



EU STATES

CLAIMS MANAGEMENT

GUIDELINES

**CLAIMS ARISING DUE TO MARITIME
POLLUTION INCIDENTS**

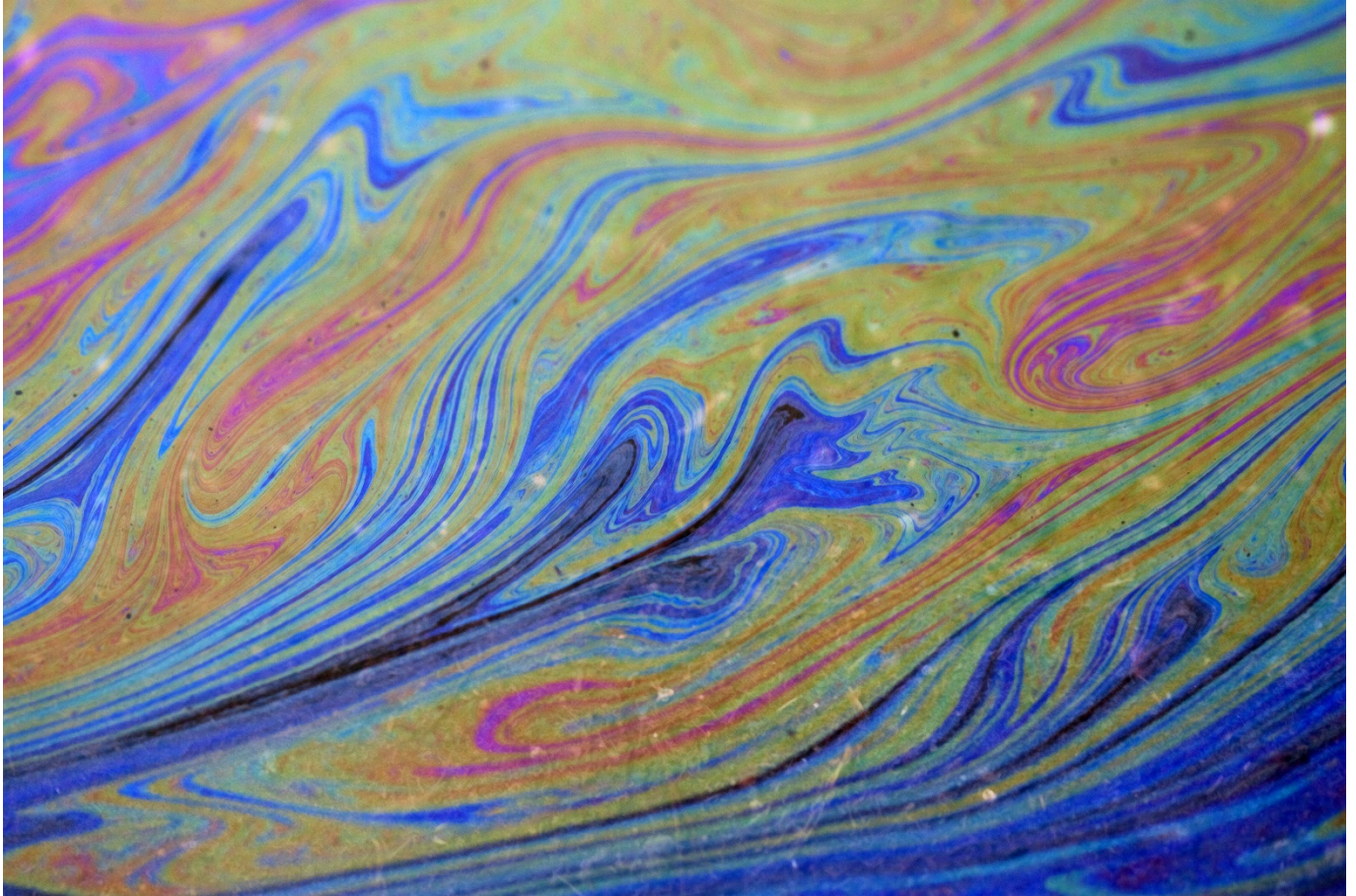
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***“If anyone intentionally spoils the water of another....
Let him not only pay damages, but purify the stream
or cistern which contains the water...”***

Plato

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Disclaimer

These Guidelines are intended to provide useful information when addressing claims management and costs recovery following maritime incidents.

The Guidelines were developed in the framework of the EMSA Consultative Technical Group for Marine Pollution Preparedness and Response and are intended to provide guidance based on prior experience. Under no circumstances do the Guidelines replace individual, legal or technical advice rendered considering the individual circumstances of each case and situation. Under no circumstances shall EMSA or any of the other contributors be liable for any loss, damage, liability or expense incurred or suffered that is claimed to have resulted from the interpretation and the use of the information presented in these Guidelines.

¹ A list of Acronyms is provided in Appendix I.
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1. INTRODUCTION AND BACKGROUND

- 1.1 The Environment is a resource common to all. It is a primary task of both the polluter and the national authorities to avoid, to limit and to reinstate any damaged environment as deemed necessary. In addition, the European Union (EU) Member States² recognise that their citizens should not have to pay for the costs of dealing with marine pollution incidents, and that the persons or bodies responsible for causing the incident should meet all the costs reasonably incurred, in accordance with the “polluter pays” principle. Most maritime Member States have a policy of using their best endeavours to recover all of the costs that they reasonably incur in dealing with an actual, or threatened, pollution incident.
- 1.2 Dealing with pollution of the marine environment originating from whatever source affecting sea areas and coastlines will generally be a protracted and expensive business. Ideally those costs should be directly borne by the source of the pollution. As a consequence, it is strongly recommended here that the national authorities in charge of implementing the pollution response plans should engage immediately with the source of the pollution, and its advisors³, to establish what part of the response they can and are willing to deal with directly. Agreements achieved in those circumstances may greatly alleviate the burden on the response authorities. Irrespective of this, the costs for preventive measures and clean-up operations initially fall on the authorities incurring them.

Case study (The Netherlands, 2003)

At the end of 2003, in The Netherlands Exclusive Economic Zone (EEZ) but outside the territorial waters, a ship lost three containers overboard. The containers carried drums with a wood preservation substance. Authorities immediately initiated response measures consisting of creating a safe zone around the position where the containers were lost; issued navigational warnings; asked advice on the level of threat of the product if released into the marine environment; advised fishery not to enter a specific area; samples of fish catches were analysed frequently; a survey was conducted to locate the lost containers; the owners were given the opportunity to contract a salvage company for the removal of the containers.

Inspections and checks on board the vessel by the neighbouring authorities when the vessel arrived in port resulted in accurate information on the cargo and the route the ship had sailed.

Very good communications, close co-operation between representatives of the owners and the authorities was awarded with a reasonably swift survey and removal operation.

In the same spirit the claim was settled.

² For the purpose of these Guidelines European Union Member States include the EU Member States, coastal European Free Trade Association (EFTA) countries and EU candidate countries.

³ Not to be confused with the IOPC Fund and its advisors. The Fund has no mandate to bear response costs, but only to pay reasonable cost recovery claims.

Purpose

- 1.3 These Guidelines seek to assist those Member States with the processes necessary to achieve a successful claim or cost recovery. There are many international and national legal instruments in place providing a framework for the process of cost recovery, however, the prime purpose of these Guidelines is to seek to expand and to advise on the practical usage of this legislation. It should be borne in mind that the international regimes currently in place do not seek to over compensate damaged parties following a pollution incident at sea, however, they do seek to compensate those that have outlaid actual money in the response to the incident and those who suffer loss of earnings as a result of the incident (spill). It is a cost recovery process.
- 1.4 It is strongly believed that the adoption of these Guidelines by EU Member States will add weight to each individual claim submitted to shipowners and their insurers of vessels that pollute, or threaten to pollute, in the jurisdictions of Member States. The adoption of the principles, standards, and best practices outlined in this document, for example standard formula for the calculation of hire rates for State owned response equipment, will, hopefully, contribute to a better understanding between the claimant and the liable party during claim settlement process.
- 1.5 It must be borne in mind that these Guidelines are a “living” document and as Member States define their preparatory work and internal policies for claim management, this could impact on this document. Also, lessons learned on each incident and settlement procedures practiced may impact on this document necessitating the need to review and update.
- 1.6 There are many publications⁴ available for assistance when compiling a claim that results from an incident involving an oil tanker. However, the purpose of these Guidelines is to provide guidance to Member States on how to make claims for all types of maritime incidents polluting or threatening to pollute the environment.

Scope

- 1.7 The scope of these Guidelines is the compilation and management of a claim by a Member State as regards costs incurred due to a maritime incident polluting or threatening to pollute the environment. Pollution in this sense can be from any source, sea, land or air.
- 1.8 These Guidelines are for the use of National response organisations and their Claims Handlers, though some principles may be useful for other claimants.
- 1.9 It should be understood by EU Member States that this document is meant to be advisory only and is, in no way, mandatory. Each individual Member State is entirely free to determine its own cost recovery policy in line with its own domestic laws and policies. These Guidelines do not, in any way, seek to supersede individual States’ domestic legislation.

Background

- 1.10 In 2007, the Maritime and Coastguard Agency (MCA) organised an EU Claims workshop⁵ with the financial support of the European Commission, Directorate-General for Environment under the framework for cooperation in the field of accidental or deliberate marine pollution⁶. This workshop gathered 37 representatives from 18 EU Member States involved in maritime shipping incidents. The workshop concluded on seven main actions including:
 - The establishment of a correspondence/working group, and

⁴Publications can be found on relevant organisations websites. A non-exhaustive list of websites is enclosed in Appendix A.

⁵ Felbridge, United Kingdom, 24-28 September 2007.

⁶ Decision No 2850/2000/EC of the European Parliament and of the Council of 20 December 2000 setting up a community framework for cooperation in the field of accidental or deliberate marine pollution, OJ L 332, 28.12.2000, p. 1–6.

- That a claims manual be created based on the existing manuals in use in the United Kingdom, Spain and The Netherlands.
- 1.11 To address the first of these actions a Working Group was formed of representatives from Belgium, France, Germany, The Netherlands, Norway, Spain and the United Kingdom and an observer from EMSA.
- 1.12 In 2008, the project was transferred under the CTG MPPR umbrella, EMSA ensuring the secretariat of the working group.
- 1.13 The first draft of the Guidelines was discussed and refined during a workshop⁷ gathering experts from 21 coastal States. The workshop addressed the following main objectives:
- To bring together the different authorities involved in claims management and cost recovery.
 - To discuss and finalise the 'EU States Claims Management Guidelines'. This document, once finalised and published, can be used as a reference and guidance in the field of claims management, at the Member States' discretion.
- 1.14 This first version of the Guidelines was endorsed by the CTG MPPR, at its 5th meeting, on 26 October 2010.
- 1.15 The Guidelines have since been reviewed by the members of the Claims Management Working Group on two main occasions in 2012 and 2016. These reviews cover updates and expansions or additions in order to incorporate further learning and any new legislation including appropriate comments formulated by national claim handlers and major stakeholders.
- 1.16 As for previous versions, the amendments to the Guidelines were first presented and discussed among national claims handlers from EU Member States and then submitted for endorsement to the CTG MPPR members.



'EU States Claims Management Workshop' participants, EMSA, Lisbon, 6 October 2016

⁷ EMSA offices, Lisbon, Portugal, 8 -9 December 2009.
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2. GENERIC DESCRIPTION OF CLAIMS MANAGEMENT

- 2.1 Dealing with marine pollution incidents can be a protracted and expensive business. Initially the costs of such operations fall on those undertaking them. Under current legislation, those incurring expenses as part of the response operation may later seek to recover them from those responsible for paying compensation. This Chapter outlines some of the general principles drawn from experience gained by the Member States that formed the Claims Management Working Group.

Polluter Pays Principle

- 2.2 The “polluter pays principle” is a dominating principle as regards marine pollution incidents in international environmental law. It is also a key principle of the European Union’s environment policy in that the cost of preventing pollution or of minimising environmental damage due to pollution should be borne by those responsible for the pollution. Under this principle it is not the responsibility of a government to meet the costs involved in either prevention of environmental damage, or in carrying out remedial action because the effect of this would be to shift the financial burden of the pollution incident from the polluter to the taxpayer.
- 2.3 Since 1972 the ‘polluter pays principle’ has been part of European Law. It is included in Article 191(2) of the Treaty on the Functioning of the European Union (TFEU). The ‘polluter pays principle’, recalled in the White Paper⁸ on environmental liability, served as a basis for the adoption of a Directive on environmental liability in April 2004⁹. The environmental liability regime established by the Directive aims at making the causer of environmental damage (the polluter) pay for remedying the damage that has been caused.

General Principles

- 2.4 It is essential, from the outset of an incident, that a Financial or Claims Co-ordinator and a Record Keeper are designated and that all participants keep personal records of how, when and why, response measures are taken. These records are needed to support claims for cost recovery and to show that the actions taken were proportionate and reasonable for the threat from pollution and the risks to safety.
- 2.5 It is vitally important that financial systems are in place as part of contingency plans, in advance of an incident. There is pressure, frequently severe, to deal with new issues and problems and to relegate record keeping to a lesser priority. However, the importance of records cannot be over emphasised. It is simply not realistic to rely on memory to reconstruct events in a fast moving and possibly lengthy incident. Responders must therefore arrange to keep adequate records. The compilation of a photographic and video library, with all forms of media dated and time stamped would be of great assistance as a proof of activities. Record keeping is essential for good cost recovery. Documents compiled during incident response should clearly show information received, decisions taken, orders given, action taken and daily personal activity logs as well as all direct financial expenditure. A photographic library and catalogue of all correspondence would provide an overview of essentials.
- 2.6 The first choice of many Member States would be for the polluter to directly appoint salvors and/or counter pollution resources, thereby not inflicting any costs on that State for those activities. However, if a shipowner fails to comply with the legislation or an order given by the authority and therefore a Member State feels it necessary to deploy its own resources, it should bear in mind that government intervention may have a financial impact on the activities of every company involved in the response operation.

