



European Maritime Safety Agency

**Report to the European
Commission on monitoring of
the HNS reporting – the use of
the data already available on
the basis of the EU legislation,
23.06.2006
Unit E.4/90/06**

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Ref: Request for advice n° TREN G1 D(2006) 206562

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Annex “Monitoring of the HNS reporting”

Executive summary

The paper analyses several EU legislative and non-legislative sources in order to find out if the information obtained through them can be used for the purpose of the verification of the HNS reporting as required in the HNS Convention. The analysis leads to the conclusion that none of the sources presents an optimal solution, as none provides all the information required by the Convention, however some of them could be used as verification mechanism for certain parts of the HNS reporting. The most effective results could be therefore achieved if different combined means are used simultaneously for the verification purposes in order to cover the widest area possible. Several minor but important amendments are proposed at the end of this paper in order to enhance the potential of the relevant legislative acts. Moreover, due to the fact that the system is likely to be based on self-reporting (the potential contributors will be submitting the relevant information themselves to the competent administration in the state parties), it would be more effective to support the verification mechanisms by sanctions resulting from the non-execution of the self-reporting obligation.

I. General introduction – HNS Convention

The International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances was adopted in 1996. The convention provides for the rules of civil liability for damage caused in relation to the transport of the HNS substances by sea.

The HNS Convention is based on two-tier liability. The shipowner is strictly liable up to a certain amount, calculated on the basis of the tonnage of the ship. A compensation fund (the HNS Fund) is to provide additional compensation up to 250 million SDR (Special Drawing Rights) when the victims do not obtain full compensation from the shipowner or his insurer. The HNS Fund is to be funded by the contributions from the companies and other entities which receive HNS in a State Party after the goods were carried by sea (“receivers”).

The premiums of each receiver are to be calculated on the basis of the amounts of HNS substances received by him annually by sea. He will have to contribute to the Fund if the quantity of the received goods exceeds the thresholds laid down in the Convention.

In case of LNG substances, the person liable for contributions is a person who held a title to an LNG cargo prior to its discharge in a port or terminal of a State party.

II. Objectives

1. Statement of the problem

According to the HNS Convention in order to provide compensation for damage sustained in relation to the HNS substances, the compensation fund will have to be created. The HNS Fund will invoice the receivers of the HNS goods carried by sea in relation to the amounts and type of the goods brought over a period of a year. In order however to be able to issue the invoices, the Fund will have to be provided by the competent administration in the State Parties with the information on the receivers, the amounts and the types of the substances received by them during the previous year. This reporting will have to be done in relation to four groups of substances as the financial resources of the Fund will operate on the basis of four accounts: oil, LNG (liquefied natural gas), LPG (liquefied petroleum gas) and a general account for bulk solids and other HNS.

1.1. Oil Account

In relation to the oil account it can be identified that the information on persistent oil (crude oils and heavy fuel oils) will be the easiest to obtain as it is already submitted to the IOPC Fund. The same information will however have also to be collected in relation to non-persistent oil (refined oil products). This information is partly available in the databases of the International Energy Agency that publishes data on production, export, import and consumption of e.g. naphta, motor gasoline, aviation gasoline, jet kerosene, diesel oil and other non-persistent oils on a country by country basis. This is already a part of the information required, however the imports cannot be traced back to individual importers. This data is also collected by official bodies (like statistical offices) in the OECD Member States from firms, government agencies and industry.¹

1.2. LNG Account

In relation to the LNG account it should be pointed out there are relatively few States that export and import LNG (mostly Japan and Korea) so the EU Member States do not have to worry about establishing the reporting system yet. However in the near future the situation might change and more States are forecast to get involved in the LNG trade, therefore the LNG reporting system will have to be addressed at some point.²

¹ See: Alan Lewis, <http://www.hnsconvention.org/en/workshop.html> and <http://www.hnsconvention.org/6%20Availability%20of%20data%20on%20HNS%20transport%20by%20sea%20-%20Alan%20Lewis.pdf>

² Ibidem.

1.3. LPG Account

In relation to the LPG account, the LPG data is available through e.g. the International Energy Agency. Again, like in the case of non-persistent oil, this data is compiled from the submission of official bodies, firms, government agencies and industry on a country by country basis so it does not allow tracing individual receivers. However LPG is mostly transported in bulk and, as it has been stated at the HNS workshop organised by the IOPCF in London 25-26 May 2006, the substances transported in bulk are easier to trace than the substances transported in containers, mostly due to big quantities of the former, the regularity of the transport and the character of the receiver (which is usually a large company with developed book-keeping).³

1.4. General Account for bulk solids and other HNS

1.4.1. Bulk solids

The difficulties might be encountered in the reporting in relation to the general account, which will contain solid bulks and other HNS and which has to be operational prior to the separate accounts. Regarding to its first part, the solid bulks, the consultant Alan Lewis stated at the HNS workshop⁴ that no major dry bulks are HNS. Only minor and very specific dry bulks are HNS, such as certain metal products, some nitrates, fertilizers, some radioactive material, sulphur in some forms, etc. Due to their limited quantity, it should be feasible to obtain the relevant information.

1.4.2. Other HNS

The real problem however might be posed by the "other HNS" part of the general account. They contain over 2810 substances, although only 50 of them are traded in bulk as commodities. There is however no comprehensive database of the "other HNS trade". Even more complicated are the IMDG Code substances in packaged form which number 2251. It is a very wide variety of substances in most cases are received in very small quantities. This is why some of the Member States have decided to place the HNS reporting in relation to packaged goods at the lower priority when establishing the reporting system.

1.5. Implementation

As previously mentioned, the State Parties will be responsible for providing the information to the HNS Fund. It will depend on each State how the reporting will be organised in their country. During the HNS workshop organised by EMSA in February 2006 in Brussels, participants discussed a proposal of self-reporting launched previously at the workshop of the IMO Correspondence Group in Ottawa. Each receiver should himself inform the competent authority in the State about the HNS substances received by sea during the previous year.

