



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 417/2002 on the accelerated phasing in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No 2978/94

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The Commission's response to the oil spill caused by the tanker PRESTIGE in November 2002 off the coast of Galicia in Spain, should be seen in the light of the measures taken after the severe oil spill off the French coast of Brittany, resulting from the accident of the ERIKA in December 1999. Shortly after the ERIKA accident, the Commission presented a number of proposals to help prevent such accidents occurring again. One of the so called "Erika I" measures was a proposed Regulation on the phasing out of single-hull oil tankers. This Regulation was adopted on 18 February 2002, and applies from 1 September 2002¹. This measure was also agreed at the international level when the International Maritime Organisation adopted a revision of its Regulation 13G of Annex I to the International Convention on the Prevention of Pollution from Ships (MARPOL) 73/78 at the 46th meeting of the Marine Environment Protection Committee in April 2001. The timetables for the phasing in of the double hull design or equivalent requirements that were eventually adopted at EU and the international level were less ambitious than those initially proposed by the European Commission.

When another 26 year old single-hull oil tanker carrying 77.000 of heavy fuel oil, sank, and will potentially cause an even worse environmental disaster than the ERIKA had in 1999, it became clear that the international and previously agreed EU schemes were not sufficiently ambitious.

The Commission in its Communication on improving safety at sea in response to the PRESTIGE accident (COM(2002)681 final) announced a number of measures to minimise the risk of future accidents involving ships such as ERIKA and PRESTIGE. The Transport Council meeting on December 6th 2002, furthermore called for an acceleration of the calendar for phasing-out of single-hull tankers, for applying the Condition Assessment Scheme from 15 years of age, as well as the conclusion of administrative agreements by Member States in view of refusing single hull oil tankers carrying the heaviest grades of oil into their ports, terminals and anchorage areas.

The Commission proposes to meet these objectives by an amendment of the Regulation (EC) No 417/2002, to bring it in line with the initial Commission proposal.

2. PROPOSED ACTION AT COMMUNITY LEVEL

In **summary** the Commission proposes **three amendments** to the existing regulation:

¹ OJ L 64, 7.3.2002, p.1 Regulation (EC) No 417/2002 of the European Parliament and of the Council of 18 February 2002 on the accelerated phasing in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No 2978/94, as amended by Regulation (EC) No 2099/2002 (OJ L324, 29.11.2002, p.1).

1. A provision that heavy grades of oil shall only be carried by double hull tankers.
2. A revision of the phasing out scheme to ensure in particular that single hull tankers of category 1 will not operate beyond 23 years and 2005, or, 28 years and 2010 for category 2 and 28 years and 2015 for category 3.
3. A broader application of the special inspection regime for tankers (the Condition Assessment Scheme), designed to assess the structural soundness of single hull tankers, that have passed the age of 15 years.

2.1 Ban of transport of heavier grades of oil in single hull tankers

Heavy fuel oil is among the most polluting types of oil. In view of its relatively low commercial value and comparatively small risk of fire or explosion, it is regularly carried in older tankers nearing the end of their economic lives, i.e. ships that pose the greatest safety risks. As indicated in the Communication from the Commission on improving safety at sea in response to the Prestige accident, this anomaly is of great concern to the Commission.

The Commission therefore **proposes to prohibit the transport of heavy grades of oil in single-hulled tankers bound for or leaving EU ports of a Member State of the EU.**

The heavy grades of oil chosen are heavy fuel oil, heavy crude oil, waste oils and bitumen and tar. When spilt into the sea the heavier oils behave differently from lighter grades of oil. Due to their low volatility and high viscosity (resistance to flow), heavier oils evaporate slower than lighter grades and hardly disperse. Therefore, these oils tend to remain in slicks and degrade only very slowly and can cause severe ecological damage to the ecosystems of the marine and coastal environments. In contrast, accidents involving spills of lighter oils may result in atmospheric pollution, whilst lighter grades evaporate and pollutes the atmosphere.

The enormous challenge facing the coastal population in the clean-up operations of heavy fuel oil following the PRESTIGE shipwreck is all too apparent along the Spanish coasts.