⁸ White Paper on environmental liability: COM (2000) 66 Final 09/02/2000.

⁹ Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, OJ L 143, 30.4.2004, p. 56–75 as amended.

- 2.7 The aim of a Member State should be to recover the total costs expended in the response to mitigate damage caused by the incident (as far as these costs in full live up to requirements of the Member State national law and legislation). The claim should represent the real costs incurred by the Member State. It is for each Member State to consider how they could apply these Guidelines.
- 2.8 It is believed that a Member State's incident response contingency plan is not complete unless it contains a clear policy line on how that State will seek to recover its costs. It is strongly recommended that claims management is conducted in accordance with clearly pre-defined Guidelines, reflected upon by the relevant stakeholders and familiarised by training. As far as possible lessons learned from each individual case need to be recorded and shared with other Member States.
- 2.9 Consulting with stakeholders (shipowners, P&I Clubs, international institutions and Funds, etc) in the development of a framework policy on claims management, during non-incident related operations may increase the support of these stakeholders during a marine pollution incident. An example of this type of consultation could be to share with the stakeholders the method of calculation for hire rates of State resources.

3. INTERNATIONAL LEGAL FRAMEWORK INCLUDING COMPENSATION FUNDS

Overview of the European and International legal regimes

- 3.1 This chapter gives a brief description of the international legal instruments addressing claims generated by marine pollution incidents. However, the purpose is not to provide definitive legal advice since those instruments are generally complicated and not reflected in detail in this chapter. Claimants should seek their own legal advice.
- 3.2 The applicability of the legal regimes¹⁰ depends on their entry into force within the jurisdiction of the States involved.
- 3.3 Liability limits in International Maritime Organization (IMO) conventions are expressed in Special Drawing Rights (SDR). The SDR is an artificial monetary unit. The value of the SDR is calculated by the International Monetary Fund (IMF) on the basis of a weighted basket of four currencies: US dollar, euro, Japanese yen, and UK pound.

Limitation of Liability for Maritime Claims (LLMC)

- 3.4 The Convention on Limitation of Liability for Maritime Claims 1976 (1976 LLMC), as amended by the 1996 Protocol, provides rules on the limitation of economic liability for maritime claims.
- 3.5 The liability limitation applies to general ship-sourced damage, discriminating between claims concerning loss of life or personal injury and property claims.
- 3.6 The limits of liability are calculated on the basis of the tonnage of the ship. Different limits are foreseen for personal damage claims and for material damage claims.
- 3.7 LLMC declares that a person liable will be able to limit liability unless "it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such a loss, or recklessly and with knowledge that such loss would probably result".
- 3.8 Any person alleged to be liable may constitute a limitation fund with the court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. Limitation of liability may be invoked without constituting a limitation fund, unless otherwise provided in national law.
- 3.9 More detailed information can be found at www.imo.org
- 3.10 Directive 2009/20/EC on the insurance of shipowners for maritime claims, as adopted on 23 April 2009, obliges all EU Member States to require that the ships flying their flags should have liability insurance covering the claims subject to limitation in LLMC and up to the limits as calculated on the basis of LLMC. The same obligation lies on all ships entering any port of an EU Member State. Certificate confirming the existence of such insurance should be carried on board.

Pollution caused by persistent oil carried in tankers

- 3.11 The international compensation regime for persistent oil pollution damage from tankers, developed under the auspices of the IMO, is a three-tier system:
 - First tier: the International Convention on Civil Liability for Oil Pollution Damage 1992 (the "1992 Civil Liability Convention" (CLC));

¹⁰ An overview of the Conventions and their limits is provided in Appendix C.
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- Second tier: the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (the “1992 Fund Convention” (1992 FUND));
 - Third tier: the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the “2003 Supplementary Fund Protocol” (Supplementary FUND)).
- 3.12 The shipowner has a strict, but limited liability. The owner of a tanker carrying more than 2,000 tonnes of oil in bulk as cargo is obliged to maintain insurance or other financial security (mostly through a P&I Club). Tankers must carry on board a State-issued certificate to attest that such financial security is in place.
- 3.13 The pollution damage costs exceeding the first-tier level should be claimed against the 1992 Fund and the 2003 Supplementary Fund where in force. In some rare cases, the Funds may meet ‘1st tier’ claims (for example, if the claimant cannot identify the tanker owner, or if the tanker owner has no insurance cover and is insolvent).
- 3.14 The following costs of pollution damage are covered:
- Cost of clean-up operations at sea and on shore;
 - Cost of reinstatement of the environment;
 - Property damage;
 - Economic losses by fishermen or those engaged in mariculture;
 - Economic losses in the tourism sector;
 - Costs of preventive measures, to prevent or minimize such damage.
- 3.15 One of the most essential criteria for establishing that a claim is eligible is the reasonableness of the measures taken, based on an assessment of the facts available at the time of the decision to take them. Claims are not accepted if the claimant could have foreseen that the measures taken would be ineffective in the particular circumstances of the incident. On the other hand, the fact that the measures prove to be ineffective should not in itself be a reason to reject a claim for the costs incurred. The assessment of the grave and imminent threat shall be made on actual facts and objective criteria at the time the decision is made.
- 3.16 The 1992 Fund and the 2003 Supplementary Fund are financed by contributions paid by organizations that receive more than 150,000 tonnes of crude or heavy fuel-oil per year after transport by sea.
- 3.17 More detailed information can be found at www.imo.org and www.iopcfund.org (e.g. the IOPC Fund Claims Manual).

Pollution caused by oil carried as fuel in ships bunkers

- 3.18 The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (“2001 Bunker Oil Convention”), also established within the IMO, is a single tier international compensation regime.
- 3.19 The shipowner (registered owner, bareboat charterer, manager and operator of the ship) has strict but limited liability for pollution damage arising from bunker fuel. The owner of a ship over 1,000 gross tonnage must maintain insurance or other financial security. A State-issued certificate (“blue card”) attesting that such a security is in force shall be carried on board the ship. The owner of the ship and the person(s) providing insurance or other financial security are entitled to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims (1976 LLMC) and its Protocol.
- 3.20 The following costs of pollution damage are covered:
- Cost of preventive measures and further loss or damage caused by preventive measures;
 - Cost of clean-up operations at sea and on shore;
 - Cost of reinstatement of the environment;
 - Property damage;
 - Economic losses such as:
 - those engaged in mariculture;
 - economic losses by fishermen;
 - economic losses in the tourism sector;
 - costs and losses for a harbour / harbour master.
- 3.21 More detailed information can be found at www.imo.org

Pollution caused by pollutants other than persistent oil carried in ships

- 3.22 The International Convention on Liability and Compensation for Damage in Connection with the Carriage by Sea of Hazardous and Noxious Substances 1996 and its 2010 Protocol, also set up within the IMO, is a two-tier international compensation regime. When in force, this Convention will mirror the oil pollution compensation regime.
- 3.23 Shipowner (registered owner or, in the absence of a registered owner, a person actually owning the ship) has strict but limited liability for pollution damage in connection with the carriage by sea of hazardous and noxious substances (HNS). This liability is backed up by compulsory insurance or other financial security and a State-issued certificate attesting that such a security is in force shall be carried on board the ship. The limit of liability is calculated on the basis of the tonnage of the ship.
- 3.24 In addition to this first tier, a second tier will be formed by the International Hazardous and Noxious Substances Fund (HNS Fund), contributed to by receivers of HNS after sea transport in all State Parties.
- 3.25 The following costs are covered:
- loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;

- loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;
- loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;
- Costs of preventive measures and further loss or damage caused by preventive measures.

3.26 The HNS Convention is not yet in force.

3.27 More detailed information is available at www.imo.org and www.hnsconvention.org

Pollution caused by nuclear substances

3.28 The Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material has been adopted by IMO in cooperation with the International Atomic Energy Agency (IAEA) and the European Nuclear Energy Agency of the Organization for Economic Co-operation and Development (OECD). It should be noted that nuclear damage is usually not covered by the liability insurance provided by the P&I Clubs

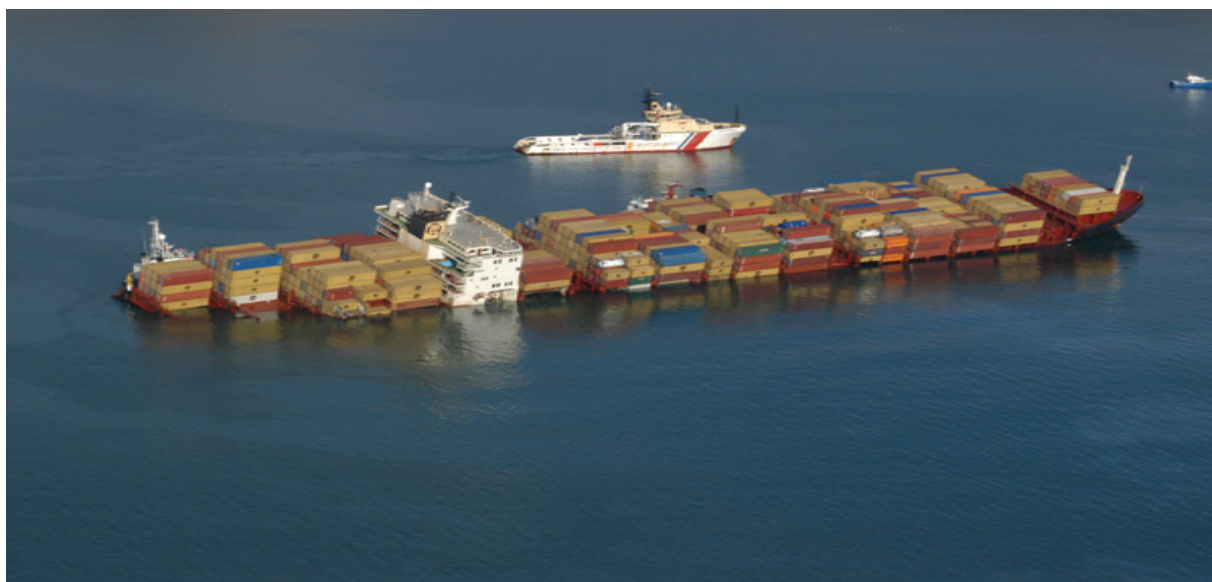
3.29 The Convention provides that a person otherwise liable for damage caused in a nuclear incident shall be exonerated from liability if the operator of the nuclear installation is also liable for such damage under:

- the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy; or
- the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage; or
- National law which is similar in the scope of protection given to the persons who suffer damage.

3.30 More detailed information is available at www.imo.org, www.iaea.org or www.oecd-nea.org

Wreck Removal

- 3.31 The Nairobi International Convention on the Removal of Wrecks, 2007 provides a legal basis for State Parties to remove, or have removed, shipwrecks potentially affecting adversely the safety of lives, goods and property at sea, as well as the marine environment. This Convention principally applies to the zone beyond territorial sea, but an optional clause enables State Parties to apply certain provisions to their territory, including their territorial sea.
- 3.32 The Convention gives regulations on locating, marking and on the removal of wrecks. The registered owner of the ship that became a wreck and that constitutes a hazard, is liable to remove the wreck. In particular, the shipowner is liable for the costs related to locating, marking and removal of the wreck carried out by relevant body of the State Party.
- 3.33 The owner of a ship over 300 gross tonnages is required to maintain insurance or provide other financial security to cover the liability under the Convention. A State-issued certificate attesting that such a security is in force shall be carried on board the ship. A right of direct action against insurers is provided to the State Parties.
- 3.34 The owner and the person(s) providing insurance or other financial security is entitled to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims (1976 LLMC) and its Protocol unless disallowed by national legislation.
- 3.35 Liabilities that would otherwise be in conflict with other IMO Conventions are excluded under the 2007 Wreck Removal Convention.
- 3.36 More detailed information is available at www.imo.org.



MSC Napoli (Credits: UK Maritime and Coastguard Agency)

Environmental damage, not covered by the aforementioned international compensation regimes

- 3.37 The Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage as amended is also applicable at sea, although the main focus is on land.
- 3.38 This Directive establishes an administrative system to prevent and/or remediate environmental damage caused by an operator of the economic activity in question (which can include shipowners). The operator shall take the relevant preventive and/or remedial measures.
- 3.39 Some operators of hazardous activities, listed in an annex to this Directive, are strictly liable; all other operators have been assigned with a fault liability¹¹.
- 3.40 Environmental damage, as defined by the Directive, comprises:
- Damage to protected species and habitats (based on the Habitats¹² and Birds Protection¹³ Directive);
 - Water damage (based on the EU Water Framework Directive¹⁴);
 - Land damage.
- 3.41 Some of the damage types mentioned in the previous paragraph may occur at sea (namely 'damage to protected species and habitats' and 'water damage'). However, this Directive is not applicable to incidents falling within the scope of the following international compensation regimes, as far as in force in the Member State concerned:
- the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;
 - the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
 - the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;
 - the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;
 - the Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.
- 3.42 The operator maintains the right to limit its liability in accordance with national legislation implementing the 1976 LLMC and its Protocol.
- 3.43 Further information is available at: <http://ec.europa.eu/environment/legal/liability/>

¹¹ Fault liability is a type of liability in which the claimant must prove that the polluter has been at fault or negligent.

