



EU Green Paper – A Future Maritime Policy for the European Union
Comments of the International Group of Protection & Indemnity Clubs

Introduction

The 13 P&I Clubs (the Clubs) that comprise the International Group of P&I Clubs (the Group) are mutual not-for-profit insurance organizations that between them cover the third party liabilities (which include liabilities arising out of pollution, loss of life and personal injury, loss and damage to cargo, wreck removal and collision risks) of approx. 92% of the world's ocean-going tonnage.

The Clubs are mutual organisations, that is the shipowner members are both insured and insurers as the members own and control their individual clubs. The day to day activities and operations of the Clubs are delegated to managers. Clubs individually retain liability for claims up to US \$7 million. Above this amount, claims up to approximately US \$5.5 billion are pooled between the 13 Clubs. Currently, claims between US \$50 million – US \$3.05 billion are protected by reinsurance purchased by the Clubs from the worldwide commercial reinsurance market.

General Comments

The Group welcomes the initiative of the Green Paper to launch a debate about a future Maritime Policy for the EU that treats the oceans and seas in a holistic way.

The endeavour to contribute to a new awareness of Europe's maritime heritage and the importance of the oceans is both laudable and one that is supported by the Group. As the Green Paper rightly states, the citizens of Europe are not always well-informed of either the importance of the oceans and seas in their lives or how vital the shipping industry is to the quality of their lives.

At the same time, the Group agrees that shipping is an international industry and that a large number of the issues covered by the Green Paper are of direct interest to global shipping interests, and not just EU interests. The Group welcomes the Green Paper's appreciation of multilateral fora and that any EU policy aimed at the oceans must be developed within the international context, notably the International Maritime Organization (IMO), the International Labour

Organization (ILO) and the United Nations. Given the potential impact of any future EU Maritime Policy on global shipping, the Group believes that the Task Force should actively involve interested parties on a global level in the Green Paper consultation process, including both non-EU States and NGOs.

The Group welcomes the opportunity to comment on the specific sections of the Green Paper where it believes it can usefully contribute.

There are a wider number of issues of direct interest to the global shipping community, which the Group suggests are best addressed by specific shipping interests.

RESPONSES TO SPECIFIC QUESTIONS

1. Introduction

How can the EU add value to the many national, local and private initiatives which already exist in the maritime field?

The Group believes that the EU can add value to the many initiatives that exist in the maritime field by encouraging the ratification and implementation of the relevant international regulations, for example the International Convention on Liability and Compensation for Damage in Connection with HNS, 1996 (the HNS Convention) and the 2001 International Convention on Bunker Oil Pollution Damage, 2001 (the Bunker Convention) and the Wreck Removal Convention, 2007

In this context, the Group does not necessarily support EU wide implementation of such international regulations by means of EU Directives or Regulations. The main purpose of developing international regulations through Conventions is to promote uniformity and certainty. Implementing Conventions by way of Directives or Regulations will generally result in incorporating regulations additional to those of the international Convention, resulting in a lack of uniformity and potential uncertainty. This is not helpful to an international industry such as shipping.

Rather, the Group believes that the European Commission and the European Maritime Safety Agency (EMSA) could more usefully pool expertise within EU and third countries in order to assist States in addressing any obstacles that may exist to implementing such international regulations. For example, are the Commission and EMSA providing assistance and expertise to Member States and industry on implementation of the HNS Convention and, if so, how? Has the Commission actively engaged Member States to determine why the Bunker Convention has only been implemented by a small number of EU States and, if so, is it taking action to promote EU wide implementation?

Nonetheless, the Group contends that such a role would be more beneficial than creating unnecessary bureaucracy, duplicating legislation and regulation that has been established in international fora and complicating the implementation of international regulations by Member States.

2.7 The Regulatory Framework

To what extent can economic incentives, self regulation and corporate social responsibility complement government regulation?

The Green paper (page 24) proposes that a mandatory insurance and a “bonus-malus” system should be implemented and that P&I Clubs should ensure that their operations provide incentives for quality shipping and penalize sub-standard ships.

Ships' Standards

Although the Group Clubs are not the front-line policemen of ships' standards and safety issues (as was recognised in the OECD Maritime Transport Committee report on the removal of insurance from substandard shipping published in June 2004), they nevertheless can, and do, assist in addressing these issues.

The Group Clubs already provide incentives for quality shipping and penalize so called “sub-standard” ships. In light of the conclusions contained in the OECD report, Group Clubs have agreed and implemented a number of other ship quality measures and are in the course of implementing further measures. It is also worth noting that the Group has made significant contributions in the Quality Shipping Working Group (WG) established by the IOPC Fund which had its second meeting in March 2007. This WG is looking at non-technical means by which ship standards can be improved on an international basis.

