



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 16 February 2005

6384/05

LIMITE

MAR 19

NOTE

from : Secretariat
to : Committee of Permanent Representatives

No. Cion prop.: 16144/04 MAR 225

No. prev. doc.: 6244/05 MAR 17

Subject: **SHIPPING**
IMO - **European Community position** to be adopted by the Council for the 9th session of the Sub-Committee on Bulk Liquids and Gases (**BLG 9**)

1. In preparation of the 9th session of the Sub-Committee on Bulk Liquids and Gases of IMO (**BLG 9**) in London, on 4 to 8 April 2005, the Commission tabled a working document with a draft Community position to be agreed by Council.
2. The Committee of Permanent Representatives agreed last week that the Netherlands would try to obtain a written document by the IMO stating the reasons for the refusal to circulate the document sent to IMO's Secretariat on Friday 28 January, with the following heading:
"Submitted by the Netherlands on behalf of the European Community, by Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, the Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom, as well as by the European Commission".

A fax (Annex I to this document) was subsequently sent by Mr. E.E. MITROPOULOS, Secretary-General of the IMO, to Mrs. J. TAMMENOMS BAKKER, Director-General for Freight Transport in the Netherlands.

3. Considering both the urgent need to have the document tabled for consideration at BLG-9 and the political/legal issue raised by the attitude of the IMO's Secretariat, it is suggested to act in the following way:
 - (a) The Netherlands are invited to submit a new version of the document (see Annex II) as amended in light of IMO's comments;
 - (b) In parallel to this submission, the Presidency would send a letter to the IMO Secretariat expressing its concerns at the course of events;
 - (c) Finally, the Legal Service of the Council would be invited to consider, with a view to future submissions, the issue of the presentation of the Community's positions in the IMO [especially when it concerns matters of Community competence]. The Committee would then consider this opinion with a view to further action.
4. The Committee of Permanent Representatives is invited to agree this approach.

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ORGANISATION
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MARITIMA
INTERNACIONAL

Secrétaire général

Secretary-General

Secretario General

14 February 2005

Dear Mrs. Tammenoms Bakker,

I refer to your facsimile letter of today's date concerning the submission, by the Netherlands and other States of the European Union, of a document for consideration by the ninth session of the Sub-Committee on Bulk Liquids and Gases (BLG 9) "on behalf of the European Community".

We have considered the issue with due care. Based on the advice I have received from IMO's Legal Office, we are unable to acquiesce in this request for two reasons. In the first instance and most pertinently in this case, pursuant to Article 16 of the MARPOL Convention only States Parties to that Convention may propose amendments to it, which is not the case as far as the "European Community" is concerned. Secondly, the European Community, as such, unlike the European Commission, is not a Member State of IMO nor does it have observer status with the Organization which would entitle it to submit documents for consideration by any of its Committees or Sub-Committees.

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Mrs. J. Tammenoms Bakker
Director General for Freight Transport
Safety Management Division
Directorate Transport Safety
Ministry of Transport, Public Works and
Water Management
P.O. Box 20904
2500 EX The Hague
The Netherlands

4 Albert Embankment
London SE1 7SR
United Kingdom

Direct line +44 (0)20 7887 3100
Tel: +44 (0)20 7755 7611 (Switchboard)
Email: secretary-general@imo.org

Fax: +44 (0)20 7887 3100
Website: www.imo.org

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You may have found our conversation earlier useful and I look forward to hearing from you soon.

With best regards,

Yours sincerely,



E.E. Mitropoulos
Secretary-General

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INTERNATIONAL MARITIME ORGANIZATION



SUB-COMMITTEE ON BULK LIQUIDS
AND GASES
9th session
Agenda item 12

BLG 9/X/X

Original: ENGLISH

**CLARIFICATION OF THE DEFINITION OF FUEL OIL
IN THE REVISED MARPOL ANNEX I**

Amendment of regulation 21.2.2 of MARPOL Annex I

Submitted by the Netherlands, by Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, the Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom, as well as by the European Commission

SUMMARY

Executive summary: This document proposes an amendment to the definition of heavy fuel oil in MARPOL Annex I

Action to be taken: Paragraph 7

Related documents: Resolution MEPC.111(50) and MEPC 52/6

Introduction

1. At the fifty-second session of the Marine Environmental Protection Committee, the issue of clarification of the definition of “fuel oil” in MARPOL Annex I revised regulation 20.2.2 and regulation 21.2.2 was discussed at the request of the “Oil Companies International Marine Forum” (OCIMF). The delegations participating in the debate supported in general the proposal by OCIMF and agreed that this was an important issue that merited clarification.
2. The problem is that fuel oil is defined in regulation 20.2.2 and does not apply beyond this regulation. Even if this definition were extended to regulation 21, it would only include 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* and not similar products used in a different manner.
3. The purpose of the clarification is thus to avoid the wrong types of heavy oil such as lubricants, cat feed or feedstock to be carried in single-hulled oil tankers after 5 April 2005 and ensure consistent global application of the carriage requirements pertaining to heavy grades of oil.
4. A pollution incident involving a single-hull oil tanker, carrying oils with the same characteristics as those types of oil, which are not allowed to be transported in single-hull tankers, would have serious consequences not only for the marine environment but also for the shipping industry.
5. It is therefore the view of the above mentioned submitting Contracting parties - which are all members of the European Community, to which these States have transferred the competence regarding this particular subject matter - that all oil types in Annex I, with the same kinematic viscosity or density as heavy fuel oil, as currently defined in article 21.2.2, should be subject to the carriage requirements pertaining to regulation 21 in general. The types of oil in question are defined in chapter I in Annex I.¹

¹ “Oil” is defined in chapter I in Annex I as: oil means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals which are subject to the provisions of Annex II of the present Convention) and, without limiting the generality of the foregoing, includes the substances listed in appendix I of this Annex.

6. We therefore propose an amendment to article 21.2.2:
“Oil – other than crude oil – having either a density at 15 C higher than 900 kg/m³ or a kinematic viscosity at 50 C higher than 180 mm²/s;or”

Action requested of the Sub-committee

7. The Sub-committee is invited to consider the amendment proposed in paragraph 6 and to take action as appropriate.