Table 1: Volumes of oil imported and exported per year (extra EU and intra EU) by sea, total EUR-15 (million tonnes).

<i>Product</i>	<i>Import</i>	<i>Export</i>
Heavy fuel oil	35.7	28.2
Heavy crude oil*	70.0	0
Bitumen and tar	0.18	0.55
Waste oils	0	0
Total oil trade to/from EU ports	c.a. 800.0	

Source: Eurostat (COMEXT)

**Estimate - In 2001, heavy crude oil represented approximately 15% of all crude oil imported to the EU.*

The industry indications are that there is today already a sufficient capacity of double hull oil tankers to ensure that this proposal will not cause any disturbance of the security of supply.

2.2 Acceleration of the current phasing out scheme of single-hull oil tankers

2.2.1 The current legislation

For the purposes of the phasing out scheme, oil tanker categories are determined according to the tonnage, construction and age of the vessel. The following categories have been defined:

- Category 1: so-called "pre-MARPOL" single hull oil tankers, being crude oil tankers of 20000 tons dead-weight and above and oil product carriers of 30000 tons dead-weight and above having no segregated ballast tanks in protective locations.
- Category 2 corresponds to "MARPOL" single hull tankers, being of the same size as category 1, but which are equipped with segregated ballast tanks in protective locations.
- Category 3 corresponds to single hull oil tankers below the size limits of categories 1 and 2 but above 5000 tons dead-weight.

Note: Category (1) tankers are generally constructed before 1982 and Category (2) tankers between 1982 and 1996.

The phasing-out scheme for single hull oil tankers currently enforced under Regulation (EC) No 417/2002 establishes the following final dates (cut-off dates) for the operation of (a) oil tankers entering into ports and offshore terminals under the jurisdiction of Member States and (b) oil tankers flying the flag of Member States:

- until 2007 for Category (1) oil tankers;
- until 2015 for Category (2) and Category (3) oil tankers.

Secondly, the Regulation imposes age limits for the different categories of single hull tankers depending on their category and year of construction. These age limits are generally in the range of 26 to 30 years.

The above-mentioned age limits, and phase-out dates were established in parallel and in conformity with the age-limits laid down in the relevant international regulation developed by IMO: revised Regulation 13 G of Annex I to the MARPOL Convention.

The establishment of the aforementioned phase-out scheme at European and international level was initiated by a Commission proposal for a Regulation included in the ERIKA I package of 21 March 2000. However, the initial proposal was watered down considerably in the subsequent legislative process.

In particular, the Commission had proposed as final deadlines (cut-off dates) for the categories (1) and (2) and (3) respectively the dates of 2005, 2010 and 2015. As mentioned above, the first 2 deadlines were changed to 2007 and 2015 respectively.

Equally important was the change in the age limit for category (1) tankers. The Commission had proposed a maximum age limit of 23 years for this oldest category of tankers; whereas this was extended to a range of 26 to 30 years in the legislation as finally adopted.

The Prestige and the Erika were category (1) tankers of 26 years at the time of their fatal accident. The Prestige would have been phased out in accordance with the current legislation in March 2005.

2.2.2 *Proposed amendments to the phase-out scheme*

The severe oil spills of Community waters resulting from the accidents of the ERIKA and PRESTIGE tankers have raised serious concerns about the adequacy of the age limits introduced by Regulation No 417/2002.

The purpose of the modifications introduced in this proposal is to lower the age limits, and cut-off dates to the level as initially proposed in the ERIKA I package in order to ensure a better protection of the marine environment.

Category 1 tankers are the most vulnerable and oldest tankers. They should be phased out urgently. The end-date for the use of such tankers under the scope of this Regulation is therefore moved from 2007 to 2005 with an age limit of 23 years.

Category 2 tankers - so called MARPOL tankers - offer better protection against grounding and collision. In line with the United States' Oil Pollution Act of 1990, the Commission proposed a final deadline of 2010 and an age limit of maximum 28 years. We go back to the initial Commission proposal, but where Regulation (EC) No 417/2002 is more stringent, this will be kept as it is.