³ Ibidem.

⁴ Ibidem.

For that purpose the receivers can use a system called HNS Convention Contributing Cargo Calculator developed by the IOPC Fund. Potential contributors can input there the data on receipts of individual substances, identify total receipts for each account and report those receipts to the competent authority in their State. The State will then transmit the aggregate data to the Fund. It is envisaged that this system will be the basis for invoicing by the HNS Fund.

If the self-reporting option is chosen, the States will have to develop **verification mechanisms** in order to check if the receivers fulfil this obligation correctly. The information needed in that respect would be:

- (a) the name of the receiver, and
- (b) the quantities of the HNS substances brought by him annually by sea.

2. Background of the present report

In view of the future accession of the EU Member States to the HNS Convention and in order to identify if any potential HNS reporting verification mechanisms are already available to the Member States, EMSA has been requested by the Commission to perform an analysis of the data obtained on the basis of other existing EC legislation relating to ships and HNS.

III. Action undertaken and presentation of the findings

EMSA has analysed 11 EU legislative acts and 3 non-legislative sources relating to the statistical information provided in relation to ships or relating to different aspects of marketing of the HNS substances. EMSA has presented the analysis below in point IV, each sources separately. In point V EMSA has only singled out the sources that might be relevant to the HNS reporting and we presented them first according to the legislative or non-legislative source that is their basis and then according to the place where the required information is available. Last but not least, in the conclusions contained in point VI possible modifications that might render certain sources more effective for the purpose of the HNS reporting are presented.

IV. EC legislation – data available in relation to ships and HNS substances

1. Council Directive 95/64/EC of 8 December 1995 on statistical returns in respect of carriage of goods and passengers by sea

Object of the directive: to collect Community statistics on the carriage of goods and passengers by seagoing vessels calling at ports in the territories of the Member States.

The data is collected in relation to ports handling more than one million tonnes of goods or recording more than 200 000 passenger movements annually. Other ports provide only summary data. There is therefore a threshold applied, ports below the threshold do not report information, those above the threshold limits, do.

Member States are obliged to collect the data and transmit it to Eurostat. It depends thus on the Member States how they organise the system to obtain the data. Different Member States have different systems but any relevant public authority should be able to get the necessary data from the ports.

The data required by the directive to be submitted at the entrance to ports concerns the vessel itself, the passengers and the cargo. The information on passengers and vessels is of no relevance to the HNS convention. The information on cargo comprises: gross weight of goods in tonnes, type of cargo, its description, reporting port, direction of movement (in or out), the port of loading or unloading (depending on the movement). For goods carried in containers or ro-ro units a number of containers/ro-ro unit with and without cargo have to be provided.

The cargo classification however is quite general: liquid bulk, dry bulk, containers, ro-ro, etc.

The only type of cargo that could be of interest for the purpose of the HNS convention are the liquid bulk goods which contain: liquefied gases (LNG – LPG), crude oil and oil products. Nevertheless the data obtained is only the overall data in relation to each port. It is difficult at this stage to trace the imports of each economic operator or relate the cargos to individual receivers and specific movements.

Eurostat webpage on the data accumulated on the basis of the Dir. 95/64:

http://epp.eurostat.ec.eu.int/portal/page?_pageid=1996,45323734&_dad=portal&_schema=PORTAL&screen=welcomeref&open=/&product=EU_MAIN_TREE&depth=1

In the database one can see, e.g. how many tonnes of oil arrived at a port, or left it, in a given time period but not from which operator, not from which ships and not from specific movements, or days, only at an aggregated level for the time period in the data set (quarterly or annually) for the port.

Therefore the directive is geared towards aggregated data suitable for general trade statistics.

Relevant to the HNS Convention: minimal. The data is too general. It can be classified by ports and by cargo. It is not possible to trace the imports of a particular economic operator. It could be used only as a supportive data to cross-check with other sources (the names of chemical importers, the customs data,

the industry data on the annual production, etc.) but independently it has no use for the HNS reporting.

2. Directive 2002/6/EC of the European Parliament and of the Council of 18 February 2002 on reporting formalities for ships arriving in and/or departing from ports of the Member States of the Community

Object of the directive: to provide standardisation of reporting formalities on the basis of Convention on Facilitation of International Maritime Traffic, 1965 as amended.

When: on arrival in and/or departure from ports of the Member States;

Who: ship master/operator/agent in relation to all ships arriving or departing from the ports of the Member States;

What information (FAL forms 1-5):

- general declaration (name and description of the ship, port of arrival/departure, date of arrival/departure, nationality declaration, name of the master, port arrived from/port of destination, certificate of registry, name and address of the ship's agent, gross and net tonnage, brief particulars of the voyage, brief description of cargo, number of crew, number of passengers) – on arrival and departure

- ship's stores (name of the ship, port of arrival/departure, date of arrival/departure, port arrived from/port of destination, number of persons on board, period of stay, place of storage, articles stored) – on arrival and departure

- crew's effects (name of the ship, nationality of the ship, effects which are dutiable or subject to prohibitions or restrictions, name of the member of the crew being owner of the relevant effects) – on arrival

- crew list (name of the ship, port of arrival/departure, date of arrival/departure, port arrived from, nationality of the ship, crew data: name, rank, nationality, date and place of birth, ID) – submit on arrival and confirm on departure

- passengers list if the ship is certified to carry up to 12 passengers (name of the ship, port of arrival/departure, date of arrival/departure, nationality of the ship, passenger data: name, nationality, date and place of birth, ports of embarkation and disembarkation) – on arrival and departure

Relevant to the HNS Convention: yes, but only indirectly. The only reference to the cargo is a brief description of the cargo in the general declaration which is

not sufficient. Again, no possibility to trace the imports of a particular economic operator. No reference to quantities discharged or loaded.

