



## NON-TECHNICAL MEASURES TO PROMOTE QUALITY SHIPPING FOR CARRIAGE OF OIL BY SEA

Submitted by Comité Maritime International (CMI)

<i>Summary:</i>	A questionnaire was issued to the National Maritime Law Associations which are members of the Comité Maritime International (CMI). At the end of February 2008 only five responses had been received. Subject to receipt in the reasonably near future of further responses, CMI would expect to complete a report, with the assistance of the University of Southampton, in time for the June 2008 meetings of the IOPC Funds.
<i>Action to be taken:</i>	(a) Take note of the information contained in this document; and  (b) consider instructing the University of Southampton to study the replies to the questionnaire issued by the CMI and to prepare a review of the issue, taking into account the estimated cost of £15 000 to be paid by CMI and reimbursed by the 1992 Fund (section 3).

### 1 Background

- 1.1 At its first meeting the Working Group had extended an invitation to CMI to undertake a study with the following aims:
- (a) to identify factors that allow/require/prevent marine insurers and other business endeavours from sharing information on clients, including national legislation and practices; and
  - (b) to identify whether competition law and practices take into consideration the need for taking measures to encourage quality shipping for the transportation of oil.
- 1.2 At its 3rd meeting, held in June 2007, the Working Group invited CMI to proceed with the study focussing on the difficulties faced by property insurers (document 92FUND/WGR.4/8, paragraph 7.1.23).

### 2 Submission of questionnaire to the National Maritime Law Associations

- 2.1 Following the decision taken at the June 2007 meeting by this Working Group to submit a questionnaire to the National Maritime Law Associations which are members of the Comité Maritime International (CMI), the wording of the questionnaire was discussed and eventually agreed.

- 2.2 The questionnaire took somewhat longer to reduce to its final form than had been originally expected, and it was distributed to National Maritime Law Associations at the beginning of October 2007 as set out at the annex. The covering letter from the President of CMI requested responses by the 10 December 2007, but in the event this proved unrealistic.
- 2.3 At the end of February 2008 responses had been received from five Maritime Law Associations. Detailed responses from at least two more associations were still in the course of finalisation and the CMI continues to press other National Maritime Law Associations for their responses.
- 2.4 While CMI is confident that the responses to this questionnaire will in due course provide a valuable insight into the problem and possible solutions, it is clear that the CMI will not be able to give a report based on contributions from a wide survey of national positions to the meeting of the Working Group scheduled for the 11 to 14 March 2008 in Monaco. At that meeting the CMI Observer Delegate will deliver a short verbal report on the current position of this work.

### **3 Review of responses**

- 3.1 In the view of the CMI, this is an important study and it is considered that it would be desirable to supplement the responses from National Maritime Law Associations by instructing the University of Southampton to study the replies to the questionnaire and to prepare a review of the issue not limited to these replies but more broadly. This review would be carried out by Dr. Renato Nazzini, who is Reader in Law at the University of Southampton and holds doctorates in both Italy and the United Kingdom. His special interest is Competition Law, and he is, in the opinion of CMI, an ideal person to carry out this work.
- 3.2 As has already been made clear, the CMI will make no charge to the 1992 Fund for its part in this project, but the University of Southampton will indeed require a fee, which has been estimated at £15 000. The CMI will be responsible for this in the first instance, but will expect to be reimbursed by the 1992 Fund.
- 3.3 Subject to receipt in the reasonably near future of the responses which are in the process of finalisation, CMI would expect to complete the report in time for it to be presented and translated for the IOPC Fund meetings in the week commencing 23 June 2008.
- 3.4 For the sake of order, CMI wishes to inform the Working Group that Mr Richard Shaw, CMI Observer Delegate to the IOPC Funds, is a Senior Research Fellow of the University of Southampton Institute of Maritime Law. He will therefore be in a position to maintain an overview of the progress of the work. As already indicated, there will be no charge for his time spent on the project.

### **4 Action to be taken by the Working Group**

The Working Group is invited

- (a) to take note of the information contained in this document; and
- (b) to consider instructing the University of Southampton to study the replies to the questionnaire issued by the CMI and to prepare a review of the issue, taking into account the estimated cost of £15 000 to be paid by CMI and reimbursed by the 1992 Fund (section 3).

## ANNEX

### NON-TECHNICAL MEASURES TO PROMOTE QUALITY SHIPPING

#### CMI Questionnaire to National Maritime Law Associations

As part of their overall review of the working of the Oil Pollution Compensation system, the International Oil Pollution Compensation Fund (IOPC Fund) set up a Working Group under the chairmanship of Birgit Solling Olsen of Denmark with a mission, *inter alia*, to research possible non-technical measures to promote quality shipping for Carriage by Sea.

