



**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND
COUNCIL ON CIVIL LIABILITY AND FINANCIAL GUARANTEES OF
SHIPOWNERS**

FREQUENTLY ASKED QUESTIONS

INTERNATIONAL GROUP OF P&I CLUBS

Introduction

The thirteen member clubs of the International Group of P&I Clubs (“the Group”) between them provide liability cover (protection and indemnity) for approximately 92% of the world’s ocean-going tonnage.

Each Group club is an independent, non-profit making mutual insurance association, providing cover for its shipowner and charterer members against third party liabilities relating to the use and operation of ships. Each club is controlled by its members through a board of directors or committee elected from the membership.

Clubs cover a wide range of liabilities including personal injury to crew, passengers and others on board, cargo loss and damage, oil pollution, wreck removal and dock damage. Clubs also provide a wide range of services to their members on claims, legal issues and loss prevention, and often play a leading role in the management of casualties.

1. Policy objectives

Q. Does the IG consider that the Directive will contribute to an improvement in ships standards and maritime safety?

A. No. The Directive seeks to adjust the levels of compensation payable **after** an incident. This does not prevent the accident happening in the first place nor prevent substandard ships from operating. There is no correlation between ships standards and the method or amount of compensation available to claimants whether or not the shipowner can limit his liability. Ensuring safe ships on the one hand and adequate compensation to accident victims on the other are two separate objectives that require different regulatory solutions.

Q. What measures does the IG consider will improve ship safety?

A. There are many measures including:

increased standards of control by classification societies classification control

technological advances

improved implementation of international safety standards by flag states

rigorous port state control.

enhanced control of ships standards by charterers.

better sharing of information between stakeholders

Q. What measures has the IG implemented to improve ship safety?

A. Clubs already ensure that their operations provide incentives for quality shipping and, in so far as possible, penalise “sub-standard” ships and, in the light of the conclusions contained in the 2004 OECD report on marine insurance, the Group Clubs have agreed and implemented a number of additional ship quality measures and are in the course of implementing a number of others. These are listed in Schedule 1 and include, for example, a scheme whereby survey information will be shared to help in identifying sub-standard ships and excluded them from trading.

Q. Through which body does the IG consider improvement of ship standards and maritime safety is best achieved?

A. The IG considers that, in view of the global nature of shipping, and accordingly the need for international uniformity, the most effective forum for developing safety and technical measures is the International Maritime Organization (IMO).

2. Compensation systems

Q. What is the current legal framework for payment of compensation to citizens who suffer financial loss due to maritime accidents?

A. The IMO has formulated Conventions covering the main types of claim arising from maritime accidents affecting parties who are not part of the transport chain. Not all of these have come into force as they have not been

ratified by enough states. Where these Conventions are not in force, claims are handled according to national law.

Q. What are these Conventions?

A.

Type of Claim	Convention	In force?
Oil pollution from tankers	1. Civil Liability Convention 2. IOPC Fund Convention 3. Supplementary Fund Convention	Yes, in most European coastal states
Oil pollution from non-tankers	Bunkers Convention 2001	not yet in force
Damage caused by dangerous cargoes	Hazardous and Noxious Substances (“HNS”) 1996	not yet in force
Death and injury to passengers	Athens Convention 2002	not yet in force

Q. Why does the IG support ratification of these Conventions?

A. The Conventions provide an internationally uniform and efficient legal framework for payment of compensation to citizens who suffer financial loss due to maritime accidents.

Q. Does the IG consider that the Conventions currently in force provide adequate compensation for oil pollution from tankers?

A. Yes. The three applicable Conventions provide compensation up to approx EUR 850 million. Most coastal Member States are party to all three conventions¹.

Q. How and to what extent has the compensation available for victims of pollution from tankers changed since the time of the Erika and Prestige incidents in 1999 & 2002?

A. As a result of action in the IMO, in which EU members states were actively involved, there is now nearly five times the amount of compensation which was available when these incidents occurred (see graph in Schedule 2).

Q. Is compensation currently available for liabilities covered by Conventions which are not yet in force?

¹ Belgium, Denmark, Finland, France, Germany, Spain, Greece, Ireland, Italy, Latvia, Lithuania, Netherlands, Portugal, Slovenia, Sweden, United Kingdom

A. In general yes. Shipowners will usually be liable under national law if, for instance, a non-tanker causes pollution or dangerous cargo causes injury. IG Clubs provide insurance for such liabilities.

