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

PROPOSED STUDY BY COMITÉ MARITIME INTERNATIONAL

### Note by the Director

<b>Summary:</b>	At its second meeting in March 2007, the 4th intersessional Working Group invited the Secretariat, the International Union of Marine Insurance and the International Group of P&I Clubs to discuss which questions should be included in a proposed study to identify factors that affected marine and other insurance business endeavours from sharing information on clients and identify whether competition law and practices took into consideration the need for taking measures to encourage quality shipping for the transportation of oil. This document sets out the outcome of these discussions.
<b>Action to be taken:</b>	Decide whether further action is necessary and, if so, whether to proceed with the study or whether to write to some leading competition authorities to seek their general views on the question of sharing of information on shipowners for the purpose of promoting quality shipping.

### 1 Introduction

- 1.1 At its first meeting in May 2006 the 4th intersessional Working Group invited the Comité Maritime International (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 second meeting in March 2007 the Director informed the Working Group that after its first meeting the previous Director had met with representatives of CMI to discuss the study in detail. He explained that at that meeting it became clear that CMI would be unable to carry out the study itself but that it would need to be commissioned and paid for by the 1992 Fund. The Director pointed out that, whilst the budget was not necessarily an issue, the difficulty arose in that it was unclear what the exact nature of the problem was. He explained that without clarification the study would have to be very broad, which could then prove to be not cost effective.

- 1.3 The Working Group confirmed that the study should not be undertaken until the Group could give a more precise focus for the questions it would like answering. The Working Group invited the Secretariat, International Union of Marine Insurance (IUMI) and the International Group of P&I Clubs to discuss which questions should be included in the study and report their conclusions to the Group at its next meeting in June 2007.

## **2 Discussions with IUMI and the International Group of P&I Clubs**

- 2.1 The Secretariat met with representatives of IUMI and the International Group on 30 May 2007. In discussing the problems currently faced by the industry it became apparent that those faced by property insurers, as represented by IUMI, and liability insurers, as represented by the International Group of P&I Clubs, were somewhat different, largely as a result of the fundamental differences between the two sectors.
- 2.2 Property insurers are separate individual entities providing insurance cover on a commercial and profit-making basis with different selection criteria as regards specific risks. The variation in selection criteria, combined with the current over capacity in the market made it relatively easy for shipowners to obtain the required cover and the potential for insurers to play a leading role in selecting against substandard shipping was therefore limited.
- 2.3 IUMI attaches great importance to the issue of quality shipping and encourages best practice and the exchange of information to assist underwriters in their risk assessment and selection. However, a previous attempt by a group of cargo underwriters to obtain dispensation from the European Union to enable them to introduce a vessel grading system, without the risk of being sued by shipowners, failed. It was the general view of the IUMI representatives that a broad study along the lines proposed could raise the expectations of the Working Group but might not have a major impact on the industry, or be of benefit to underwriters seeking to contribute to quality transportation of oil.
- 2.4 P&I Clubs, although also separate individual entities, are mutual insurance associations owned by shipowners and do not have a profit element, the amount payable by each shipowner member to obtain liability cover being proportional to the estimate of the risk posed by that member to the club.
- 2.5 The measures already put in place by the International Group of P&I Clubs to address quality shipping, such as the procedure for 'designating' vessels that fail to meet acceptable standards and the introduction of the double retention mechanism for such vessels, had been designed in such a way as to avoid infringement of competition rules and the Group was confident that the systems that the Clubs had put in place were safe from an exchange of information point of view.
- 2.6 It was the general view of the representatives of the International Group of P&I Clubs that the P&I Clubs had taken all measures which could be considered effective and which could reasonably be asked from them at this stage and that those measures had already taken into account issues of sharing of information. These representatives therefore felt that there were no P&I Insurance issues that would bring a more precise focus to any study. They also considered it necessary, before embarking on other measures, to await the experience of the measures that the P&I Clubs had already taken.
- 2.7 It was the general view of the meeting that an alternative to undertaking a study, which would necessarily be of a rather general nature, might be for the Working Group to get in touch with some leading competition authorities to obtain their general views on the possibility of free exchange of information about ship safety for the purpose of promoting quality shipping for the transportation of oil. On the basis of the information thus provided, the Working Group could be in a better position to determine whether to proceed further with this matter. Should the Working Group, however, prefer to have a study of a more general nature undertaken by the CMI,

a possible set of questions is set out in the Annex for consideration by the Working Group. These questions, in particular those under A, might also be useful if the Working Group were to decide on the alternative of obtaining the views of some leading competition authorities.

**3 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 decide whether further action is necessary and, if so, whether to proceed with the study or whether to write to several leading competition authorities to seek their general views on the question of sharing of information about ship safety for the purpose of promoting quality shipping for the transportation of oil.

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## ANNEX

### Possible questions

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

1. Does competition law and practice in your country in principle allow 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?
2. If not, 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 that rule?
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, under what other heading might there be scope for taking the need for quality and safety of transport by sea into consideration when determining what is allowed under competition law and practice in your country, and how far would that extend?
5. Would it, in the context of these questions, be relevant if and to what extent such sharing of information would in practice lead to the insurance or other relevant service not being available or being available at a significantly higher price or on significantly different conditions?

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

1. Does the law and practice on data protection in your country in principle allow 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?
2. If not, 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 that rule?
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, under what other heading might there be scope for taking the need for quality and safety of transport by sea into consideration when determining what is allowed under law and practice on data protection in your country, and how far would that extend?

#### **C. Legal factors not related to competition law or the law on data protection**

1. Are there any legal factors, not related to competition law or the law on data protection, 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?

**D. Non-legal factors**

1. Are there any non-legal factors 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?
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