



**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND COUNCIL
AMENDING DIRECTIVE 2002/59/EC ESTABLISHING A COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM
POSITION OF THE INTERNATIONAL GROUP OF P&I CLUBS ON THE LINKAGE
WITH THE PROPOSED DIRECTIVE ON CIVIL LIABILITY AND FINANCIAL
GUARANTEES**

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 legal liabilities to third parties (which include pollution, loss of life and personal injury, damage to fixed and floating objects, cargo loss and damage and collision risks) of over 90% of the world's ocean-going tonnage. The Clubs are mutual organisations, that is the shipowner members are both insured and insurers and, as such, third party liabilities are shared (pooled) between the members. The members of each Club own and control their individual clubs through Boards elected from the members. The day to day activities and operations of the Clubs are delegated to managers. Clubs are individually liable for claims up to US \$6 million. Above this amount, claims up to a figure of approximately US \$5.5 billion are pooled between the 13 Clubs.

Proposed Directive

The Group has a close interest in the proposal to amend Directive 2002/59/EC, since the Clubs cover those liabilities likely to arise in the event of a vessel in distress seeking refuge e.g. pollution, wreck removal etc.

The Group believes that an international industry such as shipping should be regulated on an international basis in order to achieve maximum uniformity and thus certainty. The Group therefore welcomes the proposal that Member States implement the various IMO compensation and liability regimes (HNS, Bunkers, Wreck Removal which is likely to be adopted during 2007) to supplement as well as the International Oil Pollution Compensation Fund regimes in the form of the Civil Liability & Fund Conventions which are already in force.

The Group also strongly supports measures to ensure that ports of refuge are made available to ships in distress. However, one feature which gives rise to considerable concern to the Group is the proposed link between this Directive and the proposed Directive on the Civil Liability and Financial Guarantees of Shipowners (CLD) and the suggestion that this will ensure prompt reimbursement of costs and damages which might result from accommodating a ship in distress.

Certificates

Almost all of the liabilities likely to arise in the event of a vessel in distress seeking refuge are already covered by the international regimes referred to above. The speedy implementation of these will provide a comprehensive and satisfactory international maritime compensation and liability regime within European waters, providing for compulsory insurance evidenced by State-issued certificates and the right of direct action against the insurer for third party liabilities for almost all types of damage arising from ship sourced pollution. Any economic losses not covered by these Conventions will, as proposed by the draft Directive, be covered by the relevant competent authority, which may subsequently recover the amount in question from those responsible.

As regards liabilities not covered by these Conventions, Group Clubs also issue certificates of entry (CoE) to all entered vessels, which are carried on board, as evidence of the fact that the vessel is entered with an International Group Club. 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 is suggested in the CLD that is that certificates should be issued by States, which will be costly to and an administrative burden for States.

It is highly questionable therefore what added benefit would be derived from application of the CLD, particularly in light of the proposal that the absence a financial guarantee or insurance certificate is not sufficient reason for a Member State to refuse to accommodate a ship in distress in a place of refuge. Moreover we do not see that a failure to have such guarantee or certificate renders a vessel a potential hazard to shipping or a threat to maritime safety, the safety of individuals or the environment (Art 16 (1)).

Group Proposal

The Group has been conscious of the concerns of port and other authorities that in the absence of the entry into force of all the framework Conventions mentioned above, they lack appropriate security when granting a vessel refuge. As we have said above, Group Clubs already cover those liabilities likely to arise from a vessel in distress seeking refuge, and such cover is evidenced by a CoE. However, in order to address these concerns, the Group has developed a standard form letter of guarantee to be given to a port or other proper authority in relation to a ship seeking entry to a place of refuge as a form of "comfort" when a port provides accommodation to a ship in distress. The Group has agreed that, where a Club is in a position to provide such security, it does so on the basis of that agreed standard form letter of guarantee, amended if necessary to meet the particular circumstances of the case, thereby avoiding a delay in negotiating the terms of security at a time when delay could be critical.

For these reasons the Group Clubs would support the proposal that Member States implement the various IMO compensation and liability regimes, but does not support the suggested linkage with the proposed Directive on the Civil Liability and Financial Guarantees of Shipowners.

Comments on amendments put forward by Members of the EP TRAN Committee on the proposed Directive

Amendments put forward that the IG strongly supports:

Topic	Am# (tabled by)	Art#	IG position and explanation
The absence of financial guarantee certificates and right to be granted a place of refuge	4 & 30 (Sterckx)	Recital 15 & Article 1(10)	The priority at this stage should be to avoid potential losses of life or damage to the environment. A failure to have such guarantee or certificate does not render a vessel a potential hazard to shipping or a threat to maritime safety, the safety of individuals or the environment (Art 16 (1)). Furthermore, the justifications that follow below explains that a port which accommodates a ship in distress is already able to recover compensation in the event of oil pollution under the international regime and will be able to recover compensation under the other IMO Conventions when in force, as well as outlining the security provided by Group Clubs to a port or other authority in any particular case.

