform.org/members-organisations>

² Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009

³ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste

The European Commission estimates that 40,000 to 1,3 million tones of toxic substances onboard vessels (including asbestos, PCBs, and heavy metals) are exported each year to South Asia from the EU alone. Toxic waste sickens the workers and ravages the coastal ecosystems. In Bangladesh, children under 15 years of age count for 20% of the workforce.

Under the Basel Convention, and therefore under EU Regulation EC 1013/2006 on the shipment of waste which operationalizes the Convention, end-of life ships which contain hazardous materials are in fact hazardous wastes. Under the Basel Convention such wastes cannot be exported without strict controls. And under the Basel Ban Amendment (adopted in 1995 by the Parties to the Basel Convention and ratified by the EU in 1997), such exports to developing countries (countries other than members of the OECD, EU and Liechtenstein) are prohibited.

Ever since its adoption in 1989, the EU has been a champion of the Basel Convention. Since 1994 the EU has been a champion of the Basel ban on the export of hazardous waste to developing countries. At COP 7 (2004), once again, it was the EU that pushed the decision asserting that a ship could be a ship and a waste at the same time and that if containing hazardous material, a waste ship would be under the control of the Basel Convention (Decision VII/26). The EU has ratified both the Basel Convention and the Basel Ban Amendment and rightly so.

But now, what the European Commission is proposing is to unilaterally remove end-of-life ships from the EU's Basel Convention implementation law: the Waste Shipment Regulation EC 1013/2006. This proposal is not legally possible as the Basel Convention has not first removed ships from its definitions of hazardous waste. It does not yet appear that the Commission understands the gravity of this illegal act.

It is of course possible for the European Union to withdraw from the Ban Amendment and Basel Convention in its entirety. But before embarking on that notion, it is important to examine the rationale for removing ships from the Waste Shipment Regulation. The main claimed reasons for this are that there is not enough environmentally sound ship recycling capacity in the OECD, and that enforcement of the Waste Shipment Regulation on ships is too "difficult".

These rationales are faulty and must be rejected. Firstly, the Commission conveniently ignores the massive and sufficient capacity for green recycling in Europe, Mexico, Turkey, Canada and the U.S. Secondly, both regimes (Basel Convention and Hong Kong Convention) can operate simultaneously and will have to do so in any event, due to the fact that Hong Kong does not, for example, cover government-owned ships. Further, while there are known loopholes wherein shipowners can circumvent Basel rules, these loopholes can be closed with further effort. And in the meantime, application of the regime/s that are clearly applicable is necessary and appropriate.

We urge you not to support the Commission's Proposal in its present form but rather to ensure that it is amended to remain in conformity with the binding legal provisions of the Basel Convention.

Yours sincerely,

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

Patrizia Heidegger
Executive Director

NGO Shipbreaking Platform
Rue de la Linière 11
1060 Brussels
+32 (0) 6094 419
patrizia@shipbreakingplatform.org
www.shipbreakingplatform.org