¹² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive), OJ L 206, 22.7.1992, p. 7–50.

¹³ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (Birds Directive), OJ L 103, 25.4.1979, p. 1–18.

¹⁴ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p. 1–73.

Pollution caused by offshore installations

- 3.44 The responsibility for meeting claims from pollution caused by offshore installations rests solely with the operator, however, in the event that the operator is unable to meet its liabilities, for whatever reason, the oil industry has developed the Offshore Pollution Liability Agreement (OPOL) to ensure that claims for pollution damage are met and the cost of remedial measures reimbursed. Under this Agreement operating companies have agreed to accept strict liability for pollution damage up to a maximum of US \$250 million per incident (about EUR 224 million).
- 3.45 Operators under the OPOL Agreement must provide evidence of financial responsibility for a certain amount, but the Agreement does not preclude claimants from seeking redress in the courts for losses incurred. If an operator fails to meet its obligations to claimants under the Agreement, then the remaining operators have agreed to guarantee payment of claims up to a certain maximum amount.
- 3.46 The OPOL Agreement covers not only fixed installations and pipelines but also production facilities such as Floating Production Storage and Offloading vessels (FPSOs) and Floating Storage Units (FSUs) while being used in the production process, as well as when temporarily removed from their normal station for any reason whatsoever.
- 3.47 More detailed information is available at www.opol.org.uk
- 3.48 Under the Offshore Safety Directive¹⁵, Member States shall ensure that the companies holding the authorisations for offshore oil and gas operations are financially liable for the prevention and remediation of environmental damages caused to protected marine species and natural habitats as defined in the Environmental Liability Directive. It also extends the scope of the Environmental Liability Directive to damage to the environmental status of the marine waters concerned, as defined in Directive 2008/56/EC, in so far as particular aspects of the environmental status of the marine environment are not already addressed through Directive 2000/60/EC.

International Convention on Salvage

- 3.49 The International Convention on Salvage, 1989, introduces a “special compensation” (Article 14) to be paid to salvors who have failed to earn a reward on the basis of the “no cure, no pay” rule. This special compensation takes into account maritime pollution and creates an incentive for a salvor to undertake an operation which has only a minor chance of success. For calculating this special compensation, a special clause (SCOPIC) has been included in the Lloyds Open Form.
- 3.50 More detailed information is available at www.imo.org and marine-salvage.com

International Convention on the Arrest of Ships

- 3.51 The 1952 Arrest Convention allows a port State to arrest a foreign ship that calls its ports for a certain type of claims, hereunder claims for property damage caused by a ship and salvage, under certain formal conditions. The rules of the Convention apply only if both, the Flag State of the ship and the State performing the arrest, are States Parties to the Convention. The 1952 Convention entered into force on 24 February 1956.
- 3.52 In 1999, a new Arrest Convention was concluded with the intention to replace the 1952 Arrest Convention. The 1999 Arrest Convention adds new categories of maritime claims as grounds for ship arrests. These include claims for damage or threat of damage caused by the ship to the environment, coastline or related interests. The 1999 Arrest Convention came into force on 14 September 2011, but, has so far, only been ratified by a limited number of States.

¹⁵ Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC.

Pollution from an unidentified source

- 3.53 Generally, claimants can only obtain compensation if they know the precise source of pollution. However, there is one exception to this. The IOPC Fund pays compensation for pollution damage if the claimant can prove (for example, by sophisticated chemical analysis) that the pollution resulted from a spill of persistent oil from a tanker in a signatory State.

Forum shopping

- 3.54 “Forum shopping” refers to the practice of intentionally choosing between multiple courts or jurisdictions in order to file or transfer the case to a court or a judicial system that is most likely to give the desired result. This can be done by either, the plaintiff, the defendant or both parties. The risk of forum shopping has to be taken into consideration since the beginning of the incident. Forum-shopping can be obstructive for a management of the claim, without being illegal.

4. REGIONAL CO-OPERATION

- 4.1 Filing a claim against a polluter sometimes goes beyond the boundaries of one Member State. Also, it is possible that one incident could cause pollution in more than one State and if this should occur it is highly recommended that authorities co-operate with each other fully. The co-operation of more than one Member State should not cease when the operational incident has closed, it should continue until the final claim has been settled and the response action and management of the claim has been evaluated – as this is the true close of an incident.

Case Study (Tricolor, English Channel, 2002)

Following the incident involving the TRICOLOR that sunk on 14 December 2002 after collision in the French EEZ four coastal States were affected. France, the United Kingdom, Belgium and the Netherlands suffered from oil escaping from the wreck during the wreck removal operation. There was limited co-ordination on the claim management aspect of this incident and it was subsequently identified that there is room for improvement with this process. Ideally, these four Member States should have met to carry out a comparison exercise with their completed claims. This exercise would have highlighted omissions and differences, permitting a Member State to reconsider their claim prior to submission to the polluter's representative. If all these four States had presented their claims to the shipowner / P&I Club at the same time and demonstrated a joint approach it may well have improved and expedited the claims process.

Single or joint claim

- 4.2 Response costs should be recognised and divided into two main files:
- When a neighbouring coastal state is requested to assist the authorities of another State in whose jurisdiction the incident occurred, then, unless agreed otherwise in advance, these costs are to be paid by the requesting State. This action is then followed up by the requesting State submitting a claim to the appropriate ship owner/insurer.
 - In the event that the neighbouring State is also affected by pollution, and response measures (in the widest sense) have been taken to avoid, mitigate or clean up the damage, although the incident occurred outside its own EEZ (or equivalent area), then this State should seek to recover its costs in this category directly from the polluter.

Sub-regional co-operation

- 4.3 In the event that a maritime incident results in damage to the properties of more than one coastal State, or even when the threat causes preventive response measures, not only the country in whose jurisdiction the incident occurs will file a claim, the other affected States will also seek recompense from the polluter.
- 4.4 Where neighbouring Member States co-operate in the field of response, they should consider the merits of joint efforts for the claim management aspect of the incident.



Fire damaged container ship *MSC Flaminia* (Credits: Havariekommando)

Legal framework

- 4.5 The first step in any claim process is to establish whether the legislation in the country in whose jurisdiction the incident occurred, permits another State to claim directly from the polluter for the response measures taken in its zone of jurisdiction.

Case Study (ECE, Guernsey, 2006)

In contrast to the TRICOLOR example provided above, a subsequent incident involved the vessel ECE (31 January 2006). France led the incident response supported by the UK and this strategy was extended into the claim management element of the States' response. The French and UK claims handlers met and compared what each State was claiming for. This strategy led to France submitting both claims together.

5. MARITIME INSURANCE

- 5.1 To aid the understanding of those working on cost recovery matters and who are not familiar with this field of work, given below is a little more detail on the insurance structure of ships generally, and more specifically about ship insurance and P&I Clubs.
- 5.2 Ships have two different types of insurance for their general activities, Hull and Machinery insurance (property insurance) and P&I insurance (liability insurance). Furthermore, normally the cargo of a ship and sometimes the freight are insured as well by the cargo owners or cargo receivers (cargo insurance). It is worth mentioning here that container vessels could have many different cargo insurers and in the event of an incident they could all send representatives to the scene.

Protection and Indemnity (P&I) Clubs

- 5.3 P&I insurers were originally formed when hull underwriters first extended the policies of insurance to include collision liability when they limited the cover available to three quarters, the intention being that the shipowners should be their own insurers for the remaining quarter. In the 1850s and 1860s shipowners joined together to form mutual protection associations to share the risk of the remaining quarter collision liability and also other risks, such as death and injury claims by passengers, liabilities to seamen and damage to docks and shore installations. In the 1870s the increase in the number of instances where shipowners were held liable for losses of cargo led to the establishment of mutual indemnity associations to share these liabilities, and within a few years the similarity of the risks covered resulted in the emergence of the combined "Protection and Indemnity Associations", or P&I Clubs as they are known today.
- 5.4 The P&I Clubs have a set of rules which differ somewhat between themselves but this type of insurance generally covers:
- Personal injury, illness and death of seamen;
 - Personal injury, illness and death – to persons other than seamen;
 - Repatriation and substitutes expenses (repatriation of seamen in the event of illness or the illness of a close family member);
 - Stowaways, deserters and refugees;
 - Loss of and damage to the personal effects of seamen and others;
 - Collision liability (if not covered in hull policies);
 - Loss of or damage to property;
 - Pollution (absolute maximum of US \$1,060,000,000 each incident);
 - Liabilities under towage contracts;
 - Liabilities resulting from wrecks.
- 5.5 Looking specifically at the pollution liability that Clubs cover:
- Loss, damage, or contamination;
 - The cost of any measures reasonably taken for the purpose of preventing, minimizing and or/cleaning up pollution;
 - The cost of any measures reasonably taken to prevent an imminent danger of the discharge or escape from the insured vessel of oil or any hazardous substance;

- The costs or liabilities incurred as a result of compliance with any order or direction given by any government or authority for the purpose of preventing or reducing pollution, or the risk of pollution, provided that such compliance is not recoverable under the hull policies.

The “Pay to be paid” clause

- 5.6 P&I cover is provided on an indemnity basis. This means that the Club reimburses the insured shipowner for what he has paid out to the person or body claiming against him. However, the Club will pay directly when it has given a guarantee that it would do so, for example in the form of a blue card under the CLC and Bunkers Convention where in force, or in the form of a Letter of Undertaking (see paragraph 7.3 below and appendix D). The CLC and Bunkers Convention provide that the liabilities arising under the Conventions may be enforced directly against the P&I insurer of the shipowner. In this regard, the only defences available to the shipowner's insurers are those provided within the relevant Convention itself, namely the shipowner's own defences and, in addition, the "wilful misconduct" of the shipowner.

TOPIA & STOPIA – Oil Tankers only

Remark: the following paragraphs are added for information only. Claimants do not need to be aware which agreement is being used as the IOPC Fund administration will manage the process on their behalf.

- 5.7 Two voluntary agreements have been entered into by tankers owners in respect of vessels entered mutually in Group Clubs, the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) and the Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA).
- 5.8 STOPIA 2006 provides a mechanism by which for small (up to 29,548 tons) tankers, the shipowners and their P&I Clubs will reimburse more than the amount calculated in accordance with the 1992 CLC. Accordingly, the shipowners and their P&I Clubs will not contribute for less than SDR 20 million (approx. EUR 28 million) in respect of any pollution damage occurring in a State Party to the Fund Convention. Under CLC compensation regime, the limitation amount for tankers of 5,000 GT or less is SDR 4.51 million (approx. EUR 5.4 million).
- 5.9 TOPIA is a mechanism by which shipowners and their P&I Clubs will pay an increased contribution to funding compensation for oil pollution (again in a Fund Convention State only), by in effect contributing 50% of compensation payments made under the Supplementary Fund. The remaining 50% paid under the Supplementary Fund will be paid by oil receivers.
- 5.10 Although the Clubs are not party to either STOPIA or TOPIA, all Club members of the International Group have amended their Rules to provide shipowners with the cover to meet their payment obligations under STOPIA 2006 and TOPIA.

Web based sources of relevant information

- 5.11 A wide range of statutory survey information on individual ships is available in Seaweb or in Equasis from Classification Societies, including any detention data and details of the current P&I Club (which could be changed by the shipowner on an annual basis).
- 5.12 Port State Control facilities can assist in this research on the survey history of any vessel. This historical information is essential for possible enforcement action which may follow the initial incident response. It is also very useful as it provides details on any modifications to the vessel.
- 5.13 More detailed information can be found at www.equasis.org, www.maritime.ihs.com and www.igpandi.com.

6. PREPARATORY WORK

- 6.1 Claims management should not be considered as the final step in the overall incident management but at an early stage in every incident. It is strongly believed that the good management of a claim, which leads to maximum cost recovery will be an extra incentive for the shipowner to take all necessary measures to prevent incidents. It is also believed that a Member State's incident response contingency plan is not complete unless it contains a clear policy on how that State will seek to recover its costs.
- 6.2 Claims management should be given due regard in State contingency plans and it is important that this part of the plan is tested and evaluated regularly. It is strongly recommended that claims management is conducted in accordance with clearly pre-defined guidelines, reflected upon by the relevant stakeholders. As far as possible lessons learned from each individual case need to be recorded and shared with other Member States.

The establishment of advisory networks

- 6.3 The establishment of networks is a typical activity that should be carried out during the planning phase. The initial point of contact should be ready to provide an overview of the service they can provide.
- 6.4 Discussing claims management at European level and producing guidance will lead to further exchanges of experience between EU Member States. It is a requirement that Member States have an established operational plan for co-operation in the case of an incident and it is just as important that they find the best methodology to co-ordinate in filing a claim.
- 6.5 Some possible networks that could be considered:
- Network of national/local public services involved in the operational management of a pollution incident, e.g. Bonn Agreement;
 - Network of relevant civil and judicial authorities;
 - Network of public services and private stakeholders (P&I Clubs, salvage companies...);
 - Network of national claims management experts.
- 6.6 The contact details of the members of a network should be updated regularly.

The increased workload of claims compilation

- 6.7 Most Member States do not have specific bodies or even individuals appointed specifically for claims management. It appears to be usual for this particular activity to be an "add on" to another role within the responsible organisation. However, the investment in time, logistics and finances necessary for the management of a specific claim adds to the requirements of the normal work schedule of the responsible public service. In the case of a major pollution incident, the successful combination of several tasks is often extremely difficult.
- 6.8 Member States should be mindful that individuals appointed to compile claims will have an increased workload whilst this work is ongoing. Planning and training for this event should be outlined in national plans.
- 6.9 The establishment of framework agreements to call upon external assistance (lawyers, consultants, etc) is an important part of preparatory work. These framework agreements should be established in line with current EU procurement procedures as appropriate.

