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COMPENSATION  
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## EUROPEAN COMMISSION PROPOSAL FOR A REGULATION ON THE ESTABLISHMENT OF A FUND FOR THE COMPENSATION OF OIL POLLUTION DAMAGE IN EUROPEAN WATERS AND RELATED MEASURES

### Note by the Director

**Summary:**

In December 2000, the Commission of the European Communities published a proposal for a Regulation which would set up a fund to provide supplementary compensation up to a maximum limit of 1 000 million Euros (£628 million) for oil spills in Member States of the European Union. Compensation would only be payable for claims which have been approved by the IOPC Fund. The proposed fund would be financed by contributions levied on receivers of sea-borne oil in European Union Member States. The European Parliament has proposed amendments to the text proposed by the Commission.

**Action to be taken:**

- a) Information to be noted;
- b) Give the Director such instructions in respect of this matter as the Assembly may deem appropriate.

### **1 Introduction**

- 1.1 At its 5th extraordinary session, held in January 2001, the Assembly was informed of a proposal by the Commission of the European Communities (the European Commission) published in December 2000 for a Regulation on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures (document 92FUND/A/ES.5/2).

- 1.2 The Assembly instructed the Director to continue to provide information on any developments within the European Union relating to the proposed Regulation, whenever appropriate. He was also instructed to provide factual information to the bodies of the European Union on the international compensation regime so as to enable those bodies to ensure that any measures taken within the Union would not be detrimental to the global compensation system (document 92FUND/A/ES.5/5, paragraph 3.1.3).

## **2 The Regulation proposed by the Commission of the European Communities**

- 2.1 The Regulation proposed by the Commission would set up a fund (the COPE Fund) to provide supplementary compensation for oil spills in Member States of the European Union. The amount of compensation available would be 1 000 million Euros (£625 million), including the amount payable under the 1992 Civil Liability Convention and the 1992 Fund Convention, ie 135 million SDR (£119 million or 190 million Euros). The COPE Fund would be based on the same principles and rules as the current IOPC Fund system.
- 2.2 The COPE Fund would only be activated when a spill occurs in European Union waters and the costs of the pollution damage exceeded, or threatened to exceed, the maximum limit of the IOPC Fund. Victims of an oil spill would receive full compensation as soon as their claims had been approved by the IOPC Funds, so that the problems and delays associated with pro-rating of claims would be avoided. At the end of the case, once the total costs were known, there would be a bilateral financial settlement between the IOPC Fund and the COPE Fund.
- 2.3 The COPE Fund would be financed by European oil receivers according to procedures similar to those for contributions to the IOPC Fund.
- 2.4 The Commission of the European Communities would represent the COPE Fund. Any major decision relating to the operation of the COPE Fund would be taken by the Commission, assisted by a COPE Fund Committee.
- 2.5 The Regulation proposed by the Commission is reproduced at Annex I to the present document. The proposal was accompanied by an Explanatory Memorandum which was reproduced at Annex I to document 92FUND/A/ES.5/2.

## **3 Considerations within the European Council**

- 3.1 In April 2001, the European Council held a policy debate on the Commission's legislative proposal made in the aftermath of the *Erika* incident, including the proposal for establishment of the COPE Fund. The Council asked the Ministers if it was appropriate to raise the compensation limits of the international liability and compensation regime either within the IOPC Fund regime using a common approach of the European Union Member States or by complementing the international system with a top-up European Union fund, possibly as a provisional measure pending adaptation of the existing IOPC Fund regime. The European Council recognised that efforts must be made to improve maritime safety with the aim of preserving life at sea and of protecting the marine environment. It invited the Permanent Representatives Committee to pursue the work at the widest level without excluding solutions at the regional level, including the definition of common approaches on the issues to be dealt with at the level of the IMO and the reinforcement of European Union co-ordination in this framework.
- 3.2 At a meeting held on 27 June 2001, the European Council referred to the Commission's proposal to create a European Union complementary compensation fund and the need to ensure a proper and, as far as possible, global regime for liability and compensation in cases of oil pollution damage. Having considered that the best way to achieve this objective was to seek an international solution in the framework of the IMO, the European Council reached agreement on a common approach concerning the position to be taken by the delegations of the European Union

Member States and the representatives of the Commission in the IMO negotiations on a supplementary compensation fund for oil pollution damage.