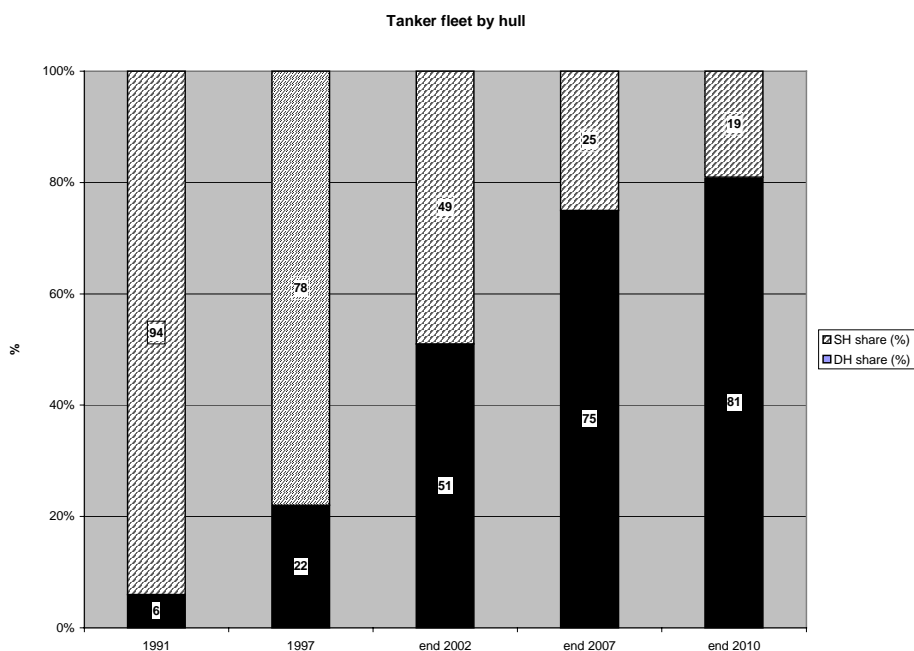
For the smaller tankers below 20000/30000 tons deadweight, that is category (3) tankers, which often operate in regional traffic, the rules laid down in Regulation 417/2002 are only slightly different from the initial ERIKA I proposal. However, it is proposed that the age limit for these ships should in no case exceed the age limit of 28 years as also proposed for category (2).

2.2.3 *Impact of the proposed measures on the oil tanker fleet*

The further acceleration of the phasing out of single-hull oil tankers for the transport of all types of oil will affect not only single-hull oil tankers under EU flag, but also the world tanker fleet calling into EU ports. Oil trade to or from EU ports represents roughly 28% of the total tanker trade.

The world tanker fleet has a capacity of roughly 330 million tons deadweight and is currently undergoing a rapid modernisation process. The tanker industry already appears to have anticipated the application of the existing phasing-out scheme as illustrated by the following graph:

Graph 1: Current forecast for replacement of the world-wide fleet of single-hull oil tankers Source: Intertanko



According to data reported by the International Association of Independent Tanker Owners (Intertanko), the tanker industry is currently engaged in the most extensive renewal programme in a decade and a half. Renewal activity at the beginning of 2002 was higher than in 1985, the industry's peak scrapping year, when 30 million dwt. were sent to the demolition yards. Up to 60 million dwt will need to be culled from the existing fleet by 2005 to offset the arrival of double hull tankers currently on order.

The current order book (shipyards world wide) comprises 600 tankers above 10000 tons deadweight totalling 60 million tons deadweight. The current proposal is expected to give a further boost to newbuildings.

Considering the current overcapacity in the world tanker fleet and the large numbers of tankers on order, there is no ground to fear for any disruption of the oil supply as a result of the present proposals. The Commission is aware, however, of the considerably economic impact these proposals may have on the tanker industry and will present a further economic analysis as soon as possible.