Development of resource hire rates and methods of calculation

- 6.10 The development and regular review of hire rates and methods of calculation before an incident occurs has several advantages:
- claims compilation work can absorb a great deal of time and effort, so the availability of this material beforehand can mean a significant saving in human resource time;
 - Member States may choose to share their hire rates and the formula used with international institutions, e.g. P&I Clubs, ITOPF. This action may shorten the settlement process.
- 6.11 Chapter 8 of this document provides more details on hire rates for response equipment, and how these rates could be calculated.

Drafting of Proformas

- 6.12 Member States may choose to formulate a standard format for presenting a claim and all supporting documentation. This will ensure that every response activity is considered and included in the claim if deemed appropriate. Chapter 9 of this document provides further details on recommended sections for claim formats.
- 6.13 Defining a strategy for the claims management of small-scale and large-scale pollution incidents.
- 6.14 Management of every claim compilation and settlement exercise requires an investment in time and financial and logistics resources. However, some claims are too limited to justify an extensive investment of time and resources, while other claims are too extensive to justify the dismissal of the case. It is for each Member State to determine whether they will pursue cost recovery in every case or determine whether some cases are too small to warrant the human resource investment. It is necessary to bear in mind that the “polluter pays” principle applies equally to small incidents as it does to the major ones. Each Member State should develop a claims management strategy to cover as many pollution incidents as possible.
- 6.15 In anticipation of the occurrence of a maritime incident, the claims management plan should be regularly reviewed by the sharing of best practices with national and international colleagues, and the organisation of table top exercises.

7. FINANCIAL SECURITY

- 7.1 For any State affected by a threat of pollution, it is vital to obtain financial security for the money that that State is paying to take counter pollution measures. It should be borne in mind that shipping is an international industry and the liable party may not be under the legal jurisdiction of the State that is threatened. Obtaining a form of financial security and establishing the legal jurisdiction early in an incident provides a level of comfort for the future dealings with the polluter.
- 7.2 It is for each individual Member State to decide on the level and form of financial security, on a case by case basis. It is strongly recommended that some form of security is discussed with the shipowner's representatives during day one or, at the latest, day two of the incident.
- 7.3 When an incident occurs, it is essential for notice of the incident, reporting all details available, to be given promptly to the insurers and owners of the casualty. Experience shows that this is generally achieved verbally by telephone from the scene of an incident. This can be achieved by contacting the principle ship/insurance representative and stating your intention to make a claim and requesting security for the money that the affected State is committing. This financial security can take several forms such as a deposit, bank guarantee or a P&I insurer's Letter of Undertaking (LOU) a sample of this document is provided at Appendix D to these Guidelines. The LOU also clarifies the legal jurisdiction for any subsequent legal action. However, it should be noted that the wording of this Letter may need to be altered depending on the charter of the vessel and legal advice should be sought. This document makes the Member State's position very clear. Basically, if, in accordance with national legislation, appropriate financial security is not provided in a timely manner during the incident, further steps to underwrite the financial exposure are required. If financial security is not provided within sufficient time, alternative measures such as arrest of the ship, cargo or sister ship should be considered. The possibility of securing the claim by gaining security in other assets such as the shipowner's company assets or Hull insurance payments could also be considered. Again, legal advice should be sought.
- 7.4 Both a Letter of Undertaking and a Bank Draft require a figure of money to be included in the document. A Rotterdam Guarantee Form 2000¹⁶ is an internationally accepted guarantee form, well-known by maritime insurers, and can, in some cases, be used as well. This is where the daily use of an electronic spreadsheet is helpful to estimate the level of financial exposure. It is necessary here to include a prediction for how many days the incident is likely to last for. Include an estimated figure for equipment to be returned to its storage site and any necessary refurbishment or cleaning. It is strongly recommended that an element of uplift is included in the level of security requested from the P&I Club. The reason for this is there are very often expenses incurred which the Claims Management Team does not learn of until after the physical incident has closed. Most P&I representatives are experienced personnel and are well aware that the estimation of costs at this stage is not an exact science, but it helps later negotiations on the claim if the figure given here exceeds the quantum of the final claim.
- 7.5 To reinforce the financial security many States may wish to forward a letter to the shipowner / insurers' representative stating the intention to file a claim, and clearly stating the legal basis for this action. An example of such a letter of liability is provided at Appendix F.

¹⁶ See template in Appendix E.
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Possible Options Should a Request for Financial Security Fail

- 7.6 In the event that a liable party is unwilling to provide the financial security requested by the affected Member State, there are further options which could be pursued. The following paragraphs briefly outline some of the possible options although it is strongly recommended that legal advice is sought on every occasion.

Detention

- 7.7 Ports and statutory authorities have statutory powers under which they can detain a ship and sell it in order to secure the repayment of monies owed to them. The debt must have arisen in specific circumstances, such as from port dues or expenses incurred in removing a stranded or abandoned vessel, as set out in the relevant national legislation.

Arrest

- 7.8 Arrest may be considered as a measure to obtain financial security for the claim or establishing the choice of law and jurisdiction of the concerned state. Arrest should be considered at an early stage during an incident, as it is essential to act while the ship still is within the jurisdiction of the concerned state. The decision of starting a procedure to arrest a ship should be taken after careful consideration, taking into account amongst others the legal and economic risks related to the arrest and the value of the ship and the cargo. The legal and economic risk related to arresting a ship might vary in different countries, and it should therefore be considered to take advice from local expertise before starting an arrest procedure in foreign countries.
- 7.9 A ship can be arrested and held as security for monies owed to the arrestor and it cannot be traded whilst it is under arrest. The action is commenced against the ship and often serves to identify the actual shipowner so an action can be commenced against them. It should be considered whether another ship of the same owner can be arrested.

7.9.1 What is a ship arrest?

Ship arrest is a procedure available worldwide whereby a ship is prevented, by Court order, from sailing. It usually forms part of a procedure whereby it is possible to pursue a claim against the ship itself. The requirements for ship-arrest vary depending on the jurisdiction in which the ship is located. The paragraph below is based on the 1952 International Convention on the Arrest of Ships which has been adopted by most maritime nations.

7.9.2 Why arrest?

An arrest will achieve two objectives:

- 1) **Security** - The usual aim of arrest is to obtain security which is usually provided by the Owner's liability insurer (P&I Club), or property insurer by way of a letter of undertaking (LOU) or bond.
- 2) **Establish a jurisdiction** - A claimant can sometimes bring substantive proceedings against the ship itself in the country of arrest, even if the dispute has no connection with the country of arrest. The presence of the ship is sufficient. If the claim succeeds and no security is given, the claimant can then have the ship sold to satisfy any judgment.

7.9.3 Common grounds for arrest

The most common grounds for arrest include disputes arising out of any damage caused by a ship (which will include most pollution claims), salvage, crew wages, general average, loss of or damage to cargo and construction, repairs and dock dues.

A claimant can arrest the ship which gave rise to the claim or sometimes a "sister ship" (another ship under the same ownership) in respect of any of these claims.

Arrests are also possible in relation to claims arising from the ownership, possession, employment or earnings of a ship. It is not possible to make a "sister-ship" arrest for these claims.

7.9.4 Wrongful arrest

If an arrest is made without the arresting party satisfying the required criteria in the relevant jurisdiction, the arresting party may be liable for any costs which the other party incurs in relation to the arrest. These can be high.

7.9.5 Releasing an arrest ship

If acceptable security is provided for the claim for which the ship is arrested (usually as a LOU from the P&I Club/bond from a property insurer), the arrest should be lifted, and the ship released.

Injunction

- 7.10 An injunction either prevents someone of doing something or compels them to do something. It is an action brought against the owners of a ship and is usually used for preserving matters pending trial to resolve the issues in dispute. In order to obtain an injunction, the claimant must establish a good arguable case before a judge who will grant the injunction. An injunction can be obtained in an emergency, outside of normal court hours and it is possible to secure a worldwide freezing injunction against the ship owners.

Freezing order

- 7.11 A freezing injunction is a court order which would prevent a ship owner from disposing of or dealing with its assets. These assets could be the shipowner's claim for compensation against its own insurance or in the case of a collision between two ships - a claim one shipowner may have against the other (e.g. a claim for compensation for damages caused by negligence of the other ship's crew). In individual Member States it may be possible to obtain a so-called attachment or freezing order. Such an order, which is issued by a court, prohibits a payment of the insurer or the liable party to the ship owner. It may help the authorities to get a guarantee from the ship owner because they want this order to be lifted. The authorities of one Member State could, depending on the case, even go to the courts of another Member State to obtain a freezing injunction.

8. DEFINING A PRICING STRUCTURE

Objective and general principles

- 8.1 The objective of this chapter is firstly, to identify the most frequent items included in claims, and secondly, suggest reasonable formulae to calculate hire rates.
- 8.2 It is recommended that whenever possible the full cost (including both direct and indirect costs¹⁷) of the incident should be sought from the shipowner and all efforts should be made to ensure this occurs. The claimant should not be financially penalised for the damage caused by the polluter.
- 8.3 It is not the role of Member States to provide services that are easily obtainable by the shipowner, but to promote the prompt contracting of private companies. It is in the interest of all Member States to have these businesses in existence to assist use when necessary.
- 8.4 It should be noted that contracts awarded through public procurement procedures to private companies reflect market conditions at the time. Consequently, they do not undermine commercial operators.

General recommendations

- 8.5 It is useful to have a schedule of prices published beforehand to provide the liable party with confidence that the rates are reasonable and justifiable. This may also avoid disputes during claim settlement meetings.
- 8.6 It is recommended that Member States should consider whether they would wish to claim interest on outstanding claims. It should be pre-established when, and if, to commence charging this interest. Each Member State should develop its own policy on this issue and this policy should be in line with national legislation. Options could be to start charging interest from the date of the incident or the date the claim is submitted for payment.

Concepts commonly included in claims

- 8.7 The activities and equipment to be included in a claim depend on the incident itself, however, the items often included are expanded upon below:

Checklist

- Maritime assets: tugs, work boats, oil recovery vessels, patrol boats, etc.;
- Aerial assets: helicopters, surveillance aircraft, etc.;
- Contract personnel: working hours, daily allowances, hotels, flights, etc.;
- Staff personnel and associated costs;
- Subcontracted companies;
- Equipment: booms, skimmers, anchors, containers, power packs, etc.;
- Vehicles: cars, trucks (owned and rented);
- Sample analysis: laboratory analysis, sample collection equipment;
- Satellite images;

¹⁷ Direct cost: An expense that can be directly assigned to a cost object.
Indirect cost: An expense related to a cost object but that is shared with others.

- Documentation: videos, pictures, etc.;
- Numerical spill modelling;
- Environmental impact assessment;
- Environmental damage (if applicable);
- Capture, cleaning and rehabilitation of wildlife;
- Cleaning, repairing or replacing property;
- Charge for the navigational aids (e.g. cost for navigation buoys);
- Special weather reports;
- Expert advice outsourcing (technical, legal, claims handling consulting, etc.);
- Waste management (storing and disposal);
- Telecommunication expenses;
- On site office set up, electricity, etc.;
- Mail expenses;
- Miscellaneous.

Recommended guidelines to define a price structure

8.8 It is recommended that Member States claim for all their activities when responding to a shipping incident inside their EEZ of responsibility. It is highly likely that there will be two types of items to be claimed for:

- actual expenditure to third parties,
- and
- State owned resources, i.e. equipment, staff.

8.8.1 Actual Expenditure to third parties

These costs should be evidenced by an invoice submitted by the providing organisation. In this case, the invoice is included as supporting documentation in the claim, and it is up to the discretion of individual Member States whether they chose to add handling costs to these invoices or not. This decision would have been part of the planning and preparation work carried out prior to an incident occurring.

8.8.2 Member State Resources

When the expenditure is generated by Member States owned resources: that is, personnel, response equipment, etc, which are paid and maintained directly or by a contract, or even purchased before the incident occurred. In essence these resources are “hired” to the incident, at predetermined rates if possible.

Determining Hire Rates

- 8.9 In this section, there are some recommendations to calculate the price of the items usually included in maritime claims based on the experience of some EU Member States. However, it is up to each Member State to define its own criteria within the frameworks of its national legislation and its own price structure since there are different methods to calculate the price of a service. In particular, when dealing with indirect costs or fixed costs there are different possible approaches, the most common ones are to add a total percentage to the claim or to include indirect costs into the unitary cost of each resource.
- 8.10 The methodology most commonly used to calculate hire rates including indirect costs is outlined below. In the case that Member States decide to charge indirect costs by a percentage, the methodology should be simplified since it only takes into account the direct cost.

8.10.1 Identify assets

Define a list of the resources that is wanted to calculate their cost (i.e. helicopter, aircraft, tug, technician, etc.).

8.10.2 Identify costs

- It is recommended to start by taking cost data from an audited financial balance sheet or its purchase invoice.
- From the whole balance sheet, identify the following information for each resource listed in paragraph 8.10.1:
 - Direct costs: identifiable because they are costs that are generated only by a specific asset. For example: aircraft amortization costs, vessel operational costs, etc;
 - Indirect costs: identifiable because they are just partly related to a particular asset, so therefore they must be distributed among different resources (Maritime Response Co-ordination Centre (MRCC), communication expenses, etc.);
 - Non attributable costs: the remaining costs that are not related with the resources identified above.
- Distribute direct and indirect cost among the units:
 - The cost of each unit will be the sum of their own direct cost plus a proportion of indirect cost;
 - To calculate the proportion of indirect cost that should be assigned to each asset, firstly define a cost driver to calculate which proportion of the total indirect cost sum will be distributed into the identified assets, and secondly a cost driver to distribute the proportion of indirect cost among the assets listed.