**4 Amendments proposed by the European Parliament**

4.1 The proposed Regulation was considered by the European Parliament which adopted its first reading opinion on 14 June 2001. The Parliament proposed a number of amendments to the Regulation.

4.2 The European Parliament thus proposed that the COPE Fund should cover not only oil pollution damage but also damage caused by hazardous and noxious substances. The effect of the Parliament's proposal on this point would be that the COPE Fund would complement not only the 1992 Civil Liability Convention and the 1992 Fund Convention but also the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunker Convention) and the International Convention on Civil Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention).

4.3 The COPE Fund would under the Parliament's proposal also pay compensation for damage caused to the environment when environmental costs are not covered by the international regime. These environmental costs would be costs for assessing environmental damage and, if the environmental damage cannot be fully repaired, the costs of returning the environment to a state equivalent to that prior to the incident.

4.4 Under the Parliament's proposal the COPE Fund would be established in addition to the existing IOPC Fund and consist of two parts:

Part 1 would establish higher limits of compensation to be paid by the shipowners where the cost of pollution damage exceeded or threatened to exceed the aggregate compensation limits under the existing Civil Liability Convention and Fund Convention.

Part 2 would establish a supplementary fund to be paid for by cargo receivers where the cost of pollution damage exceeded or threatened to exceed the aggregate compensation limits under the existing IOPC Fund as supplemented by the shipowner's contribution under Part 1 of the COPE Fund or the HNS Convention once ratified.

4.5 Contributions to the COPE Fund would under the Parliament's proposal be paid by any person who received contributing oil or hazardous and noxious substances in total annual quantities exceeding 150 000 tonnes carried by sea to ports or terminal installations in a European Union Member State and was liable to contribute to the IOPC Funds.

4.6 The owner of a tanker responsible for marine pollution would under the Parliament's proposal contribute to the compensation of the victims on the same basis as cargo receivers.

4.7 The Parliament has proposed that the European Commission should in co-operation with IMO establish clear administrative rules for co-operation between the management of the COPE Fund and the management of the IOPC Fund, in accordance with the principles of transparency, efficiency and cost-effectiveness.

4.8 Under the Parliament's proposal the European Commission should submit a report no later than June 2003 on efforts to improve the international liability and compensation regime at the level of IMO and, in particular, should assess progress in:

- (a) significantly increasing the liability of the shipowner under the Civil Liability Convention;
- (b) increasing compensation under the Fund Convention;

- (c) extending the Civil Liability Convention to all other players involved in the transport of oil or hazardous and noxious substances at sea, and in particular to charterers, managers and operators;
- (d) widening compensation for environmental damage in the light of comparable compensation regimes established under Community law.

4.9 The Parliament has proposed to include in the Regulation a provision to the effect that, if the Commission were to consider that significant progress had been achieved in respect of the issues set out in paragraph 4.8 above, it shall propose to the European Parliament and the European Council that the provisions of the Regulation should be adapted to the revised international regime. The Parliament has further proposed that, if the Commission were to conclude that no substantial improvements had been achieved on these points, it should submit to the European Parliament and the European Council a proposal for Community legislation establishing a Europe-wide maritime pollution liability and compensation regime.

4.10 The Parliament's amendment proposals are reproduced at Annex II to this document.

## **5 Future work within the European Union**

The European Commission is preparing an amended proposal taking into account the views of the European Parliament. It is likely that the Commission's revised proposed Regulation will be submitted to the European Parliament for a second reading.

## **6 Action to be taken by the Assembly**

The Assembly is invited:

- a) to take note of the information contained in this document; and
- b) to give the Director such instructions in respect of this matter as it may deem appropriate.

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**ANNEX I**

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 80(2) and 175(1) thereof,

Having regard to the proposal from the Commission<sup>18</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>19</sup>,

Having regard to the opinion of the Committee of the Regions<sup>20</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>21</sup>,

Whereas:

- (1) There is a need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from tankers in European waters.
- (2) The international regime for liability and compensation of oil pollution damage from ships, as established by the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 as amended by the 1992 Protocol thereto, provide some important guarantees in this respect.
- (3) The maximum compensation afforded by the international regime is deemed insufficient to fully cover the costs of foreseeable oil tanker incidents in Europe.
- (4) A first step to improve the protection of victims in case of an oil spill in Europe is to considerably raise the maximum amount of compensation available for such spills. This can be done by complementing the international regime through the establishment of a European Fund which compensates claimants who have been unable to obtain full compensation under the international compensation regime, because the totality of valid claims exceed the amount of compensation available under the Fund Convention.

