



GREEK MARITIME POLICY AND INSTITUTIONAL DIMENSIONS: A STRONG PRESENCE IN THE EU AND IMO

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Abstract

The Greek maritime policy is an initiative of the competent institution called the Ministry of Maritime Affairs and Insular Policy (MMAIP). In recent years, an attempt has been made at tripartite maritime cooperation with the respective ministries of Cyprus and Malta, which should be continued.¹ The agenda of the meetings concerns the exchange of views and the prospect of a possible formation of a common position on a number of current important maritime policy issues at the EU level. At the center is the ongoing, controversial, in the EU issue of supporting a common European position of all EU Member States (M-S) in the IMO. With this policy, the European Commission attempts the formal and substantial substitution of M-S in the IMO by the EU, in its capacity as an autonomous legal entity. This perspective, based on the experience of the past, has more negative than positive elements for Greek shipping and more generally for the orderly and efficient operation of the IMO as an international shipping organization of global scope. The above-mentioned meetings therefore show that the seriousness of the issue has been realized and the prospect of a structured continuation with expanded participation of other EU Member States, signals the positive outcome of this move, especially for the interests of the Greek and Greek-owned shipping.

Keywords: *International Law, EU Law, Maritime Policy, IMO.*

1. INTRODUCTION

The EU being a supranational international organization has achieved, mainly in the last three decades, a high level of integration between the Member States while their external relations are still largely a state matter, with the 27 countries wishing to maintain their own national policies. However, with the EU to hold more weight as, sui generis, the strongest economic union of states to date, there are occasional attempts at international representation of all the M-S, especially in terms of trade, with the simultaneous expansion of the competences of the EU in this area and through amendments to the founding Treaties.

As is known, 75% of the EU's foreign trade and 31% of its internal trade is served by sea² and therefore maritime transport largely supports the economic development of the EU Member States and especially the maritime ones. The liberalization of maritime transport services at national level (cabotage), the promotion of competitiveness and the strengthening of employment are some of the areas that laid the main foundations of a common maritime transport policy, which was developed centrally by the European Commission³ over of the years and especially during the 80s. The "White Paper Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system" moves along the same wavelength.⁴ Recently, there has been an increased tendency within the Union for a joint and coordinated representation of the M-S in international organizations and in particular on maritime issues in the International Maritime Organization (IMO), in which the EU participates as an observer.

2. EU INTEGRATION AND MARITIME POLICY.

This trend has as its ultimate goal the full membership of the EU in the IMO and therefore the full legal substitution of its M-S, for which, however, an amendment of the founding Treaty of the IMO will be required. According to article 34§1 of the Treaty for the European Union (TEU), *M-S shall coordinate their action in international organizations and at international conferences. They shall*



uphold the Union's positions in such forums. In this direction, the positions of Greece and the other M-S of the EU will not be independently supported in the IMO but will be expressed centrally by the EU in the logic of unified representation, on maritime issues. It should be noted that, at the EU level and specifically at the meeting of the Maritime Transport Group (12/2004), it was decided that a committee of M-S experts would be set up only for the long-term planning of maritime issues within the IMO framework, while international maritime issues would be discussed in the Council of Ministers where the relevant decisions will be taken.

As it indirectly follows from the aforementioned, in the field of the EU's maritime policy, the views of the M-S on shipping issues often do not coincide with that of the EU. The issue is extremely serious for Greek Shipping, which is firmly maintained in the first positions of the international maritime forces (Figure 1), a phenomenon due, among other things, to the successful international representation of the Greek maritime sector in the IMO and other fora, resulting in the excellent adaptability of Greek shipping to international developments. The issue needs to be seriously monitored by the competent Greek authority (MMAIP) with the aim of taking important initiatives in the field of maritime policy planning with the cooperation of Cyprus and Malta. In particular, in view of the policies launched by the EU institutions that are likely to oppose the interests of Greece regarding the regulation on the recycling of ships and the legislation on the monitoring and reporting of greenhouse gas emissions from ships within the borders of the EU.

