



International Group Position Statement on the proposed Civil Liability Directive following the EP TRAN Committee Vote on 27 February 2007

The International Group of P&I Associations has been closely following the progress of the first reading on the draft Civil Liability Directive (CLD) through the European Parliament. If implemented, whether on the basis of either the original draft, or with the amendments adopted by the TRAN Committee on 27 February, the International Group does not believe that the CLD will achieve its objectives of promoting maritime safety and preventing and repairing damage to the environment. In addition, the introduction of a new test of 'gross negligence' for breaking the limit for vessels flying the flag of states not a party to the 1996 LLMC and a right of direct action for the great majority of maritime claims is likely to have a fundamental impact on the cover provided by, and the operation of, the International Group. The International Group is therefore extremely concerned at the outcome of the TRAN Committee vote on 27 February and would like to make the following general observations ahead of the Parliament's plenary vote later this month.

Firstly, the CLD is a part of the third package of measures on maritime safety. The measures proposed in CLD relating to the Limitation Convention and financial guarantees do not address, or impact on, maritime safety but rather relate to payment of compensation for certain types of claim **after** an incident has taken place. The idea that CLD is justified or necessary to prevent accidents occurring in the first place is misconceived. Other policy tools can serve this policy objective through such instruments as port state control, flag state and Class. The misconception may explain why some parts of the CLD could have the reverse of the intended effect. For example, under the existing International Group mutual system, the requirement for insurers to provide financial guarantees will significantly increase the insurers' liability but reduce the financial exposure of shipowners, charterers and cargo owners from the consequences of operating or employing an unseaworthy ship.

Another source of confusion is the misapprehension that LLMC is a liability convention giving rights to claimants. It is in fact a limitation convention giving rights to shipowners and operators. One consequence is that the liabilities are not defined, except by broad reference to categories of claim. The precise liabilities would generally be determined by national law. This creates a lack of uniformity. It cannot be assumed the insurers will be able or willing to provide open-ended financial guarantees for undefined liabilities.

Further, the practical operation of these complex proposals and the substantial administrative burden on states of issuing certificates have not been fully examined in an impact study and do not in our view abide by the proportionality principle of EU law.

As far as compensation is concerned, reference continues to be made to the Erika and Prestige cases. This is perfectly understandable in view of the gravity of these incidents. However, in order to have the complete picture, it should be remembered that ratified international conventions now provide compensation for oil pollution from tankers of more than EUR 850 million, more than five times the amount available at the time these incidents took place.=

Finally, the International Group has from the beginning expressed concern about the workability of the CLD. That concern is greater after the amendments adopted by the TRAN Committee. The CLD deals with issues which are extremely complex even for those familiar with the law relating to maritime limitation and compulsory insurance. Quite apart from differences on policy issues, the International Group has real concerns about the legal confusion and increased litigation which would arise from the proposals. In the end this would be detrimental to the quick and effective compensation of victims. This was formally recognized by the EP JURI Committee in its opinion of 15 September 2006, according to which amending the basis of shipowners' entitlement to limitation "might give rise to legal confusion and does not seem to be an effective way to offer better legal protection to the victims of maritime casualties" and "would probably do more harm than good and should consequently not be supported".

Note: the thirteen P&I Clubs that comprise the International Group are not-for-profit mutual organizations which provide insurance cover for third party liabilities (including loss of life and personal injury, pollution, cargo loss and damage and collision risks) for approximately 92% of the world's ocean going tonnage.