



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

DEFINITION OF 'RECEIVER'

Proposal regarding Article 14 of the HNS Convention

Submitted by Germany

Summary:	It is proposed that the HNS Fund pay compensation for damages caused by substances which are contributing cargo within the meaning of Article 1, paragraph 10 of the HNS Convention. The HNS Fund would not be liable for damages caused by substances which are not contributing cargo. Compensation for these damages would be paid for by the insurance of the shipowner.
Action to be taken:	The Focus Group is invited to take note of the proposal set out in section 2 and approve the text set out in paragraph 2.2 for inclusion in the draft Protocol to the HNS Convention.

1 **Introduction**

The HNS Focus Group is considering the proposal by a number of States to exclude packaged HNS from the scope of the HNS Convention since the reporting of packaged HNS can present many complex problems. The proposal is that packaged goods should not be liable for reporting, running cost contributions or post-incident levies to the HNS Fund (document 92FUND/WGR.5/3). Germany welcomes and supports this proposal, as it removes major problems and will enable States to ratify the Convention, which is an important part in the international system of liability and compensation for damage caused by ships. However, Germany has concerns insofar as it is also proposed that the HNS Fund remain liable for damages caused by packaged goods and that bulk receivers (as defined in Article 1, paragraph 5(a)(i) to (iii) and (v) to (vii) and 5(b) of the HNS Convention) should be liable for the necessary contributions to the HNS Fund. Following discussions at the last meeting of the HNS Focus Group this document sets out the proposal in writing.

2 **Proposal**

- 2.1 Germany proposes that in accordance with the already-discussed proposal that packaged goods should not be liable for post-incident levies to the HNS Fund, the HNS Fund should not be liable for paying compensation for damages caused by packaged goods (the insurance of the shipowner should remain liable).

Suggested Draft Treaty text:

- 2.2 It is proposed that Article 14, paragraph 1 of the HNS Convention be amended as follows (new text in **bold**):

'1 For the purpose of fulfilling its function under Article 13, paragraph 1(a) the HNS Fund shall, **except where the damage is caused by substances as defined under Article 1 paragraph 5(a)(iv)**, pay compensation to any person suffering damage if such person has been unable to obtain full adequate compensation for the damage under the terms of chapter II:

(a) '

Reasons for the Proposal:

- 2.3 The proposal has been made for the following reasons:

- (a) As packaged goods (as defined in Article 1 paragraph 5(a)(iv) of the HNS Convention) are no longer liable for post-incident levies to the HNS Fund the HNS Fund no longer has the possibility of collecting the necessary levies to pay compensation. The consequence of excluding packaged goods from goods liable for contributions is that the HNS Fund should no longer assume liability for damages caused by these goods.
- (b) If the HNS Fund remains liable the necessary means for paying compensation in such cases would have to be collected from bulk receivers (as defined in Article 1, paragraph 5(a)(i) to (iii) and (v) to (vii) and 5(b) of the HNS Convention). Bulk receivers are, however, not responsible for the transport of packaged goods.
- (c) If bulk receivers were liable for damages caused by packaged goods, that would be contrary to principles also recognised by the HNS Convention. The HNS Convention has a (rather complicated) system of separate accounts (Articles 16 to 20 of the HNS Convention). According to Article 16, paragraph 4 of the HNS Convention the general account and the separate accounts shall be available to compensate damage caused by HNS covered by that account (eg: compensation for damages caused by oil carried in bulk – Article 1 paragraph 5 (i) – is paid for from the separate account for oil - Article 16 paragraph 2(a) and 4). That means that damages caused by a certain cargo are paid for only by the receivers of this cargo. This general principle would no longer apply if bulk receivers had to pay contributions in connection with damages caused by packaged goods.
- (d) The proposal would not make it necessary to decide which account (as regulated in Article 16 of the HNS Convention) should be available to compensate damage caused by packaged goods. If it should be decided not to follow this proposal it would seem necessary to decide also which account should be available for compensation and who should be levied accordingly.
- (e) Germany would also like to inform delegations that the German Constitution generally would not permit liability for contributions if the affected person does not have any connection to the reasons behind the contributions or does not gain any advantages from the payments.

3 Adjustment of Shipowners' Liability

In the discussion it was also mentioned that it is very unlikely that a major incident will happen which will lead to the Fund having to pay for damages caused by packaged goods. In this connection Germany welcomes the proposal that shipowners' liability limits for ships carrying packaged HNS be adjusted. Germany supports an adjustment which should ensure that the Fund

would have to pay only for damages caused by packaged goods in a very limited number of cases, if at all. Such an adjustment would help to alleviate Germany's concerns.

4 Action to be taken by the HNS Focus Group

The Focus Group is invited:

- (a) to take note of the information contained in this document; and
 - (b) to consider the proposal set out in section 2 and approve the text set out in paragraph 2.2 for inclusion in the draft Protocol to the HNS Convention..
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