FIGURE 1

Greece is the first among 10 countries with the largest fleets > 1000 GT

	Country or territory of ownership	Number of vessels			Deadweight tonnage				
		National flag	Foreign flag	Total	National flag	Foreign flag	Total	Foreign flag as a % of total	Total as a % of world
1	Greece	620	4 246	4 870	55 715 512	328 703 344	384 430 215	85.51	17.63
2	China	5 357	2 599	8 007	113 035 546	163 977 083	277 843 335	59.19	12.74
3	Japan	933	3 070	4 007	35 970 817	200 656 470	236 638 365	84.8	10.85
4	Singapore	1 371	1 400	2 799	67 869 137	68 312 248	136 243 709	50.16	6.25
5	Hong Kong, China	861	948	1 822	72 061 117	39 473 538	111 587 729	35.39	5.12
6	Republic of Korea	804	867	1 680	14 767 539	77 501 218	92 302 014	84	4.23
7	Germany	185	2 036	2 221	6 976 526	72 616 389	79 592 915	91.23	3.65
8	Bermuda	2	505	507	26 137	63 381 136	63 407 273	99.96	2.91
9	Norway including Svalbard and Jan Mayen Islands excluding Bouvet Island	982	1 002	1 987	18 980 244	40 945 002	59 931 039	68.33	2.75
10	United Kingdom of Great Britain and Northern Ireland including Channel Islands and Isle of Man	363	1 014	1 380	9 376 891	49 222 876	58 746 865	84	2.69

SOURCE: RMT, 2022.⁵

Therefore, the tripartite meetings between Greece, Cyprus and Malta should be held to discuss current maritime issues in order to lay the foundations for the further expansion of cooperation and coordination in general between the three countries in the maritime sector within the EU. The main issues that affect shipping policy and need to be closely monitored are:

- EU's Integrated Maritime Policy (IMP).
- The presidency of M-S in the Council of the European Union and the priorities in matters of maritime policy.
- EU Maritime Legislation.
- The procedural framework for formulating positions of the EU within the committees of the International Maritime Organization (IMO).



- Further examination of subjects related to maritime policy and with other EU M-S who have similar views and positions.

Under these conditions, an attempt is being made to lay the foundations for the creation of a traditional maritime "South Front", since Greece, Cyprus and Malta have as a starting point several common positions regarding their maritime policy within the EU and their representation in international organizations. The managed maritime interests and challenges of the maritime "South Front" inside and outside the EU have a common component and therefore there is room for cordial cooperation between the three States since they represent the three largest fleets within the EU. Obviously, the enlargement of the "South Front" is desirable with the permanent or occasional cooperation of other M-S of the EU. The juncture of said cooperation is considered favorable, since the EU is said to seek the formulation of common positions on behalf of all M-S, at the level of IMO committees, which, however, may not adequately serve but sometimes be contrary to the interests of each individual M-S in the International Maritime Organization.

3. LEGAL AND POLITICAL ARGUMENTS FOR AN AUTONOMOUS PRESENCE OF THE EU'S M-S IN THE IMO.

What developed previously and mainly the activation of the tripartite meetings of the maritime authorities of Greece, Cyprus and Malta highlight the formal and essential issue of the impossibility of formulating a commonly accepted external (international) maritime policy on behalf of the EU and the further problematic promotion and support it in the IMO's Committees. This issue touches on serious economic aspects for Greek shipping as a whole and in particular issues with divergent opinions. However, in order to be a responsible treatment and a beneficial solution to the specific problems, it is further required: a) the EU to assess whether the existing EU institutional framework and the objective conditions are ripe to form a commonly accepted composition of the maritime interests of the M-S so as to enforce a joint representation in the IMO, b) Regarding any political aspirations of the EU in the IMO, the given legal status and functioning of the maritime organization must be taken into account, which obviously cannot be modified and thus the EU must respect them and show cooperation and adaptability.