3. Limitation Convention (LLMC)

Q. Does the IG support implementation in Europe of 1976 Convention on Limitation of Liability for Maritime Claims as amended by the 1996 Protocol ("LLMC")?

A. Yes.

Q. Is LLMC a liability convention?

A. No. It does not impose liability on shipowners or define when shipowners are liable.

Q. When does LLMC become relevant?

A. **After** the shipowner has been found to be legally liable for certain types of claim, whether under an international convention or national law. LLMC may then become relevant by imposing a limit on the shipowners' total liability.

Q. How does LLMC then work?

A. Once the shipowner has been found liable, the claims subject to LLMC will be channelled against the shipowners' limitation fund. This amount is calculated according to the vessel's gross tonnage.

Q. Can these limits be increased over time?

A. Yes. LLMC contains a mechanism for states to agree to revise the limits at the IMO.

Q. Are all types of liability subject to limitation under LLMC?

A. No. Pollution claims from tankers are covered by CLC. Claims under HNS will be outside LLMC when it comes into force. Wreck removal will not be subject to LLMC in those states (such as the United Kingdom and Spain), which have made a reservation to LLMC². Passenger claims will be subject to the Athens Convention when it comes into force and will not be subject to LLMC if states have made a reservation in respect of the global limit for passenger claims³.

² LLMC 96 Article 18.1

³ LLMC 96 Article 15.3bis

Claims caused by oil pollution from non-tankers will generally be subject to LLMC (including when the Bunkers Convention enters into force).

Type of Claim	Liability Convention	In force?	LLMC applies?
Oil pollution from tankers	1. Civil Liability Convention 2. IOPC Fund Convention 3. Supplementary Fund Convention	Yes, in most European Coastal states	No (separate fund)
Oil pollution from non-tankers	Bunkers Convention 2001	not yet in force	Yes
Damage caused by dangerous cargoes	Hazardous and Noxious Substances ("HNS") 1996	not yet in force	No (separate fund)
Death and injury to passengers	Athens Convention 2002	not yet in force	Depends on States
Others: Collision between ships, cargo claims, dock damage			Yes

Q. In what sort of claims is LLMC typically relevant?

A. Claims subject to LLMC usually involve collision between ships, cargo claims or dock damage. These cases often concern apportionment between different insurers. It is unusual for LLMC to affect private citizens.

Q. Is LLMC relevant if claims are less than the limit?

A. No. LLMC will not reduce payments to claimants if total claims do not exceed the overall limit.

Q. What if claims exceed the limit?

A. All claims will be reduced pro rata.

Q How many states are party to LLMC?

A. 24 states worldwide, of which 10 are Members of the European Community or European Economic Area (see Schedule 3).

Q. Will amendments to LLMC affect non-member states which are party to LLMC?

A. The purpose of an international convention is to establish a uniform body of law applicable throughout all party states. Introducing a different European version of LLMC may create treaty law problems with the 14 non-member states which are party to LLMC. It may also discourage third country member states from ratifying LLMC, contrary to the underlying policy objective.

Q. Will the 10 EU/EEA states which have ratified LLMC need to take action if the Directive is implemented?

A. Yes. They will probably need to amend their national law.

4. LLMC and the right to limit

Q. How can the principle that shipowners are able to limit under LLMC except in cases of the most extreme conduct be justified?

A. If there is to be a limit, it is important that it applies in almost all instances. The alternative will be to increase litigation, delay and legal costs. The current right to limit was introduced in 1976 and retained in 1996 to ensure certainty. IG supports the current principle as the best mechanism to ensure swift payment of compensation to victims.

Q. Does the IG believe that restricting the right of a negligent shipowner to limit his liability will contribute to ship safety?

A. No. Shipowners will generally be covered by insurance so it is the insurers not the shipowner who will pay. In the case of mutual insurance, compensation payments are shared between all shipowner members, and there is no correlation between ship safety and the amount of compensation available to claimants. The Directive will require insurers to provide a guarantee. This means that the insurer will not be able to avoid payment or use a policy defence against a shipowner. This may encourage sub-standard operators to take risks, contrary to the underlying policy objective.

5. Insurance

Q. Does the IG recognise the importance of ensuring that ships carry adequate insurance?

A. Yes. To ensure compensation is available to meet the claims of maritime accidents, but not as a mechanism to improve ship standards.