A list of ship quality measures adopted by the Clubs can be found in the appendix to this position paper. It is worth pointing out that prior to the implementation of these ship quality measures, the Group Clubs already had in place measures designed to improve ship quality which include common club rules for compliance with classification requirements, flag state requirements and the ISM & ISPS codes, condition survey requirements and safety and loss prevention programmes.

“Bonus-Malus” System

Group Clubs currently apply in effect a “bonus type” of system by reflecting claims record in the annual premium that a shipowner pays.

Also, in order to provide a financial incentive for ensuring common minimum acceptable condition standards for vessels entered within the Group Clubs, the

Group has introduced with effect from February 2007 a new “double retention” mechanism, the details of which are set out in the list of ship quality measures in the appendix to this position paper.

Differentiated insurance rates and premiums

It is worth noting that it has been suggested in the past that differentiated insurance rates and premiums would encourage ‘quality shipping’. In fact, this issue was considered recently by the 1992 IOPC Fund Quality Shipping WG referred to above.

The price which shipowners pay for their P&I insurance already reflects their claims record. A ship with a poor loss record will attract increases in the premium charged. It is important to note however that the Group has found no evidence to establish that there is a direct correlation between so called substandard ships and a poor claims record. A quality operator can have a bad claims record (due to fortuity or the nature of trade or trading areas in which he operates) whilst a substandard operator may have a good claims record (for similar reasons).

The media attention and focus on maritime casualties involving substandard vessels creates a misleading picture of the reality, which is that the great majority of maritime casualties involve well found and good quality vessels. Since insurance costs form a very modest part of a shipowners operating costs, even a significant increase in premium is unlikely to have a meaningful deterrent effect on the substandard operator. Furthermore, because of the mutual nature of the insurance provided by clubs, the financial burden of a substantial claim arising out of a substandard ship is shared between the individual club’s members up to the club’s individual retention (currently US \$7 million) and thereafter by all shipowner members of all the Group clubs through the Group claims Pooling system. The particular substandard operator’s financial exposure is therefore likely to be limited at most to a possible rise in premium based on his claims record.

The objective of addressing quality shipping by non-technical measures should therefore be to identify and subsequently withdraw or deny insurance to the substandard operator rather than to simply increase the cost of his insurance cover. The procedures which the International Group has already adopted or is currently developing are aimed at achieving this objective.

Compulsory Insurance

The Green Paper proposes that “*mandatory insurance.....as used in other transport modes should be implemented*”.

The Group Clubs cover the liabilities of approximately 92% of the world’s ocean going tonnage (vessels not entered with Group Clubs are by and large entered

with non-Group P&I insurers). There is every incentive for a shipowner to effect insurance to protect his asset, the ship, from being seized to meet a claim.

The IMO Liability Conventions all contain the same mandatory regime which was first introduced in the Civil Liability Convention 1969 which governs shipowners' liability for oil spills from tankers. This insurance regime, under which the industry has been operating for more than thirty years, is in some respects more comprehensive than that imposed on carriers operating other transport modes. For example, the Montreal Convention and European Regulation No 785/2004 require air carriers to have liability insurance in place. However, there are not the same certification requirements as in the IMO Conventions. Compliance is achieved by a rather simpler and more flexible (but no doubt effective) system which requires the air carrier to produce evidence of insurance to the competent authority in order to obtain an operating licence.

The implementation of the remaining IMO Conventions¹ will provide a comprehensive and satisfactory international maritime compensation and liability regime within European waters, providing for compulsory insurance in the same form as under the Civil Liability Convention. This insurance will be evidenced by State-issued certificates and there will be a right of direct action against the insurer for almost all types of liability to third parties.

As for liabilities not covered by these Conventions, every vessel entered in a Group Club has a certificate of entry which confirms that the vessel is entered in a Group Club and therefore has P&I cover. This is in conformity with IMO Resolution A. 898 (21) on shipowners responsibilities in respect of maritime claims, and is a much more efficient method of providing evidence of cover than, for example, a mandatory system that is suggested in the Commission's proposal for a Directive on Civil Liability and Financial Security of Shipowners: that is that certificates attesting that insurance is in place should be issued by States. Apart from anything else, this system will impose a very heavy administrative burden on States in relation to annually issuing and updating certificates for a very large number of vessels.

Furthermore, given that the vast majority of ocean going vessels calling at EU ports maintain effective P&I insurance evidenced by a Certificate of Entry, the introduction of a mandatory insurance in the form proposed in the Directive on Civil Liability and Financial Security would seem to be unnecessary.