Having said that, the participation of the EU, as a party to the IMO, is currently impossible because according to the IMO's Founding Treaty (Article 4), as amended and in force today, only states can become parties.⁶ Also, the case of future amendment of the disputed article 4 is considered a particularly difficult and long-term process. According to the current regime, the EU maintains observer status and participates in IMO meetings under the Agreement of Mutual Cooperation between the Commission and the Secretary-General of the IMO, signed in 1974. Nevertheless, all 27 EU's M-S are members of the IMO.⁷ Thus, the EU as a whole has significant power to play a serious role in the international maritime decision-making process through M-S with coordinated joint action, as a whole (27) or even by groups.

It is noted that the observer status within the IMO does not allow the Commission to: (a) speak on behalf of the 28 M-S, (b) use the coordination mechanism effectively in the areas for which the EU has the competence, (c) to contribute specifically to EU policy on maritime safety and (d) to participate in the negotiation of international conventions.⁸ So, since the EU has no negotiating right within the IMO on behalf of the M-S, it assumes, through the European Commission, the role of coordinator of their positions, in order to intervene indirectly, through the M-S, in the IMO's decision-making process. In this direction, the Council plays a particularly important role in the EU's relations with the IMO. In more detail, after the signing (13-12-2007) of the Reform Treaty or "Treaty of Lisbon", as it is more widely known (entry into force 01-12-2009), mainly the Council, but at the same time in cooperation with the European Parliament and the Commission, can negotiate



and conclude agreements with third countries and international organizations, as follows from article 218 of the Treaty on the Functioning of the EU (TFEU).

In the context mentioned above, the EU today it is a party to a number of IMO maritime conventions, developing an important activity in this field both in the IMO and within the framework of the EU institutions and bilateral relations with its Member States. Likewise, the European Court of Justice (CJEU) also plays an important role in the development of EU law and can, through its case law, shape the field of common competence between the EU and M-S by issuing relevant decisions regarding the representation and formulation of the positions of M-S within the IMO, as it did in case C-45/07 (*Commission v. Greece*), which is analyzed below. Specifically for the issue of coordination and harmonization of the positions of the EU's M-S in the IMO, in 2005, the Council established the "Procedural framework for the adoption of Community or common positions for IMO related issues and rules governing their expression in the IMO" SEC (2005) 449.

According to the Framework of Procedures, EU positions at the IMO are divided into three categories: (a) EU positions (exclusive EU issues), (b) Coordinated Positions (exclusive M-S issues), (c) Common positions (issues of EU and M-S competence). To prepare EU positions, technical discussions can be held in relevant technical committees, such as the Committee on Safety in Shipping and Prevention of Pollution from Ships (COSS) or the Maritime Safety Committee (MARSEC), or, as appropriate, in technical meetings of M-S experts with the Commission. A working document should be submitted to the Council by the Commission, including the proposed position of the EU as well as the M-S. If this position is approved by the Council, then it binds the M-S to the IMO. However, it is not always easy for M-S to follow the decisions from the coordination process, especially when national maritime issues are at stake, let alone those Member States with strong maritime interests, such as Greece, Cyprus and Malta. It is emphasized that there are no drastic measures that can be taken by the EU to address this issue as the coordination process is not legally binding.⁹

The issue of M-S's commitment to support a common position with the EU in the IMO has been brought by the Commission before the Court of Justice of the European Communities (ECJ) in two cases, with Greece and Sweden as litigant parties respectively. Specifically, in the case: *Commission v. Greece (C-45/07)*, it was ruled that the Hellenic Republic, submitting to the International Maritime Organization (IMO) a proposal, (MSC 80/5/11), for the control of the compliance of ships and port facilities to the references of chapter XI-2 of the International Convention for the Safety of Life at Sea, (SOLAS), and the International Code for the Security of Ships and Port Facilities (ISPS), breached its obligations and in particular on the basis of Articles 483 TEU (former Article 10 TEU). It was deemed to have breached the duty of good faith or loyalty, (Article 91 TFEU former 71 TEU and Article 101 TFEU, former Article 80 TEU).

