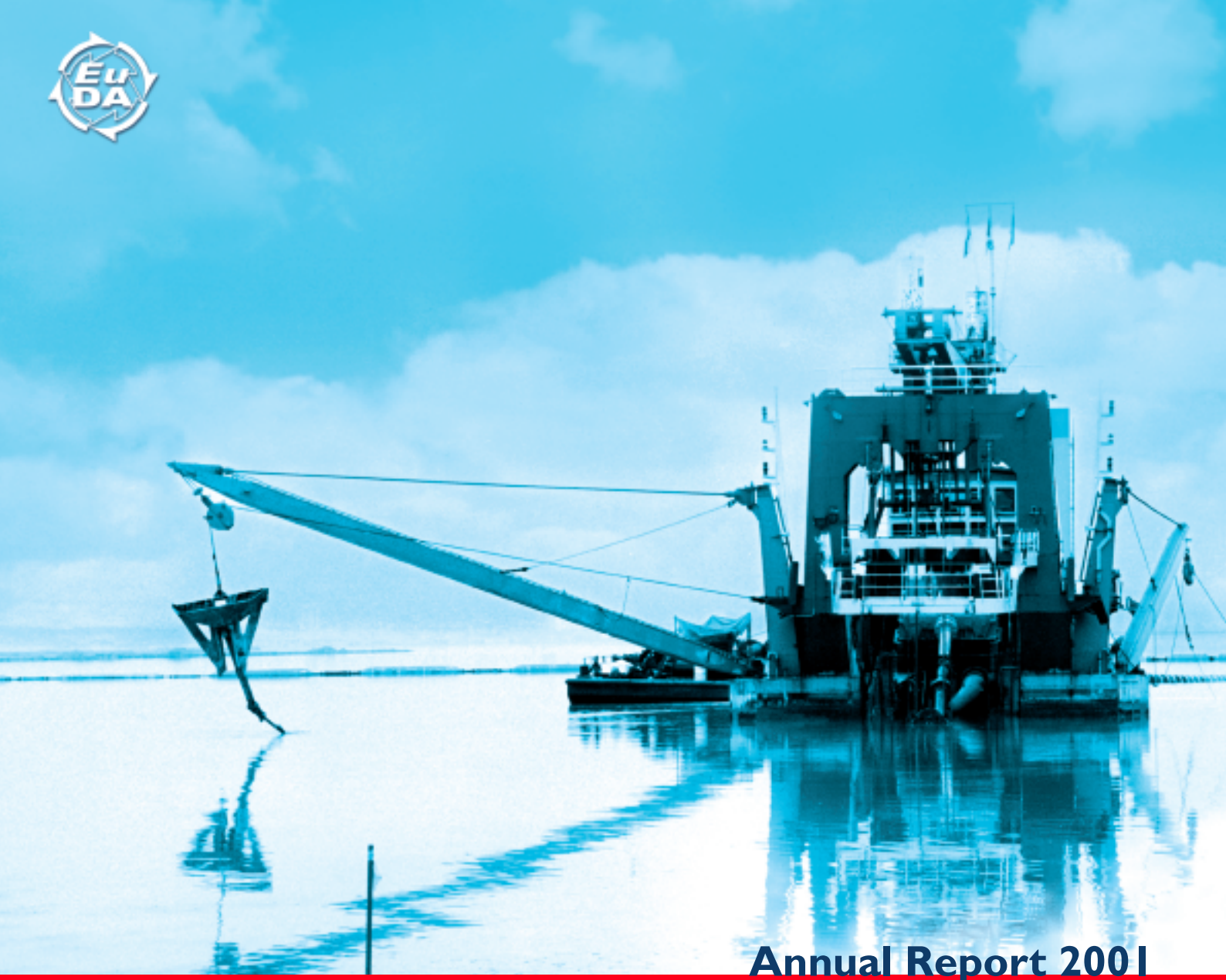

Annual Report 2001

European Dredging Association

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Annual Report 2001

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Message by the President

The year 2001 brought us into a new millennium. For the world economic situation it has been a very special and memorable year. In particular the terroristic attacks of September 11 caused a downturn of the economy in the USA which has repercussions throughout the world. These events led to economic recession.

In spite of the depressed economies the European dredging contractors maintain a positive view of the short and medium term perspectives. The order portfolios are well-stocked; moreover, many contractors have shaped robust companies that would be able to survive a recession period longer than used to be the case in the 1980's.

Part of the explanation lies in the anti-cyclical nature of the dredging sector : on the one hand orders to realise infrastructure built with capital dredging span several years, on the other hand the industry has heavily invested in modern technology and advanced dredging vessels.

This contributed to the emergence of new market segments : 10 years ago it was still inconceivable to dredge with precision at high seas in depths of 50 to 100 meters; today this is a reality which has been welcomed by the offshore industry.

Large contracts for infrastructure works are more and more adjudicated, not merely on the basis of the lowest price, but by also taking into account available know-how, specialised dredging equipment and qualified technical staff.

The demand for larger ports, equipped with modern facilities and accessible with greater draughts, the continuing development of coastal zones, the installation of submerged pipelines and the realisation of modern waterways infrastructure all contribute to a sustained demand.

These are reasons for European dredging contractors to face the future with confidence.

While since 1993 a major share of the fleet expansion took place by constructing large size vessels, so-called 'jumbo-hoppers', this trend stagnated since 2001; instead many medium sized dredging vessels in the range of 5000 m^3 - 15000 m^3 hopper capacity have been ordered recently.

Meanwhile the concentration in the industry continued : the number of European dredging contractors active in global markets diminishes as a result of take-overs or mergers. The driving force here is that increased company size enables one to tender for larger contracts (inherently with more risks) without necessarily having to form combinations.

This brings us to the role of EuDA. The Association has been founded in 1993. It has grown into a full-fledged industry group for European affairs and a valuable "antenna" for the member companies. EuDA maintains an active dialogue with the Commission services concerned by our sector. Of course, as pointed out earlier, the evolution of European policies is a slow process and the patience required from the EuDA Secretariat is often in sharp contrast with the speed of the dredging business.

Towards the European Institutions we continue to insist that the dredging sector has specific needs and demands; such requests are ultimately driven by the economic importance of the sector :

- The dredging industry is a net export industry; more than 50% of its turnover is realised outside Europe.
- The dredging industry is capital intensive and practically all new orders are placed at European shipyards.
- The dredging fleet owned by EU contractors is still largely under European flag and officers and professional crewmembers are mainly recruited in Europe. The industry offers quality employment in the maritime sector.
- The dredging sector is a basic industry with important spin-off effects : 1 person onboard creates 3 to 4 direct positions onshore and has many more indirect economic effects in terms of employment and capital spending.

The major themes summarised in this Annual Report capture our concerns :

Policies

- A further development and realisation of a trans-European waterways network.
- A critical review of cost charging systems for (waterborne) transport.
- A strong request to maintain the framework guidelines for support of the maritime industries.

Market

- Active support for a pragmatic revision of the public procurement directives.
- Focus on market access barriers and the preparation of WTO negotiations.

Industry

- The shortage of (European) seafarers is also felt by the dredging sector. EuDA has taken initiatives to organise specific vocational training in a European context in the form of a pilot project.
- A sustained interest in environmental concerns. This year has seen particular emphasis on the rules for disposal of dredged material; and of course, the dredging industry advocates its role as producer of natural resources - dredged material is not waste.

Jozef Allaert,
President

1.1. Transport Policy

The European Commission published its long-awaited White Paper on European Transport Policy (COM 2001/370). On behalf of the dredging industry EuDA provided comments. The specific observations on the White Paper are limited to issues related to waterborne transport, its associated infrastructure and the links with other transport modes.

Waterborne transport

EuDA noted with satisfaction that the White Paper highlights the advantages of waterborne transport and investigates avenues to increase its already significant role. Waterborne transport (both maritime, short-sea shipping and inland) is cost-effective, environmentally friendly, accommodates large volumes and is reliable on those links where the waterways network is well-developed and maintained.