However the general declaration can confirm if the ship has actually entered the port and in that way this information could, if made available, support the SafeSeaNet (SSN) information (if the SSN was to be used for the purpose of the HNS reporting), where the messages are sent 24 hours in advance before the arrival to the port. (In practice this may not always be the case).

An amendment could be considered for the purpose of the HNS reporting: the "brief description of the cargo" in the general declaration could be expanded, in relation to HNS substances, by cargo unloaded in the relevant port and the entity receiving the cargo in this port. This might be a simpler way to achieve the same aim than the discussed amendment of the vessel traffic monitoring directive. However, it would mean changing a FAL declaration which is internationally recognised, so politically such measure might not be very welcome.

3. Regulation (EC) no 638/2004 of the European Parliament and of the Council of 31 March 2004 on Community statistics relating to the trading of goods between Member States and repealing Council Regulation (EEC) no 3330/91

Object of the regulation: establish a common framework for the systematic production of Community statistics relating to the trading of goods between Member States.

"Intrastat system" – a system for data collection containing information on dispatches and arrivals of goods. The Member States have to organise the way the Intrastat data is supplied by the parties responsible for providing the information.

Parties responsible for providing information: natural and legal persons registered for VAT in the Member States of dispatch or arrival, who has concluded the contract (with the exception of transport contracts) giving rise to the delivery/dispatch of goods or takes the delivery/dispatches goods or is in possession of goods which are subject to the delivery/dispatch.

National authorities manage a register of intra-Community operators containing at least the consignors and consignees of goods (the latter could be identified with potential physical receivers acting as agents for another entity in the HNS Convention) in order to identify parties responsible for providing information.

Parties responsible will submit following information to the relevant national statistical institutes:

- The identification tax number of the party responsible;
- The flow (arrival, dispatch);
- The reference period;
- The commodity identified by the 8-digit code of the EU combined nomenclature;
- The partner Member State (the state of dispatch or arrival);
- The value of goods (the taxable amount or the statistical value: FOB for dispatches or CIF for arrivals);
- The quantity of goods (the net mass or the supplementary units);
- The nature of transaction (purchase/sale, work under contracts, etc.).

Member States may collect additional information, e.g. the identification of goods on more detailed level, the country of origin, the region of origin and destination, the delivery terms, the mode of transport, the statistical procedure.

The Member States define every year the thresholds, below which parties are exempted from providing information.

The Member States transmit to the Commission (Eurostat) the monthly results of their statistics relating to the trading of goods between Member States no later than 40 days after the end of the reference months (70 days for the additional data established by the MS).

Relevant to the HNS Convention: yes, partly.

(a) The HNS Convention concerns imports, intra-EU trade and national trade. On the other hand, the data collected on the basis of the present Regulation concerns goods dispatched from one EU Member States for a destination in another EU Member State (only intra-EU trade). Therefore it could be used as a verification mechanism together with customs databases – one would cover the intra-EU trade and other the imports.

(b) There is no information about the mode of transport by which the goods arrived. In that context however, if the Member States decide to collect additional information according to art. 9.2., they can single out goods brought to the relevant Member States by sea. The Regulation could also be amended by introducing the mode of transport into the list of obligatory information.

(c) Thus, out of the information submitted, the following would be of interest for the purpose of the HNS convention:

- The natural or legal person who signed a contract giving rise to delivery of goods or who take delivery or who is in possession of the goods that are subject to the delivery (which can be identified with the “physical receiver” in the convention);
 - Goods that arrived by sea;
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- The commodity number according to the EU combined nomenclature: this might constitute a problem, an additional exercise should be done to identify if the relevant goods are within the scope of the HNS Convention by pairing the combined nomenclature numbers with the UN numbers;
- The quantity of goods.

The parties are responsible to provide such data to statistical institutes (depends on the Member States how it is organised). The statistical institutes provide the aggregate data to Eurostat.

The Member States thus can possess the HNS information relating to the intra-EU transport by sea. For this reason each of them needs, on the basis of the Reg. no 638/2004, to:

- Establish a system on the basis of which the responsible parties provide such information to statistical institutions;
- Introduce an additional obligation to identify the mode of transport;
- Introduce low thresholds for reporting because the HNS quantities are evaluated on yearly basis according to art. 10;
- Combine EU combined nomenclature and the UN numbers.

This information could be used as one of the supporting verification mechanisms for the self-reporting obligation imposed on the receiver of HNS substances in relation to the intra-EU trade – providing the mode of transport was recorded as a mandatory field.

4. Commission Regulation (EC) No 1982/2004 of 18 November 2004 implementing Regulation (EC) No 638/2004 of the European Parliament and of the Council on Community statistics relating to the trading of goods between Member States and repealing Commission Regulations (EC) No 1901/2000 and (EEC) No 3590/92

Object of the regulation: to set up measures implementing the Reg. 638/2004.

The regulation provides for some specific issues, e.g. the obligation to prove to the tax authorities the correctness of certain information by the parties providing it to the Intrastat System, the list of goods excluded from the obligation to provide statistical information (means of payment, gold, commercial samples, etc.), the rules concerning specific goods and movements (e.g. vessels and aircrafts, electricity, military goods, etc.). There are no rules that could be specifically applied to the hazardous and noxious substances and their carriage by sea.

Relevant to the HNS Convention: no.

5. Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances

The object of the directive: to approximate laws, regulations and administrative provisions of the Member States on classification, packaging and labelling of dangerous substances which are placed on the market in the Member States of the Community.

The directive contains the list of categories into which the substances should be classified.

The substances should not be placed on the market unless the strength and the impermeability of their packaging satisfy the requirements in the directive (art. 5). Moreover, all packaging must be properly labelled (art. 6-8).

However, the directive does not affect the carriage of dangerous substances by rail, road, inland waterway, sea or air (art. 1.2(b)).