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<sup>18</sup> OJ C , , p. .

<sup>19</sup> OJ C , , p. .

<sup>20</sup> OJ C , , p. .

<sup>21</sup> OJ C , , p. .

- (5) A European oil pollution compensation fund needs to be based on the same rules, principles and procedures as those of the IOPC Fund in order to avoid uncertainty for victims seeking compensation and in order to avoid ineffectiveness or duplication of work carried out within the IOPC Fund.
- (6) In view of the principle that the polluter should pay, the costs of oil spills should be borne by the industry involved in the carriage of oil by sea.
- (7) Harmonised Community measures to provide additional compensation for European oil spills will share the costs of such oil spills between all coastal Member States.
- (8) A Community-wide compensation Fund (COPE Fund) which builds upon the existing international regime is the most efficient way to attain these objectives.
- (9) The COPE Fund shall have the possibility to reclaim its expenses from parties involved in the oil pollution incidents, to the extent that this is permissible under international law.
- (10) Since the measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>22</sup>, they should be adopted by use of the management procedure provided for under Article 4 of that Decision.
- (11) Since the adequate compensation of victims of oil spills does not necessarily provide sufficient disincentives for individual operators in the seaborne oil trade to act diligently, a separate provision is needed providing for financial penalties to be imposed on any person who has contributed to an incident by his wrongful intentional or grossly negligent acts or omissions.
- (12) A Regulation of the European Parliament and the Council is, in view of the subsidiarity principle, the most appropriate legal instrument as it is binding in its entirety and directly applicable in all Member States and therefore minimises the risk of divergent application of this instrument in Member States.
- (13) A revision of the existing international oil pollution liability and compensation regime should be undertaken in parallel to the measures contained in this Regulation in order to achieve a closer link between the responsibilities and actions of the players involved in the transport of oil by sea and their exposure to liability. More particularly, the liability of the shipowner should be unlimited if it is proved that the pollution damage resulted from gross negligence on his part, the liability regime should not explicitly protect a number of other key players involved in the transport of oil at sea and the compensation of damage caused to the environment as such should be reviewed and widened in light of comparable compensation regimes established under Community law.

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<sup>22</sup> OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS REGULATION:

*Article 1*  
**Objective**

The purpose of this regulation is to ensure adequate compensation of pollution damage in EU waters resulting from the transport of oil by sea, by complementing the existing international liability and compensation regime at Community level, and to introduce a financial penalty to be imposed on any person who has been found to have contributed to an oil pollution incident by his wrongful intentional or grossly negligent acts or omissions.

*Article 2*  
**Scope**

This Regulation shall apply:

1. to pollution damage caused:
  - (a) in the territory, including the territorial sea, of a Member State, and
  - (b) in the exclusive economic zone of a Member State, established in accordance with international law, or, if a Member State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
2. to preventive measures, wherever taken, to prevent or minimize such damage.

*Article 3*  
**Definitions**

For the purpose of this Regulation, the following definitions shall apply:

1. "Liability Convention" shall mean the International Convention on Civil Liability for Oil Pollution Damage, 1992.
2. "Fund Convention" shall mean the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 as amended by the 1992 Protocol thereto.
3. "Oil" shall mean means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.
4. "Contributing Oil" shall mean crude oil and fuel oil as defined in points (a) and (b) below:
  - (a) "Crude Oil" shall mean any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed

(sometimes referred to as "topped crudes") or to which certain distillate fractions have been added (sometimes referred to as "spiked" or "reconstituted" crudes).

- (b) "Fuel Oil" shall mean heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D 396-69)", or heavier.
- 5. "Ton", in relation to oil, shall mean a metric ton.
- 6. "Terminal installation" shall mean any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.
- 7. "Incident" shall mean any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence.
- 8. "Person" shall mean any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
- 9. "IOPC Fund" shall mean the fund established by the Fund Convention.