Trans-European Networks

The current guidelines for the development of trans-European transport networks appear to have a double goal (Decision 1692/96/EC) :

- To define the networks for the different transport modes.
- To list priority projects which must be executed expeditiously in order to achieve full integration (missing links).

EuDA recommended that the anticipated revision of the guidelines should improve on these points :

- The transport networks should be defined more completely and consistently. There should be particular emphasis on the intermodal connections between the networks (ports, railway stations, airports).
- An inventory of projects should include all projects anticipated and necessary in the next 10 to 20 years. The current list of priority projects is misleading in the sense that other equally important projects tend to get lesser priority. Project lists should be established in consideration of the network needs; not in anticipation of sizeable European funds and subsidies.

Bottlenecks

EuDA fully endorses the following statement in the White Paper (p. 45) :

*"Despite progress following the fleet renewal and the full opening-up of the inland waterway market, better use could still be made of the mode. For example, there are still a number of **infrastructure problems** (bottlenecks, inappropriate gauge, height of bridges, operation of locks, lack of transhipment equipment, etc.) which prevent **the uninterrupted passage of vessels** throughout the year. The free movement of vessels is also hampered by the diversity of legal systems with different rules, particularly on technical specifications for vessels and pilots certificates."*

The Association is convinced that an efficient waterways network will boost the volume of waterborne transport and produce the modal shift from road to water. The necessary improvements in waterways infrastructure must be carefully coordinated at EU level.

Fig. 1: Trans-European Network for container transport

The backbone of the networks should be the Trans-European Network for major waterways. For this network, decisions should finally be taken to eliminate critical bottlenecks. Certain projects, such as the deepening of the Danube between Straubing and Vilshofen, have been under review for many years without any real progress being made. This is regrettable.

Similarly, commitments should be made by Member States to construct major missing links that have been on the drawing board since the Trans-European Network were first proposed in 1992. Consideration must be given to the height of bridges on important axes. Currently only a limited part of the network can accommodate vessels with 4 layers of containers. The larger part of the network can only accept 2 layers of containers, because of existing bridge height (see Fig. 1. :).

Private finance

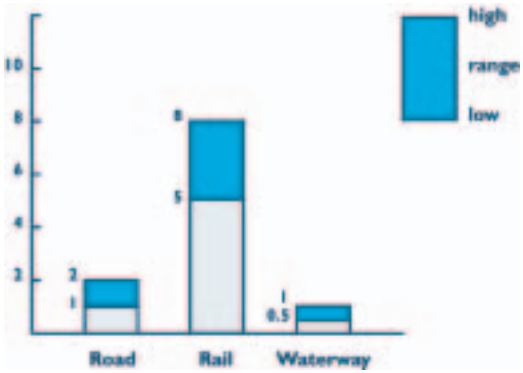
An important element in the strategy outlined in the White Paper is the use of private finance for the construction of infrastructure. The incentive for doing so lies in the fact that public funds are insufficient to realise the enormous investments required for the development and upkeep of trans-European transport infrastructure. As a result the current "priority projects" are limited to rail and road networks to the detriment of waterways. This is incorrect since a specific investment in waterways will produce more transport capacity per monetary unit invested than investment in other transport modes (see Fig. 2. :).

Private investment in infrastructure is only feasible if mechanisms exist to guarantee a regular flow of funds back to the private contractor.

This can only be achieved in a realistic manner in a limited number of ways :

- By raising toll;
- By allocating "shadow" toll paid out of public funds;
- As a leaseback financial arrangement.

Fig. 2. : Comparative capital cost (€ct / ton-km) (Estimate)



It does not require lengthy discussion to conclude that the mechanisms for payback of the investment hardly exist today for either railways or waterways; even for roads toll systems appear to be limited to main motorways and specific links (bridges, tunnels). If private finance is to play a greater role the leaseback formula should be explored in more depth.

Transport and subsidies

The issue of financial support for certain transport modes is not developed in the White Paper paper. Nevertheless, a policy conflict could easily arise if on

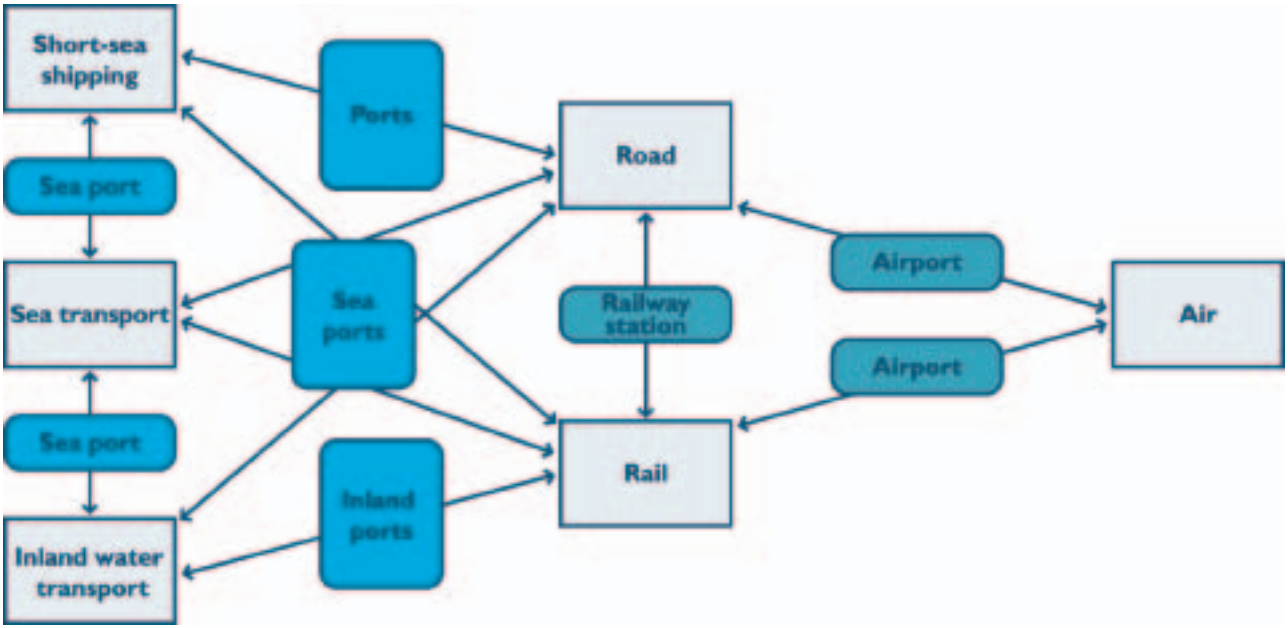
the one hand "true cost" of transport is assessed and included in charging systems, while on the other hand some transport modes are rather heavily subsidised. This would certainly undermine the credibility of a new charging policy.

In order to overcome such objections it would be of considerable help if the financing, construction and maintenance of the various transport networks infrastructure would be organised in similar fashion.

The realisation of infrastructure must be seen as a public function : the government or its agent makes available transport capacity. This "service" should be financed through the public budget, directly or indirectly. Any user charges should not reflect the capital cost of infrastructure. The **use of the transport** network can than be organised in a variety of manners and involve public, private or mixed actors.

The "true cost" charging principles can be applied to the core transport function. If any subsidies would be necessary to achieve the balanced exploitation of the transport function, this may only be allowed if it concerns the public service obligation. Any other support is state aid and would have a distortive effect.

Fig. 3. : Ports and intermodality



1.2. Ports Policy

Ports and Intermodality

Ports play a very important role in the development of intermodal transport. The Fig. 3. : illustrates this quite graphically. The construction, development and maintenance of ports relies heavily on the dredging industry. It should not come as a surprise that EuDA has a keen interest in the policy aspects of ports as it affects their infrastructure.

Port Structure

There exists a great variation between ports in ownership, activities and jurisdictional forms (Table 1 :)

The spectrum of activities and services to be offered in and around ports is also rather diverse (Table 2 :)

This diversity makes it very difficult to develop EU wide legislation to regulate competition between ports and ensure market access.