Q. How does the IG consider that the existence of insurance can be verified?

A. By checking that ships have a Certificate of Entry or similar insurance document on board confirming that the ship is entered in an IG P&I Club or other reputable insurer or financial guarantor.

Q. Are there other ways of verifying insurance?

A. Yes. All IG Clubs have lists of entered vessels available on their websites to which public access is available. The Equasis website⁴ also identifies the insurer.

Q. Are there any existing measures in place relating to shipowners taking out liability insurance?

A. Yes. IMO Resolution A. 898 (21) adopted in November 1999 contains Guidelines on Shipowners' Responsibilities in Respect of Maritime Claim which provide that shipowners arrange proper liability insurance and have on board a certificate issued by the insurer⁵. The guidelines have been followed by the vast majority of the world's fleet and by all ships entered in IG Clubs (92% of the world's ocean-going tonnage). These guidelines could be incorporated into EU law.

Q. What is the practical difference between a "certificate of entry" and a "certificate of financial guarantee"?

A. Certificates of Entry are already issued by IG Clubs and serve as evidence of insurance but are not guarantees to third parties.

Q. Does the IG support the proposals for financial guarantees and certificates?

A. No. For the reasons given above, the IG does not think that such measures would contribute to ship safety or loss prevention.

⁴ www.equasis.org

⁵ <http://folk.uio.no/erikro/WWW/corrgr/insurance/898.pdf>

Q. Can the IG Clubs confirm that they will issue guarantees required in the draft Directive (Article 7.1)?

A. No. The IG Clubs issue financial guarantees against specific risks arising under international liability conventions for claims which concern the public interest (such as pollution and injury to passengers) but not in respect of national or regional legislation, or private or commercial interests.

6. Administration - Costs & Benefit

Q. How many certificates will Member states need to issue (Article 7)?

A. Accurate statistics are difficult to find for the number of vessels over 300 gt trading in Europe but there are at least 50,000 vessels operating worldwide.

Q. How often and when will certificates need to be issued?

A. Certificates will need to be issued at the beginning of each insurance policy year. Certificates will also need to be withdrawn or re-issued whenever ships are sold, or there is a change of insurer or guarantor, or when insurance is cancelled.

Q. Does the IG support the establishment of a Community Office for this purpose?

A. This is primarily a matter for states. Significant administration and associated costs will be required whether by a Community Office or individual Member States.

Q. Why will the burden be significant?

A. Because of the number of certificates which will be required. Member States or a Community Office will need to issue certificates to ships flying the flags of non-member states as well as member states. Standards would also need to be agreed to ensure that providers of financial guarantees meet national and international requirements in relation to solvency, risk management and corporate governance.

Q. Does the IG consider that the benefits of the proposals justify the likely costs?

A. No, but primarily this is a matter for States. A proper impact study would facilitate this assessment.

Q. Will checking that all vessels have a Certificates of Entry in a P&I Club on board the vessel impose a significant administrative burden on member states?

A. No. Port State inspectors would simply need to include the Certificate of Entry as one of the documents to be checked on their routine inspections. Ships entered in P&I Clubs already carry Certificates of Entry onboard.

7. Abandonment of seafarers

Q. Is there already a legal framework dealing with the protection abandoned seafarers?

A. Yes. The IG believes that this is provided for through the ILO Maritime Labour Convention 2006 which requires shipowners to have in place financial security for costs associated with the repatriation of abandoned seafarers. The IG encourages Member States to implement this Convention. In addition a number of Flag States have introduced measures to ensure that abandoned seafarers are repatriated e.g. Norway.

SCHEDULE 1

Ship quality measures recently agreed and implemented within the International Group