#### *Article 4*

#### **Establishment of a Fund for Compensation for Oil Pollution in European waters**

A fund for Compensation for Oil Pollution in European waters (hereinafter 'the COPE Fund') is hereby established with the following aims:

- (a) to provide compensation for pollution damage to the extent that the protection afforded by the Liability Convention and the Fund Convention is inadequate; and
- (b) to give effect to the related tasks set out in this Regulation.

#### *Article 5*

#### **Compensation**

- 1. The COPE Fund shall pay compensation to any person who is entitled to compensation for pollution damage under the Fund Convention but who has been unable to obtain full and adequate compensation under that Convention, because the totality of valid claims exceed the amount of compensation available under the Fund Convention.
- 2. The assessment as to whether a person is entitled to compensation under the Fund Convention shall be determined under the terms of the Fund Convention and carried out in accordance with the procedures foreseen therein.

3. No compensation shall be paid by the COPE Fund until the relevant assessment referred to in paragraph 2 is approved by the Commission, acting in accordance with Article 9 paragraph 2.
4. Notwithstanding paragraphs 1 and 2, the Commission may decide not to pay compensation to the shipowner, manager or operator of the ship involved in the incident or to their representatives. Similarly, the Commission may decide not to compensate any person in a contractual relationship with the carrier in respect of the carriage during which the incident occurred or any other person directly or indirectly involved in that carriage. The Commission, acting in accordance with Article 9 paragraph 2, shall establish which claimants, if any, fall under these categories and shall decide accordingly.
5. The aggregate amount of compensation payable by the COPE Fund shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention and the Fund Convention for pollution damage within the scope of application of this regulation shall not exceed EUR 1,000 million.
6. Where the amount of established claims exceeds the aggregate amount of compensation payable under paragraph 5, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this regulation shall be the same for all claimants.

#### *Article 6*

#### **Contributions by oil receivers**

1. Any person who receives contributing oil in total annual quantities exceeding 150,000 tons carried by sea to ports or terminal installations in the territory of a Member State and is liable to contribute to the IOPC Fund shall be liable to contribute to the COPE Fund.
2. Contributions shall only be collected following an incident falling under the scope of this regulation which exceeds or threatens to exceed the maximum compensation limits of the IOPC Fund. The total amount of contributions to be levied for each such incident shall be decided by the Commission in accordance with Article 9, paragraph 2. On the basis of that decision, the Commission shall calculate for each person referred to in paragraph 1 the amount of his contribution, on the basis of a fixed sum for each ton of contributing oil received by such persons.
3. The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Member States in the relevant year.
4. Member States shall ensure that any person who receives contributing oil within its territory in such quantities that he is liable to contribute to the COPE Fund appears on a list to be established and kept up to date by the Commission in accordance with the subsequent provisions of this article.
5. Each Member State shall communicate to the Commission the name and address of any person who in respect of that State is liable to contribute to the COPE Fund

pursuant to this article, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year.

6. For the purposes of ascertaining who are, at any given time, the persons liable to contribute to the COPE Fund and of establishing, where applicable, the quantities of oil to be taken into account for any such person when determining the amount of his contribution, the list shall be prima facie evidence of the facts stated therein.
7. The contributions shall be made to the Commission and the collection shall be fully completed no later than one year after the decision to levy the contributions has been made by the Commission.
8. The contributions referred to in this article shall be used solely for the purpose of compensating pollution damage as referred to in Article 5.
9. Any potential surplus of contributions which have been levied for a particular incident and have not been used for the compensation for damage in relation to that incident or any immediately related purpose, shall be returned to the person who made the contribution, no later than 6 months after the completion of the compensation proceedings of that incident.
10. Where a Member State does not fulfil its obligations relating to the COPE Fund and this results in a financial loss for the COPE Fund, that Member State shall be liable to compensate the COPE Fund for such loss.

#### *Article 7*

#### **Subrogation**

The COPE Fund shall, in respect of any amount of compensation paid by it in accordance with Article 5, acquire by subrogation the rights that the person so compensated may enjoy under the Liability Convention or the Fund Convention.