Ports package

The European Commission has nevertheless introduced a package of proposals to harmonise the position of ports. The overall objective of the ports policy package is to improve functioning of the EU internal market in view of fair competition between ports and competition within ports. The package itself consists of :

- A draft Directive aimed at opening up the market for port services;
- A communication to highlight the applicability of Directive 80/723/EEC and 2000/52/EC which deal with transparency of accounts for public undertakings and certain particular undertakings;
- A background report highlighting the diversity amongst ports.

The European dredging industry has a keen interest in the development of port infrastructure and in the maintenance of nautical access and as such has commented on the proposed rules.

Table 1: Port function matrix

Port models	Port functions		
	Regulator	*Landowner*	*Operator*
Public	Public	Public	Public
Public/Private	Public	Public	Private
Public/Private	Public	Private	Private
Private	Private	Private	Private

Table 2: Port related activities

	Cargo related	Transport related
Infrastructure	Port infrastructure Terminal infrastructure Terminal superstructure	Nautical access Nautical depth (incl. dredging) Traffic control Reception facilities
Port services	Load/unload Storage Stevedoring, etc.] Cargo handling	Pilotage Towage Mooring] PTM

The package is currently under review by the Council. The European Parliament has amended the proposal without much conviction. The Association will continue to raise critical questions during further debates in and between the Institutions.

Is the proposed package an effective legal instrument ?

In terms of complying with rules that touch upon competition, ports would in principle have to comply with :

- Utility Directive 93/38/EC on Public Procurement
- Proposed Directive on Market Access to Port Services;
- Transparency Directive 2000/52/EC.

It is not obvious that the implementation requirements for these 3 legal instruments are consistent. In particular the statute of private ports is determined by national legislation and one could imagine cases where private ports are not covered by the proposed directive, thus leading to unequal treatment.

There are potential inconsistencies between the regulations for providing services and the obligations in procurement of services and works.

There are also problems with the territorial limits of competence :

- The ports directive would apply only within the jurisdictional boundaries of the port, while several of the services covered in the Commission proposal are being performed outside these boundaries (pilotage, nautical access) and would not be covered by the terms of the directive. (The European Parliament has proposed amendments to deal with this.)
- The Transparency Directive 2000/52/EC and its "mother directive" exist already and impose obligations on all semi-public and utility bodies that provide a public service. The existence of the Directives has not yet had any noticeable effect on financial reporting in general. It is a bit odd that one should specifically emphasise applicability for one particu-

lar sector; this might be seen as unequal treatment.

- On the Transparency Directive, one can make several more observations :

■ The Transparency Directive would apply to all public and private ports. This raises the question of enforcement and verification in view of identifying state aid or cross-subsidisation; can this be done effectively ? By whom ?

■ In contrast, the draft text on ports services seems to limit the scope of the Transparency Directive to those managing bodies of ports that provide port services and service providers selected by the competent authority. Both restrictions do not match the thrust of Directive 2000/52/EC and are in our view inconsistent.

- The draft ports' directive includes provisions to deal with conflict of interest : 'The managing body of the port shall not discriminate between service providers. It shall in particular refrain from any discrimination in favour of an undertaking or body in which it holds an interest.'. This simply is not likely to work.

1.3. Support for Maritime Sector

The maritime sector operates in a global competitive environment and the European companies are under a lot of pressure from low cost suppliers. This is certainly true also for the dredging sector.

The guidelines for allowable positive measures in support of the maritime sector have been in force since early 1997. They need to be reviewed carefully and their effectiveness should be gauged. This is not an easy

process as one needs to disentangle the effects of the EU framework package as applied by various Member States, from the organic growth of the sector that would have occurred otherwise. The existing package consists of various elements that may be applied individually or in combination.

The maritime dredging industry has under the existing guidelines benefited from measures in the social sphere, in particular in Belgium and the Netherlands. Overall there are many questions on the divergent treatment by different Member States and of different maritime sectors.
(Fig. 4. : illustrates the implementation status.)

The fiscal regime consists essentially of the application of a tonnage tax in lieu of company taxation on profits. The dredging sector has during the year looked into the possible benefits of such a taxation scheme but has not arrived at clear-cut conclusions.

One of the difficulties is that the tonnage tax scheme considers the operation of a single vessel as the object of taxation. One thus has to define the cost associated with such a commercial entity within the total cost base. For a dredging company the operations are probably more integrated than for a transport company and it is more complex to assign costs.

In the discussions about applicability of the guidelines to the maritime dredging sector much emphasis has been placed on the unique position of maritime transport. However, all other maritime sectors that operate in an international environment (towage, offshore) are facing similar requirements, struggle with the same stiff competition and experience problems comparable to the transport sector (see Fig. 5. :).

It is the view of the dredging industry that all maritime operators that compete globally should qualify for application of the guidelines. Specifically for the dredging sector EuDA has prepared a submission to the Commission in which the following considerations and conclusions are presented :

- Deep-sea dredging is a form of deep-sea transport, operating in an international market and subject to international competition.
- It is at the core of a technically sophisticated cluster of European companies (both shipbuilders and component manufacturers) which rely heavily on it for business.
- The industry has hitherto been predominantly EU oriented; but there are signs that competitive pressures are beginning to stimulate a move away from EU flags and EU nationality crews.
- The value of the application of the guidelines to deep-sea dredging is that they will allow, and even encourage, the governments to consider the sorts of measures which Member States are applying to an increasing degree to other forms of shipping.

1.4. Optimised Transport Modes

Freight transport by road contributes significantly to the saturation of motorways across Europe. The Council and the Commission advocate a "sustainable policy" as the instrument to manage the growth of transport volumes.

The recurring theme is the thesis that, if users pay the

■ **Fig. 4. : State aid, Guidelines, Implementation Status**

	Shipping			Dredging	
	Fiscal	Social		Fiscal	Social
Belgium	-	✓		-	✓
Netherlands	✓	✓		-	✓
UK	✓	-		-	-
Denmark	✓	-		-	-
FR Germany	✓	-		-	-

■ **Fig. 5. : Dredging: Transport versus Services?**

Equal requirements	**Maritime shipping**	**Maritime dredging (hoppers)**
IMO requirements	✓	✓
International safety Mgt - ISM code	✓	✓
Ship certified	✓	✓
Port state control	✓	✓
Certified crew	✓	✓
STCW 95	✓	✓

Similar concerns	**Maritime shipping**	**Maritime dredging (hoppers)**
Shortage European crew	✓	✓
Labour cost	✓	✓
Flags of convenience	✓	Not yet
Global competition on cost	✓	✓
Market access barriers	Limited	✓

true cost of transport including the "external" cost of pollution, congestion and accidents, the use of infrastructure will be optimised. There are currently some major hurdles to be overcome before such a charging system could be achieved.

i) The definition of the elements to be considered in external costs varies widely amongst experts. Also the terminology proposed by the Commission itself in this and previous communications is not helpful.

ii) The estimates of actual "total" cost figures per transport mode and type vary widely as well.

iii) The social resistance against introduction of widespread charging systems is high.