Relevant to the HNS Convention: no. Firstly, it does not oblige identifying the receiver. Even if art. 6.2(b) requires to insert on the label “the indication of origin [that] must include the name and address of the manufacturer, the distributor OR the importer”, it is not sufficient as it could be any of the three persons mentioned above while the HNS directive only requires a physical receiver after the transport by sea, let it be national, intra-EU and international. Secondly, it does not provide for any mechanism allowing for tracing the quantities of dangerous goods brought annually by an economic operator or the mode of transport. Last but not least, the directive does not affect the carriage of dangerous substances by sea.

6. Council Directive 76/769/EEC of 27 July 1976 on the approximation of laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations

The object of the directive: to restrict the marketing and use of certain dangerous substances and preparations (preparations being the mixtures of the substances) in the Member States. The list of relevant substances and preparations is found in the Annex to the directive. It contains two groups of substances and points out which uses cannot be given to them or which uses only can be given to them.

Relevant to the HNS Convention: no. The directive does not concern any transport whatsoever, only marketing and use of substances.

7. Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations

The object of the directive: to approximate laws, regulations and administrative provisions of the Member States on classification, packaging and labelling of dangerous preparations placed on the market in the Member States (preparations being the mixtures or solutions composed of two or more substances) and to approximate specific provisions for certain preparations that may present hazards.

The preparations are classified according to the degree and specific nature of the hazards involved. The general principles of their classification and labelling are the same as the principles laid down in the directive 67/548.

The Member States have to make sure that the preparations placed on the common market are properly packed and labelled. The proper package has to prevent the contents from escaping. The containers containing preparations have to properly secured and contain the warning danger. The proper labelling has to inform the public about the content of the packages and indicate: (a) the trade name or designation of the preparation, (b) the name, address, telephone of the person responsible for placing the product on the market: the manufacturer, importer or distributor, (c) the chemical name of the substance, (d) the danger indications, (e) the risk phrases and (f) the safety advice.

Relevant to the HNS Convention: no. The directive does not oblige identifying the receiver. Even if art. 10.2.2 requires to insert on the label "the name, full address and telephone number of the person established in the Community who is responsible for placing the preparation on the market, whether it be the manufacturer, the importer OR the distributor", it is not sufficient as it could be any of the three persons mentioned above and the HNS directive only requires a physical receiver after the transport by sea, let it be national, intra-EU and international. Moreover, it does not provide for any mechanism allowing for tracing the quantities of dangerous goods brought annually by an economic operator or the mode of transport.

8. Commission Directive 91/155/EC of 5 March 1991 defining and laying down the detailed arrangements for the system of specific information relating to dangerous preparations in implementation of Article 10 of Directive 88/379/EEC

(A) Amended by the Commission Directive 93/112/EC of 10 December 1993 defining and laying down the detailed arrangements for the system of specific information relating to dangerous preparations in implementation of Article 10 of Directive 88/379/EEC

The Directives mentioned above concerned the obligation of the Member States to implement a system of specific information (safety data sheet) relating to dangerous preparations. The obligation was imposed by art. 10 of the Directive 88/379. As the Directive 88/379 was repealed by the Directive 1999/45, the above mentioned directives have lost their objective. However, the new Directive 1999/45 has introduced a similar requirement to produce safety data sheet (art. 14). This is why the Directive 91/115 was amended for the second time by:

(B) Commission Directive 2001/58/EC of 27 July 2001 amending for the second time Directive 91/155/EC defining and laying down the detailed arrangements for the system of specific information relating to dangerous preparations in implementation of Article 14 of European Parliament and Council Directive 1999/45/EC and relating to dangerous substances in implementation of Article 27 of Council Directive 67/548/EEC (safety data sheets).

According to the directives, any person established in the Community who is responsible for placing a dangerous substance or preparation on the market (manufacturer, importer, distributor) shall supply the recipient of the substance with the safety data sheet. The sheet will contain a.i. the name of the substance and its producer, hazards identification, fire-fighting measures, handling and storage indications, toxicological information, etc. The "Guide to the compilation of safety data sheets" is contained in the Annex to the directive.

Relevant to the HNS Convention: no. The obligation is imposed on manufacturer, importer or distributor but there is no indication of having received the substances or preparations by sea. Moreover, the obligation concerns only providing the "risk information" to the industrial user but it does not allow assessing the quantity of the substance brought annually by sea by each receiver.

9. Community Customs Code

(A) Council Regulation (EEC) no 2913/92 of 12 October 1992 establishing the Community Customs Code

The Community Customs Code codifies Community customs law. It entered into force in 1992 and mainly concerns:

- General provisions on people's rights and obligations with regard to customs legislation (right of representation, information, etc.);
- Basic provisions governing trade in goods (import and export duties, customs value, the EC customs tariff, the tariff classification of goods and their origin, etc.);
- Provisions governing the introduction of goods into the EC customs territory (the presentation of goods to customs, the customs declaration, the obligation to assign to goods a customs-approved treatment or use, temporary storage, etc.);
- Provisions concerning non-Community goods which are moved under a transit procedure;
- Provisions on the customs-approved treatment or use (concerning i.a. placing of goods under customs procedures, release for free circulation, transit, customs warehousing, inward and outward processing, processing under customs control, temporary admission and export, etc.);
- Provisions on the introduction of goods into a free zone or free warehouse, re-export, destruction of goods and their abandonment to the exchequer.

In 1997 the amendments were adopted concerning the customs debt and control of free zones and simplifying the formalities surrounding the customs declaration.⁵

In 1999 the amendments were adopted concerning customs transit (clarification of the rules on discharging the transit procedure and the responsibilities of the persons authorised to use the procedure, as well as the rules on financial guarantees and procedures for recovering debts arising from Community transit operations).⁶

In 2000 the amendments introduced procedures for preventing fraud, simplified customs rules and procedures, facilitated the use of electronically submitted declarations, as well as the use of the procedures for inward processing, processing under customs control, temporary admission and free zones and

⁵ (Regulation (EC) no 82/97 of the European Parliament and of the Council of 19 December 1996 amending Regulation (EEC) no 2913/92 establishing a Community Customs Code (*OJ L 017 of 21/01/1997*, p.1-6).