2.3 Condition Assessment Scheme

The Condition Assessment Scheme (CAS) as introduced by Regulation (EC) No. 417/2002 is an additional reinforced inspection scheme specifically developed to detect structural weaknesses of single-hull oil tankers. It is carried out, every two and a half years by the Flag State and by Classification Societies acting on their behalf. Such reinforced inspections are crucial, since the safety of a ship is not only determined by the age, but also by its structural integrity, often affected by for instance maintenance.

The central idea in the current EU and IMO legislation is that single hull tankers of Category 1 or 2 which have not yet reached their age limit, can only continue to operate beyond 2005 or 2010 respectively if they have passed successfully the test of the Condition Assessment Scheme. If not, such tankers, even though they are relatively young, may not be allowed to operate to or from EU ports, or under EU flag.

Regulation (EC) No 417/2002 as well as Regulation 13G of MARPOL Annex I, currently requires that Category 1 and Category 2 oil tankers shall comply with CAS from the anniversary date of the delivery of the ship in 2005 and 2010 respectively. Currently CAS does **not** apply to the smaller Category 3 ships. However, since also these ships can cause severe pollution, the Commission proposes that such ships should also be required to comply.

The Commission therefore proposes to introduce a requirement that all remaining categories of single-hull oil tankers shall comply with the Condition Assessment Scheme from the age of 15 years. The Commission is aware that such general scheme may put a strain on the available capacity of inspectors to carry out these inspections, and therefore consider that 2005 is the appropriate start-up date.

3. SPECIFIC CONSIDERATIONS

3.1 Purpose and scope (1.1 and 1.2)

Article 1 is modified to add the new purpose of banning the use of single hull oil tankers for the purpose of carrying the heavy grades of oil (*Article 1.1*).

The scope is slightly amended to also cover "anchorage areas", that is to cover oil tankers of 5000 tons deadweight and above that are entering into a port, offshore terminal or anchorage areas under the jurisdiction of a Member State, irrespective of their flag, or flying the flag of a Member State. This is consistent with Directive 95/21/EC as amended², which includes anchorage areas in its scope for where Port States have jurisdiction and may carry out inspections. (*Article 1.2(a)*)

In addition, the scope is amended to cover oil tankers from 600 tons deadweight and above, in order to ensure that the ban on carriage of heavy grades of fuel in single hull tankers shall equally apply to small tankers between 600 and 5000 tons deadweight. This is in line with the lower size limit initially proposed by the Commission (*Article 1.2(b)*).

3.2 Banning the use of single hull oil tankers for the carriage of the most polluting heavy grades of oil (Article 1.3 and 1.4.(b))

New definition 14 specifies which heavy grades of oil will not be allowed to be carried to or from EU ports, off shore installation or anchorage areas in single hull oil tankers, and new definitions 15, 16, 17 and 18 further specify the characteristics of these oils. The definitions used are the Combined Nomenclatures codes (CN codes) of Commission Regulation (EC) No 1832/2002 of 1 August 2002 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature

² OJ L157, 7.7.1995, p.1, as amended.

and on the Common Customs Tariff. The choice of oil types are those with high viscosity that in the case of an oil spill either sink or float in the sea, causing the most severe forms of pollution of the marine and coastal environments (*Article 1.3*).

The provision introducing this ban is the *new* article 4.2. This article provides that all shipments of heavy grades of oil to or from EU ports are carried by double hull oil tankers, regardless of their flag.

The *old* Article 4.2 is deleted, as it concerns special requirements for Category 1 tankers above the age of 25 years. Since the new proposed age limit for these vessels is set at 23 years, this article has become irrelevant (*Article 1. 4 (b)*).

3.3 Further acceleration of the phasing-out of single hull oil tankers (1.4 (a))

The timetable for the phasing-out of single-hull oil tankers as included in Regulation (EC) N° 417/2002 will now be revised to include the new age limit of 23 years for Category 1 tankers, and the maximum age of 28 years for Category 2 and 3 tankers. This is in line with the age limits initially proposed by the Commission, as are the new final end-dates reintroduced by this Regulation, that is 2005, 2010 and 2015 respectively (*1.4(a)*).