Even if one assumes that the external costs can reasonably be "internalised", it is hard to see how charging mechanisms may be developed that are simple, fair, transparent and **equitable across the transport modes.**

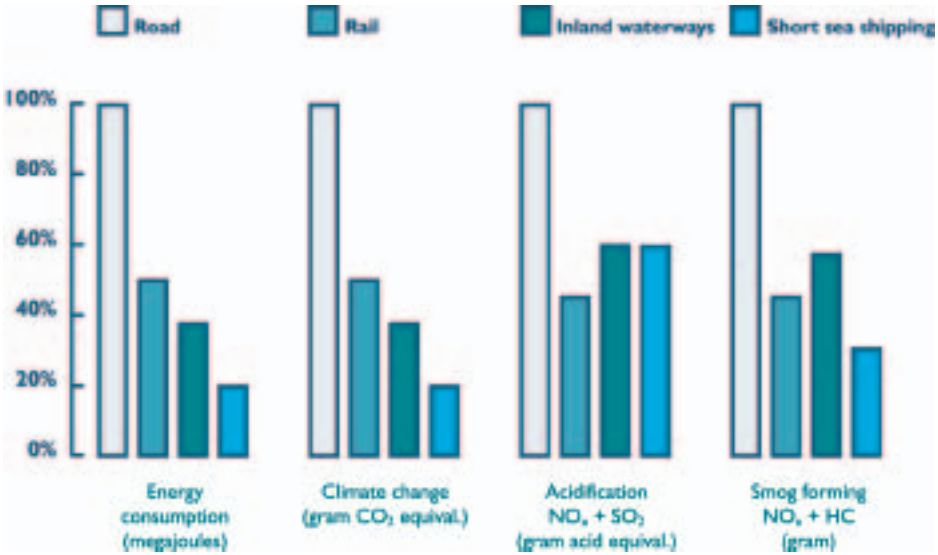
EuDA has contributed to the debate by making several suggestions on promoting waterborne transport to the Belgian Minister in her capacity as President of the EU Transport Council (2° half 2001). This input was based on the following general observations :

- Realistic pricing of (freight) transport must indeed include social and environmental costs ('external costs'). The inland waterborne transport sector scores favourably on both accounts (see Fig. 6. : & Fig. 7. :) .
- The investment cost for transport infrastructure is very high, but typically lasts also for a very long period. Again, the waterways sector scores favourably. The specific investment costs for a certain tonnage capacity are lower than for roads (motorways) and much lower than for railway tracks. Investment in waterways should get a much higher priority in national budgets.
- The optimisation of freight transport must consider the waterborne transport mode whenever feasible. This can often be achieved via intermodal

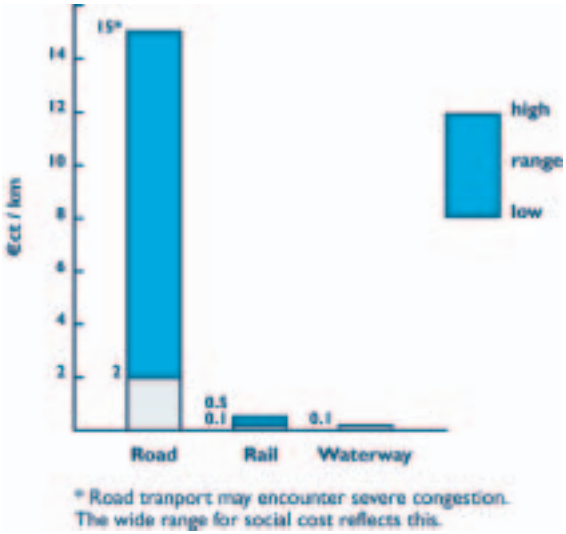
Box

The following is quoted from COM(2001)370 - White Paper on European Transport Policy :
"The 2000 Gothenburg European Council pointed out that "a sustainable policy should tackle … the full internalisation of social and environmental costs. Action is needed to bring about a significant decoupling of transport growth and GDP growth, in particular by a shift from road to rail, water and public passenger transport."
The thrust of Community action should therefore be gradually to replace existing transport system taxes with more effective instruments for integrating infrastructure costs and external costs. These instruments are, firstly, charging for infrastructure use, which is a particularly effective means of managing congestion and reducing other environmental impacts, and, secondly, fuel tax, which lends itself well to controlling carbon dioxide emissions. The introduction of these two instruments, which will allow greater differentiation and modulation of taxes and rights of use, needs to be coordinated, with the first being backed up by the second."

■ **Fig. 6. : Relative environmental performance per transport mode (per ton-km)**
Sources : Eurostat, PIANC, Schuttevaer



■ **Fig. 7. : Social "cost" per transport mode (€ct / ton-km) (Estimate)**



Sources

1) Investigating Mobility - Dutch Ministry of Transport - 2000.
2) Dings et.al. - Efficient Pricing for Transport - CE Delft - 1999.
3) C. de Vries - Waterborne Freight Transport - Van Gorcum, Assen - 2000.
4) B. de Borger et.al. - Mobility : The Fair Price - Garant - 1998.
5) PIANC Report
6) COM(2001)370 - White Paper, European Transport Policy for 2010.

transport routes. The (public) investment in infrastructure to facilitate freight handling in ports should thus not be seen as a form of state aid, but rather as an "eco-subsidy", an investment towards a cleaner environment. This approach is not unlike subsidies for the construction of wind turbines or other renewable forms of energy.

- If such eco-subsidies remain limited to the category of capital costs for (public) transport infrastructure, they will not distort competition between transport modes.

1.5. Decision-Making Infrastructure

Phase I of the study by EuDA in cooperation with Strateco NV, NV Zeekanaal and Dienst voor Scheepvaart on the 'Models for decision-making relative to the investment in transport infrastructure' has been completed during the year. Although the next phase, selection and development of specific decision models, has been postponed, the study had demonstrated its value already in the review of transport policy.

The specific characteristics and economic features of waterways were listed in more detail. This provided the arguments for a critical review of several studies that provide numerical assessment and cost comparisons of transport modes.

The issue is embedded in the whole debate on transport policy and "user pays" approaches. EuDA remarks relate in particular to the cost allocation of construction and maintenance of waterways. The most impor-

■ **Table 3 : Waterway functions**

Waterway functions	
• Waterbone transport:	
• Water supply:	- Irrigation - Drinking water
• Industrial use:	- Waste water disposal - Cooling water supply - Electric generation
• Water control	- Water level - Flood protection
• Leisure	- Fishing - Tourism - Yachting

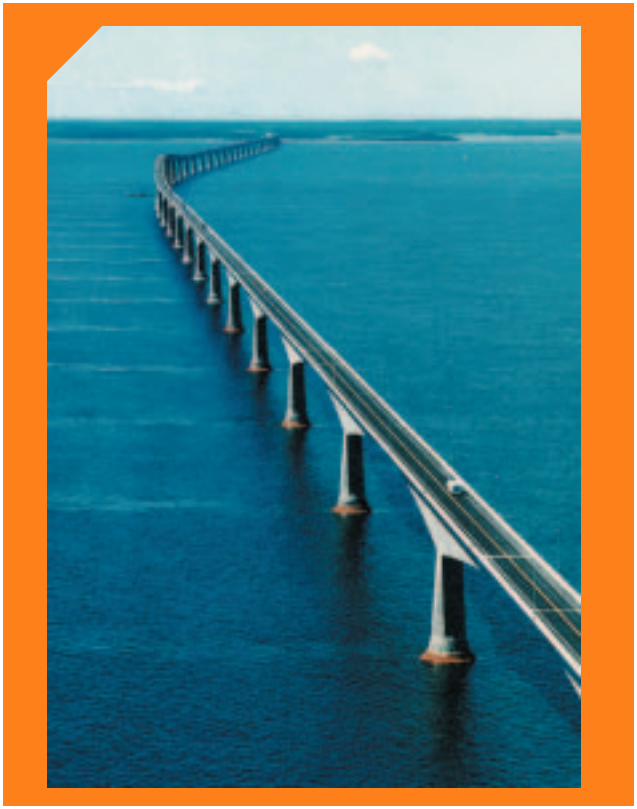
tant consideration concerns the multifunctionality of waterways (Table 3 :).

The EC Green Paper 'Towards Fair and Efficient Pricing' (1996) contains the following observations :

"Cost recovery figures for inland waterways do not seem to take account of the fact that waterways … are relevant to a multitude of objectives and activities … Studies by the 'Service de la Navigation de la Seine', which attempt to take these factors into account, suggest that only 18% (!) of total infrastructure costs of the river Seine should be allocated to waterways transport."

The share of the transport function amongst the other functions will vary of course, but it should be clear that cost estimates of capital cost and use and maintenance costs of waterways should do justice to their multifunctionality. The proper cost allocation for different uses results in specific infrastructure costs of the transport function of waterways to be much lower than for any other transport mode.