⁶ (Regulation (EC) no 955/99 of the European Parliament and of the Council of 13 April 1999 amending Regulation (EEC) no 2913/92 with regard to the external transit procedure (*OJ L 119 of 07/05/1999*, p.1-4).

defined a new concept of protecting "good faith" for the persons importing goods under preferential conditions.⁷

In 2005 the amendments adopted were aimed at tightening security requirements for movements of goods across international frontiers. Among other measures, the regulation requires traders to supply customs authorities with advance information on goods brought into, or out of, the customs territory of the European Community. This will provide for better risk analysis, but, at the same time, for quicker process and release upon arrival, resulting in a benefit for traders that should be equal to, if not exceed, any cost or disadvantage of providing information earlier than at present. The measures will not apply, however, until the necessary implementing provisions have also come into force. These provisions will define: the data elements to be included in the pre-arrival and pre-departure declarations, the time limits for the provision of this information, the rules for variations and exceptions to these limits and the framework for the exchange of risk information between Member States. This will therefore entail the setting up of a one-stop shop for importers and exporters.⁸

In November 2005 the Commission adopted a proposal aimed at modernising the Community Customs Code. This proposal's objective is to simplify the legislation and administrative procedures governing imports and exports. In addition, the Commission proposes: streamlining structures and making terminology more consistent, streamlining the system of customs guarantees and extending the use of single authorisations.⁹

(B) Commission Regulation (EEC) no 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) no 2913/92 establishing the Community Customs Code (as amended)

This Regulation contains the implementing provisions for the Community Customs Code. It combines the implementing provisions for European customs law in a single document. It covers: provisions of general application, other customs-approved treatments or uses, privileged operations, customs debt and certain controls.

⁷ Regulation (EC) no 2700/2000 of the European Parliament and of the Council of 16 November 2000 amending Council Regulation (EEC) no 2913/92 establishing the Community Customs Code (OJ L 311 of 12/12/2000, p. 17-20).

⁸ Regulation (EC) no 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 117 of 04/05/2005, p. 13-19).

⁹ Implementing the Community Lisbon programme – Proposal for a Regulation of the European Parliament and of the Council laying down the Community Customs Code (Modernised Customs Code), (SEC(2005)1543, COM/2005/0608final – CDD 2005/0246).

The general provisions cover binding information, the origin of goods, their value and customs declarations. In consequence, following information has to be available in relation to the imported/exported goods:

- Tariff information (BTI - concerning the classification of goods in the Combined Nomenclature or a nomenclature derived from it);
- Origin of goods information (BOI – concerning the preferential or non-preferential origin of specific goods to be imported or exported; preferential origin making the goods eligible for preferential tariff measures);
- Customs value (calculated on the basis of their transaction value and with the application of the Community customs tariff for the purpose of calculating customs duties).

Customs declarations should be lodged by the owner of the goods or a person acting on his behalf (a representative) with the customs office where the goods were or will shortly be presented in order to place goods under a given customs procedure.

Relevant to the HNS Convention: yes, partly. Every customs authority in the country receives the information from the owner of the goods about their character (type, origin, quantity and value, etc.). The owner of the goods is usually the final receiver, not the physical receiver in the meaning of the HNS Convention, which may also be as well useful, as in the cases where the physical receiver acts as an agent for someone else, the final receiver would be the person paying contributions to the HNS Fund.

This allows the customs to know what good is being imported, however they will only know the common nomenclature number of the good. In order to check if those goods are within the scope of the HNS Convention (which operates on the basis of the UN numbers of substance), a translation table between the UN nomenclature and EC common nomenclature would have to be provided.

The customs databases do not indicate if the goods were brought by sea or by other ways, which is an obstacle for the HNS reporting. In many cases however this information can be extrapolated from the geographical position of the country the goods were brought from. This situation could be resolved if such information, in relation to chemical substances, was required by the future provisions implementing the Regulation no 648/2005 amending the Customs Code, which requires certain information to be provided in advance.

The customs data would only be useful to monitor the HNS reporting in relation to the HNS goods imported to the EU. The HNS Convention however concerns also the intra-EU trade by sea and transport within the same country by sea. Another measure would have to be used to cover those parts, like e.g. the Regulation 638/2004 concerning statistical information on the intra-EU trade.

(C) Council Regulation (EC) no. 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, and Commission Regulation (EC) No 696/98 of 27 March 1998 implementing Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters

The Regulation specifies the ways in which the administrative authorities responsible for implementation of the legislation on customs [...] matters in the Member States shall cooperate with each other and with the Commission to ensure the compliance with that legislation within the framework of a Community system.

According to the Regulation, an authority in one Member State can request a relevant authority in another Member State to transmit the information which may enable the first authority to ensure the compliance with the provisions of customs (or agricultural) legislation. It would also be practical to use this provision for the purpose of the HNS Convention as it could potentially facilitate the exchange of customs information between the authorities in order to monitor the compliance of the HNS receivers with the obligation of reporting, however the objective is different: monitoring of the HNS reporting is not within the scope of the customs legislation.

The electronic platform for the exchange of this information is being created. CIS (Customs Information System) will provide i.a. for: commodities, means of transport, commercial entities and persons. It will consist of a central database facility and be accessible via terminals in each Member State.

It is relevant to know about the existence of such platform for the exchange of the information. Even if most of the information needed for monitoring of the HNS reporting in relation to imports should be available in the customs database of the country of import, the relevant authority in a Member State might need some supporting information from other databases (e.g. if the physical receiver pays premiums to the HNS Fund even if he is not the importer).