8.10.3 Hire rates calculation

- Divide the cost of each unit into an indicator of their own activity (e.g. number of days/hours involved in operations in that year).

EXAMPLE OF HIRE RATES CALCULATION (*)			
<i>CALCULATING THE COST OF ONE HELICOPTER PER HOUR</i>			
CONCEPTS	Audited annual balance sheet	% of the cost related to helicopter fleet	Cost of helicopter fleet
DIRECT COST		(1)	
Amortization of the helicopter fleet	3,120,000 €	100%	3,120,000 €
Operational Cost (Insurance, crew, fuel, maintenance, heliport)	4,302,000 €	100%	4,302,000 €
A. TOTAL DIRECT COST	7,422,000 €		7,422,000 €
INDIRECT COST		(2)	
Cost of the personnel involved in managing the aerial fleet (helicopters and aircrafts) in the MS headquarters	80,000 €	50% (3)	40,000 €
Cost of the MRCC involved in coordinating all types of units	11,000,000 €	1,5% (4)	165,000 €
B. TOTAL INDIRECT COST	11,080,000 €		205,000 €
NON-ATTRIBUTABLE COST			
Advertising Cost/Cost of the training centre (to third parties)/ Taxes/All other costs not included in A or B.	145,000,000 €	0%	€ -
C. TOTAL NON ATTRIBUTABLE COST	145,000,000 €		€ -
D. TOTAL (A+B+C)	163,502,000 €		7,627,000 €
E. Number of hours flown in a year by helicopter fleet			1,000 h
F. Cost of one helicopter per hour of flight (D/E)			7,627 €/h

(*) Note that this example is a simplified case just to illustrate the methodology exposed in this chapter.

(1) Direct cost will be 100% related to the unit.

(2) Indirect cost will be related just in a percentage that has to be calculated or estimated by a cost driver.

(3) Since these personnel are in charge of the management of helicopters and aircrafts, it is considered that 50% of their cost is just related to helicopters.

(4) As a result of a study, it is calculated that MRCC spend 1.5% of their resources coordinating helicopters. This indicator is used as a cost driver to calculate the cost.

(*) Note: the above table is a simplified case. The figures do not reflect actual costs.

Aerial and Maritime Units

- 8.11 As mentioned earlier it is recommended that Member States claim for assets both owned by Member States and chartered from third parties. It is considered reasonable to include all response activities of these major assets, such as surveillance, costs for preparedness and stand-by, equipment deployment, transporting equipment or technicians or supporting operations.
- 8.12 When calculating the costs of both aerial and maritime assets it should be noted that these may be charged on an hourly or daily basis. It is necessary at this stage to determine whether to include bunkering and consumables within the rate, or to consider them as an additional expenditure. Further considerations include those costs that are linked to a particular asset, are the costs of the ship or aircraft building, other investment costs and interest, the cost to equip the vessel, and the annual operational costs such as maintenance, equipment, insurance, quay or berth.
- 8.13 It is up to the discretion of the Member States to charter units as they deem necessary for the scenario they are facing. The rates for these vessels and aircrafts should be included in the claim. Any vessels chartered for a specific response will be from the open market and dependent upon what is available on that day.

Equipment

- 8.14 Member States should include costs for their equipment from the moment it is mobilised from its normal storage place until it is returned to that place, fully refurbished and ready for the next incident. Equipment should also be charged for during preventive, clean up and salvage operations, even if it is subsequently found that the equipment, although mobilised to the site of an incident, was not needed.

Recommended Pollution Response Equipment Formulae

- 8.15 To determine the rate for equipment, it is recommended to amortise the value of the equipment over its expected life and add a mark-up for overheads such as storage, maintenance, training, exercises, etc. This mark-up is generally accepted to be 100% of the amortised value and the following formula may be used to determine the daily hire rates for pollution response equipment¹⁸:

$$\text{Rate per day} = (\text{list value}) * 2 / \text{life expectancy}$$

- 8.16 The amortisation periods vary according to the type of the equipment and are based on the expected durability of this equipment. Periods are usually determined in multiples of thirty days. It should be taken into account that some pieces of equipment could have two formulae, for example, a Ro-skim may have one formula for the boom and another for the sweeping arm. Following research with industry it is recommended that the following life expectancies may be applied. However, it is up to the Member State's discretion to define the life expectancy considered most suitable for each type of equipment.
- 180 days for mechanical equipment (e.g. power packs, pumps, skimmers, etc.);
 - 90 days for heavy plastic equipment (e.g. off-shore booms, temporary storage equipment, etc.);
 - 30 days for plastic and rubber materials (e.g. in-shore booms, etc.).

¹⁸ See Appendix G.
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- 8.17 It is standard practice for the cost of equipment placed on standby, or in transit or undergoing decontamination, but not actually deployed, to be assessed usually at a lower rate to reflect the reduced wear and tear on the equipment. Some States apply a fixed standby rate of 50% of the in-use rate. This does not prejudice the right of States to use a different rate.
- 8.18 Should a piece of equipment break down while it is in use or stand by, it is considered reasonable to charge for the days that it was used or on standby up until it was determined that the item was unfit for use.
- 8.19 It is recommended that decontamination and repairs to equipment should be charged for in line with the purchase invoices if repaired by private companies, or with the equipment used and time spent by personnel if repaired by State employed staff or subcontracted companies.

Personnel

- 8.20 It is recommended that Member States charge for all personnel involved in the incident, i.e. response team, scientific and logistical support, finance / claims support, extra personnel to reinforce regular services such as staffing an MRCC should also be charged for, etc.
- 8.21 Personnel rates are usually calculated in line with the contract of employment plus all on-costs such as taxes and national insurance. Government employee pay structures can be highly complex, often involving scales of pay which include a base time rate, time and a half or double time. It is recommended that each Member State pre-determines its staff charge out rates prior to any incident occurring. Methods of calculation are provided at paragraph 9.21.
- 8.22 Personnel contracted to support the Member State's response should be charged as per the invoice.

Administrative costs

- 8.23 It is not possible to specify the precise costs for all expenses that a Member State will incur during the response to maritime pollution incidents. It is therefore recommended to add administrative costs. These costs should cover use of existing overheads such as telephone, stamps, photocopying, office supplies, rent of buildings, electricity, coffee/tea for personnel etc. The level of administrative costs and the basis for calculation will depend on what it is to cover. It is therefore up to each Member State to define a reasonable level.

9. COMPILING A DOSSIER AND DRAFTING THE CLAIM - CLAIM FORMAT

- 9.1 Some general principles of good practice that may be adopted by Member States are:
- Identify the source of pollution involved in the incident;
 - Record name and address of the claimants and of any representative;
 - A summary of events – together with why the working methods or courses of action were selected is very useful (maintain a narrative of the incident);
 - An expense must have been incurred and third-party invoices provided;
 - Response measures must be deemed to be reasonable and justifiable – proportionate;
 - Investigate rates quoted for all hired in equipment – prove investigation if feasible;
 - Keep a record of dates on which work was carried out at every site – date and timed photographic evidence;
 - Keep a record of the number and categories of response personnel, regular / overtime rates of pay and who is paying them – names;
 - Keep a record of travel, accommodation and living costs for response personnel;
 - Calculate hire rates for response equipment in use and standby;
 - Keep a record for all equipment costs for every site:
 - Type of equipment;
 - Rate of hire;
 - Costs of purchase – remember residual values;
 - Quantity used of each piece of equipment;
 - Period of use – (in use and standby);
 - The name of the contractor.
 - Photograph any damaged equipment – if possible, get assessed by an independent body (ship surveyor, expertise Bureau, Special Casualty Representative) prior to repair or replacement;
 - Do not bring equipment of a better state than at the commencement of the hire (no betterment);
 - Keep a record of consumable materials – get responders to sign out consumables and say which site the item will be used on;
 - Keep a record of waste disposal quantities, routes and costs.

Record Keeping

- 9.2 It is not possible to specify the precise form of records, as this varies with the circumstances, however, there are two principal points to keep in mind:
- The records serve a variety of purposes and are the source material for much information drawn; and
 - Since responders cannot know the particular purpose that records will serve in advance, record keeping should err on the side of too much rather than too little detail.

Recommended Subject Headings for Claims

- 9.3 The following paragraph headings indicate the recommended subject headings for sections of a claim – Often referred to as Heads of Claim. As each one of these sections is compiled all the guidance in other sections of this document, should be borne in mind. It should be noted that not all of these sections will be necessary with every claim compiled, and occasionally other sections may need to be added. This is a recommended structure for Member States to consider adopting in part or in its entirety. The sections are designed for major incidents, however for the smaller ones, it should be possible to combine some of the sections.

Aerial and satellite resources

- 9.4 This section to include:
- Aerial surveillance flying hours – if this is a contracted-in resource the contractor should provide a separate invoice showing hours flown, hourly rate (as determined in the contract), landing fees, subsistence rates if flight crew have an overnight stop, fuel consumed, routes flown;
 - Aerial dispersant spraying hours;
 - Helicopter use. Different rates could be applied here dependent upon whether a State resource or a contracted-in one. Also, whether the flying hours were at the request of a shipowner appointed salvage organisation. These rates should be pre-determined in the Planning stage and prior to any incident occurring;
 - Mobilisation flying hours. Should the State response team charter an aircraft to mobilise to the scene of an incident, this cost should be included but it is necessary to record all personnel on board. If there is time to get more than one quotation for this flight – include copies of the competitive quotations with the claim.

Counter Pollution at Sea

- 9.5 This section should include any State-owned vessels as well as any chartered for response operations. It is necessary to acquire supporting documentation of all the vessels' activities as well as the invoice. A full specification of every vessel is needed to justify the expenditure. For example, if applicable, this documentation may include:
- Capacity of tanks, including heating, pumping capacity;
 - Oil pollution response equipment;
 - Crew size and whether included in the charter rate, considering possible crew changes and associated travel costs;
 - Research into rate offered – investigate whether rates had previously been published;

- Condition at start of charter – photograph;
- Condition at end of charter – photograph;
- If oil recovered – daily quantity/volume recovered and how disposed of;
- Daily activity log of every vessel;
- Daily assessment of use of vessel during oil recovery activities;
- If an oil recovery vessel, check whether charges for the equipment on board were included in the agreed charter rate;
- Full contact details for the owner – and who they reported to;
- Copy of invoices for any harbour dues, fuel and lubes;
- Whether bunkers were included in the charter party agreement;
- Daily activity log of vessel movements;
- Fuel consumed;
- Passenger list;
- Specification of the vessel;
- Voyage route.

9.6 Also, in the At Sea section include the activities of any equipment stockpile contractor. These contractors should provide a separate invoice for work carried out on a specific incident response. Their invoice should include staff names, hours worked, travel costs, subsistence costs etc. Member States should ensure that they request a daily log of what each member of this contracted-in resource were actually working on. This report should be included with the claim as justification for their employment.

Counter Pollution Beach / Shoreline

- 9.7 This section should include the activities of any contracted-in shoreline response contractors. These contractors should provide separate invoices for work carried out on a specific incident response. Their invoices should include staff names, hours worked, travel costs, subsistence costs etc. The Member State needs to ensure that they request a daily log of what each member of staff was actually working on. This report should be included as supporting documentation with the claim as justification for their employment.
- 9.8 It is possible that Member States will employ temporary staff to work on beach clean-up activities. Again, it is necessary to justify this type of recruitment and provide timesheets and logs of activities for every individual. Details of every name must be provided, not just the quantities of staff, even if the recruitment had been facilitated by another organisation.
- 9.9 It is possible that marshalling points will need to be established for the distribution of response equipment to several front-line sites. Procedures for the issue and distribution for equipment should be established and recorded. These procedures should be especially useful for the justification of the use of consumable items such as absorbent and personal protection equipment, i.e. overalls and boots. It will be necessary to justify the quantities of such equipment. It is highly likely that this marshalling area will need to be hired from a port or local authority and the agreement reached will need to be included in the claim.
- 9.10 It is often necessary to hire further equipment at the scene of an incident. This equipment could be cranes, forklift trucks etc. The Financial or Claims Coordinator should make every effort to acquire copies of printed/published hire rates from the equipment supplier and copies of this documentation need to be included with the claim.



Volunteers cleaning a pebble beach (Credits: EMSA)

Wildlife treatment

- 9.11 Pollution may have an impact on wildlife, and this can contaminate bird feathers causing hypothermia (loss of insulation). In many EU Member States aid to wildlife has been established. Volunteers working in bird rehabilitation centres, if possible, assisted by authorities will collect living contaminated birds as well as dead birds (research) for treatment. Wildlife treatment has procedures in place for triage, cleaning and nursing the animals.
- 9.12 In the case that a large number of contaminated birds wash up at the coastline of a country, assistance may be required from a neighbouring Member State. Costs involved in the treatment of wildlife as well as the transportation to an assisting country will be claimed from the polluter. The costs made by the country that provides assistance should preferably be settled by the State requiring assistance.

Purchased Items

- 9.13 Third party invoices must be provided and included in the claim for all items and services purchased. Experience indicates that Member States should, if possible, directly procure any items necessary. This is preferable to appointing contractors as they may apply a mark-up which may then subsequently be found to be unacceptable to the insurer. The incident circumstances may not permit standard public procurement procedures to be implemented in a timely manner.
- 9.14 Should a purchase be for the replacement of a damaged piece of equipment - the damage must be photographed, and an independent report obtained. At the close of an incident if an item has been purchased specifically for that incident, the claim compiler must consider whether the item has a residual value. If so, a deduction should be made from the claim.