Unfortunately many studies that assess comparative cost between transport modes ignore this basic consideration.



2.1. Internal Market

2.1.1. Public Procurement Directives

The European Commission has in 2000 introduced proposals to modernise the directives on public procurement of products, works and services as well as the one imposing procurement obligations on the "utility" sector (energy, transport, water). These proposals have been sent to the Council and the Parliament for decision.

EuDA has put forward its position on significant issues in the revised directives to the European Parliament.

A. Procurement by public entities

1) The public procurement directives prescribe as standard procedure the preparation of detailed tender documents, on the basis of which the bidders submit a priced offer. This procedure is not very flexible as it leaves little room for discussions between procurement entity and bidder on the specific details of their bids. This procedure is suitable for standard products, standard services or smaller works, but it is not optimal for more complex works projects.
   The directive should give more room to the use of alternative procedures (negotiated, variants, dialogue).

2) EuDA welcomes in particular the procedure proposed to deal with "complex contracts", which would include a round of technical discussions with prospective bidders prior to submitting technical and commercial bids.
   Such a dialogue is absolutely necessary in cases where the technology evolves fast, in situations where the contracting authority cannot define the optimal solution and in cases where the contractor is expected to perform (part of) the detailed design work.

3) For larger works contracts the procurement practice evolves to more frequent use of 'design + construct' type of contracts. The directives should leave ample room for this development and not impose a split between the design work and the construction of the projects.

4) When technical discussions take place between contracting authority and bidders, the confidentiality of such discussions must be guaranteed as well as the intellectual property rights associated with design solutions proposed by individual bidders. In these cases the contract should always be awarded on the basis of the most economically advantageous tender.

5) EuDA as a rule favours that works contracts are awarded on the basis of "most economically advantageous bid" rather than on "lowest price" only.

6) EuDA is of the opinion that public tender procedures which require extensive proposal engineering work by the selected bidders, must foresee cost compensation for all selected bidders. This requirement should be spelled out in the directive.

7) The existing directive on public procurement of works as well as the proposed revision both include contracts designated as "works concessions". These are defined in the following manner :

'Public works concession' means a public works contract except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with payment.

EuDA is of the opinion that this definition is not adequate to characterise the nature of a concession. It covers only a limited part of those contracts under which the private party assumes broader responsibilities.
The definition does not at all consider concession agreements where no "works" are involved, and which are presumably seen as services contracts.
Apparently the whole range of **public-private partnership contracts does not fall under the terms of the concession and therefore not under the proposed directive.** Separate guidance will have to be developed. It is advisable that the limits of applicability of the directive for certain "works" contracts is clarified.

■ B. Procurement by entities in the water, energy and transport sector

1) EuDA fully supports the Commission's intent to prescribe procurement transparency for those utility sectors where competition is restricted and / or where liberalisation processes have not been completed. In this respect the ports sector, as part of the transport sector, is of particular interest to the dredging industry.

   There are many management models around for ports, ranging from fully publicly owned and administered to full private ownership and management. The fact that ports have certain statutory rights and obligations keeps them in the domain of the utilities and results in public procurement obligations for all ports, including private ports.

2) EuDA members are particularly concerned about the trend in some private ports. These ports tend to evolve towards vertical integration and to become providers of comprehensive services packages. This trend may easily lead to market protection and result in market access limitations and cross-subsidisation.

   The utility directive is a valuable instrument to maintain market access to the utility segment. The revisions to the directive cover new developments in procurement practice.

For the review by the European Parliament of these legislative proposals EuDA has supported the amendments suggested by FIEC, the Federation for the European construction industry, and has also prepared a number of specific amendments to emphasise the unique status of public-private partnerships.

In the first reading in the EP most of the industry amendments (which the construction sector at large considers to be improvements) have been accepted. At the time of writing this report it remains to be seen what the reaction of the Commission and the Council will be.

2.1.2. Contractor Qualification

The long running attempt to develop a European (CEN) standard for contractor qualification has reached a critical stage. The differences of opinion and the widely varying treatment in Member States have made it almost impossible to arrive at a common position. Moreover, any standard that would be found acceptable remains of a voluntary nature and would certain-

ly not be adopted by several Member States.

The tension results from existing practices. While countries in north-western Europe would leave the choice of contractor entirely up to the discretion of the contracting authority, countries with a more Napoleontic influence on contract law tend to regulate the qualification of contractors.

The position of Belgium is illustrative in the sense that an elaborate system of contractor qualification is embedded in law. Although the goal is to screen the credibility of contractors early in the process, such a system can also restrict access to the market to non-Belgian contractors. This is at least the opinion of the European Commission who has formally censored the Belgian rules and regulations relative to foreign contractors seeking registration in Belgium :

"The Commission opines that the duties and liability resulting from these rules and regulations are so heavy-going that they are likely to deter customers or contractors from resorting to enterprises or subcontractors that are not established, or that have not had themselves registered, in Belgium. Furthermore, as far as non-Belgian contractors are concerned, the procedure is bogged down in so much red tape that, for those that are not doing business in Belgium on a regular basis, it cannot be a worthwhile venture. These rules and regulations therefore encroach on the freedom to provide services, which goes against Article 49 of the EU Treaty."

At the moment of writing this report, it is not yet known what the response of the Belgian authorities will be.

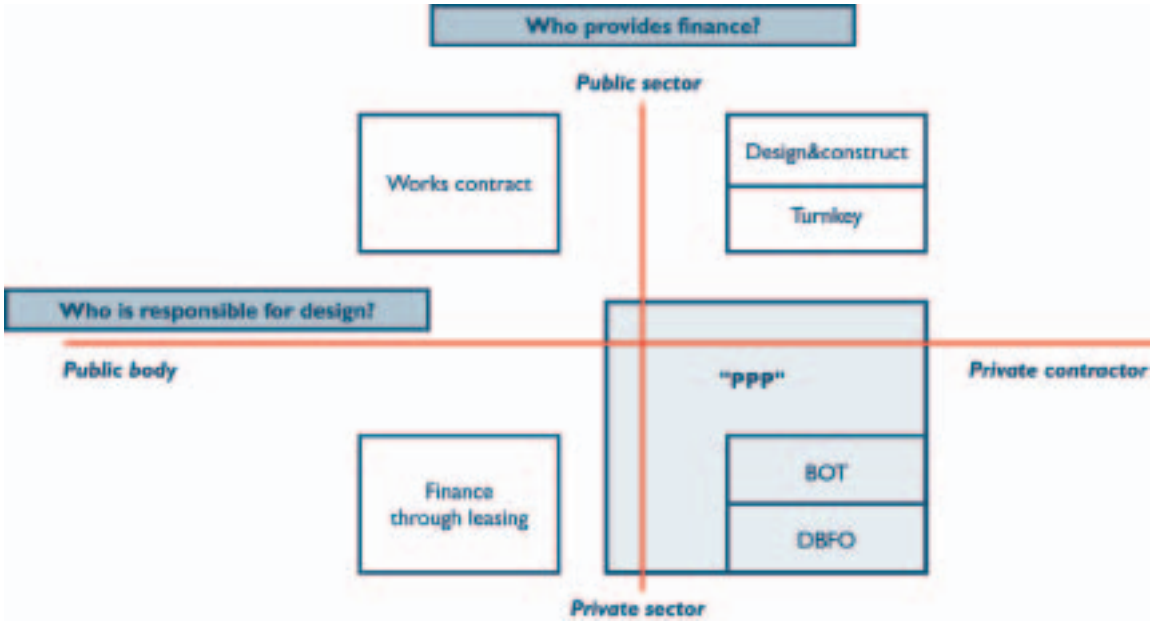
2.1.3. The role of public-private cooperation contracts

The traditional "works" contract in the construction sector is based on the model that the owner, or his agent, define the requirements and specifications for a work in such minute detail that the prospective contractor can price the work without taking undue risk. This type of contract keeps the parties at arm's length.