Relevant to the HNS Convention: limited relevance as the system is only used for the purpose of ensuring proper implementation of customs and agricultural legislation and preventing fraud in these areas. If the Member States express that they intend to use the customs data as the verification mechanism of the HNS reporting and that they might also need information from the customs of other

Member States, one could consider expanding the objective of CIS to monitoring of the HNS reporting in relation to imports.

10. REACH – Regulatory Framework for the Registration, Evaluation and Authorisation of Chemicals

The Commission proposed a new EU regulatory framework for the Registration, Evaluation and Authorisation of Chemicals (REACH) on 29 October 2003¹⁰. The aim is to improve the protection of human health and the environment through the better and earlier identification of the properties of chemical substances. At the same time, innovative capability and competitiveness of the EU chemicals industry should be enhanced. The benefits of the REACH system will come gradually, as more and more substances are phased into REACH.

The REACH proposal gives greater responsibility to industry to manage the risks from chemicals and to provide safety information on the substances. Manufacturers and importers will be required to gather information on the properties of their substances, which will help them manage them safely, and to register the information in a central database. A European Chemicals Agency is to be created and it will act as the central point in the REACH system: it will collect registrations, run the databases necessary to operate the system, co-ordinate the in-depth evaluation of suspicious chemicals and run a public database in which consumers and professionals can find hazard information.

According to art. 5 and art. 6.1(b) of the proposal any manufacturers and importers established within the Community who manufacture or import chemical substances or their preparations in quantities starting at 1 tonne per year will have to submit a registration. This obligation will concern dangerous chemical substances in the meaning of the Directive 67/548/EEC, therefore “chemical elements and their compounds as they occur in the natural state or as produced by industry” which are either: explosive, oxidising, easily flammable, flammable, toxic, harmful, corrosive or irritant (according to the definitions of this qualities in the Directive 67/548). It will therefore be possible for a Member State to identify a group of chemical producers in their country, as well as the type and quantities of the substances imported annually (in the registration submitted by the importers) or the types and quantities of the substances brought from other EU countries (in the registration submitted by the manufacturers). It will however not be specified how the substances were brought: by sea or by land. Sometimes the geographical location of the place of origin of the substance may help determine this but not in all cases.

¹⁰ Proposal for a Regulation of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (Reach), establishing a European Chemicals Agency and amending Directive 1999/45/EC and Regulation (EC) (on Persistent Organic Pollutants) {SEC(2003 1171} (COM/2003/0644 final - COD 2003/0256).

Relevant to the HNS Convention: once the Agency is created and the regulation is in force, partly yes. The information will be available on all the importers of chemical substances to the common market. It seems also that the range of the substances and preparations under the scope of REACH is going to be wider than the scope of the HNS Convention. The data available will concern the importers of the HNS substances and the manufacturers (for the purpose of the HNS Convention it will be possible to separate the data on the manufacturers who have brought chemical substances from other EU countries). In that respect the data will help the Member States to identify the potential contributors to the HNS Fund but it will only be able to outline the quantity of their import or intra-EU trade without differentiating how many substances were actually brought by sea. It could however be proposed to amend REACH in the way that the declarations would include the transport mode.

Moreover, it has to be pointed out that the principle of REACH is the principle of self-reporting: the manufacturers and importers of chemical substances will have to provide the information themselves. It is a similar principle than the one proposed in relation to the HNS Convention: self-reporting obligation to the HNS Fund. That proves that the idea of self-reporting is used in other areas but it also limits the usefulness of REACH for the purpose of verification of the HNS reporting. The same commercial entities which will report their data to REACH, will also report the data to the relevant administration for the purpose of the HNS Fund premium. Thus if an entity decides not to report certain data, it will not report it to both REACH and HNS Fund.

11. Chemical Abstracts Service (CAS)

CAS (Chemical Abstract Service) is a team of scientists, creating and delivering a digital information environment for scientific research and discovery. CAS provides pathways to published research in the world's journal and patent literature relevant to chemistry and information in the life sciences and a wide range of other scientific disciplines.

Since 1907, CAS has indexed and summarized chemistry-related articles from scientific journals, in addition to patents, conference proceedings and other documents pertinent to chemistry, life sciences and many other fields. In total, abstracts for more than 25 million documents are accessible online through CAS. One of the areas of activity of CAS is substance identification. It is known as the CAS Registry, the largest substance identification system in existence (over 28 million organic and inorganic substances and 57 million sequences). When a chemical substance, newly encountered in the literature, is processed by CAS, its molecular structure diagram, systematic chemical name, molecular formula, and

other identifying information are added to the Registry and it is assigned a unique CAS Registry Number.

Relevant to the HNS Convention: no. The register contains only the information on chemical characteristics of the substances but no information relevant for the purpose of the HNS Convention: who receives these substances after a carriage by sea and in what annual quantities. CAS Registry Numbers would not be useful either for the purpose of the HNS reporting as the HNSCCC system uses the UN numbers.

12. European Inventory of Existing Commercial Chemical Substances (EINECS)

EINECS (European Inventory of Existing Commercial Chemical Substances) is similar to CAS. It is an organisation drawn up by the European Commission in application of Article 13 of Directive 67/548, as amended by Directive 79/831, and in accordance with the detailed provisions of Commission Decision 81/437. It lists and defines those chemical substances, which were deemed to be on the European Community market between 1 January 1971 and 18 September 1981.

Many chemicals used in Europe are given an EINECS reference number, which has a similar function to the widely-used CAS number (though it has a different format).

Relevant to the HNS Convention: no, for the same reasons as CAS.

V. Appreciation of relevance of the EC statistical and customs legislation to the HNS reporting

(A) Classification by the obligations enshrined in the EU legislation

1. Directive 2002/6/EC of the European Parliament and of the Council of 18 February 2002 on reporting formalities for ships arriving in and/or departing from ports of the Member States of the Community can be indirectly applicable to the HNS reporting but only as a support system to the SafeSeaNet if the Hazmat notification in the Directive 2002/59 was amended in the manner that would require the ship master or agent to submit the port of destination of the dangerous cargo. The submission of the FAL forms would confirm if the ship has actually entered the port as the Hazmat notification is sent in advance and might not always reflect the reality.

