

# "HNS and the general regulatory framework for pollution liability in Europe"

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# Introduction:

- ❑ **'DISASTER REACTION SYNDROME':**
  - **3 Maritime safety regulation packages following:**
    - ❖ **Estonia (1994, Baltic sea)** – first round of measures mainly bringing into EU law existing IMO requirements for safety
    - ❖ **Erika (1999, Atlantic – French EEZ)** – giving rise to two rounds of EU maritime safety legislation ('Erika I and II' maritime safety packages), this time 'thinking ahead' of international instruments – e.g. bringing forward timetable for phasing out of single-hull tankers, proposing creation of European compensation fund for victims of oil spills
    - ❖ **Prestige (2002, Atlantic – Spanish EEZ)** – emphasising need for a more stringent response to maritime safety following increasing pressure for more EU-specific regulation, e.g. criminal sanctions for ship-source pollution, EU civil liability and financial guarantee system for shipowners
  - **Recent incidents involving container vessels (e.g. MSC Flaminia) with dangerous cargo, and chemical tankers (e.g. Stolt Valor, Maritime Maisie) have revived interest in HNS in the context of discussions on places of refuge**

# Initial EU proposal for compulsory liability insurance

- ❑ **COM(2005) 593 final – "Proposal for a Directive of the European Parliament and the Council on the civil liability and financial guarantees of shipowners"**
- ❑ **EU system for civil liability for third party claims:**
  - Aiming at liability without limitation;
  - Adding obligation to have adequate insurance cover for claims under LLMC;
  - Adding direct action rights against insurers
  - Providing for insurance cover in case of abandonment of seafarers
- ❑ **Parallel international developments:**
  - *Entry into force of the 2003 IOPC Fund Supplementary Protocol – making compensation available for oil pollution from ships approx. 1 billion \$*
  - *Adoption of the Maritime Labour Convention (including 'financial guarantee' for abandonment of seafarers)*
  - *Member States have undertaken to ratify all major international liability conventions*

# Directive 2009/20/EC on insurance of shipowners for maritime claims

## ❑ Objectives:

- fill legal vacuum – no obligation to have insurance under international law
- Fighting sub-standard shipping at least in EU waters
- Some level of harmonisation achieved by 'endorsing' LLMC standards across EU
- Ensuring application of relevant obligation with cooperation of Member States and industry

## ❑ Article 2: Scope

- Ships over 300gt
- Excluding war ships or State-owned ships used for non-commercial purposes
- **Without prejudice to applicable international conventions with specific liability regimes and compulsory insurance provisions (incl. HNS)**

## ❑ Links with HNS:

- Presently HNS incidents are covered by mandatory insurance requirement as LLMC claims

## 2. Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage ("the ELD")

- ❑ **Article 1:** 'Polluter-pays' principle
- ❑ **Article 2:** Scope
  - Definition of 'damage': *"measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly"* (amended with Directive 2013/20/EC (offshore) to broaden the scope of damage to waters)
  - Definition of 'operator': *"any natural or legal, private or public person who operates or controls the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity"*
- ❑ **Article 3:**
  - The Directive does not give private parties a right of compensation as a consequence of environmental damage – only the MS and their national competent authorities can claim

# Directive 2004/35/EC (...continued)

- ❑ **Article 4:**
  - Exemptions apply for incidents covered by international conventions – i.e. CLC, IOPC Funds, Bunker Oil, HNS – which are in force in the Member State concerned
  - The right to limitation under LLMC 1996 applies
- ❑ **Articles 5-8:** preventive and remedial action – to be distinguished from costs (≠ HNS)
- ❑ **Article 14:** Financial security
  - No compulsory insurance or other financial security
  - The Directive specifically empowers Member States to "take measures to encourage the development" of such instruments and markets for the types of damages covered by the ELD (*'non-harmonised approach'*)
  - The Commission is presently studying the possibilities for developing harmonised mandatory insurance under the ELD in the EU

# Directive 2004/35/EC (...continued)

- ❑ **Challenges in relation to environmental damage from shipping activities:**
  - Operators in shipping argue that the system of maritime liability conventions already in place offers sufficient levels of liability and ensures effective remediation of environmental damage up to a very high financial threshold;
  - Compulsory insurance is in place - States and operators have worked well in making it effective;
  - However, the polluter pays principle is circumscribed in the shipping context by limitation of liability and the fact that only financial compensation is foreseen (unlike the ELD standards)
  
- ❑ **Links to HNS:**
  - HNS incidents causing environmental damage are presently NOT excluded from the scope of the ELD
  - An operator of a ship causing environmental damage or a threat of such damage falling within the scope of the ELD is liable to the coastal State for preventive and remedial action and cost reimbursement

# Support to EU Member States

## ❑ **European Commission**

- Has supported ratification of the HNS 1996 Convention through a European Council Decision in 2002 (2009/971/EC) – will reiterate this for the 2010 Convention

## ❑ **EMSA**

- Databases: MAR-ICE ('Marine Intervention in Chemical Emergencies Network') developed in cooperation with CEFIC and CEDRE since 2008, offers rapid access to product and incident-specific information on chemicals and their risks, from experts. It is available to 28 EU Member States, EFTA coastal States and EU candidate countries.

*[Information on HNS quantities is not available on MAR-ICE]*

- HNS Action Plan (not covering liability)
- Trainings: Since 2002, EMSA has offered a number of trainings to EU States on HNS liability (1996 Liability Convention) and response (OPRC-HNS), using expertise from the IOPC Funds, MS and its own resources – available to continue tutoring project at Member States' request.





*Thank you for your attention!*

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