Nowadays many alternative forms of contracting abound, where the contractor accepts more responsibility and risk in exchange for a higher reward. The ultimate form of this cooperation is the Public-Private Partnership or PPP contract. The classification of different contract types is given in Fig. 8. : .

The evolution in contract models reflects :
- The fast development in technology, which makes it difficult for the contracting entity to specify its require-

■ **Fig. 8. : Classification of construction contracts**



ments in detail.

- The growing size of many infrastructure projects, which is beyond the management capabilities of the public body.
- The need to attract private finance for public infrastructure.

With the shifting balance between public and private sector it is necessary to consider the implications for the tendering process. The larger the project and the greater the ultimate responsibility for the contractor, the earlier public entity and private contractor should initiate detailed discussions on subject and form of contract. This development is somewhat at odds with the attempts of the EU Institutions to maintain an open and transparent market for public works in Europe. The current procurement directives are written on the basis of arm's length contractual relationships and do not accommodate partnership agreements.

The ultimate development is to be found in public-private partnerships (PPPs), where responsibilities are shared between the public and private parties in function of their ability to manage these. Such a partnership may well imply equity shareholding in a joint venture by the public party.

The result is that it is no longer clear whether rules for public procurement should be applied to the PPP

contracts and if yes, which rules ? Existing public procurement rules are certainly not applicable without amending them. This has been recognised by the European Commission in a recent Communication*. On the other hand can there be little doubt that PPPs fall under the terms of the Treaty. The implication is that further guidance must be developed for these partnerships which play an essential role in the development of large scale infrastructure.

The EuDA Secretariate has commented on these issues on various occasions and plans to take further initiatives.

2.2. External Market

2.2.1. Market Access

EuDA is pleased with the outcome of the WTO deliberations to start a new round of negotiations which will include trade in services. The dredging industry is affected by both the sectors of 'construction services' and 'maritime services'. This ambiguity will complicate the requests to remove certain market access barriers. A few recent case studies may illustrate this point.

- The Indian government imposes up to 5% import duties on vessels. This rule is also applied to foreign flag vessels entering Indian ports on a temporary basis in order to execute e.g. dredging works. Moreover, the levy is applied each time that the vessel would return for a new dredging campaign. The resulting charges are quite considerable (as well as compounded by red tape) and put foreign contractors at a severe competitive disadvantage vis-à-vis Indian dredging contractors. At the same time the Indian government encourages the leading Indian dredging company to offer its services on the open world market.

- Canada applies the so-called Coasting Trade Act to dredging services. This Act stipulates for all practical purposes that a foreign (dredging) vessel will not be granted a permit or trade licence if a ship under Canadian flag is available to perform the same work. This determination will be made without consideration of commercial conditions and obviously constitutes a market access barrier. In the case

* COM (2001)xxx : Interpretative communication on concessions under Community law.

of dredging such a protectionist measure most likely will be costly to the tax payer.

- Australia has formally open markets for dredging work. There is only the requirement to (temporarily) register the vessel under Australian flag. In practice this requirement leads to a further demand to man an Australian flagged vessel with Australian crew and to the imposition to apply certain local labour practices, all of which lead to considerable expenses.

Moreover, a European dredging vessel that is certified under the ISM Code* would have to repeat the whole certification process and adapt its safety-related procedures to local conditions once it decides to register under the Australian flag. Although probably not intended that way, the requirement to change flag leads in practice to huge market barriers for dredging vessels.

2.2.2. Development aid

Over the years there have been several cases where European governments granted development aid for the construction of dredging vessels on their national shipyards. Beneficiary countries have been India, Indonesia, China, …

The European Commission imposes special conditions on such aid. The problem is that, even if these conditions are respected (quod non), the new vessel enables other dredgers of that national fleet to operate internationally. The European industry than encounters competition in world markets at discount prices. EuDA strongly objects to this practice and considers that it must be stopped altogether. More generally we advise that the practice of granting aid tied to purchases in the country of origin should be discouraged.

During the year 2001 the Commission has nevertheless approved aid for the construction of a dredging vessel for China. Subsequently the Chinese construction industry tendered actively in international markets with price levels that are often below cost of European contractors and push them out of markets. This can hardly be seen as an enlightened industry policy.

* International Safety Management Code. This IMO Code formally applies to seagoing dredging vessels as of 01/07/2002

3. Industry Matters

3.1. MIF

The Maritime Industries Forum met this year in Valencia. The work of the Forum has been streamlined. EuDA contributed a report that attempts to define the different dimensions of the trans-European waterways network and the interfaces with other trans-European networks in more detail*.

The group that reflects on long-term innovation aspects of the maritime sector and the link with Community R&D programme worked on a new version of the R&D Masterplan. This report has been outlined before the Forum and will be formally published early 2002. The EuDA contribution deals with the diverse roles of the coastal zone and the long-term research needs.

We welcomed the initiative of the DG Enterprise to commission a study with as goal to sketch the contours of the maritime cluster in Europe and to quantify its economic contribution. It was disappointing to read in the final report ('Economic Impact of Maritime Industries in Europe') that available data for the various maritime industries segments were insufficient to quantify the economic significance of the cluster in its entirety.

3.2. Employment seafarers

The seagoing dredging fleet employs seafarers that fulfil the same requirements as those aboard other vessels. In addition the crewmembers responsible for the dredging operations follow complementary training.

The maritime sector in the EU faces a severe shortage of qualified EU officers on the fleet. This problem has been recognised since many years. The European Commission has published the report COM(2001)188 'Communication on the training and recruitment of seafarers'.

The communication presents an in-depth analysis of the problems, the causes and possible solutions, while expressing real concerns about the current situation. These concerns include weakening of the maritime cluster, shortage of qualified personnel also for shipping related jobs onshore (e.g. qualified inspectors to execute port state control functions) and the undermining of the existing high quality and safety performance levels in the EU maritime sector.

The Commission does, however, not propose any actions in which it would play a role or take commitments to address the situation.

The dredging industry, being fully part of the maritime sector, experiences problems with the shortage of qualified (EU) crew members as well. These problems are in a sense even more critical because the practical know-how about dredging operations is to be found in the minds and hands of an experienced crew. If this know-how is lost, the competitive position of the industry would be seriously undermined.

Individual companies, national federations and branch organisations are taking initiatives to attract recruits for the sector. Within EuDA a project is under consider-

* EuDA report to the MIF October 2001 "On the Definition of the trans-European waterways" (available on request from EuDA Secretariate.)

ation to develop advanced dredging courses in an international setting, hopefully with the help of European funds.

EuDA has collected data from member companies on trends in the manning of their seagoing ships. The results are summarised in Fig. 9. : . It will be seen that the dredging sector, compared to the merchant fleet, has succeeded in maintaining a relatively high share of EU crew members thus far.

3.3. Environmental Concerns

3.3.1. Contaminated Dredged Material

Much of the dredging in Europe takes place in marine waters (ports, access channels, coastal zone) and the preferred location to place dredged material is on the seabed, either in coastal waters in national territory or in international waters.

Sea disposal is regulated by international conventions. The relevant conventions that deal with dredged material to some extent (OSPAR, HELCOM) have been revised in 1992 in particular with regard to territorial competence. These conventions now cover all of the sea, including territorial waters, lagoons, etc. and a part of the inland waters up to the tidal limits (for OSPAR) and an administrative limit near ports (for HELCOM).

They place the responsibility to issue permits on the respective national authorities. The European Union does not have regulations to deal with dredged material (except for some exceptional situations where dredged material would be of a hazardous nature) and it is even questionable whether the EU could claim competence to deal with dredged material when it is placed outside of the coastline.

The territorial competence of the Union is not uniformly defined and may give rise to differences in interpretation. For example, the Water Framework Directive, which came into force in 2000 and deals with the desirable quality of fresh water, establishes as limits of competence a zone extending to 1 mile outside the coastline. This EU Directive could give rise to a conflict of interest between international conventions and EU rules.