If both States and insurers were to have to issue further certificates as provided for under a separate EU regime such as the proposed Directive on Civil Liability and Financial Security of Shipowners, it would prove costly and administratively very burdensome to States and insurers. In contrast, it would be extremely easy for certificates of entry issued by the insurer to be inspected as a routine part of port state control inspections.

¹ The 2001 Bunkers Convention, 1996 HNS Convention, 2002 Athens Convention, 2007 Wreck Removal Convention. 1992 CLC is already in force.

5. Maritime Governance

How can an integrated approach to maritime affairs be implemented in the EU?

The Green Paper (page 41) notes that the Commission intends to conduct a review of existing EC legislation affecting maritime sectors and coastal regions and to identify possible policy contradictions or potential synergies. Stakeholders are invited to identify and explain their concerns and suggestions for improvements in this respect.

The Group refers again to the Commission's proposal for a Directive on Civil Liability and Financial Security of Shipowners. The intended stated objectives of the proposed Directive are to improve the quality of shipping and maritime safety and thereby prevent or reduce loss and damage to third parties and the environment. It is suggested that this can best be achieved by requiring Member States to implement LLMC 1996², increasing shipowner liability and introducing a system of state issued certificates evidencing that insurance or financial security is in place together with direct action.

There is no evidence to support the underlying premise that an increase in liability leads to improvements in safety standards, or the quality of shipping or is linked to shipowner responsibility, if that liability is insured. See comments on page 4 of this document on insurance rates and quality shipping.

A copy of the Group's comments on the Commission's text, circulated to the Commission and MEPs, is attached. Specific reference is made to the comments on Articles 4 – 7.

How can the EU best bring its weight to bear in international maritime fora?

The Green Paper states that the issue of Community membership in the IMO has to be addressed on the basis of the relevant Commission recommendation of 2002 and that the role and status of the EU in international organisations dealing with maritime affairs need to be reviewed.

The Group does not believe that Community membership of, or increasing the status of the EU in, the IMO will enhance the EU role in this institution or positively contribute to the negotiation and implementation of effective and workable international maritime rules.

It should be recognised that the vast majority of coastal EU Member States are both influential and active participants in their own right within the various

² The 1996 Protocol to the 1976 Limitation of Liability for Maritime Claims Convention

permanent and temporary IMO Committees, Sub-Committees and Working Groups. It should also be noted that there is considerable expertise within, and quite often a divergence of views between, the maritime administrations of Member States. This ensures that proposals and issues are generally considered and debated in a detailed and open manner and that the positive and negative aspects of proposals are considered over an appropriate period of time by EU Member States and third countries before agreement is reached at the relevant level within the IMO structure.

The substantial influence that the EU Member States have within the IMO should not be lost. The Group believes that either excessive co-ordination of Member States' views on issues discussed in the IMO (or other international fora), or a single EU voice within the IMO or other fora itself, will have a negative impact on the work that is undertaken within the IMO system and is likely to bring an unwelcome political aspect to the consideration and negotiation of, what are often, complex and technical maritime issues. It could significantly hamper open debate within the IMO and the negotiation, ratification and implementation of international agreements on a global basis and affect the general spirit of consensus that exists within the IMO.

Should the European Community become a member of more multilateral maritime fora?

For the reasons set above, the Group has strong reservations about the benefits of the European Community pursuing membership of more multilateral maritime fora.

The Group hopes that the comments contained in this paper are helpful. The Group will continue to participate throughout this consultation process and would be more than happy to provide any further comments on or clarifications to the comments contained in this paper.

15 June 2007

International Group of P&I Clubs
Peek House
20 Eastcheap
London, EC3M 1EB

Tel ;+ 44 (0) 207 929 3544
Fax: + 44 (0) 207 621 0075
www.igpandi.org

Appendix

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
- 'Designated vessel' and Double retention mechanism for vessels failing to meet acceptable quality standards.

Under this procedure a club will be able to nominate a vessel which it considers does not meet the standards expected of vessels entered with Group Clubs for inspection by an independent survey committee. That committee will assess the vessel on the basis of a common survey form and common scoring system and if the vessel does not, in the view of the committee, meet the minimum acceptable standards, the vessel will be deemed to be a "designated" vessel. The effect of designation will be that any Group club which enters the vessel will incur a double retention under the Group claims pooling system (US \$14 million instead of US \$7 million) in respect of any claims arising on the vessel. If work is not promptly undertaken to bring the vessel back to an acceptable standard, and the vessel remains "designated" for in excess of one year, thereafter any claims arising will be excluded from the pooling system altogether. It is envisaged that the existence of this system will provide a strong incentive on shipowners and clubs alike to ensure that entered vessels are properly maintained and any deficiencies arising are promptly rectified. It should also assist in improving technical underwriting disciplines within clubs. A database of designated vessels will be maintained by the Group.