Waste treatment and disposal

- 9.15 A standard operation whilst undergoing response measures is waste collection, treatment and disposal, covered hereunder one heading: waste management. Response vessels will collect oil/water mixtures at sea and the volume has to be delivered ashore. Deployed equipment e.g. oil booms, that is contaminated requires cleaning and the response vessels need to be decontaminated before they can resume normal operations. Also, the recovery of oil from the coastline may result in large volumes of oily debris e.g. oil and sand mixture. Besides these items, there might be protective clothing that is collected as waste.
- 9.16 Experience gained in many incidents shows that the effective waste treatment and disposal of waste could take many weeks or even months. Temporary storage is created, and waste has to be segregated for proper treatment. Oil-water mixtures could be separated and if possible, the oil is refined again or reused as fuel for incinerators. Other elements of the recovered material could be incinerated in chemical waste plants and contaminated sand can be “cleaned” by incineration leaving “black sand”.
- 9.17 Waste management may require the service of professional companies either through direct contracting because of the incident, requiring immediate action, or through public tendering. Accurate assessment of volumes and best ways of treatment preferably would result in a fixed price for the waste disposal. If time and the management of the incident allows, the polluter or its representative could arrange for the waste to be treated or even the entire management process.
- 9.18 The final claim cannot be finalised until all tasks have been completed and the disposal and management of the waste has been finalised. However, if parties agree that the total costs for the disposal can be settled on the basis of the estimated costs or the fixed priced contract this section of the claim could be closed as well.
- 9.19 It is recommended to identify all the risks associated with each preferred option of the waste management plan. In the event that the costs have not been included in the claim as fixed costs, but on the basis of estimated costs, both parties may bear a risk considering that waste treatment may take many years, depending on the volume of collected solid waste, serious negotiations on cost per tonne is necessary.

Staff Costs

9.20 The issue of government authorities charging staff costs, and whether they should be charged to the liable party, is raised by many insurers on the basis of whether they should reimburse a public service organisation for standard hours as well as overtime worked (see paragraph 9.22 below).

9.21 There are many methods that can be used to calculate staff costs, and we provide below three possibilities for consideration by the Member States.

9.21.1 Charge exact rate plus social costs

Each member of staff is charged at the exact cost incurred by the authority that employs them, including overtime payments, national insurance, taxes, pension etc.

9.21.2 Charge an average cost for categories of staff

This method of charging for staff saves a great deal of calculation time for the claim compiler and therefore is more cost efficient for the overall claim. All response staff are grouped into several categories using averages to obtain at an acceptable figure for each group. In some Member States employees are entitled to three types of pay, flat time, time and a half, and double time. For each grade of staff, the three pay rates are added together and then divided by three to find an average rate. This then becomes the rate applied to that category of staff.

Examples of the staff categories are:

- Strategic Staff;
- Senior Technical;
- Technical;
- Logistics;
- Operational Support;
- Other.

9.21.3 Using a Predetermined Formula

It is possible to determine the cost of a member of staff by analysing his/her number of utilisation days to his/her employer. The methodology is outlined below.

Firstly, it is necessary to calculate how many days an employee is actually of use to his/her employer. Example as follows:

52 weeks a year x 5 days = 260 possible working days in a year

It is then necessary to deduct the non-working days such as bank holidays, annual leave, training days, and any other non-working days specific to a Member State.

Example: 260 possible working days in a year minus 40 non-working days= 220 days of utilisation.

Then take the annual salary of the individual, divide it by the number of days of utilisation in a year to obtain the utilised rate.

Example: EUR 50,000 per year divided by 220 utilisation days=EUR 227 per day.

Then, add to a daily rate for overheads of the organisation.

Example: EUR 227 per day plus EUR 15 for overheads= a daily charge rate of EUR 242 per day.

To use this method, it would also be necessary to provide the insurers with the methodology followed to determine the daily overhead rate.

- 9.22 Justification for charging the full staff costs is that experience has shown that many insurers are content to pay for overtime but generally express a reluctance to pay full staff costs as these would have been incurred even if the incident had not occurred. Paragraph 8.21 gives further information on this subject. An argument that could be used to counter this is:

The [your Member State]'s position with regard to staff mobilised to incidents is that all our response staff have dual roles. The management of stockpiles, finance, logistics, cost recovery and training course preparation. The technical staff is employed on contingency planning, cost recovery, research project and minor incidents. None of these members of staff are employed solely to respond to major incidents. When staff are mobilised, their normal day to day tasks are put on hold until the close of the incident. As all these tasks are specialised it is not feasible to employ unsupervised, temporary staff to carry out their roles, also the [your Member State] often has to cover further overtime costs as staff return to their normal place of work to tackle a backlog that has accrued during their absence at response centres.

This argument has proved successful and a firm stand is recommended if this is in line with individual Member States' policy.

- 9.23 A sample matrix of staff documents is provided at Appendix H to assist in the collation of the records necessary to justify staff rates and expenses in a claim. This matrix should also act as a reminder of the documents to be collected from all response staff.

These documents include:

- Personal logs;
- Overtime Claim Forms;
- Travel and Expense Forms.

- 9.24 Not all these documents need to be included with the claim but will assist the justification and negotiations at a later date. It will be necessary for the Claim Handler to check that all the timings on these documents match.
- 9.25 Member States should note that the time spent on document compilation should also be included in the claim.

Scientific and Technical Advice/Contractors

- 9.26 Should a Member State require the services of contracted-in scientific and technical staff it is necessary to acquire a daily time sheet from each individual. This additional expert advice should be to aid decision making for the response and clean-up operations to assess its effectiveness and to ensure that more damage is not being incurred by the response measures adopted.

Wash Down / Decontamination Facility

- 9.27 Any contractor appointed to establish a wash down/decontamination facility needs to devise a system to log vessels and large equipment in and out of the facility, preferably taking photographs regularly during the cleaning process. This photographic evidence and invoices should be included with the claim. Records of waste water disposal should also be maintained.

Dispersant

- 9.28 If dispersant is used during incident response this section should include such items as:
- Types used and how applied;
 - Where dispersant was mobilised from;
 - Cost of transport to airport / port;
 - Quantity of each type used;
 - Cost of replacement stock;
 - Cost of forklift operations;
 - Cost of cleaning containers;
 - How applied, i.e. by sea or air;
 - Cost and methodology of special waste disposal / tank disposal;
 - Age / efficacy of dispersant used;
 - Costs for platform (e.g. aircraft or helicopter).

Media and Public Relations

- 9.29 The fact that large scale incidents such as EXXON VALDEZ, SEA EMPRESS and PRESTIGE, but also smaller incidents attract attention by mass media, justifies that authorities may contract the service of professional media and Public Relations agents. Providing information and details of an incident, the possible impact to coastal areas or municipalities, and reporting the developments in the response measures taken, is of utmost importance. Thus, press releases or on-line information (special web-site) require expert involvement. The costs for this service, in the opinion of the authors, are costs directly related to the incident and should be added to the overall claim.

Car Hire

- 9.30 All vehicles hired for the mobilisation of response staff need to be included in this section clearly stating who the drivers were and what their activities were for the entire hire period.

Accommodation

- 9.31 All accommodation, whether bed and breakfast for response staff or the hire of rooms for meetings or work, should be included in this section. If for the latter requirement, justification for the extent of the hire is necessary.

Communications

- 9.32 Any extra telephone lines ordered and fitted into the response centres should be included in the claim with fully itemised bills. Public service response staffs' mobile telephone bills should also be included if not included in the administration costs on the overall claim.

External service arranged by the authorities

- 9.33 In the case of a maritime incident coastal state authorities may have arrangements in place for rendering assistance. It is in the interest of the captain/owners of the vessel in need of assistance as well as in the interest of the coastal State authorities to co-operate in order to limit or contain the damage and find best response options.
- 9.34 One of the emergency services that can be found in some EU Member States is a National Fire Fighting team that can be flown on to the vessel on which the crew is struggling with a fire. Crew, passengers (if any) and/or cargo could be brought into safety if assistance is offered. Sometimes the best way is for the captain to enter into a Lloyds Open Form (LOF) Contract. If a fire fighting team is flown in, legal aspects play a role as these teams may not accept liability and require the captain to approve their plan of action.
- 9.35 Emergency towing vessels (ETVs) are considered to be a State provided service if available. Some Member States have arrangements in which the contractor of the ETV can enter into a LOF contract with the ship in distress, others may provide the service and claim reimbursement for costs.
- 9.36 The above given examples of governmental service require accurate communication between authorities and captain/owner/charterer of the vessel concerned and it also requires detailed description of the services provided and related costs. Claiming reimbursement, though obvious, needs profound preparation.

Miscellaneous

- 9.37 This section is used for purchases or activities utilised but do not fall into any of the previously mentioned categories.

Sample Analysis

- 9.38 In any pollution incident the substance released may have to be analysed for different reasons. First of all, it is necessary to identify the substance for safety and response purposes. Secondly, the analysis might be required for legal proceedings against the suspected polluter. The sampling should be done according to national legislation (criminal law), meaning that a qualified person needs to take the sample, keep it secure and follow administrative procedures handling the sample until it has been delivered to an appropriate laboratory. Sampling may need to be repeated regularly, because there is a possibility other discharges could be carried out illegally close to the polluted area. In the case the laboratory needs assistance by other experts these can be contracted. Costs for sampling and sample analysis will form part of the claimed costs.

Costs of Modelling

- 9.39 Based on information obtained by satellite/aerial surveillance or directly from the source of pollution, computer modelling generally is used to predict behaviour and drift of the pollution. Computer models can also be run in the case of Search and Rescue (lost persons) and when containers or other deck cargo has been lost overboard. The outcomes of the modelling are applied in the response measures to get accurate directions e.g. for deployment of booms. Another example is the use of a computer modelling package to inform decision making with regard to the application of dispersants.

Impact and Reinstatement Studies

- 9.40 Whatever efforts are devoted to combating pollution at sea and on the coastline, it will have some impact on sensitive species and sensitive areas. As a consequence, it will be expected from the response authorities that they will undertake to monitor the importance and extent of that impact, in both the short and long term. This will not only inform the scientific community and the general public on what really happened, but it may also provide the necessary basis for the election of studies on economic losses or socio-economic consequences. Assessing the necessity and extent of such studies is a duty of the response authorities and would be based on the seriousness of the incident and these costs may be recovered from the polluter.

Post Incident Studies and Research

- 9.41 In the aftermath of an incident it could be worth studying the affected environment in relation to response measures as well as the consequences of the impact (see paragraph above). This type of research is vital to learn lessons from the response measures. As an example, reference is made to studies following the AMOCO CADIZ incident, where high pressure steam cleaning was used in specific areas. As a result of the study it was found that this method had a significant [detrimental] impact on natural wildlife and other methods would be preferred in future.



Oil on the shoreline (Credits: EMSA)

10. SETTLING A CLAIM

- 10.1 Previous chapters outline the legal framework, the generic procedures, the methodology to calculate tariffs and provide a methodology to compile a claim. The final action for Member States is to reach a financial agreement with the liable party or parties for the response measures taken. An amicable settlement on the reimbursement of costs or a court trial are options, both of these possible outcomes have positive and negative aspects to be considered.
- 10.2 The precise methodology for settlement of claims is, again, for Member States to determine. In most cases, by noting the co-operation from the liable parties during the incident response, Member States will have an awareness of whether amicable settlement is likely.
- 10.3 Despite the financial security obtained during the early days of an incident, be it a bank guarantee (a fixed amount of money deposited in a bank) or a P&I Club Letter of Undertaking, it does not necessarily follow that the reimbursement for costs is imminent. In most cases, it will not simply be a case of sending an invoice and receiving payment, even though, some cost recovery cases have been achieved in this manner.
- 10.4 In most cases, securing payment requires further input from representatives from the claimant Member State. However, if many of the recommendations from this document on preparatory work have been followed this claim justification phase should be reasonably simple.

Arbitration

- 10.5 Arbitration is a legal technique for the resolution of disputes outside the courts. The dispute is referred to whose decision (the "award") the parties agree to be bound. Arbitration is most commonly used for the resolution of commercial disputes, particularly in the context of international commercial transactions. Arbitration is an instrument to settle costs or awards in salvage disputes but is not very well known in claims resulting from a pollution incident. Amicable settlement or court proceedings are the two options used.
- 10.6 Parties, being the authorities and the polluter, might seek to resolve their disputes through arbitration because of a number of perceived potential advantages over judicial proceedings. At least a part of the subject is highly technical as it concerns the response measures taken including the equipment deployed then arbitrators with an appropriate degree of expertise can be appointed. Arbitration is often faster than litigation in court and arbitration can be cheaper and more flexible for businesses. However, if the arbitration is mandatory and binding, the parties waive their rights to access the courts and have a judge or jury decide the case and rule of applicable law is not necessarily binding on the arbitrators, although they cannot disregard the law. Unlike court judgments, arbitration awards themselves are not directly enforceable. A party seeking to enforce an arbitration award must resort to judicial remedies, called an action to "confirm" an award.
- 10.7 More details can be found at: www.lcia-arbitration.com

Relationship with shipping industry

- 10.8 Shipping industry is a broad term, in this respect it could be narrowed down to P&I Clubs and expert marine organisations. If there are shipping companies whose vessels also call on national ports, it makes sense to meet with the management and build a relationship with a view of gaining an understanding of their working methods in the event of an incident with one of their vessels.
- 10.9 The establishment of good working relations with P&I Clubs, and other third-party liability insurers, is considered very important. An understanding of the perspective of the insurers who will represent the shipowner makes it mutually easier to discuss and reach an agreement when attempting to settle a claim. The participation in regular, table-top exercises, both at government and industry level assists in the development of this understanding.