On the other hand, an amendment of this directive could be considered for the purpose of the HNS reporting: the “brief description of the cargo” in the general

declaration could be expanded, in relation to HNS substances, by cargo unloaded in the relevant port and the entity receiving the cargo in this port.

The information can be therefore available in ports.

2. Regulation (EC) no 638/2004 of the European Parliament and of the Council of 31 March 2004 on Community statistics relating to the trading of goods between Member States and repealing Council Regulation (EEC) no 3330/91 imposes an obligation to submit certain information to the national statistical institutes (through a system organised by the Member States) by the natural or legal persons who signed a contract giving rise to the delivery of goods or who take their delivery or who are in possession of the goods that are subject to the delivery (which can be identified with the “physical receiver” in the HNS convention). The information submitted concerns the goods brought from another EU country. In that respect the “receivers” are obliged to give i.a. the quantity of goods and their EU combined nomenclature number.

By introducing an obligation to provide additional information on the basis of the art. 9.2 (e) of the regulation, the Member States could require the “receiver” to notify the mode of transport by which the goods arrived. The Regulation could also be amended by introducing the mode of transport into the list of obligatory information. Moreover, the EU combined nomenclature and the UN numbers of the goods would have to be paired to allow identifying which goods are within the scope of the HNS Convention. This information could then be used as one of the supporting verification mechanisms for the self-reporting obligation imposed on the receiver of HNS substances in relation to the intra-EU trade.

The information can be therefore available in the national statistical institutes.

3. Council Regulation (EEC) no 2913/92 of 12 October 1992 establishing the Community Customs Code and Commission Regulation (EEC) no 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) no 2913/92 establishing the Community Customs Code (both as amended) provide that the importer of goods should submit to the customs’ authorities a customs’ declaration upon every import. The declaration should contain certain information e.g. the type and quantity of the goods. Therefore national customs systems possess the information on importers and their annual imports of goods. The only obstacle is that the goods are classified according to the EU common nomenclature and in order to identify if they are within the scope of the HNS Convention, their numbers would have to be paired with the UN numbers. In relation to the HNS convention this data would facilitate monitoring of the HNS reporting of the importers (that either would be the “physical receivers” according to the HNS Convention or would act as principals of the physical receivers) of the substances. Moreover, the customs data does not indicate if the goods were brought by sea. In many cases the mode of transport can however be

extrapolated from the geographical location of the origin of the goods. An amendment to the Customs Code could be adopted that would require the importer to submit, in relation to chemical substances, information on the transport mode of the import.

If this could be done, the data would nevertheless concern only the reporting of the receivers who brought the HNS substances by sea from outside of the EU but not from another EU country or within the same country.

The information can be therefore available in the national customs' databases.

4. Regulatory Framework for the Registration, Evaluation and Authorisation of Chemicals is a new EU regulatory framework proposed in 2003, the regulation however has not been yet adopted. According to the proposal the manufacturers and importers established within the Community who manufacture or import chemical substances or their preparations will have to submit a registration to the European Chemicals Agency (to be created). It can be expected that the information on the importers will allow for identifying the potential contributors to the HNS Fund. It might be even possible to trace the annual import quantities however without a possibility to identify if the transport was done by sea. The manufacturers of chemical substances might also have to submit information on the chemicals that they bring from other EU countries for the purpose of production, however again the mode of transport will not be recorded. It could however be proposed to amend REACH in the way that the declarations would include the transport mode.

The registration is based on the idea of self-obligation: the manufacturers and importers of chemical substances will have to submit the registration on their own initiative. The reporting obligation in relation to the HNS substances will most probably also be based on the principle of self-obligation: the receivers will themselves have to inform the relevant administration. It proves that the idea of self-obligation is already in use but it also limits the practicality of REACH for the verification of the HNS reporting as both systems will be based on the information provided by the same commercial entities themselves.

(B) Classification by the source of the information

1. Ports/ terminals

Each port possesses the information concerning the vessels that entered their ports and the goods that were unloaded there on the basis of the Directive 2002/6/EC (e.g. on the basis of this information the port duties are imposed). It should also be possible to find in the terminals the information on the entities that received the goods, e.g. on the basis of the bills of lading. Every port is

different however and it has a different system of receiving and storing the information (e.g. in various electronic modes or in hard copy). It also differs how long the information is stored.

This information could be used by the relevant administration as one of the verifying mechanisms to trace HNS movements into the ports. A ready made solution cannot be developed in this paper as the ports differ too much one from another but the relevant national administrations should investigate into what the information is available in the ports at their territory and how it can serve the process of verification.

Moreover, there are companies that specialise in extracting such information from the ports and customs databases and collecting the information on the basis of bills of lading, notably PIERS in the United States whose activity is based on the agreement between the company and the US administration. Their services are costly and they acquire certain rights as to the property of the data extracted but they also have experience and know-how in obtaining the required data.

2. National statistical institutes

The national statistical institutes possess, on the basis of the Regulation no 638/2004, the information submitted by the physical and legal persons on goods brought by them from another EU country. In the countries where an additional obligation was imposed, the information on the transport mode is also available. The information concerns only intra-EU trade and the goods are classified according to the EU common nomenclature, the UN classification of dangerous goods is not used. This information could be used by the relevant administration as one of the verifying mechanisms to trace the quantities of the HNS intra-EU trade by sea in relation to each “receiver”.