Amendments put forward that the IG strongly opposes:

Topic	Am# (tabled by)	Art#	IG position and explanation
Linkage with, and application of, the proposed Directive on the Civil Liability and Financial Guarantees of Shipowners (CLD)	5 (Sterckx) & 44 (De Grandes Pascual) 31 & 32 (Sterckx)	Recital 15 (a) (new), 1 (10)	A port which accommodates a ship in distress is already able to recover compensation in the event of oil pollution from tankers under the Oil Pollution Compensation Conventions and will also be in a position to recover, and may receive compensation for, damage suffered under the other adopted IMO compensation and liability regimes (HNS, Bunkers, Wreck Removal) when in force. These regimes cover the great majority of liabilities which a shipowner may incur when seeking and being granted a place

			<p>of refuge. The responsibility for any costs incurred that are not covered by these Conventions would be assumed by the competent authority, which could recover such costs from those responsible.</p> <p>The application of, and references to, the proposed CLD is, therefore, superfluous and unwarranted and would lead to duplication.</p> <p>Whilst it is recognised that ports and other authorities may have concerns about the lack of appropriate security when granting a vessel refuge in the absence of the entry into force of the compensation and liability regimes, such concerns have been addressed by the standard form letter of guarantee provided by Group Clubs to a port or other authority as security in any particular case.</p>
The establishment of a solidarity fund for places of refuge to be financed by shipowners	43 (De Grandes Pascual)	Recital 15 A (new)	<p>See justifications above on the cover provided by the international Conventions and the security provided by Group Clubs standard form letter of guarantee.</p> <p>Furthermore, all vessels entered into Group Clubs are issued with certificates of entry (CoE), which are carried on board, as evidence of the fact that the vessel is entered with an International Group Club.</p> <p>The proposal for a solidarity fund to be financed by shipowners raises many concerns. Which shipowners would finance such a fund? It is unreasonable that responsible shipowners should finance a fund to cover damage caused by an irresponsible shipowner that has failed to maintain insurance cover or adequate insurance? In this regard it is worth re-iterating that approx. 92% of the</p>

			<p>world's ocean going tonnage is entered in Group Clubs (vessels not entered with Group Clubs are by and large entered with non-Group P&I insurers). Would the fund have a limit? How would shipowners be levied and on what basis? Who would administer the fund? How would payments from the fund be determined?</p>
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IG Proposed amendments:

Article 12 (5) - Obligations on the Shipper

Proposed Directive text:

- (5) In Article 16(1) the following points (d) [and (e)] are added:
- (d) “ships which have failed to notify or do not have insurance certificates or financial guarantees *pursuant to Directive XX/XXXX/EC [on the civil liability and financial guarantees of shipowners]*;

IG’s proposed text:

- (5) In Article 16(1) the following points (d) [and (e)] are added:
- (d) “ships which have failed to notify or do not have insurance certificates or financial guarantees

Justification

The IG proposes that Article 12 (5) be amended to read as above.

It is difficult to envisage why the mere absence of a financial guarantee or an insurance certificate which complies with the Directive on Civil Liability and Financial Security of Shipowners (CLD) should result in a vessel being considered to pose a potential hazard to shipping or a threat to maritime safety, the safety of individuals or the environment.

The guarantee or certificate is only evidence that appropriate cover is in place, and in the case of vessels entered with International Group Clubs such evidence can be provided in the form of a certificate of entry which is issued to all entered vessels at no cost or administrative burden to States. If States were to have to issue certificates as provided for under the CLD it would prove costly and administratively burdensome. Moreover States would presumably have to check on the financial viability of every insurer or other institution providing financial security, which would be likely to prove difficult in the case of insurers outside the State’s jurisdiction.

ARTICLE 20 (b) - Financial Guarantees

Commission's text:

1 Prior to accommodating a ship in distress in a place of refuge, the Member State may request the ship's operator, agent or master to present an insurance certificate or a financial guarantee, *within the meaning of Article X of Directive XX/XXXX/EC [on the civil liability and financial guarantees of shipowners]*, covering his liability for damage caused by the ship.

IG's proposed text:

1 Prior to accommodating a ship in distress in a place of refuge, the Member State may request the ship's operator, agent or master to present *a State certificate under any applicable International Convention and, if there is no applicable Convention, an insurance certificate confirming the existence of liability insurance* covering his liability for damage caused by the ship.

Justification

The IG proposes deletion of the reference to the proposed CLD and suggested alternative text for the reasons already mentioned in this position paper.