



**PROPOSAL FOR A DIRECTIVE  
OF THE EUROPEAN PARLIAMENT AND THE COUNCIL**

**IG COMMENTS ON THE AMENDMENTS PUT FORWARD BY THE MEMBERS OF  
THE EP TRAN COMMITTEE ON THE CIVIL LIABILITY PROPOSAL COM (2005) 593**

**Introduction**

The 13 P&I Clubs that comprise the International Group of P&I Clubs (the IG) are mutual not-for-profit insurance organizations that between them cover the third party liabilities (which include pollution, loss of life and personal injury, cargo loss and damage and collision risks) of approximately 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 are individually liable for claims up to US \$6 million. Above this amount claims are pooled, that is shared, between the 13 Group Clubs.

**Proposed Directive**

The IG would like to refer to the position paper submitted jointly with industry in the context of the first reading of the European Parliament of the Commission's proposal COM (2005) 593 final for a Directive on the civil liability and financial guarantees of shipowners, to provide members of the European Parliament with background information to the amendments supported and opposed by the IG in this document.

The IG supports the wide implementation of the international liability Conventions, namely the HNS, Bunkers, LLMC and ILO Maritime Labour Conventions, and would urge EU Member States to ratify them as rapidly as possible.

IG Clubs already provide insurance cover for the types of claims that are covered by the Conventions, and there is no evidence to our knowledge that the objectives of the proposed Directive to improve the quality of shipping and maritime safety can be achieved through an increase in liability, particularly if that liability is insured.

The IG would urge that this document, and the previous shipping industry position papers, be given careful consideration before making the sweeping and far reaching changes as have been proposed.

Amendments put forward by MEPs that the IG would support:

Topic	Am#	Tabled by	IG comments
Ratification of HNS Convention	2, 8, 32	Savary, Evans	This ratification would ensure that damages arising from the carriage of hazardous and noxious cargoes are promptly and efficiently compensated through the applicable international regime.
Ratification of the Bunker Convention & Wreck removal Convention	21, 22, 30, 31	Fernandes, Bradbourn, Lopez Isturiz-White & de Grandes Pascual	This ratification would ensure that damages arising from oil pollution from non-tankers are promptly and efficiently compensated through the applicable international regime.
Denunciation of the 1976 LLMC Convention by EU Member States in compliance with the provision the 1996 LLMC Protocol	13	Savary	As proposed by the Commission, the industry encourages the Member States to ratify the 1996 LLMC regime as soon as possible and therefore welcomes the rapporteur's proposal which would bring consistency and clarity to the legal framework.
Regime of liability - Test of limitation for non LLMC-flagged vessels	33, 34, 35	Bradbourn, Evans, Kasoulides	IG agrees with the deletion of this provision which is clearly discriminatory and would create legal uncertainty and be counter productive as regards quick and effective compensation for claimants (see further details below).
Regime of liability - test of limitation	37	Kratsa-Tsagaropoulou	This is in line with the international Conventions and would ensure the sustainability of the compensation regime.
Limit of financial guarantee – double LLMC ceiling	39	Kratsa-Tsagaropoulou	The IG supports this amendment if, contrary to the IG's submission, the financial guarantee provisions are not amended. Ratification of the international Conventions, and deletion of Article 4 (3) of the Commission's text, will ensure that the Commission's proposal to double the ceilings will be unnecessary and superfluous.
Financial Guarantee Certificates – Certificates of Entry & IMO Resolution A 898	24, 38, 40, 44, 45, 46, 47, 50, 51	Bradbourn	The implementation of the international Conventions will already provide for compulsory insurance evidenced by State-issued certificates and the right of direct action against the insurer for third

(21)			<p>party liabilities for almost all types of damage arising from ship sourced pollution. In actual fact, LLMC will be restricted to a limited number of damages (of commercial nature, such as cargo claims).</p> <p>IG Clubs already issue certificates of entry 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 Assembly Resolution A. 898 (21).</p> <p>If States and insurers were to have to issue further certificates as provided for under the proposed Directive, it would prove costly and administratively very burdensome.</p>
Scope of EU liability regime- Territorial waters as opposed to EEZ	41, 48	Kratsa-Tsagaropoulou	Save for the final sentence of Amendment 41, the IG supports these amendments if, contrary to the IG's submission, the financial guarantee provisions are not amended. This amendment is in line with the International Convention on the Law of the Sea, and would ensure compatibility with international law and practice.
Abandonment of seafarers- 2006 ILO Convention	23, 28, 42,	Bradbourn	This issue is already dealt with internationally through the recently finalised 2006 ILO Maritime Labour Convention which includes a provision that requires States to ensure that owners of vessels that fly their flag provide financial security for repatriation of seafarers in cases that include insolvency.

Amendments put forward by MEPs that the IG strongly opposes:

Topic	Am#	Tabled by	IG position
Limitation of the scope of the incorporation of the LLMC Convention in EU law to third parties not involved	6	Savary	This proposed provision is clearly in conflict with the intention of the Convention and its application in all existing State parties, which includes the vast majority of coastal Member States.

in the transport chain			This could also create treaty law conflicts. Claims that are subject to limitation of liability under the Convention include all third party claimants, whether or not they are involved in the transport chain. It is difficult to understand how the proposal would work in practice. It could have the result that parties to the transport chain are either outside of LLMC or that there are two separate liability regimes. This could be a recipe for considerable confusion.
Regime of liability - Shipowners' reckless behavior as a new test to break limitation right	3, 14	Savary	<p>Changing the test of limitation would give rise to legal uncertainty (and long court processes) and would be counter-productive as regards the aim to offer better legal protection to the victims of maritime casualties.</p> <p>The proposed text is accordingly totally contrary to Article 4 of the LLMC Convention and could create treaty law conflicts in those Member States that have already ratified either the 1976 Convention or the 1996 Protocol, since in the Convention the test under which the shipowner loses his right to limitation, is still recklessly and with knowledge that damage would probably result.</p>
Regime of liability - Stricter test of limitation for non LLMC-flagged vessels (no right to limitation for a damage resulted "partly or wholly" from the shipowner's personal act or omission).	15	Savary	<p>The Commission's and the rapporteur's proposal to introduce a specific liability regime for non LLMC-flagged ships is clearly discriminatory towards vessels flagged in non- Member States (many of which are controlled by EU businesses) and it is doubtful that this will encourage non LLMC states to ratify the Convention.</p> <p>For the reasons stated above, IG also strongly opposes the rationale behind the proposal (i.e. changing the principle of limitation as a means to better compensate or improve ship safety).</p> <p>The new rapporteur's definition of the test of limitation would make the test even easier to break. No reference is made to any degree of fault so any act or omission would appear to lead to the loss of the right to limit, even if entirely</p>

			innocent. This would challenge the functioning and the sustainability of the LLMC compensation regime, and at the end of the day the effective and quick compensation of the claimants.
Regime of liability - Stricter test of limitation for non LLMC – flagged vessels - Definition of gross negligence	29	Jarzembowski	A precise definition of gross negligence may raise legal conflicts and create legal insecurity for the compensation of the victims. However defined, the terms “negligence” and “gross” require courts to exercise judgement based on all the circumstances of an individual case and this inevitably creates uncertainty and increased litigation. The test of limitation in LLMC should be maintained, so as to ensure the sustainability and efficiency of the compensation regime and to ensure certainty and uniformity.