#### *Article 8*

#### **Representation and management of the COPE Fund**

1. The Commission shall be the representative of the COPE Fund. In this respect, it shall perform the tasks presented by this Regulation or otherwise necessary for the proper operation and functioning of the COPE Fund.
2. The following decisions relating to the operation of the COPE Fund shall be made by the Commission, acting in accordance with the procedure in Article 9 paragraph 2:
  - a. fixing the contributions to be levied in accordance with Article 6;
  - b. approving the settlement of claims in accordance with Article 5.3 and taking decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article 5.6;
  - c. taking decisions in respect of payment to claimants referred to in Article 5.4; and

- d. determining the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims are compensated as promptly as possible.

*Article 9*  
**Committee**

1. The Commission shall be assisted by a COPE Fund Committee composed of representatives of the Member States and chaired by the representative of the Commission.
2. Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Articles 7 and 8 thereof.

The period provided for in Article 4 paragraph 3 shall be one month.

*Article 10*  
**Penalties**

1. Member States shall lay down a system for financial penalties to be imposed on any person who has been found by a court of law to have contributed by his wrongful intentional or grossly negligent acts or omissions to an incident causing or threatening to cause oil pollution in an area referred to in Article 2, paragraph 1.
2. The penalties awarded in accordance with paragraph 1 shall not affect the civil liabilities of the parties concerned as referred to in this Regulation or elsewhere and shall be unrelated to the damage caused by the incident. They shall be set at a level high enough to dissuade the person from committing or persisting in an infringement.
3. Penalties referred to in paragraph 1 shall not be insurable.
4. There shall be a right for the defendant to appeal against penalties referred to in paragraph 1.

*Article 11*  
**Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*. It shall be applicable on [12 months after its entry into force date].

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*

## ANNEX II

## 6. Fund for compensation of oil pollution damage \*\*\*I

A5-0201/2001

**Proposal for a European Parliament and Council regulation on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures (COM(2000) 802 - C5-0701/2000 - 2000/0326(COD))**

The proposal was amended as follows:

Text proposed by the Commission <sup>1</sup>

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Amendments by Parliament

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### Amendment 1

#### Title

on the establishment of a fund for the compensation of *oil* pollution damage in European waters and related measures

on the establishment of a fund for the compensation of pollution damage in European waters *caused by oil or hazardous and noxious substances* and related measures

### Amendment 2

#### Recital 1

(1) There is a need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil *from tankers* in European waters.

(1) There is a need to ensure that *the fullest and most* adequate compensation *possible* is available to persons who, *directly or indirectly*, suffer damage caused by pollution resulting from the escape or discharge of oil *or hazardous and noxious substances* in European waters.

### Amendment 3

#### Recital 2

(2) The international regime for liability and compensation of oil pollution damage from ships, as established by the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the

(2) The international regime for liability and compensation of oil pollution damage from ships, as established by the International Convention on Civil Liability for Oil Pollution Damage, 1992 (*CLC*) and the International Convention on the

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<sup>1</sup> OJ C 120 E, 24.4.2001, p. 79.

Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 as amended by the 1992 Protocol thereto, provide some important guarantees in this respect.

Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (*IOPC*) as amended by the 1992 Protocol thereto, provide some important guarantees in this respect *but serious deficiencies exist. In addition, the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 and the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by sea, 1996 have not entered into force because they have not been ratified.*

Amendment 4  
Recital 3

(3) The maximum compensation afforded by the international regime is deemed insufficient to fully cover the costs of foreseeable *oil tanker* incidents in Europe.

(3) The maximum compensation afforded by the international regime is deemed insufficient to fully cover the costs of foreseeable incidents in Europe.

Amendment 5  
Recital 4

(4) A first step to improve the protection of victims in case of *an oil* spill in Europe is to *considerably* raise the maximum amount of compensation available for such spills. This *can* be done by complementing the international *regime* through the establishment of a European Fund which compensates claimants who have been unable to obtain full compensation under the international compensation regime, because the totality of valid claims exceed the amount of compensation available under the Fund Convention.

(4) A first step to improve the protection of victims in case of *a* spill in Europe *caused by oil or hazardous and noxious substances* is to raise *considerably* the maximum amount of compensation available for such spills. *Ideally* this *should* be done by complementing the *current* international *CLC/IOPC regimes* through the establishment of *an international third tier. Meanwhile, a European Fund must be established* which compensates claimants who have been unable to obtain full compensation under the international compensation regime, because the totality of valid claims exceed the amount of compensation available under the Fund Convention.