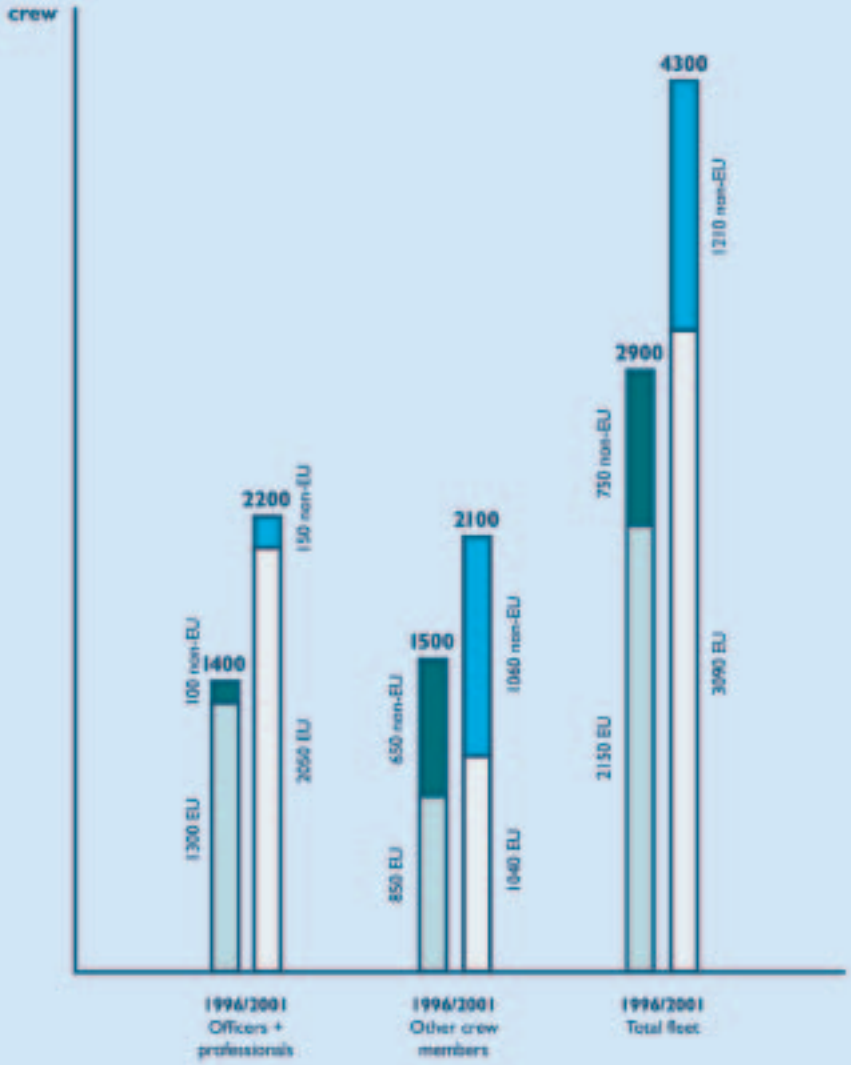
It is thus up to the competent national authority to develop an integral approach to the disposal of dredged material and harmonise international conventions with EU legislation.

The various tensions suggested above lead in practice to considerable frustration or friction.

Some ports consider that the lack of generic rules leads to differences in treatment under the national rules which could be considered as an element of unfair competition.
Other ports feel that the unpredictability of the conditions that may be imposed in a permit to dredge in the port exposes the port authorities to major risk (both financially and nautically).

A third group of unhappy stakeholders is formed by parties (potentially) involved in projects to clean-up contaminated water bottoms in inland waters. The uncertainty about what constitutes severe contamination of silt usually has as a result that unduly expensive dispos-

Fig. 9. : Manning of the dredging fleet (maritime)





al facilities are imposed, or that the project is postponed for lack of rules or for lack of budget. Both outcomes are clearly undesirable.

Thus, in practice, the different approaches in rulemaking by the international conventions (for sea disposal) and by the European Union (for land disposal) could easily lead to frictions at national level between different disposal regimes.

One of the recurring problems is that under EU definition dredged material is considered to be "waste". In the view of the dredging community such a definition is erroneous, misleading and counterproductive.

EuDA has undertaken a comparative analysis* in order to clarify these issues. Further discussions will carry over into 2002 and EuDA will not cease to plead for a different classification of dredged material as a valuable resource.

3.3.2. TBT

The Ministerial Conference called for by the International Maritime Organisation in October 2001 approved the text of a 'Convention on the control of harmful antifouling systems on ships'. The subject of the Convention is in particular the harmful effect of organotin compounds present in marine coatings and acting as biocides.

The approved text calls for a ban on the application of organotin compounds as antifouling agents in coatings

* Report available on request.



on shiphulls as per January 1, 2003, while all existing coatings on vessels be removed not later than January 1, 2008.

The European Union and the Member States have advocated early introduction of the Convention. The document must now be ratified by a sufficient number of IMO Member States prior to entering into force. The EU is considering to take steps to introduce the measures effectively as of Januray 1, 2003 since it fears delays in ratification.

The Commission proposal is to ban the sale of ship coatings containing TBT as antifouling agent as of January 1, 2003 in the EU, even if the Convention is not yet ratified. The ban on application of these coatings would also be introduced for all EU flag ships as of this date.

The Commission proposal is currently under consideration by industrial partners; the main consideration is whether the (early) application of the prohibition could form a competitive handicap in global shipping.

3.4. Safety Management

The International Safety Management Code has become mandatory as Ch. XI of the SOLAS Convention (Safety Of Life At Sea). The legal date of applicability for the dredging fleet is July 1, 2002.

It may be recalled that the Code applies ultimately to all seagoing vessels above 500 GT. EuDA member companies manage a fleet of about 350 such vessels. The goal of the Code is the following : every company should develop, implement and maintain a safety management system (SMS) which includes the following functional requirements :

1) A safety and environmental protection policy.
2) Instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag state legislation.
3) Defined levels of authority and lines of communication between, and amongst, shore and shipboard personnel.
4) Procedures for reporting accidents and non-conformities with the provisions of this Code.
5) Procedures to prepare for and respond to emergency situations.
6) Procedures for internal audits and management reviews.

Member companies have started to develop appropriate policies and procedures several years ago and the certification process is in its final stage. It has generally been found helpful to prepare detailed procedures for safety management, environmental care and for communications between ship and headquarters. It was also realised that the thrust of the ISM Code requirements does not always fit with the practice of marine dredging operations.
Although there are recommendations on how to deal with ISM certification in the case of changes in register, such a transfer may nevertheless pose particular problems (and expense !).

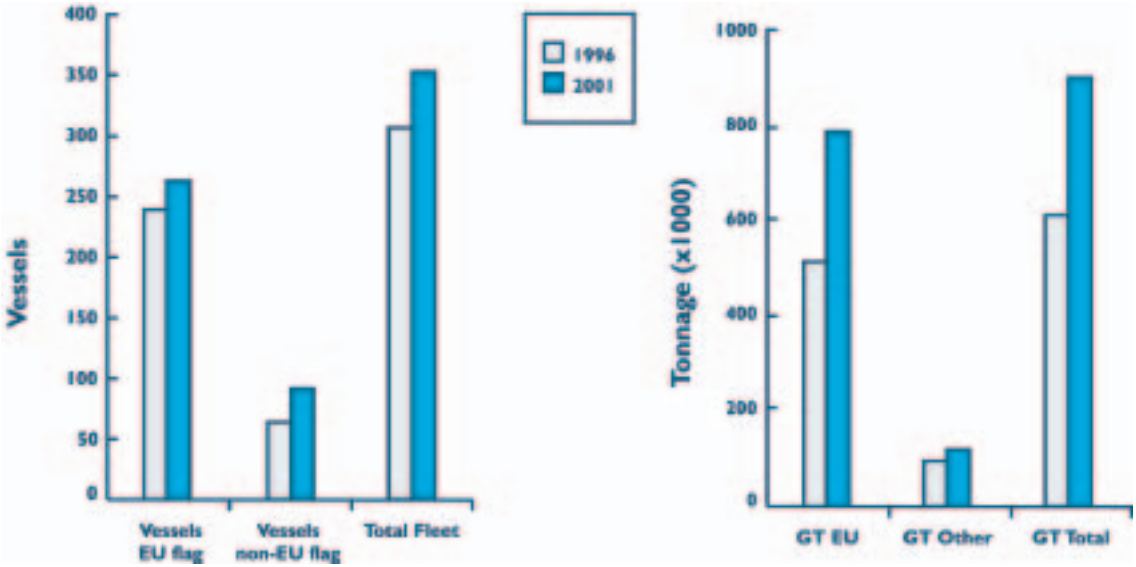
For example, both Australia and Canada require that a (dredging) vessel transfers to its register if work on its territory is to be done. This implies not only a change in flag, but also modifications in the communication procedures and established lines of authority and leads to a new audit and revalidation of the certificate.