3. National customs

National customs receive, on the basis of the Regulation no 2913/92 on the Community Customs Code and the [Regulation no 2454/93, customs declaration containing the details of importer and the goods imported by him](#). The information concerns only imports and the goods are classified according to the EU common nomenclature, the UN classification of dangerous goods is not used. Moreover, the information on the mode of transport is not directly available. Every national customs authority has a different system, so no specific conclusion can be drawn in this paper as to the way of obtaining the data, however it can be said that this information could be used by the relevant administration as one of the verifying mechanisms to trace the quantities of the HNS imports in relation to each importer assuming that further investigation as to the mode of transport would have to be made.

4. EU-wide sources

(a) Eurostat – it receives information from the national statistical institutes and from the customs, however this information would not be very useful for the purpose of the HNS Convention as it is in a summarised form – it is possible to ascertain the quantities and types of the goods brought into ports (per port or per country) and the quantities and types of goods imported to the country (per country) but it is not possible to identify the data in relation to individual receiver or importer. Thus the information could only be used as a secondary verification mechanism in order to support the more detailed mechanisms and check if the aggregate quantities are approximate.

Trade statistics are based on the Combined Nomenclature (CN). Data can be extracted based on the product code.

- *Here is a link to the CN: once a product code is known, data on this product can be extracted from the Eurostat database.*

http://ec.europa.eu/comm/eurostat/ramon/index.cfm?TargetUrl=DSP_PUB_WELC
(link to “classifications”, then link to “Combined Nomenclature, 2006”)

- *Here is also a link to Easy Comext, a web based data extraction tool:*

<http://fd.comext.eurostat.cec.eu.int/xtweb/>

It includes a database “Extra EU25 trade by mode of transport”.

- *The same data is available on the webpage of Eurostat:*

http://epp.eurostat.cec.eu.int/portal/page?_pageid=1996,45323734&_dad=portal&_schema=PORTAL&screen=welcomeref&open=/&product=EU_MAIN_TREE&depth=1

However, detailed trade data on CN level (8 digit) is currently not published by mode of transport. It can be extracted individually from the database. The data collected on the basis of the Directive 95/64 as amended is collected in relation to annual seaborne trade of goods through ports. It gives overall quantities of each product in relation to each port but it does not allow identifying individual importers.

(b) European Chemicals Agency – will be created in the future and will possess information on the manufacturers and importers of chemical substances in the common market who are going to be obliged to submit a registration. This information could be used by the relevant administration to narrow down a circle of potential contributors to the HNS Fund, although without being able to identify the mode of transport of chemical substances.

5. Other sources¹¹

International Energy Agency publishes information on production, export, import and consumption of several products like persistent and non-persistent oils and LPG. The data is collected on country by country basis and comes from the submissions of national statistical offices and other official bodies in the OECD states, as well as from companies, government agencies and industry. The IEA petroleum database also does not specify the transport route.

The US Energy Information Administration can provide data on export and import of LNG on country by country basis. Similar information is available from BP statistical review. Information on imports of specific commodities is available from specialist trade bodies, i.a. International Fertilizer Industry Association, commodity traders, specialist market information companies, etc.

All the sources provide the information by country which does not allow for tracing individual importers/receivers. Therefore the information is not entirely useful to the HNS reporting: it can only serve to verify the aggregate data.

VI. Conclusions

The principle of self-reporting is already used in the national and EC legislations: e.g. in relation to the tax declarations, to the provision of statistics data or, in the future, to the registration of the manufacturers and importers of chemical substances in REACH. To be effectively fulfilled however, such obligation has to be supported by verification mechanisms and possibly by fines and other sanctions imposed on the persons obliged to submit information for the non-execution of the obligation.

The self-reporting obligation has been proposed several times in relation to HNS reporting for the purpose of the contributions to the HNS Fund. Every receiver of the HNS substances will have to inform the relevant administration in the State Party about the types and quantities of HNS substances brought annually by sea, unless he acted as an agent of someone else – in that case he will have to inform about the identity of his principal. On the basis of this information the Fund will send an invoice to either to the receiver or the principal that the receiver-agent identified in his submission. The obligation to pay can be passed on only once, therefore the principal of the receiver cannot state that he himself acted for someone else. The final receiver is not of interest to the HNS Fund.

There exist a number of potential partial verification mechanisms of the reporting obligation that could be used by the EU Member States. None of those

¹¹ See: Alan Lewis, *ibidem*.

mechanisms however covers the whole area of the HNS Convention. Some may cover only imports, whilst others, only intra-EU trade. Others may cover intra-EU and imports or intra-EU trade and national trade but all will have some parts of the information missing. Some might identify the quantities and others might identify the importers. Some might not be able to provide the mode of transport. Only by the simultaneous use of several of them and by the combination of results, could the verification cover a large part of the HNS reporting. To set in place such a process would be very difficult if the State intended to provide the data to the Fund itself. This is why the State should base the system on the obligation of self-reporting imposed on the relevant companies supported by fines for the non-execution of the reporting obligation.

Moreover, in order to be able to fully use the potential offered by EU legislation for the purpose of the HNS reporting, some legislative acts analysed above might need to be amended. The following measures could be considered:

- An amendment to the Directive 2002/6 in order to expand the “brief description of cargo” in the general FAL declaration by, in relation to the HNS, details on the cargo unloaded in the port where the declaration is submitted including the information on the entity that receives the goods;
 - An amendment to the Regulation 638/2004 in order to include the transport mode among the information obligatory to be recorded for statistical purposes;
 - An amendment to the Customs Code in order to have, in relation to the HNS, information on the transport mode of the import provided in the customs declaration;
 - An evaluation and check if the Member States do intend to use customs for the purpose of the verification of the HNS reporting and if they would need information from the customs of other Member States. If the answer is positive, an amendment of CIS (Customs Information System) in order to expand the exchange of information for the purpose of the HNS reporting;
 - If the Member States declare that they will use customs data for the purpose of the verification of the HNS reporting: an external study in order to create a translation table between the UN numbers of the HNS goods and their Common Nomenclature;
 - Eventual amendment of REACH to record the transport mode.
-