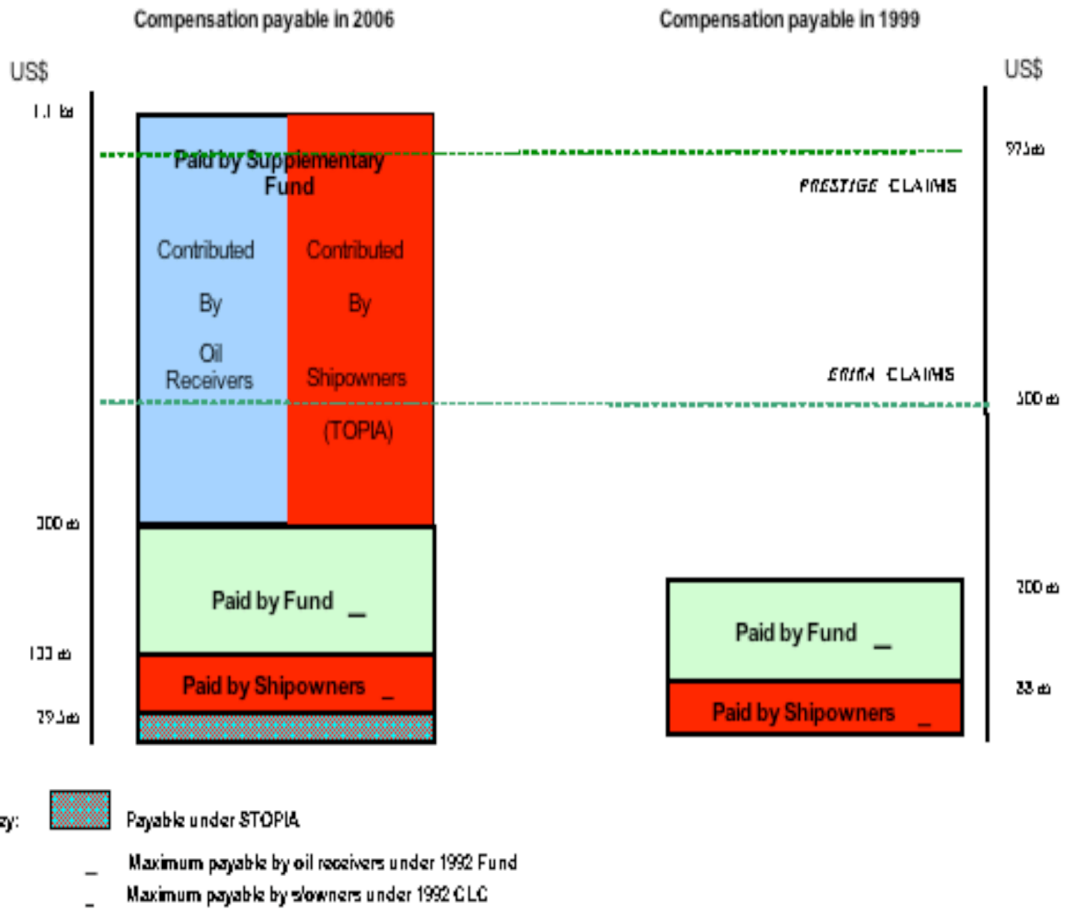
- new underwriting guidelines for vessel entry for new members providing for specified indicators of quality to be checked on each application including vessel type, age, flag, build and any subsequent modification details, current and previous Classification, ISM & ISPS certification details, area and type of trade, officer and crew nationalities, management details, P&I condition survey history, claims and port state control records and details of any previous refusal to cover withdrawal of cover.
- Harmonisation of ship survey target criteria by the introduction of new more stringent condition survey triggers and reporting procedures for suspected substandard vessels.
- Common minimum scope of information for club condition surveys and the development of a common survey report form.
- Establishment of a central ship survey database updated monthly by all clubs with details of vessels surveyed during the previous month to be consulted by underwriters prior to quoting on vessels

Ship quality measures in the course of implementation include:

- 'Designated vessel' procedure for vessels for failing to meet acceptable quality standards. It is intended that under this procedure a club will 'designate' a vessel which it considers does not meet the standards expected of vessels entered with Group Clubs. A database of designated vessels will be maintained by the Group.
- Double retention mechanism for vessels failing to meet acceptable quality standards.
- New underwriting guidelines for existing members providing for specified indicators of quality (substantially replicating those identified above).

SCHEDULE 2

Oil Pollution – Compensation Payable



SCHEDULE 3

LLMC 1996 Status as at December 2006

EU/EEA States where LLMC in force (11)

Cyprus	Malta
Bulgaria	Norway
Denmark	Spain
Finland	Sweden
Germany	United Kingdom
Luxembourg	

EU States where LLMC not in force (16)

Austria	Italy
Belgium*	Latvia*
Czech Republic	Lithuania*
Estonia*	Netherlands*
France*	Poland*
Greece*	Portugal
Hungary	Slovakia
Ireland*	Slovenia

Non EU States where LLMC in force (14)

Albania	St Lucia
Australia	Samoa
Croatia	Sierra Leone
Jamaica	Syria
Japan	Tonga
Marshall Islands	Faroe Islands
Russian Federation	

Number of States world-wide where 1976 LLMC Convention in force: 48

* Contracting State to the 1976 LLMC Convention