Preparing to Settle a Claim

- 10.10 Assuming an incident has been completed operationally; ship and crew and cargo have been brought into harbour safely, pollution has been combated, all equipment cleaned and repaired, waste materials disposed of, all invoices have been collected, then the claim can be progressed from draft to completion.
- 10.11 During the incident response phase, it is highly likely that a P&I Club / shipowner representative will attend any regular update meetings so they will have been kept up to date with all response operations. It should be noted at these meetings if this representative expresses any dissatisfaction with the State response. Preferably, all parties represented should sign a summary of the decisions. Outside of the main meeting it should be possible to discuss, and hopefully reach an early agreement, with the response methods, proportionality of the response, hire rates for equipment etc. An example of this would be the deployment of a new response device or cleaning method could be discussed with the representative and may lead to a pre-arranged agreement on the cost for this specific item. Remember to record the discussion and any agreements reached.

Clarifying meeting

- 10.12 Following compilation of the claim, or final invoice, it is strongly recommended to draft a summary note to explain the overall claim and expand on specific items. It might also be helpful, to include imagery of the incident and response activities.
- 10.13 It is recommended to provide and illustrate a division of the main items and specifically point at VAT, administration fee (if any) and the legal interest applied.
- 10.14 It is common practice to send the invoice to the shipowner of the polluting vessel through the P&I Club, or one copy to the shipowner and one copy to the Club. Delivery by some form of recorded delivery is recommended so the claimant has proof of delivery.
- 10.15 It is advisable at this stage to consult with other Member States' Claims Handlers to ascertain whether they have had a similar incident with that particular shipowner or P&I Club. It should be borne in mind that precedents may have already been set. This action would reinforce justification for your claim.
- 10.16 Whichever method is used to submit the claim, immediately agree on a date to meet to clarify the invoice and learn about any issues that need further explanation or justification. It is strongly recommended that the representative of the Member State should stay in charge of the process by being proactive and initiating all communications and meetings.

Providing arguments, justification of measures taken

- 10.17 A claim comprises of many different types of expenditure e.g. equipment, staff hours, cleaning of used response equipment, contracts (see Chapter 9). It should also state the legal basis for the claim and may describe the problem (type and date of pollution or area contaminated).

- 10.18 Record keeping is vital right from the start of the incident as this will provide the justification for the measures taken and how those costs relate to the response. This will be very helpful in the clarification of any queries raised by the insurers.

Financial arrangements

- 10.19 At the outset of an incident it is normal practice to hold the shipowners liable and to request some form of financial security (see Chapter 7). Depending on the level of co-operation with the shipowners or their representatives it could well be that certain response measures are directly arranged for (and paid for) by the owners. For instance, in the recovery of lost containers or for the removal of pollution from a potentially polluting wreck the owners may contract a salvor for this work. This is an ideal situation for Member States as it does not involve them in any financial outlay, but they would still have the right to oversee all the activities of the contracted organisation.
- 10.20 Another possibility for financial arrangements is to request a stage payment during the course of the incident. This course of action is only applicable in incidents that take many weeks to reach a conclusion. The arrangement depends on the level of co-operation and involvement of the owners/representatives in the overall response operation. It is recommended that Member States should seek clear legal advice before requesting a stage payment.
- 10.21 An important aspect to the possibility of a stage payment is that this would have an effect on the level of legal interest subsequently charged.

Settlement

- 10.22 A willingness to meet and discuss a claim implies that both parties wish to discuss any difficulties that have been highlighted. It is positive and productive to firstly identify the items that parties agree on and then move on to the more problematical areas of the claim. Both parties may wish to be represented by experts in the field of incident response.
- 10.23 Reaching an agreement implies give and take on the part of both sides of the settlement phase. However, it is recommended that Member State representatives should have a bottom line in mind prior to attending any settlement meetings. It is also extremely important that these representatives are empowered by their State to agree a settlement figure on behalf of that State.
- 10.24 If it turns out that an amicable settlement is impossible, it is time to pass the case to competent marine lawyers.
- 10.25 A Member State may choose to take the case to court if:
- All efforts to achieve an out of court settlement fail. Preparing a case for a court hearing is costly in money and human resource, and it should be borne in mind that a trial will identify every weakness in the prepared documentation which may reduce the claim.
 - A Member State may also choose to go to court. This could be driven by many reasons as a government could have a strong opinion about the liability of the polluter, or the main responsibility for the incident.

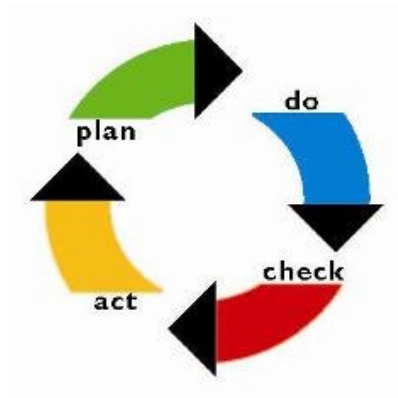
11. PRACTICAL SUMMARY

11.1 Every shipping incident is a unique event and has specific elements that may not have been experienced during another incident. National and international legislation remain the same although the applicability of legislation may vary per incident. It is therefore recommended that scenarios are prepared describing the types of incidents and related topics. The process for incident response planning, cost recovery planning and overall review of lessons learned fits into a management tool named The Plan-Do-Check-Act cycle. Authorities learn lessons from every incident they respond to, not only from the effect of their response measures but also from the claims management issues that may arise many months later. In this chapter the cycle and various steps are explored, however, it should be noted that this list is not exhaustive.

Steps in the process

11.2 The Plan-Do-Check-Act cycle philosophy is applicable to Claims Management, because in the process of handling incidents right from the first hour until settling the claim, involves:

- Preparation and planning;
- Applying the prepared methodology;
- Act accordingly in compiling the claim;
- and
- Checking during the settlement meetings if it is necessary to review aspects of the initial Plan.



- Plan: Make a plan, include the objectives aimed for;
- Do: Execute the plan (act accordingly);
- Check: Compare the results with the objectives;
- Act: Secure the results or apply corrections to meet objectives defined in the Plan.

Preparation (Plan)

- 11.3 Some examples of a typical Plan for pre-incident work is given below, however, this list is not exhaustive.
- Develop a pricing structure for State owned resources and methods of calculation;
 - Develop a system of record keeping and a method of ensuring that all responders understand that this is the responsibility of everyone;
 - Draft an overview of what costs will be charged, including statements on annual costs for storage and maintenance of equipment;
 - Define fees/costs in concurrence with wear and tear of equipment; new for old (replacement cycle);
 - Develop personal daily reporting and registration forms;
 - Describe the organisation handling the compilation of the file leading towards compiling the claim for cost recovery;
 - Develop a strategy with regard to relatively small incidents (small claims) and large-scale accidents (e.g. SEA EMPRESS or PRESTIGE); whether or not to contract-in a service to collate the file and prepare the claim;
 - Describe government to government assistance and related cost recovery;
 - Define way to deal with legal interest. The claimant and polluter can agree to limit the time period of the legal interest because of the time required to compile the claim. However, the claimant is entitled to have the entire period charged;
 - Define type of financial security / guarantee that satisfies the need of your State.

Do

- 11.4 Some examples of typical actions for incident claim work is given below, however, this list is not exhaustive.
- In the event of an incident of sufficient magnitude to require the compilation of a claim, the Plan outlined above will need to be activated. It is highly recommended that an individual be appointed to run the process and ensure the completion of daily reports. The person needs to be meticulous.
 - The appointed individual needs to pursue those involved in the response operation in whatever way, ensuring that all documentation and records are compiled and secured to justify the subsequent claim.
 - Impress on all response staff the necessity to maintain a narrative of activities and hours worked, kilometres travelled, or equipment purchased and that all these investments are sufficiently justified.

Check

- 11.5 Some examples of typical Review criterion regarding claim compilation work is given below, however, this list is not exhaustive.
- Apply planned methodology as agreed in the preparative phase and behave accordingly with regard to tariffs and fees;
 - Include supportive invoices for rented services; annex photographs of deployed response equipment;
 - When special arrangements have been made with the casualty or shipowner's representative outside of the revised tariffs, ensure that the arrangement is clearly noted and signed by an authorised person;

- In compiling the file, it is recommended to adopt a systematic method e.g. by date or by subject.

Act

11.6 Some examples of typical Actions for claim compilation work is given below, however, this list is not exhaustive.

- The preparative phase of the cycle should be reviewed regularly, at least every third year;
- Tariffs, fees and other fixed costs need to be up-dated on an annual basis;
- Record and review lessons learned from every claim settlement. Each of these lessons learned may require the revision of specific areas of the EU States Claims Management Guidelines;
- Share lessons and experience with other Member States.

Defined steps in the process of handling the incident

11.7 The following step by step guidance could be used or adapted by States to fit in with their national policies.

- Make the captain/shipowner's representative of the casualty aware of their liability through a letter of Liability in accordance with national law;
- Request and agree for a first demand bank guarantee or P&I Club letter with the captain/shipowner's representative;
- Ensure that all individuals playing a role in responding to the incident fill out their daily log sheets;
- Compiling the file (dossier) in preparation for drafting the claim commences;
- Collate the supporting evidence, e.g. photographs, invoices, reports;
- Describe the results of the measures taken, both successes and failures. Analyse the failures;
- Regularly inform owners/representatives on evolving costs; consider a request for a down payment;
- For the larger scale incidents, both in time and complexity, arrange for meetings with representing experts from owners;
- Consider the need for a dedicated claims management office and add costs to claim;
- On completion of the response operation and closing the incident file, prepare the draft claim and meet with owners to explain structure of the claim, the various items and the method of calculation;
- Send final claim;
- Start process of negotiations, considering amicable settlement;
- or
- Go to court.

Information to be gathered

11.8 An example of the type of documentation that may be necessary to substantiate a claim:

- letter of liability;

- description of the incident (initial assessment);
- outline of environmental threat;
- report on sample analysis;
- copies of oil spill / chemical spill modelling;
- copies of risk assessments for all operations;
- report on results of collected satellite imagery and aerial remote sensing operations;
- response plan and options including justification for selecting measures;
- copies of relevant weather reports;
- time sheets of staff hours worked (on a daily basis);
- copy of annually defined hire rates on State owned equipment etc;
- daily progress reports;
- copies of minutes of meetings, clearly stating who participated and their role;
- invoices relating to procured equipment and services or contracted companies and the justification report for these actions;
- coastline impact, coastline clean-up; costs for temporary storage; transport and waste treatment;
- report on reinstated cleanliness inspection of the coastline;
- overall report on the response measures to the incident;
- report and invoice on cleaning of equipment; repair and/or additional maintenance of the equipment;
- catalogued photographs of activities;
- Environmental impact;
- Report and cost of primary restoration;
- Report and cost of wildlife response actions.