Also, in the second case of *Commission v. Sweden (C-246/07)*, the unilateral M-S proposal to list a substance in Annex A of the Stockholm Convention on Persistent Organic Pollutants, Sweden was considered to deviate from the coordinated common strategy within the Council of the EU. At the same time, taking into account the institutional and procedural framework of the Convention, such a proposal was deemed to have consequences for the European Union. On this the Commission claimed that, since the Convention in question is a multilateral agreement, Sweden is not allowed to act individually, but only in coordination with the Community. The above argument should apply to all multilateral agreements. The ECJ (Court of the European Communities, now CJEU - Court of the European Union) ruled that the need for a single international representation of the Community and its Member States does not allow the Member States to act individually, while this competence remains share.¹⁰



Under these circumstances, it was decided that this act of Sweden constitutes a breach of the duty of good faith or loyalty, based on Articles 4§3 TEU, formerly Article 10 TEU and 218 TFEU, formerly Article 300 TEU. The single international representation of the EU and its M-S, according to the above philosophy is not an end in itself, it is mainly an expression of the duty of good faith or loyalty which in particular and as will be analyzed below is provided by article 4§3 of the TEU.¹¹ But, before it was decided that M-S would be represented by the EU on this basis, the obligations that will be assumed by the conclusion of the specific agreement, the effects of the act of exercising the share competence by a M-S and whether this act can lead to undermining the exercise of the EU's competence should perhaps be further studied. It is pointed out that the duty of loyalty also applies to the acts of the EU's institutions towards the M-S.¹²

The above-mentioned cases are based, *inter alia*, mainly on a provision of primary Community law that is quite general and partly unclear (Article 4§3 of the TEU, former Article 10 of the TEU, Duty of loyalty) so related rulings have many ambiguities in terms of strictness, bindingness and sanctions. It is interesting to note that the same decisions indirectly give to the M-S, that "violates" the unified stance, the argument of defense, legitimization and differentiated tendency, since the duty of sincere cooperation (or duty of loyalty) acts both ways and with regard to the EU and its institutions (Commission etc.). Therefore, if, for example, it is considered that the institutions of the EU delayed, did not adequately respond to the duty of timely and correct formulation of the EU's common maritime position, then based on the above principle the obligation of harmonized behavior of the M-S is lifted, in accordance with the primary European Union law.

4. THE CLAIM OF EU'S M-S FOR AN AUTONOMOUS PRESENCE IN THE IMO: THE CASE OF GREECE.

As already mentioned, in recent years there has been a trend within the EU of a centrally controlled and shaped maritime policy which will then be supported in the IMO by the EU's M-S as, on a case-by-case basis, EU policy. EU's M-S, with a strong economic and political presence, play a significant role in this development but not the maritime ones. This trend even promotes the official participation of the EU as a contracting party of the IMO, so now the presence and representation of the M-S is likely to be completely replaced by the participation of the EU in the above organization.¹³ In both cases for the IMO and in particular for its structure, operation and role as an international organization of global scope with competence in international shipping (forum and decision-making center) the autonomous presence and activity of the 27 EU's M-S is much more preferable than their homogenized presence substitution by the EU as a contracting party.