Amendment 6  
Recital 5

(5) A European *oil* pollution compensation fund needs to be based on the same rules, principles and procedures as those of the IOPC Fund in order to avoid uncertainty for victims seeking compensation and in order to avoid ineffectiveness or duplication of work carried out within the IOPC Fund.

(5) A European pollution compensation fund needs to be based on the same rules, principles and procedures as those of the IOPC Fund in order to avoid uncertainty for victims seeking compensation and in order to avoid ineffectiveness or duplication of work carried out within the IOPC Fund.

Amendment 7  
Recital 6

(6) In view of the principle that the polluter should pay, the costs of *oil* spills should be borne by the industry involved in the carriage of *oil* by sea.

(6) In view of the principle that the polluter should pay, the costs of spills *caused by oil or hazardous and noxious substances* should be borne by the industry involved in the carriage of *any of these substances* by sea. *In particular, shipowners, oil companies and receivers of hazardous and noxious substances should, in the overall compensation system, bear their share on an equitable basis.*

Amendment 8  
Recital 7

(7) Harmonised Community measures to provide additional compensation for European *oil* spills will share the costs of such *oil* spills between all *coastal* Member States.

(7) Harmonised Community measures to provide additional compensation for European spills will share the costs of such spills between all Member States.

Amendment 9  
Recital 8

(8) A Community-wide compensation Fund (COPE Fund) which builds upon the existing international regime is the most efficient way to attain these objectives.

(8) A Community-wide compensation Fund (COPE Fund) which builds upon the existing international regime is *at present* the most efficient way to attain these objectives.

Amendment 10  
Recital 13

(13) A revision of the existing *international oil pollution* liability and compensation

(13) A revision of the existing liability and compensation regime should be undertaken

regime should be undertaken in parallel to the measures contained in this Regulation in order to achieve a closer link between the responsibilities and actions of the players involved in *the transport of oil by sea* and their exposure to liability. More particularly, the liability of the shipowner should be unlimited if it is proved that the pollution damage resulted from gross negligence on his part, the liability regime should not explicitly protect a number of other key players involved in *the transport of oil at sea* and the compensation of damage caused to the environment as such should be reviewed and widened in light of comparable compensation regimes established under Community law.

in parallel to the measures contained in this Regulation in order to achieve a closer link between the responsibilities and actions of the players involved in *sea* transport and their exposure to liability. More particularly, the liability of the shipowner should be unlimited if it is proved that the pollution damage resulted from gross negligence on his part, the liability regime should not explicitly protect a number of other key players involved in *sea* transport and the compensation of damage caused to the environment as such should be reviewed and widened in light of comparable compensation regimes established under Community law; *in addition, progress must be achieved with regard to a liability and compensation regime for damage in connection with the transport of hazardous and noxious substances.*

Amendment 11  
Recital 13 a (new)

*(13a) Depending on possible developments and negotiations at the International Maritime Organisation, it may be necessary for this Regulation to be amended to ensure it is compatible with international decisions, which will be consistent with the spirit of this Regulation;*

Amendment 12  
Article 1

The purpose of this Regulation is to ensure adequate compensation of pollution damage in EU waters resulting from the transport of oil by sea, by complementing the existing international liability and compensation regime at Community level, and to introduce a financial penalty to be imposed on any person who has been found to have contributed to *an oil* pollution incident by his wrongful intentional or grossly negligent acts or omissions.

The purpose of this Regulation is to ensure adequate compensation of pollution damage in EU waters resulting from the transport of oil *or hazardous and noxious substances, excluding nuclear materials* by sea, by complementing the existing international liability and compensation regime at Community level, and to introduce a financial penalty to be imposed on any person who has been found to have contributed to *a* pollution incident by his wrongful intentional or grossly negligent

acts or omissions.

Amendment 13  
Article 3, point 2 a (new)

***2a. 'Bunker Convention' shall mean the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.***

Amendment 14  
Article 3, point 2 b (new)

***2b. 'HNS Convention' shall mean the International Convention on Liability and Compensation for damage in connection with the carriage of Hazardous and Noxious Substances by sea, 1996.***

Amendment 44  
Article 3, point 3 a (new)

***3a. 'Bunker Oil' shall mean any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.***

Amendment 15  
Article 3, point 5

5. 'Tonne', *in relation to oil*, shall mean a metric tonne.

