



# ECSA

European Community Shipowners' Associations

## **EU POLICY TOWARDS THE ARCTIC REGION**

### **ECSA POSITION PAPER**

(June 2014)

**ECSA acknowledges that EU's evolving policy towards the Arctic Region aims to establish a coherent and comprehensive approach on matters where the Arctic region has an impact on the EU and vice versa. However, since fundamental changes are occurring at a rapid pace in the area, ECSA would like to pinpoint that navigating the Arctic requires the careful consideration of the following important factors:**

- **full compliance with international law and principles as defined in UNCLOS and the avoidance of discriminatory treatment in the area,**
- **the application of a uniform regulatory framework through the mandatory Polar Code, under development by UN IMO**
- **the development of adequate infrastructure for safe navigation and dimensioned search and rescue systems and sustainable technologies, while recognizing the special responsibilities of the Arctic coastal states in the region**

First and foremost, ECSA highlights the need to tailor the legal regime of Arctic shipping to the special nature and risks of marine shipping in the area. The legal regime for Arctic marine shipping comprises an intricate multi-layered framework. At the global level it consists of the jurisdictional framework laid down in the UNCLOS convention and the substantive standards and requirements incorporated primarily in IMO instruments. Full compliance with international law and principles as defined in UNCLOS is an important policy objective for transport and shipping. While regional regulation is not ruled out, care must be taken not to undermine IMO's global primacy in the regulation of shipping for purposes that are within its mandate. UNCLOS allows coastal States to unilaterally - without the need for IMO involvement or approval - prescribe standards in Article 234 "Ice-covered areas"<sup>1</sup>. ECSA stresses that the UNCLOS freedom of navigation, transit passage and the right of innocent passage for straits used for international navigation (as codified in Part III of UNCLOS) are principles that need to be respected and take precedence over the rights of coastal States under Article 234. Presently, some of the Arctic States claim jurisdiction over the Arctic areas based on Article 234 of the UNCLOS mandating fee payment for use of routes and straits which are claimed to be internal waters. In recognition of the future increase of Arctic

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<sup>1</sup> UNCLOS Article 234 "Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence".

shipping and transit operations, it is likely that such practices will be widely used and consequently, disadvantage ships registered to non- Arctic States.

Furthermore, ECSA highlights that apart from UNCLOS and the Arctic Shipping and Polar Shipping Guidelines, there is a lack of legally binding standards within the full range of substantive IMO standards. Thus, ECSA stresses the need for a broad support within IMO to address this situation by means of a mandatory Code on polar shipping. IMO has launched a process for the development of the Polar Code in February 2010, which is expected to become mandatory through amendments to the SOLAS and MARPOL in 2015. ECSA supports that all efforts should be focused on this aim as there is no faster solution to the issue of safety of Arctic shipping, such as the coordination and harmonisation of national legislation<sup>2</sup>, than the adoption of the mandatory Polar Code. Additionally, ECSA acknowledges that one of the fundamental premises of EU's Integrated Maritime Policy is that each sea-region is unique and needs individual attention in balancing its uses in a sustainable manner. ECSA believes that mechanisms as Routing (traffic separation schemes - TSS) will have a higher level of precision to protect what is considered to be the environmental risk in the area than a PSSA status under IMO rules<sup>3</sup>.

The development of the appropriate regulatory framework should be accompanied by adequate development of reinforced infrastructure and technology which is critical for a region in which extreme weather events are routine occurrences. First and foremost, the development of HSE industrial standards for offshore operations in the Arctic is required. Further, navigation aids, accuracy of nautical charts, weather forecasts, bunkering facilities, monitoring of drifting ice and icing conditions, port reception facilities (PRFs) for ship's waste, pilotage in shallow passages, possible ice-breaking assistance, as well as search and rescue infrastructure developed for defined incident scenarios, bases for maintenance and supply and the provision of adequate 'places of refuge' and pollution response capacity are required. The development of means of satellite communication and tracking and monitoring systems and search and rescue (SAR) capabilities<sup>4</sup> is also of major importance. EU can provide technical and surveillance means upon request by a third country, in the event of an incident or emergency in the Arctic. Means such as SafeSeaNet, Automated Identification System (AIS), Long Range Identification and Tracking of ships (LRIT), CleanSeaNet, and the mobilization of emergency oil spill response vessels are already in place. However, ECSA recognises the special responsibilities of the Arctic coastal states and the need to take into consideration that these coastal states have obligations and rights both in the EEZ and in the territorial waters, e.g. in relation to SAR, hydrographic surveys, exploitation of natural resources etc.

Lastly, as regards to the EU observer status in the Arctic Council, ECSA acknowledges that EU has proven active and influential on Arctic issues but it should be stressed that EU has no regulatory face in the Arctic. However, since the Arctic Council is an intergovernmental

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<sup>2</sup> As proposed on the EP resolution of 20 January 2011 on a sustainable EU policy for the High North

<sup>3</sup> The PSSA designation of Arctic was proposed on the EC Communication of 20.11.2008 "*The European Union and the Arctic Region*". However, Navigation routes cannot be designated as a PSSA since PSSA status is assigned to larger areas. Further, PSSA put high restrictions to activity and may limit more than the threat posed by industry. Therefore, ECSA is proposing Routing (TSS) who is more on the target and is more likely to get the Arctic countries to accept TSS rather than a PSSA.

<sup>4</sup> EC Joint Staff Working Doc "*Space and the arctic*" 26.06.2012

forum and not a regulatory body, ECSA recognizes that EU participation in the forum as an observer could be an added value for the future development of the region<sup>5</sup>.

### **Background:**

Maritime transport in the Arctic has become a widely discussed issue because of the region's growing strategic importance. The development of technology that makes possible operations to hostile and remote environments has opened a new world of transport routes in the region. These developments have drawn interest from the shipping community and from exporting and importing countries as an opportunity to increase their global competitiveness.

Within this framework, the European Union established itself as a key supporter of the Arctic region on 2008 through the first Communication<sup>6</sup> on arctic by the Commission raising awareness of the impact it is having on the Arctic environment and of the potential for sustainable development in the Arctic region. A new Communication<sup>7</sup> by the side of the Commission was introduced on 2012 regarding the development of the European Union Policy on the Arctic Region announcing its intention to pursue a comprehensive policy for the region. On May 2014, the Council requested the Commission and the High Representative to present proposals for the further development of an integrated and coherent Arctic Policy by December 2015.

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The European Community Shipowners' Associations (ECSA), formed in 1965, comprises the national shipowners' associations of the EU and Norway. ECSA aims at promoting the interests of European shipping so that industry can best serve European and international trade and commerce in a competitive and free business environment, to the benefit of both shippers and consumers. The European Economic Area maintains its very prominent position with a controlled fleet of 40% of the global commercial fleet.

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<sup>5</sup> In fact, EU is already an "observer in principle" enjoying virtually the same rights within the Council and its working groups as the other observers. However, EU is not officially listed as one because the Council for now defers a final decision although EU's application has been received affirmatively.

<sup>6</sup> Communication of 20.11.2008 From The Commission to the European Parliament and the Council "*The European Union and the Arctic Region*"

<sup>7</sup> Joint Communication of 26.6.2012 to the European Parliament and the Council "*Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps*"