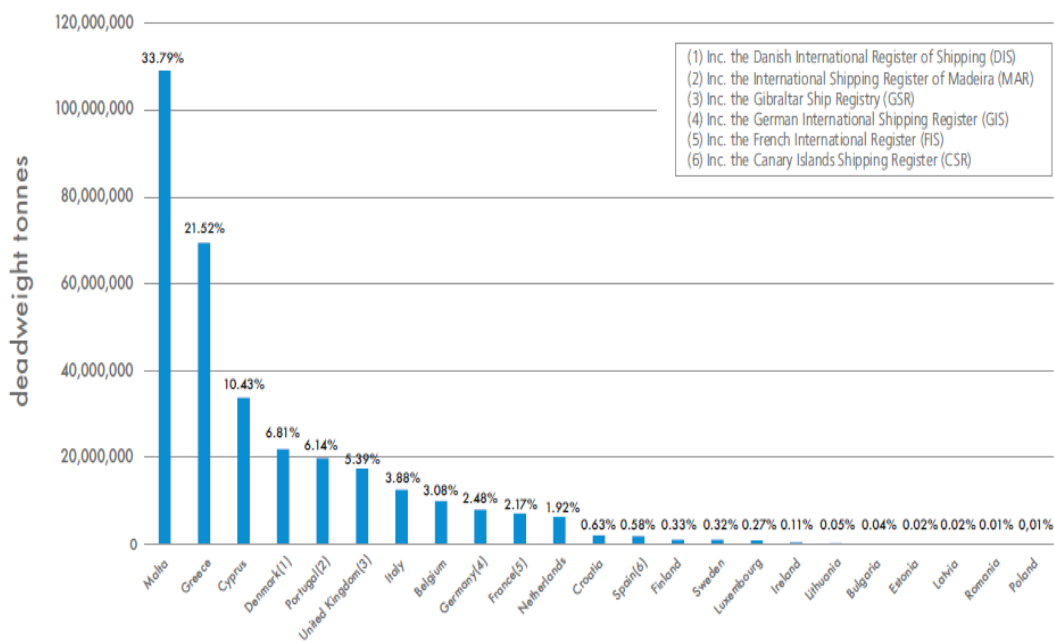
Of course, from the EU's point of view, it is understandable and legitimate to seek a common and coordinated presence and activity in the IMO in terms of the positions of the M-S. Obviously, such presence strengthens the international prestige and entity of the EU. However, the key question arises as to whether the necessary objective conditions and the corresponding institutional background for shaping and supporting a single EU maritime policy exist at this stage. A policy which will adequately cover the legitimate interests of all M-S, big or small at the maritime level. The basic and general answer is that these conditions do not seem to be mature, as in other areas (e.g., common agricultural policy) where there are experienced institutions and tools for their planning and implementation. To be completely clear and honest: without the creation of the EU Register of Shipping or even a generally accepted convergence on the issue of ship registration between the EU Member States, there is no case of forming a common maritime policy of the EU and its uniform expression in international bodies and fora. After all, the adoption of the Community Registry (Euros) was a resounding failure in the past, while on the contrary, a multitude of *sui generis* registries was created within the EU such as international - parallel - offshore etc. for which the EU institutions themselves have raised doubts as to their legitimacy.



Furthermore, there are huge variations in the capacity of the EU merchant fleets, (Figure 2), with major economic powers having small fleets and possibly serious and conflicting interests in the maritime space as coastal states. This conclusion is confirmed by the typical treatment of the situation created in the EU after the accident of the Greek-owned tanker Prestige (registered in the Bahamas) in November 2002, which highlighted the need to take a series of additional measures to avoid the pollution of the seas by the European Union's Member States.¹⁴ This situation led the then French president to declare, immediately after the sinking of the Prestige (built in the 70s in Japan, single hull) that there must finally be draconian security measures in the EU, as the Prestige was one of the four tankers of similar construction, which have been sunk in recent years. At the same time, he criticized the inability of those in charge, and especially the Europeans, to take the necessary measures to prevent the laxity that allows the construction of such junk ships.¹⁵