5. 'Tonne' shall mean a metric tonne.

Amendment 16  
Article 3, point 6

6. 'Terminal installation' shall mean any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.

6. 'Terminal installation' shall mean any site for the storage of oil ***or hazardous and noxious substances*** in bulk which is capable of receiving oil ***or hazardous and noxious substances*** from waterborne transportation, including any facility situated off-shore and linked to such site.

Amendment 17

Article 4, Title

Establishment of a Fund for Compensation for ***Oil*** Pollution in European waters

Establishment of a Fund for Compensation for Pollution in European waters ***caused by oil or hazardous and noxious substances***

Amendment 18

Article 4, introductory part

A fund for Compensation for ***Oil*** Pollution in European waters (hereinafter ‘the COPE Fund’) is hereby established with the following aims:

A fund for Compensation for Pollution in European waters ***caused by oil or hazardous and noxious substances*** (hereinafter ‘the COPE Fund’) is hereby established with the following aims:

Amendment 51

Article 5, paragraph 2 a (new)

***2a. The COPE Fund shall also pay compensation for damage caused to the environment when environmental costs are not covered by the international regime. These environmental costs are the costs for assessing the environmental damage of the incident and, if the environmental damage cannot be fully repaired, the costs of returning the environment to a state equivalent to that prior to the incident;***

Amendment 20

Article 5, paragraph 6 a (new)

***6a. The COPE Fund shall provide for the possibility of making an advance provisional payment within a period of six months.***

Amendment 21

Article 6, Title

Contributions by ***oil receivers***

Contributions by ***operators involved in the transport of oil or hazardous and noxious substances.***

Amendment 22  
Article 6, paragraph 1

***1. Any person who receives contributing oil in total annual quantities exceeding 150 000 tonnes carried by sea to ports or terminal installations in the territory of a Member State and is liable to contribute to the IOPC Fund shall be liable to contribute to the COPE Fund.***

***1. The COPE Fund, which shall be established in addition to the existing IOPC Fund, shall consist of two parts:***

***Part 1 shall establish higher limits of compensation to be paid by the shipowners where the cost of pollution damage exceeds or threatens to exceed the aggregate compensation limit under the existing CLC and IOPC;***

***Part 2 shall establish a supplementary fund to be paid by the cargo receivers where the cost of pollution damage exceeds or threatens to exceed the aggregate compensation limit under the existing IOPC, as supplemented by the shipowner's contribution under Part 1 of the COPE Fund or the HNS Convention once ratified. For these purposes "cargo receivers" shall be defined as follows:***

***Any person who receives contributing oil or hazardous and noxious substances in total annual quantities exceeding 150 000 tonnes carried by sea to ports or terminal installations in the territory of a Member State and is liable to contribute to the IOPC Fund shall be liable to contribute to the COPE Fund.***

Amendment 23  
Article 6, paragraph 1 a (new)

***1a. The owner of a tanker responsible for marine pollution shall contribute to the compensation of the victims on the same basis as the cargo receivers. To this end, each ship sailing in European territorial waters or marine economic interest zones must be able to prove it holds a financial guarantee or must pay a heavy financial penalty.***

Amendment 24  
Article 6, paragraph 2

2. Contributions shall only be collected following an incident falling under the scope of this Regulation which exceeds or threatens to exceed the maximum compensation limits of the IOPC Fund. The total amount of contributions to be levied for each such incident shall be decided by the Commission in accordance with Article 9(2). On the basis of that decision, the Commission shall calculate for each person referred to in paragraph 1 the amount of his contribution, on the basis of a fixed sum for each tonne of contributing oil received by such persons.

2. Contributions *from receivers of oil or hazardous and noxious substances under Part 2 of the COPE Fund* shall only be collected following an incident falling under the scope of this Regulation which exceeds or threatens to exceed the maximum compensation limits of the IOPC Fund *as supplemented by the shipowner's contribution under Part 1 of the COPE Fund*. The total amount of contributions to be levied *from receivers of oil or hazardous and noxious substances* for each such incident shall be decided by the Commission in accordance with Article 9(2) *after taking into account the shipowner's contribution under Part 1 of the COPE Fund*. On the basis of that decision, the Commission shall calculate for each person referred to in paragraph 1 the amount of his contribution, on the basis of a fixed sum for each tonne of contributing oil received by such persons.