3.5. Dredging Fleet

Over the past decade the fleet of maritime dredgers has grown steadily, in line with the increase in market volume. While the European merchant fleet has known considerable transfer to non-EU registers, usually for economic reasons, the dredging fleet has remained largely under EU flags (UK, Dutch, Belgian, Luxembourg). There are two important factors that influence the decisions of shipowners - apart from traditional values and loyalty - namely :

- The company results are obtained by carrying out marine works. Although the work has a strong transport component, the added value is created via maintenance dredging, capital dredging, marine contracting or civil construction. Compared to the merchant fleet the economic incentives for outflagging have been less urgent.
- The know-how of the industry is concentrated in the knowledge and expertise of the vessel crew. There is a strong interest to keep this know-how in European hands.

■ **Fig. 10. : Maritime dredging fleet owned by EuDA member companies**



Obviously, not all vessels are under EU flag. For a fleet that operates worldwide there are many reasons to choose other flags (long-term local presence, operating subsidiary company registered elsewhere, legal or contractual requirements, market barriers).
The Fig. 10. : summarises in graphical form the trend in the fleet of seagoing vessels.

4. EuDA Organisation

EuDA welcomed the company D. Blankevoort & Zn B.V. as a new member.

The EuDA Board of Directors was until October 2001 composed as follows :

- Mr. J. Allaert, President
- Mr. J. Rohde Nielsen, Vice-Chairman
- Mr. A. Kok, Treasurer
- Mr. J.H.M. Rovers

The mandate of Mr. Kok expired and he was not available for a new term in office. The General Assembly expressed its appreciation for the support that Mr. Kok gave to the Association.

Mr. K.G. van Nes was elected as member of the Board during the 2001 AGM.

The Secretariate was manned by Mr. F.J. Mink and Mrs. A.C.F. de Meester and administrative assistance was provided by Miss S. Van Hende.

The only Committee currently active within EuDA is the Social Committee. It follows the developments around the package of support measures for the industry and provides guidance within the Association on questions of vocational training and promotion of employment in the industry.

The overall policy focus of EuDA is rather broad, since the industry is active at the crossroads of maritime (support) services, marine construction work and inland (transport) infrastructure. The focus of activity in European Affairs is outlined in Fig. 11. :

EuDA has joined two thematic networks organised under the 5th Framework Programme for research activities :

- ERAMAR - European Research Area for the Maritime Sector

  and

- SEDNET - Network for information exchange on (contaminated) sediment.

Both networks are in the start-up phase.

Self-propelled sea-going
cutter suction dredgers

Self-propelled hoppers

Trailing suction hopper dredgers

Cutter suction and
bucket-wheel dredgers

Sinking pontoons
for bottom protection

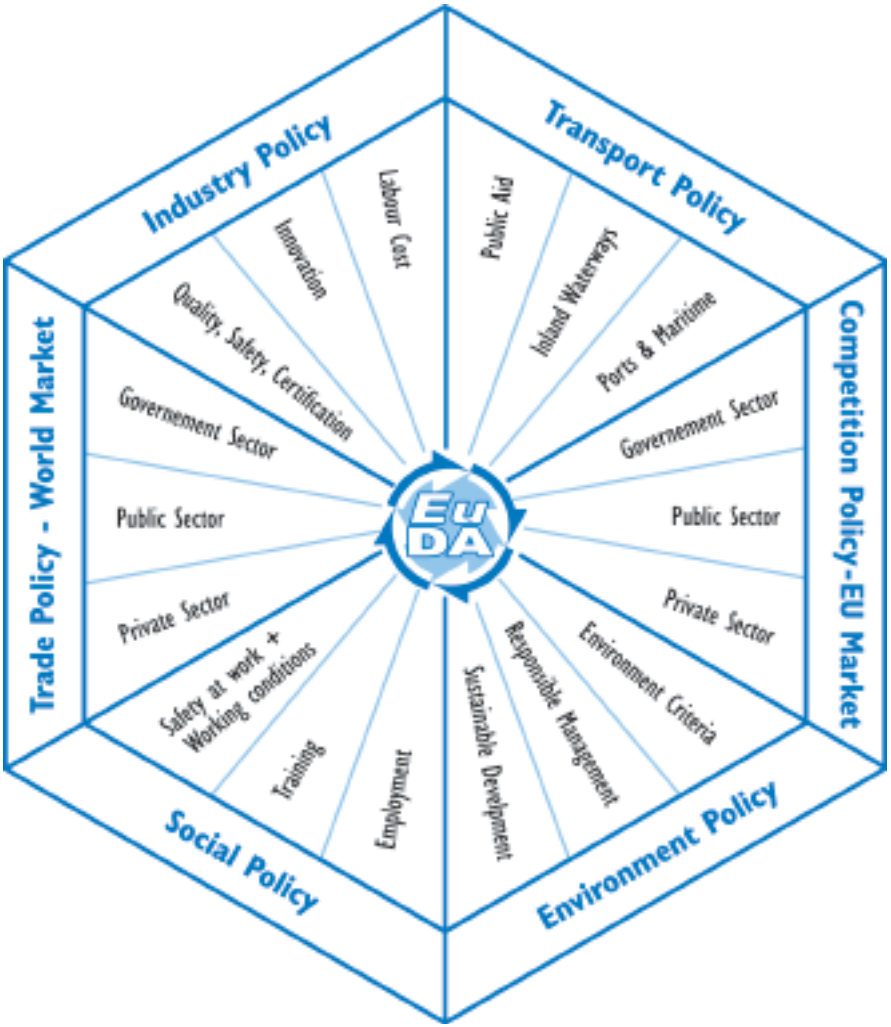
River Trailing hopper dredgers

Environmental disc
bottom cutters

Suction dredgers

European Dredging
Association

■ **Fig. 11.**


Industry Policy
Transport Policy
Competition Policy-EU Market
Environment Policy
Social Policy
Trade Policy - World Market
Labour Cost
Innovation
Quality, Safety, Certification
Public Aid
Inland Waterways
Ports & Maritime
Government Sector
Public Sector
Private Sector
Environment Criteria
Responsible Management
Sustainable Development
Employment
Training
Safety at work + Working conditions
Government Sector
Public Sector
Private Sector
EU DA

EuDA members:

Baggerbedrijf de Boer b.v. - Dutch Dredging b.v.
Ballast Nedam Baggeren b.v.*
D. Blankevoort & Zn B.V.
Dragados Y Construcciones s.a.
Decloedt & Zoon n.v.
Deutsche NassbaggerVerein
Dredging International n.v.
Fédération du Dragage Belge a.s.b.l.
Federation of UK Dredging Contractors
HAM Dredging and Marine Contractors b.v.*
Irish Dredging Company
Jan De Nul n.v.
Rohde Nielsen a/s
Royal Boskalis Westminster n.v.
SIDRA - Societa Italiana Dragaggi
V.B.K.O. (Dutch branch organisation)
Van den Herik b.v.
Van Oord ACZ b.v.

* Ballast Ham Dredging b.v.

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