FIGURE 2

EU Merchant Fleet by Flag > 100 GT



SOURCE: IHS Markit, (2019).¹⁶

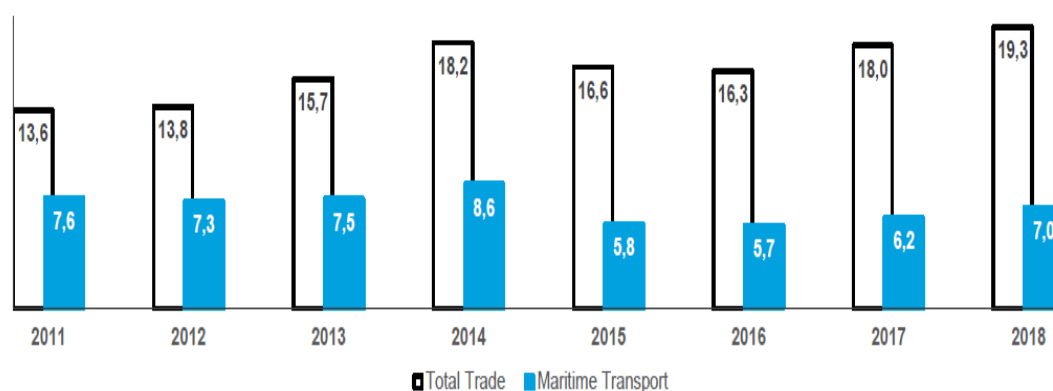
Also, from the official government lips of two powerful EU member states, the initiative for the unilateral adoption of legislation to control and possibly ban navigation at a distance of 200 nm from the shore was announced. This proposal is considered legally unacceptable, ahistorical and unrealistic. In the end, as it turned out, the above-mentioned maritime and environmental tragedy was mainly caused by the political audacity and irresponsibility of the authorities in France, Spain and Portugal (unjustified refusal to provide a port of refuge, etc.), and was followed by the demonstration of extreme hostility towards Greek shipping and the Greek seamen, since in particular the political leadership of France characterized the Greek seamen as "vagabonds of the seas", while the Greek master of the Tanker Prestige was imprisoned by the Spanish authorities as an atoning victim.¹⁷ Indicative is also the case of EU's M-S, which, not having a serious shipping industry, consider shipping as a field for raising money through stock market games, supporting as a solution to the issue of "reducing greenhouse gas emissions from shipping" the implementation of the "gas emissions exchange", i.e., a highly controversial and essentially dead-end measure with an expiration date, especially after the long-term Conferences on climate change.¹⁸

Especially for Greece, in the present difficult economic situation, is in absolute need of a thriving shipping industry, which brings a steady inflow of maritime foreign exchange (Figure 3). It is considered that the case of Greece is not treated with the required respect and recognition (See cases *Prestige* etc.), as befits to the largest shipping power of the EU (See especially figure 4). Thus, it is clear that in the EU the conditions for the formation of the common maritime policy do not generally advocate the adoption of positions that ensure, in any case, the interests of Greek shipping. Of course, the same applies to the positions supported in the IMO. Also, the existing legal framework from the primary Community law (founding treaties) does not contain a clear and specialized regulation for a mandatory single position of M-S in the above international organization (IMO). Therefore, based on these conditions, Greece, as a sovereign and independent member of the IMO, can support and express its own views, in the event that it considers that the EU's positions on maritime issues are not in harmony with its legitimate and vital interests.

FIGURE 3

Sea Transport contribution to Services of Payments

(Euro Bn, 2011-2018)