Amendment 25  
Article 6, paragraph 3

3. The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions *required* by the total amount of contributing oil received in all Member States in the relevant year.

3. The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions by the total amount of contributing oil *or hazardous and noxious substances* received in all Member States in the relevant year, *after taking into account the shipowner's contribution under Part 1 of the COPE Fund*.

Amendment 26  
Article 6, paragraph 4

4. Member States shall ensure that any person who receives contributing oil within its territory in such quantities that he is liable to contribute to the COPE Fund appears on a list to be established and kept up to date by the Commission in accordance with the

4. Member States shall ensure that any person who receives contributing oil *or hazardous and noxious substances* within its territory in such quantities that he is liable to contribute to the COPE Fund appears on a list to be established and kept up to date by

subsequent provisions of this article.

the Commission in accordance with the subsequent provisions of this article.

Amendment 27  
Article 6, paragraph 6

6. For the purposes of ascertaining who are, at any given time, the persons liable to contribute to the COPE Fund and of establishing, where applicable, the quantities of oil to be taken into account for any such person when determining the amount of his contribution, the list shall be prima facie evidence of the facts stated therein.

6. For the purposes of ascertaining who are, at any given time, the persons liable to contribute to the COPE Fund and of establishing, where applicable, the quantities of oil *or hazardous and noxious substances* to be taken into account for any such person when determining the amount of his contribution, the list shall be prima facie evidence of the facts stated therein.

Amendment 28  
Article 6, paragraph 7

7. The contributions shall be made to the Commission and the collection shall be fully completed no later than *one year* after the decision to levy the contributions has been made by the Commission.

7. The contributions shall be made to the Commission and the collection shall be fully completed no later than six months after the decision to levy the contributions has been made by the Commission.

Amendments 29 and 31  
Article 9, paragraph 1 a (new)

*1a. The elected local representatives of a damaged area about which the decisions listed in Article 8(2) are to be made shall have the opportunity to express their views in the early stages of the decision-making process.*

*They shall take part in meetings of the committee in an advisory capacity.*

Amendment 30  
Article 9, paragraph 1 b (new)

*1b. The COPE Fund Committee shall submit an annual report on its activities to the Council and the European Parliament.*

Amendment 32  
Article 9 a (new)

**Article 9a**

**Cooperation between the COPE Fund and  
the IOPC Fund**

***In close cooperation with the IMO, the Commission shall establish clear administrative rules for cooperation between the management of the COPE Fund and the management of the existing IOPC Fund, in accordance with the principles of transparency, efficiency, and cost-effectiveness.***

Amendment 33  
Article 10 a (new)

**Article 10 a**

**Evaluation**

***1. The Commission shall submit a report no later than July 2003 on efforts to improve the international liability and compensation regime at the level of the International Maritime Organization, and, in particular, shall assess progress in:***

***(a) significantly increasing the liability of the shipowner under the Liability Convention;***

***(b) increasing compensation under the Fund Convention;***

***(c) extending the Liability Convention to all other players involved in the transport of oil or hazardous and noxious substances at sea, and in particular to charterers, managers and operators;***

***(d) widening compensation for environmental damage in the light of comparable compensation regimes established under Community law;***

***2. If the Commission considers that significant progress has been achieved within the meaning of paragraph 1, it shall propose to the European Parliament and the Council that the provisions of this***

*Regulation be adapted to the revised international regime.*

*3. If the Commission concludes that no substantial improvements within the meaning of paragraph 1 have been achieved, it shall submit to the European Parliament and the Council a proposal for Community legislation establishing a Europe-wide maritime pollution liability and compensation regime.*

**European Parliament legislative resolution on the proposal for a European Parliament and Council regulation on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures (COM(2000) 802 – C5-0701/2000 – 2000/0326(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2000) 802)<sup>1</sup>,
  - having regard to Article 251(2) and Articles 80(2) and 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0701/2000),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Regional Policy, Transport and Tourism and the opinions of the Committee on Industry, External Trade, Research and Energy and the Committee on the Environment, Public Health and Consumer Policy (A5-0201/2001),
1. Approves the Commission proposal as amended;
  2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 120 E, 24.4.2001, p. 79.