



## CONSIDERATION OF A DRAFT TEXT OF A PROTOCOL TO THE HNS CONVENTION

### THE DEFINITION OF 'RECEIVER'

Submitted by the European Chemical Industry Council (CEFIC)

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| <i>Summary:</i>            | This document sets out the position of the chemical industry on the definition of 'receiver'. |
| <i>Action to be taken:</i> | Information to be noted.  |

#### **1 The recommendations of the HNS Focus Group**

- 1.1 The HNS Focus Group was set up at the 1992 Fund Assembly's October 2007 session with the aim of facilitating the entry into force of the HNS Convention. At its meeting in March 2008, the HNS Focus Group considered proposals by States with respect to the three issues which had been identified as being decisive for the entry into force of the HNS Convention, ie the concept of 'receiver', contributions to the LNG Account and the non-submission of contributing cargo reports.
- 1.2 At that meeting, the Secretariat was requested to produce recommendations and a revised draft Protocol to the HNS Convention, which would first be considered at the next meeting of the HNS Focus Group on 23 June 2008 and then by the Assembly later that week. If approved by the Assembly, the draft Protocol will be submitted for consideration by IMO's Legal Committee, ideally at its October 2008 session, with a view to the holding of a Diplomatic Conference as soon as possible.
- 1.3 The Group has recommended the following compromise: the two tier liability system remains in place but the packaged goods are excluded from the reporting of contributing cargo and contributions to the HNS Fund in respect of administrative costs and post-incident levies. However, if an incident occurs, compensation, above the threshold of the lower tier, would continue to be covered by the general account of the HNS Fund and would thus have to be paid by the receivers of bulk goods only. To lessen the consequences of the changes on the receivers of bulk goods, an increase has been suggested in the shipowners' liability limits for ships carrying packaged goods (and thus the first tier).

#### **2 CEFIC's position**

- 2.1 CEFIC welcomes the valuable work undertaken by the Focus Group. The changes put forward and agreed in principle with respect to the removal of packaged goods from the reporting requirements is a very positive step and is expected to reduce the burden on industry and governments dramatically.

In addition, the work undertaken to ensure that countries that have not complied with the reporting requirements of the Convention cannot call upon the Fund is very welcome by industry, as it should help ensure that the system is fair.

- 2.2 When it comes to the concept of receiver, CEFIC welcomes the efforts of the HNS Focus Group to avoid the disproportionately high administrative burden resulting from the reporting of packaged HNS. CEFIC has reservations however over the suggestion- as it stands today - to exclude packaged goods from contributions under the second tier of the Convention for the following reasons:

The Focus Group has so far only discussed the principle and not the actual amount by which the first tier would need to be increased – the latter will be left for the Diplomatic Conference leaving the debate open to parties that have not been involved in the detailed discussions of the Group. Once more details regarding the increase of the shipowners' liability limits becomes available, CEFIC will be in a better position to make further comments. Although the claims history provided by the P&I Clubs is reassuring, CEFIC would like to see the precise numbers being assessed first.

- 2.3 CEFIC is opposed to the proposal to compensate packaged HNS damage by contributions from the receivers of bulk solid and liquid chemicals. This would mean that the receivers of bulk HNS would be required to pay for other companies that have not had to take any steps to reduce the risks to their shipments. This goes completely against the '*polluters pays*' principle and does not appear to fit with the Lisbon agenda. This would be an arbitrary act because bulk receivers are not responsible for this damage. CEFIC would therefore like to endorse the serious concerns expressed at the meeting in March.
- 2.4 In more general terms, CEFIC would like to highlight that it remains opposed to several elements of the HNS Convention and, in particular, the provision for financial liability of the funds under the 2nd tier when compensation from the shipowner is inadequate, is not available or is exempted from the repayment (eg a natural phenomenon of an exceptional, inevitable and irresistible character) and calls for further work to be carried out in this area.

### **3 CEFIC's recommendation**

- 3.1 Adopting the rationale of the HNS Focus Group (incidents involving packaged goods with costs exceeding the first tier did not occur over the last six years and are therefore insignificant), CEFIC proposes to limit compensation for packaged goods to the first tier. Following the P&I Clubs argument, this would result in an insignificant increase in insurance fees for packaged goods carriers, which have direct responsibility for the transport conditions of packaged goods.
- 3.2 In order to allow corrective measures, it might be appropriate to set a time frame of five years from the date of adoption of the Protocol. If within this time frame, as adopted by IMO and described in document MEPC/OPRC-HNS/TG 7/INF.1, monitoring and reporting of HNS incidents provides evidence that the exemption of packaged HNS cargoes from the reporting and contributing duties has resulted in severe impact for shipowners and receivers of other HNS cargoes, eg bulk liquids, the exemption can be deleted and replaced by the original text of the HNS Convention.

### **4 Action to be taken by the HNS Focus Group**

The Focus Group is invited to take note of the information contained in this document.

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