3.4 Earlier compliance with the Condition Assessment Scheme (CAS) (1.5)

Article 1.5 proposes to amend Article 5 of Regulation (EC) No 417/2002 in order to ensure that the CAS requirement shall apply from the anniversary date of the delivery of the ship in 2005 to all remaining single hull oil tankers above the age of 15 years. The date of 2005 will allow Flag States, and Classification Societies carrying out inspections on their behalf, enough time to prepare for the relevant CAS inspections. The age of 15 years is in line with the established practice of submitting oil tankers to enhanced inspections to detect age related deficiencies.

The CAS requirement for Category 1 tankers entering EU ports or flying the EU flag becomes unnecessary, since according to this proposal these ships will be phased-out by 2005. Instead Article 5 is amended to include Category 3 tankers. The CAS as adopted in Resolution MEPC 94(46), and as amended by Resolution MEPC 99(48) shall apply, taking into account the application dates and tanker categories as specified in this Regulation.

4. FRAMEWORK FOR ADOPTION

Given the urgency to ensure improved safety of seaborne oil trade, and given that this measure falls under the co-decision procedure, the Commission urges the decision making EU institutions - the European Parliament and the Council - to adopt this measure as soon as possible, to ensure that it enters into force no later than during the month of March 2003.

The Commission furthermore calls upon the Member States to ensure that at the International Maritime Organisation similar measures are adopted to ensure maximum effect and that an appropriate inspection scheme, equivalent to the CAS, is introduced also to double hull oil tankers beyond 15 years of age.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission³,

Having regard to the opinion of the Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁶,

Whereas:

- (1) Regulation (EC) No 417/2002⁷ establishes an accelerated phasing-in scheme for the application of the double hull or equivalent design requirements of the MARPOL 73/78 Convention to single hull oil tankers, to reduce the risk of accidental oil pollution in European waters.
- (2) The Community is seriously concerned that the age limits for the operation of single hull oil tankers in that Regulation are not sufficiently stringent, and, particularly in the wake of the shipwreck of the Category 1 single-hull oil tanker "PRESTIGE" at the same age as "ERIKA", that is at the age of 26 years, those age limits should be further lowered.
- (3) The Commissions Communication on the safety of the seaborne oil trade⁸ proposed age limits of 23, 28 and 25 to 30 years respectively for three categories of single hull oil tankers, and the final end-dates of 2005, 2010 and 2015 respectively, for such tankers. The initial proposal provided that the Regulation should apply to oil tankers

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ OJ L64, 7.3.2002, p.1. Regulation as amended by Regulation (EC) No 2099/2002 (OJ L324, 29.11.2002, p.1).

⁸ COM(2000) 142 final of 21.3.2000.

from 600 tons deadweight and above. The limits eventually included in Regulation (EC) No 417/2002 were, following negotiations, less stringent on all accounts.

- (4) The Communication from the Commission to the European Parliament and to the Council on Improving Safety at Sea⁹ in response to the Prestige accident stated that the Commission intended to propose a Regulation prohibiting the transport of heavy fuel oil in single-hulled tankers bound for or leaving ports in the Member States.
- (5) The Council conclusions of 6 December 2002 invited the Commission to present as a matter of urgency a proposal concerning an accelerated phasing out of single hull tankers and incorporating the Condition Assessment Scheme for tankers regardless of the design from the age of 15 years. The Council further agreed that heavy grades of oil shall only be transported in double hull oil tankers.
- (6) The Condition Assessment Scheme is designed to detect structural weaknesses in ageing oil-tankers and should therefore from 2005 apply to all oil tankers above the age of 15 years.
- (7) The European Parliament called for stronger measures that can enter into force more rapidly in its resolution EP XXXX on the "Prestige oil tanker disaster off the coast of Galicia" of 21 November 2002, and stated that this new oil tanker disaster has again underlined the need for effective action at international and EU level in order to significantly improve maritime safety.
- (8) Regulation (EC) No 417/2002 should be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 417/2002 is amended as follows:

- 1) In Article 1, the following is added:

“, and to ban the transport to or from ports of the Member States of heavy grades of oil in single hull oil tankers.”
- 2) Article 2 is amended as follows:
 - (a) the first indent of paragraph 1 is replaced by the following:

"- entering into a port, offshore terminal or anchorage area under the jurisdiction of a Member State, irrespective of their flag, or"
 - (b) in paragraph 1 the following is added:

"For the purpose of Article 4.2, this Regulation shall apply to oil tankers of 600 tons deadweight and above."
- 3) In article 3, the following points are added:

⁹ COM(2002) 681 final of 3.12.2002.

