



PROPOSAL FOR A REGULATION AMENDING DIRECTIVE 2002/59/EC ESTABLISHING A COMMUNITY VESSEL TRAFFIC MONITORING AND INFORMATION SYSTEM (VTM DIRECTIVE)

COMMENTS OF THE INTERNATIONAL GROUP OF P&I CLUBS (IG), THE EUROPEAN COMMUNITY SHIPOWNERS' ASSOCIATIONS (ECSA) & THE INTERNATIONAL CHAMBER OF SHIPPING (ICS) FOR THE EUROPEAN PARLIAMENT and COUNCIL'S SECOND READING

August 2008

Almost all of the liabilities likely to arise in the event of a vessel in distress seeking refuge are the subject of the framework of IMO liability and compensation Conventions which provide for compulsory insurance. As regards liabilities not covered by the Conventions, but for which IG P&I Clubs provide cover e.g. legal liabilities for loss of use of port facilities, all IG Clubs 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 IG Club. This is in conformity with IMO Resolution A. 898 (21) on shipowners responsibilities in respect of maritime claims, which inter alia invites States to urge shipowners to effect indemnity insurance such as that provided by IG Clubs, and is a much more efficient method of providing evidence of cover than suggested in the Civil Liability Directive (CLD) which is that certificates should be issued by States, which will be costly and an administrative burden for States. It should be easy and straightforward for Port State Control (PSC) inspectors to check as part of a vessel's PSC inspection that a CoE is on board as a means of evidencing that a vessel has liability cover in place.

The proposal by the European Parliament (EP) to link the VTM Directive with the CLD would, in any event, seem somewhat inappropriate given that there is no guarantee that a conclusion will be reached on the CLD. Whilst the industry organisations welcome the call of the EP for ratification of the IMO Conventions as soon as possible, strong concerns remain over the EP's proposal to link the VTM Directive with the CLD and the rapporteur's call for a compensation scheme to cover the exceptional cases where "*the existing funds and conventions do not in most cases compensate for the financial losses of a port*". It should also be stressed that it is unlikely that there are many vessels calling at EU ports without third party liability cover in place.

The industry organisations have been conscious of the concerns of port and other authorities that in the absence of the entry into force of all of the framework IMO Conventions they may lack appropriate security when granting a vessel refuge. To address these concerns the IG 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 when a port provides accommodation to a ship in distress. The IG has agreed that where an IG 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. See the Letter of Guarantee in the Annex which was welcomed by the IMO Legal Committee in 2005.

The industry organisations support the Council's position (as set forth in the 3rd column of Council document 11961/08 of 23 July 2008) on the EP's amendments 10 (Recital 17 c (new)), 29 (Article 1 point 9 a (new)) and 38 (Article 1 point 9 b (new)). The industry also propose that Amendment 37 (Article 1 point 9 a (new)) is amended to reflect the IG Clubs practice in respect of the above mentioned CoE.

**STANDARD LETTER OF GUARANTEE TO BE GIVEN TO PORT OR PROPER
AUTHORITY IN RELATION TO A SHIP SEEKING ENTRY
TO A PLACE OF REFUGE**

Dear Sirs,

Heading - Details of Ship, Casualty and Place of Refuge.

In consideration of:-

- 1) your agreeing to the entry into port or other place of refuge, of the (name of ship) and;
- 2) your agreeing not to arrest or detain the (name of ship) or any other ship or property in the same or associated ownership, management, possession or control;

and upon condition that:-

- 1) such refuge is given and;
- 2) the (name of ship) or any other ship or property in the same or associated ownership, management, possession or control is not arrested or detained by you:-

we (name of Club) hereby undertake to pay you, within 14 days of receipt by us of your written demand, such sum or sums as may be found by the final unappealable judgment of a Court of competent jurisdiction (or name of specific Court having jurisdiction) or agreed in writing between us to be due to you from (name of Owners) the Owners [(name of Bareboat Charterers) the Bareboat Charterers] of the [name of ship] in respect of (i) the removal, destruction or marking of the wreck of the [name of vessel] and/or (ii) any pollution clean-up or pollution prevention expenses (individually and collectively "the Claims"), provided always that our liability hereunder shall be:

- 1) limited in any event to the total aggregate sum of US\$ [...] (..... United States dollars), less:
 - a) any amounts we (name of Club) have paid under any Certificate of Financial Security issued by us or on our behalf in respect of or relating to the Claims; and
 - b) any amounts paid or payable by (name of Owners) the Owners [(name of bareboat charterers) the bareboat charterers] of the (name of ship) or

by us in respect of or relating to the Claims, whether paid under this Guarantee or otherwise; and

c) any amount equal to any limitation fund(s) constituted by us and/or (name of Owners) the Owners [(name of bareboat charterers) the bareboat charterers] of the (name of ship) in relation to the Claims in accordance with any applicable law; and

2) without prejudice to or waiver of:-

a) any rights (name of Owners) the Owners [(name of bareboat charterers) the bareboat charterers] of the (name of ship) may have to limit their liability under any applicable law or convention;

b) any rights (including the right to limit liability) or defences which we (name of Club) may have under any applicable law or convention

We hereby further undertake, when called upon to do so, to instruct solicitors in (name of appropriate city), to accept service of any proceedings issued on your behalf in connection with the above incident and hereby confirm that we have irrevocable instructions and authority from (name of Owners) Owners [(name of bareboat charterers), the bareboat charterers] of the (name of vessel) so to do and further to agree that any claim of each party against the other and any and all disputes between the parties arising from this incident shall be exclusively determined by a competent.....court (or name of specific court).

This guarantee shall be governed by and construed in accordance with.....law.