One of the topics adopted by the Working Group for further study was **to identify factors which prevent the sharing of information between marine insurers regarding the condition of the ship and to seek to develop a common policy or other measures that would facilitate the sharing of information.** The Comité Maritime International was asked and has agreed to assist the IOPC Fund with this study.

Three particular areas of potential difficulty have been identified by the Working Group:

1. Competition Law.
2. Data Protection Law.
3. Law of Defamation.

Your Association is kindly requested to supply answers to the Questions set out below regarding the relevant laws in your country. You may find it helpful to consult colleagues who are academics or lawyers specialising in these fields. Your replies will assist us in ascertaining how far cooperation or exchange of information on sub-standard shipping can go without breaching the law.

It should be noted that the International Group of P&I Clubs has already put in place a number of measures to ensure the maximum free flow of information on entered ships between Clubs which are members of the International Group. Details of these measures are set out in the IOPC Fund document 92FUND/WGR.4/4/4 which is available at [www.iopcfund-docs.org](http://www.iopcfund-docs.org). This Questionnaire is therefore concerned with property insurance, mainly hull and machinery and cargo insurance, not P&I. Details of the position of the International Union of Marine Insurance (IUMI) in this respect is set out in the IOPC Fund Document 92FUND/WGR.4/7/5, which is also available at [www.iopcfund-docs.org](http://www.iopcfund-docs.org)

It would be appreciated if you would ensure that your Association's response to this Questionnaire is received at the CMI Secretariat in Antwerp **not later than December 20, 2007**. The short time limit is very much regretted, but is necessary in order to enable the CMI, which will establish its own Working Group on Quality Shipping, to assist the IOPC Fund Working Group as requested.

#### **A. Competition law**

1. Are there rules of competition law and practice in your country which prevent or restrict the sharing of information on clients and their ships by insurers, classification societies and/or Port State Control authorities, or other bodies or organisations with an interest in ship safety?
2. If so, does competition law and practice in your country in principle take into account certain considerations of public interest as a possible ground for an exception to those rules?
3. If so, is the need for measures aimed at enhancing the quality and safety of transport by sea among those considerations of public interest?
4. If not, what other legal rules or principles in your country would permit the need for quality and safety of transport by sea to be taken into consideration when determining what is allowed under competition law and practice in your country?

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5. Do you consider, in the context of these questions, that the ability to share such information between insurers would in practice lead to the insurance or other relevant services not being available to substandard ships/shipowners, or being available at a significantly higher price or on significantly different conditions?

In answering questions 1-5, please provide extracts, details or examples together if possible with translations into English.

### **B. Data protection law**

1. Are there rules of data protection law and practice in your country which prevent the sharing of information on clients and their ships by bodies or organisations with an interest in ship safety, such as insurers, classification societies and/or Port State Control authorities
2. If so, does the law and practice on data protection in your country in principle take into account certain considerations of public interest as a possible ground for an exception to those rules?
3. If so, is the need for measures aimed at enhancing the quality and safety of transport by sea among those considerations of public interest?
4. If not, what other legal rules or principles in your country would permit the need for quality and safety of transport by sea to be taken into consideration when determining what is allowed under law and practice on data protection in your country?

In answering questions 1-4, please supply details, if possible translated into English as necessary.

### **C. Law of Defamation**

1. Would the laws of your country relating to defamation apply to the sharing of information concerning matters of ship safety, or the lack of it, by bodies or organisations with an interest in ship safety, such as insurers, classification societies and/or Port State Control authorities?
2. If so, are there circumstances in which such sharing of information would be considered privileged and thus not grounds for a defamation action?
3. If so, is the need for measures aimed at enhancing the quality and safety of transport by sea among those considerations giving rise to such privilege?

In answering questions 1-3, please supply details, if possible translated into English as necessary.

### **D. Legal factors not related to the law on competition, data protection or defamation**

1. Are there any legal factors, not related to competition law or the law on data protection or defamation, which effectively restrict the sharing of information on clients by bodies or organisations with an interest in ship safety, such as insurers, classification societies and/or Port State Control authorities, in your country?
2. If so, do these in principle take into account certain considerations of public interest as a possible ground for an exception to those restrictions?
3. If so, is the need for quality and safety of transport by sea among those considerations of public interest?

In answering questions 1-3, please supply details, if possible translated into English as necessary.