



Workshop Report
Workshop on the Ratification and
Implementation of the HNS and
Bunkers' Conventions, held in
Brussels on the 21st of February
2006

Workshop Report: Ratification and Implementation of the HNS and Bunkers' Convention

Background

The International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances 1996 (HNS convention) establishes rules of civil liability for damage caused by HNS substances. It provides for a limited liability of a ship-owner and a supplementary liability of an HNS Fund, created from the fees paid by the importers of HNS substances. The Fund should be able to provide compensation up to 250 million euro.

The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunkers Convention) concerns specifically third party liability for damage caused by bunker oils. The ship-owner is liable up to the ceiling adopted in the LLMC Convention (in the text binding in a relevant state) and is obliged to contract insurance to cover his eventual responsibility.

None of the conventions is yet in force and they have acquired only a limited number of ratifications. Until they are in force, the above mentioned damage is governed by the LLMC system that is much less beneficial to the victims (both financially and procedurally).

The HNS Convention will enter into force 18 months after the following conditions have been fulfilled: when 12 States have accepted the Convention, four of which have not less than two million units of gross tonnage, and provided that persons in these States who would be responsible to pay contributions to the general account have received a total quantity of at least 40 million tonnes of cargo contributing to general account in the preceding calendar year. The Bunkers Convention will enter into force one year following the date on which 18 States, including five States each with ships whose combined gross tonnage is not less than 1 million, have ratified it. In both cases, if all the EU Member States ratified those instruments, the conventions would enter into force and thus it would give an impulse for their wider ratification at the international level.

In September 2002 the European Council adopted the Decision 2002/762/EC which authorises Member States, in the interest of the Community, to sign, ratify or accede to the Bunkers Convention. In November 2002, it adopted the Decision 2002/971/EC which authorises the Member States to ratify or accede to the HNS Convention. In both cases the decisions urge the states to finalise, before 30 June 2006, their procedures for ratification of the relevant conventions.

At this point it has to be indicated that the ratification of the HNS system is relevant for all the EU Member States, both coastal and land-locked states

as it provides for the obligations on the importer of chemical substances regardless of his geographic localisation. The ratification of the Bunkers' convention though is relevant to the flag and coastal states.

In this context EMSA decided to organise a workshop on the ratification of the two conventions in order to speed up the process and exchange the experiences between the Member States.

Workshop Objectives

The Workshop had the following objectives:

- To exchange the experiences of different Member States in the process of ratification of the HNS and Bunkers' Conventions.
- To identify the obstacles and most difficult elements of this process and to find a range of solutions to them.
- To give an impulse to the ratification process and make a contribution to the entering of the conventions into force on the international level.
- To create a follow-up process that will effectively lead to the ratification of the two conventions by all the EU Member States.

Workshop Programme

The workshop was divided into four sessions:

I) Introduction:

- Short welcome address by Mr Willem de Ruyter, the Director of EMSA and a second address by Mr Fotis Karamitsos, Director of the Transport Directorate in DG TREN.
- A general presentation of the HNS Convention by Mr Måns Jacobsson, the director of the IOPC Fund.

II) Particular elements of the HNS Convention and mechanism supporting the implementation of the system:

Mrs Catherine Grey from the IOPC Fund presented the substances covered by the HNS Convention and Prof. Erik Rosaeg from Scandinavian Institute of Maritime Law presented the solutions to the reporting system. Moreover, Mr Yannick Texier from EMSA presented SafeSeaNet that could serve as a supporting mechanism to identify the substances brought by sea to the European ports and Mrs Grey came back with a short presentation of the HNS Contributing Cargo Calculator, a software that is supposed to become a basis for the invoicing by the Fund.

III) Experience in the process of ratification of HNS and Bunkers' Conventions in the Member States:

The representatives of the UK, Denmark and Spain, being the states relatively most advanced in the process of ratification and implementation presented their experiences.

IV) Round table:

Various Member States presented their state-of-play, identified problems, asked questions, etc. We were able to identify a group of states that will the most probably ratify both relevant conventions by the end of 2006 or 2007.

Workshop Conclusions

I. According to the preliminary data collected at the workshop Cyprus and Slovenia have already ratified the HNS Convention, 6 Member States expect to ratify it before the end of 2006 (Denmark, Estonia, Ireland, Latvia, Poland and United Kingdom) and 8 more Member States (Belgium, Germany, Luxembourg, Malta, The Netherlands, Portugal, Spain and Sweden) as well as Norway expect to do it before the end of 2007. Hence, the necessary quorum for entry into force will normally be reached in 2007. Speakers from Member States and the IOPC Fund presented the solutions they have found and the choices they have made to ensure the consistent application. These points are in particular the following:

- 1) There are certain elements in the HNS Convention that would benefit from a harmonised interpretation at least at a regional level, e.g.
 - the definition of a "receiver": it has been recommended, already at the meeting of the IMO Working Group in June 2003 and

reconfirmed by the present workshop that the states do not avail themselves with the possibility of adopting a national definition of a "receiver" contained in art. 1.4.(b) of the Convention;

- other definitions, e.g. "associated person", "agent/principal", etc.
- the application of the HNS Convention to the small ships in domestic carriage is recommended in order to achieve uniformity;
- national reporting thresholds lower than in the HNS Convention should be adopted for the purpose of facilitating the reporting and following the fluctuations of the import;

Many of these elements will be clarified further at the first Assembly of the HNS Fund.

EMSA should follow the progress of ratification and adoption of the secondary legislation in the Member States, facilitate the exchange of information and disseminate best practices.

- 2) Reporting was identified as one of the most pertinent problems in the implementation of the HNS system. In order to simplify it, a proposal to impose a "self-reporting" obligation on everyone who brings certain amount of HNS substances by sea was presented. Such system would be complemented by random or systematic verification mechanisms and penalties for non-performance (e.g. Denmark intends to introduce a penal sanction of up to 2 years imprisonment). Verification should be based on the information available from various sources (e.g. customs, port reporting, ship reporting, statistics, etc.).

Note: The fiscal system in all Member States is based on these principles.

- 3) The use of the HNS Contributing Cargo Calculator¹ software developed by the IOPC Fund should be disseminated as a vital support for the reporting and the future basis for the invoicing by the Fund.
- 4) The participants pointed out that the SafeSeaNet could be useful to obtain the information about HNS cargo. They suggested however that the platform would have to be enriched by new elements: information about the "receiver of the cargo in the port of discharge in a Member State". In order to do so, a relevant amendment would have to be introduced to the Directive 2002/59.

II. The Bunkers Convention is much less complicated. According to the preliminary evaluation at the workshop Cyprus, Greece, Latvia, Luxembourg, Slovenia and Spain have already ratified, 7 more Member States (Denmark, Germany, Italy, Malta, The Netherlands, Poland and United Kingdom) as well as Norway expect to ratify it before the end of 2006.

III. Some participants expressed a wish that EMSA should facilitate an exchange of experts that would visit a state and provide his/her expertise in situ in the area of ratification of the two relevant conventions,

¹ www.hnscccc.org

implementing the reporting system, etc., as well as explain the existing models or projects.

IV. A new workshop will be organised to follow up the progress, the most probably at the beginning of 2007. A separate workshop may be organised earlier for the new Member States and candidate countries under TAIEX funds.

V. The IOPC Fund will organise an HNS workshop in May 2006 in London. It will undoubtedly be very useful to attend it, especially because its form is going to be different – the relevant industry will be involved.

Annex:

- 1) Workshop Agenda
- 2) List of participants
- 3) Workshop presentations