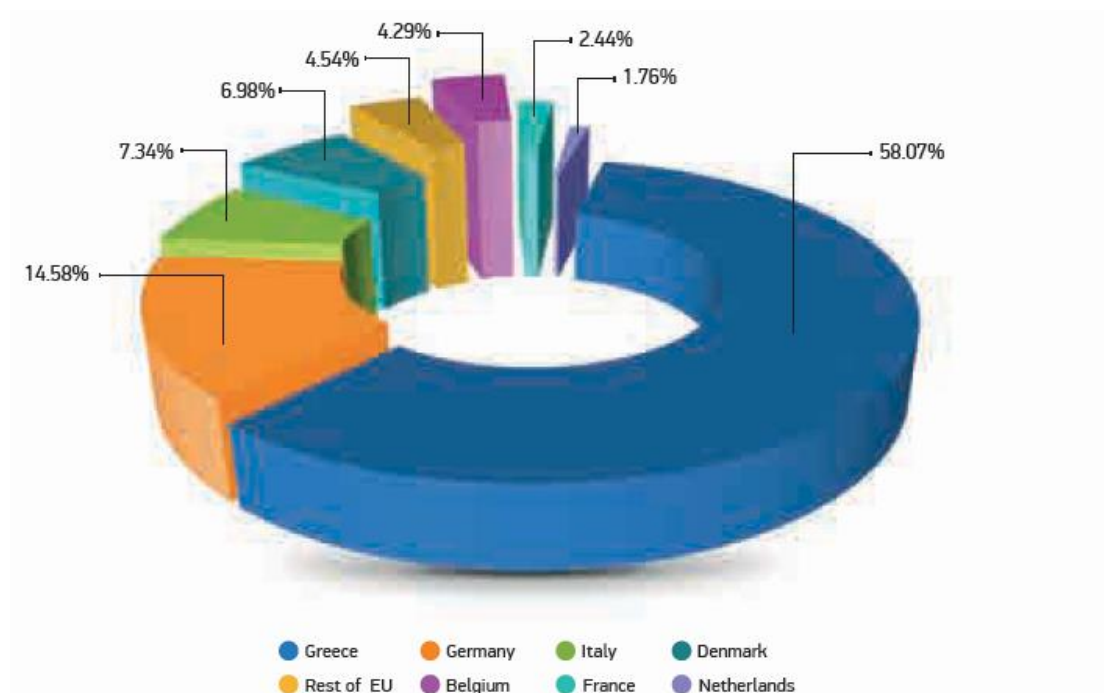
Ⓢ Since 2011 the shipping industry contributed more than Eur 55Bn to the balance of payments.

SOURCE: Bank of Greece, (2020).

The maritime interest's representation of the EU Member States in the IMO is therefore a field of substantial controversy since there is a conflict and ambiguity in the legislative framework. Shipping is an international activity with a complex structure that should be governed by international rules and for this reason it should not be approached regionally (within the EU) but primarily globally within the IMO which is the official governmental depositary of the International Maritime Institutions. Greece has always identified the importance of shipping and tries to defend its shipping policy within the EU and international organizations, taking measures in favor of competitiveness, safety of ships, etc. The obligation of the M-S and the EU for "honest cooperation" (Duty of loyalty) as well as compliance with Article 218 (9), Title V (International Agreements) of the TFEU should not be a field for changing the Greek maritime policy but the springboard for coordination, in the context the initiative to create a maritime "front" of the south, the efforts to defend maritime interests and the creation of a fair reference point of the common European maritime policy.

FIGURE 4

Ownership of the EU Merchant Fleet (dwt, ships > 1000 GT)



SOURCE: EU Statistical pocketbook, (2022).¹⁹

5. CONCLUSIONS

Today, the EU is a legal entity of international standing which, although it is not a full member of the IMO, is practically not prevented from participating in the organization's policies. It is also taken for granted that the EU's candidacy as a member of the IMO is unlikely to be supported by the majority of M-S. Strengthening the coordinated process, formulation and support of EU and its M-S common positions therefore seems the most realistic goal for the EU to improve its more effective involvement in the IMO at the present time and also in the future. In conclusion, I would like to briefly open two issues directly related to the establishment and support of a steady international maritime policy for Greece. The first issue concerns the evaluation of the permanent procedures and conditions, which must be set, for the formulation of this policy with a key coordinating and decisive role of the Greek Ministry of Maritime Affairs and Insular Policy. The second concerns the essential determination of the interests of Greek shipping, which are defended by Greek shipping policy in international organizations. At this point, the state and the private stakeholders of Greek shipping must, seriously and above all with reciprocity, evaluate, after taking into account that a large part of Greek-owned shipping has minor substantial connection with Greece, under what conditions will be formulated and expressed interests of Greek-owned shipping as a whole from officially Greece state to international organizations, (e.g., EU and IMO).

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