“14. ‘heavy grades of oil’ shall mean heavy fuel oil, heavy crude oil, waste oils, bitumen and tar.

15. 'heavy fuel oil' shall mean all oil products falling under CN codes¹⁰ 2710 19 51, 2710 19 55, 2710 19 61, 2710 19 63, 2710 19 65 and 2710 19 69.

16. 'heavy crude oil' shall mean crude oils falling under CN code 2709 00 90 and where the API grade is lower than 30.

17. 'waste oils' shall mean wastes containing mainly petroleum oils or bituminous minerals, mixed or not with water, falling under CN code 2710 91 00 and 2710 99 00.

18. 'bitumen and tar' shall mean all oil products falling under CN code 2713 20 00, 2713 90 10, 2713 90 90 and 2715 00 00."

4) Article 4 is amended as follows:

(a) in paragraph 1, points (a), (b) and (c) are replaced by the following:

“(a) for category (1) oil tankers:

- 2003 for ships delivered in 1980 or earlier,
- 2004 for ships delivered in 1981,
- 2005 for ships delivered in 1982 or later;

(b) for category (2) oil tankers:

- 2003 for ships delivered in 1975 or earlier,
- 2004 for ships delivered in 1976,
- 2005 for ships delivered in 1977,
- 2006 for ships delivered in 1978 and 1979,
- 2007 for ships delivered in 1980 and 1981,
- 2008 for ships delivered in 1982,
- 2009 for ships delivered in 1983,
- 2010 for ships delivered in 1984 or later;

(c) for category (3) oil tankers:

- 2003 for ships delivered in 1975 or earlier,

¹⁰ As defined in "Commission Regulation (EC) No 1832/2002 of 1 August 2002 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.(OJ L 290, 28.10.2002, p.197)"

- 2004 for ships delivered in 1976,
- 2005 for ships delivered in 1977,
- 2006 for ships delivered in 1978 and 1979,
- 2007 for ships delivered in 1980 and 1981,
- 2008 for ships delivered in 1982,
- 2009 for ships delivered in 1983,
- 2010 for ships delivered in 1984,
- 2011 for ships delivered in 1985,
- 2012 for ships delivered in 1986,
- 2013 for ships delivered in 1987,
- 2014 for ships delivered in 1988,
- 2015 for ships delivered in 1989 or later.”

(b) paragraph 2 is replaced by the following:

“2. No oil tanker carrying heavy grades of oil, irrespective of its flag, shall be allowed to enter into ports, offshore terminals and anchorage areas under the jurisdiction of a Member State, unless such tanker is a double hull oil tanker.”

5) Article 5 is replaced by the following:

“Article 5

Compliance with the Condition Assessment Scheme for Category (2) and (3) ships

1. An oil tanker above 15 years of age shall not be allowed to enter into ports, offshore installations or anchorage areas under the jurisdiction of a Member State beyond the anniversary of the date of delivery of the ship, in 2005 for Category (2) and Category (3) ships, unless it complies with the Condition Assessment Scheme referred to in Article 6.
2. The competent authorities of a Member State may allow an oil tanker above 15 years of age flying the flag of that Member State to continue operation beyond the anniversary of the date of delivery of the ship in 2005 for Category (2) and Category (3) ships, but only when subject to compliance with the Condition Assessment Scheme referred to in Article 6.”

Article 2

The Presidency of the Council, acting on behalf of the Member States, and the Commission shall jointly inform the IMO of the adoption of this Regulation, whereby reference shall be made to Article 211, paragraph 3 of the United Nations Convention on the Law of the Sea.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

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