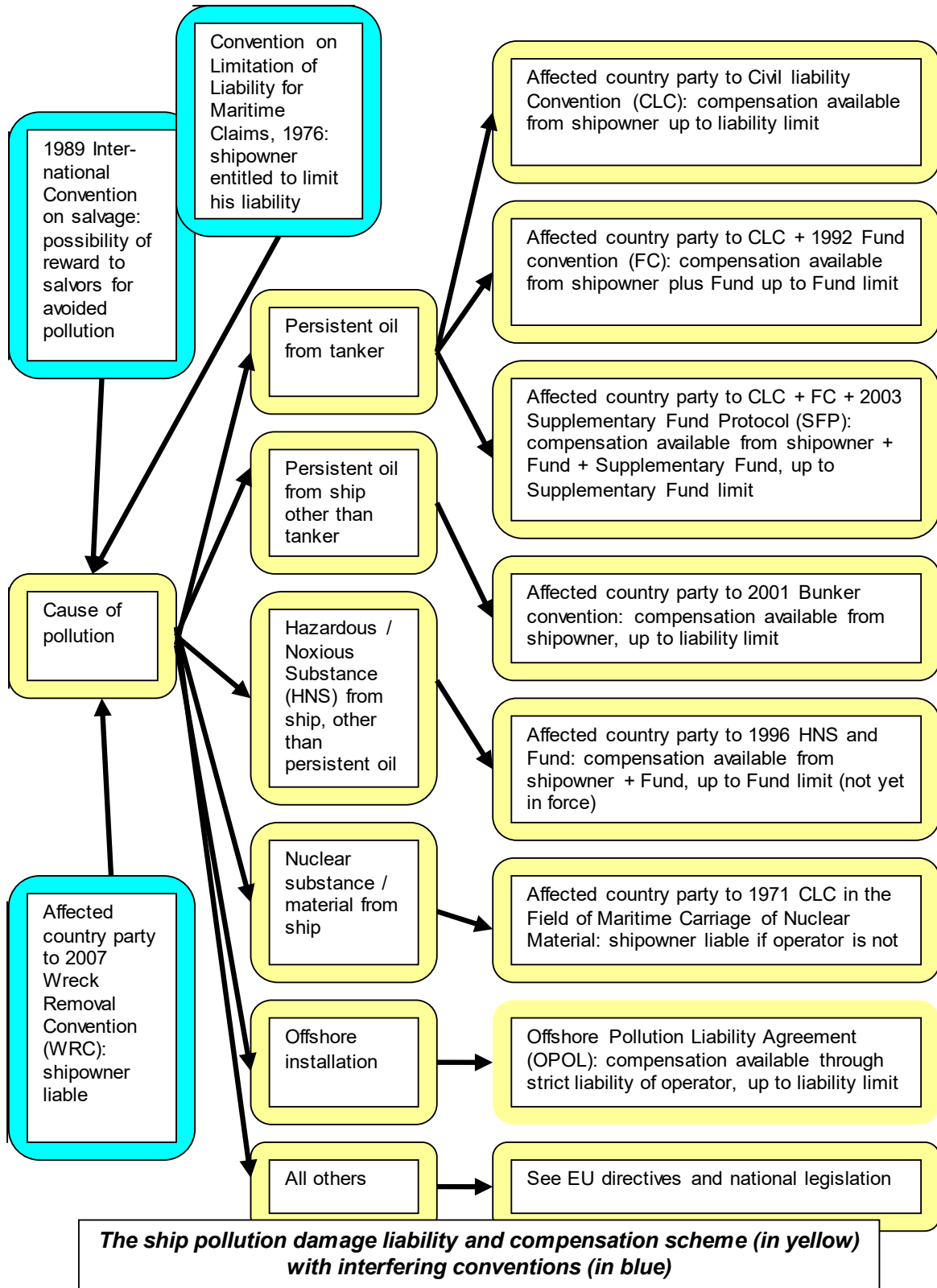
12. RECORDING LESSONS LEARNED

- 12.1 In the event of a maritime incident in the widest sense, the National Contingency Plan is tested in actual conditions. Many of its aspects e.g. communication schemes, response plans, salvage arrangements are later evaluated, and the findings may lead to a review of existing plans. Many incidents, especially those with a large impact such as the PRESTIGE have been presented to a wider audience where experts from Member States discussed various aspects of the management of the maritime incident. However, the issue of Claims Management and the procedures used for cost recovery are seldom addressed.
- 12.2 The need for a “lessons learned” session following a claim is also vitally important. It is necessary to understand those aspects of the process that raised concern, that were thoroughly debated and that required the highest level of justification. Compilation and presentation of a claim, providing the justification for the expenses and proof of the reasonableness of specific parts of the claim and – most importantly – the narrative should also be reflected in a lessons learned session.
- 12.3 Lessons learned is not a descriptive presentation of the figures and facts of the response measures, but it is to make Member States’ claims management experts aware of the relevant aspects of a claim that were profoundly disputed in the settlement with the representative of the polluter. Especially those issues that cause consideration for review of these Guidelines on claims management.
- 12.4 As most Member States may not have much experience in claims management, it is not feasible to provide an exhaustive list of items to be addressed in this chapter on lessons learned. However, the Working Group is confident that the European co-operation now established will provide guidance to any Member State preparing a presentation of the lessons learned in the process of cost recovery after an incident.

Appendix A LIST OF WEBSITES

- Equasis: <http://www.equasis.org>
- European Union legislation and treaties: <http://eur-lex.europa.eu>
- International Atomic Energy Agency: <http://www.iaea.org>
- International Group of P&I Clubs: <http://www.igpandi.org>
- International Maritime Organization: <http://www.imo.org>
- International Monetary Fund (for SDR conversion rates): <http://www.imf.org>
- International Oil Pollution Compensation Funds: <http://www.iopcfund.org> & <http://www.hnsconvention.org>
(for detailed information related to the 1996 HNS Convention and its 2010 Protocol)
- International Petroleum Industry Environmental Conservation Association: <http://www.ipieca.org>
- International Tanker Owners Pollution Federation Ltd: <http://www.itopf.com>
- London Court of International Arbitration: <http://www.lcia-arbitration.com>
- OECD Nuclear Energy Agency: <http://www.oecd-nea.org>
- Offshore Pollution Liability Association: <http://www.opol.org.uk>
- Sea-web: <http://www.maritime.ihs.com>

Appendix B MARINE POLLUTION DAMAGE LIABILITY AND COMPENSATION SCHEME



Appendix C OVERVIEW OF LEGAL INSTRUMENTS REGARDING LIABILITIES AND COMPENSATION

Substance or type of claims	Legal instruments (Conventions, Directives, Agreements)	Entry into force ¹⁹	Size (GT)	Value	Value (EUR)	Web link
All "maritime" claims except claims covered by other Conventions, as admitted by the national legislation.	Convention on Limitation of Liability for Maritime Claims (LLMC), 19 November 1976	1 December 1986	Up to 500	<u>For personal claims:</u> 333,000 SDR ²⁰	402,410	www.imo.org
			Over 500	<u>For personal claims:</u> + Additional amount calculated proportionally to the tonnage	-	
			Up to 500	<u>For other claims:</u> 167,000 SDR	218,560	
			Over 500	<u>For other claims:</u> + additional amount calculated proportionally to the tonnage	-	
as above.	Protocol of the Convention on Limitation of Liability for Maritime Claims (LLMC), 3 May 1996	8 June 2015	Up to 2,000	<u>For loss of life or personal injury claims:</u> 3,020,000 SDR	3,784,736	www.imo.org
			Over 2,000	<u>For loss of life or personal injury claims:</u> + additional amount calculated proportionally to the tonnage	-	
			Up to 2,000	<u>For property claims:</u> 1,510,000 SDR	1,892,368	
			Over 2,000	<u>For property claims:</u> + additional amount calculated proportionally to the tonnage	-	

¹⁹ Status of Conventions can be found on the International Maritime Organization website: www.imo.org

²⁰ The daily conversion rates for Special Drawing Rights (SDRs) can be found on the International Monetary Fund IMF website: http://www.imf.org/external/np/fin/data/rms_five.aspx#fn1

Substance or type of claims	Legal instruments (Conventions, Directives, Agreements)	Entry into force	Size (GT)	Value	Value (EUR)	Web link
-	International Convention on Salvage, 28 April 1989	14 July 1996	-	Salvor's expenses + may be increased up to a maximum of 100% of those expenses	-	www.imo.org
Claims for cost of locating, marking and removing the wreck.	Nairobi International Convention on the Removal of Wrecks , 18 May 2007	14 April 2015	-	LLMC Limitation unless expressly excluded by the State Party when ratifying LLMC, then national law applies	LLMC Limitation (unless see previous comment)	www.imo.org
Pollution damage caused by Persistent oil from tanker.	International Convention on Civil Liability for Oil Pollution Damage (CLC), 29 November 1969	19 June 1975	-	Max 14,000,000 SDR per incident	Max 16,918,160 per incident	www.imo.org
Pollution damage caused by Persistent oil from tanker.	International Convention on Civil Liability for Oil Pollution Damage (CLC) 27 November 1992, as amended	30 May 1996	Up to 5,000	4,510,000 SDR	5,450,064	www.imo.org www.iopcfund.org
			From 5,000 to 140,000	4,510,000 SDR + additional amount calculated proportionally to the tonnage	5,450,064 + additional amount based on the tonnage	
			Over 140,000	89,770,000 SDR	108,481,659	
Pollution damage caused by Persistent oil from tanker, as in CLC.	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (IOPC Fund) 27 November 1992, as amended	30 May 1996	-	Max 203,000,000 SDR	Max 245,313,320	www.imo.org www.iopcfund.org
as above	Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Supplementary Fund), 16 May 2003	3 March 2005	-	Max 750,000,000 SDR	Max 906,330,000	www.imo.org

Substance or type of claims	Legal instruments (Conventions, Directives, Agreements)	Entry into force	Size (GT)	Value	Value (EUR)	Web link
Pollution damage caused by Persistent oil from ship other than tanker	International Convention on Civil Liability for Bunker Oil Pollution Damage, 23 March 2001	21 November 2008	-	LLMC Limitation	LLMC Limitation	www.imo.org
Pollution damage caused by Hazardous and Noxious Substances from ships	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances (HNS), 3 May 1996, as amended by the draft Protocol of 2010 to the HNS Convention 1996	-	Up to 2,000	10,000,000 SDR	12,084,400	www.imo.org
			From 2,000 to 50,000	10,000,000 SDR + additional amount calculated proportionally to the tonnage	12,084,400 + additional amount calculated proportionally to the tonnage	
			Over 50,000	10,000,000 SDR + additional amount calculated proportionally to the tonnage Max 100,000,000 SDR	12,084,400 + additional amount calculated proportionally to the tonnage Max 120,844,000	
Pollution damage caused by Hazardous and Noxious Substances from ships, as in HNS Convention.	Hazardous and Noxious Substance Fund	-	-	Max 250,000,000 SDR	Max 302,110,000	www.imo.org
Damage caused by nuclear substance	Convention relating to Civil Liability in the field of Maritime Carriage of Nuclear Material, 17 December 1971	15 July 1975	-	Limitation in other Conventions	Limitation in other Conventions	www.imo.org
Damage caused by nuclear substance	Convention on Civil Liability for Nuclear Damage (Vienna Convention), 21 May 1963, as amended by the Protocol of 1997	4 October 2003	-	Min 300,000,000 SDR	Min 362,532,000	www.imo.org

Substance or type of claims	Legal instruments (Conventions, Directives, Agreements)	Entry into force	Size (GT)	Value	Value (EUR)	Web link
Damage caused by nuclear substance	Convention on the Third party Liability in the field of Nuclear Energy (Paris Convention), 29 July 1960, as amended by the Protocols of 1964 and 1982	7 October 1988	-	Min 5,000,000 SDR Max 15,000,000 SDR (a lot of States: 150,000,000 SDR)	Min 6,042,200 Max 18,126,600	www.imo.org
Offshore installation	Offshore Oil Pollution Agreement (OPOL), as amended	1 May 1975	-	Max US\$ 250,000,000 per incident	Max 223,000,000 per incident	www.opol.org.uk
Persistent oil from tanker	STOPIA (Small Tanker Oil Pollution Indemnification Agreement), March 2005	-	Up to 29,548	Max 20,000,000 SDR	Max 24,168,800	www.itopf.com www.igpandi.org
Persistent oil from tanker	TOPIA (Tanker Oil Pollution Indemnification Agreement)	-	-	-	-	www.itopf.com www.igpandi.org
Environmental damage caused by pollution	Directive on Environmental Liability 2004/35/EC	-	-	LLMC Limitation or specialised compensation regime if covered by any, if not – national laws apply (and national limitations or liability can be unlimited)	LLMC Limitation or specialised compensation regime if covered by any, if not – national laws apply (and national limitations or liability can be unlimited)	http://eur-lex.europa.eu
This Directive does not deal with claims for compensation of a damage, it only introduces an obligation for ships to carry insurance for maritime claim	Directive on the insurance of shipowners for Maritime Claims 2009/20/EC	-	Over 300	LLMC 1996 Limitation	LLMC 1996 Limitation	http://eur-lex.europa.eu

Appendix D LETTER OF UNDERTAKING (to be printed on P&I note paper)

To: [YOUR ORGANISATION]

"[VESSEL NAME] AT [AREA] ON OR ABOUT [DATE] ("THE INCIDENT")

IN CONSIDERATION of your refraining from arresting, or otherwise detaining the "[VESSEL NAME]" or any other vessel or property in the same or associated ownership, management, possession or control for the purpose of obtaining security in respect of your claim arising out of the above Incident, **AND IN CONSIDERATION** of your refraining from commencing and/or prosecuting legal or arbitration proceedings otherwise than before the court referred to below, **WE HEREBY IRREVOCABLY UNDERTAKE** to pay you on demand such sum or sums as may be due to you from the owners of the "[VESSEL NAME]" in respect of your said claims either by agreement between the parties or by final unappealable judgment of the [COUNTRY] Courts **PROVIDED ALWAYS** that our liability hereunder shall not exceed the sum of [value], plus interest and costs.

The owners of the "[VESSEL NAME]" hereby **WARRANT** that the registered owners of the vessel at the time of the Incident were [INSERT OWNER'S NAME AND REGISTERED ADDRESS] and that the vessel was not demise chartered out at the time of the Incident.

The owners of the "[VESSEL NAME]" hereby **AGREE** to submit to the exclusive jurisdiction of the High Court of England and Wales in respect of the claims of the [YOUR ORGANISATION] arising out of the Incident, [] Law to apply.

Within 14 days of a written request from [YOUR ORGANISATION] to do so, the Owners of the "[VESSEL NAME]" hereby **UNDERTAKE** that they will irrevocably nominate Messrs [Solicitors] to accept service of proceedings on their behalf in respect of the claims of the [YOUR ORGANISATION] brought in the [LEGAL BODY] and **FURTHER UNDERTAKE** to submit to and not to dispute on any ground whatsoever the jurisdiction of the above mentioned court to determine such claims.

We **HEREBY WARRANT** that we have received irrevocable authority from the registered owners of the "[VESSEL NAME]" to instruct solicitors as aforesaid and give the undertakings and to warranty and to agree the matters set out above on their behalf.

This agreement shall be governed by [] law and any dispute arising thereunder shall be submitted to the exclusive jurisdiction of the [] Courts. We confirm our registered or principal office is situated at [].

Signed**P&I**

For themselves and for and on behalf of the owners of the "[VESSEL NAME]"

Dated this [DATE]

Appendix E ROTTERDAM GUARANTEE FORM 2000

We the undersigned **(A) (NAME OF P&I)** waiving and renouncing all benefits and exceptions, conferred on guarantors, and the provisions of art **(LEGAL BASIS)** hereby declare to bind ourselves as surety to and in favour of **(B) (NAME OF THE ORGANISATION/COMPANY)** ("the Creditor") by way of security for the true and proper discharge by **(C) (NAME OF THE COMPANY)** ("the Principal Debtor") of whatever the Principal Debtor may be found to be indebted to the Creditor by virtue of a Judgement (which is not or no longer subject to appeal) rendered against the Principal Debtor by a competent Court of Law having jurisdiction in the matter hereinafter mentioned, or by virtue of a valid Arbitration Award which is not or no longer subject to appeal or by virtue of an amicable settlement between the parties, in respect of the principal amount, interest and costs of suit relating to a possible claim for:

Possible damage to be caused:

- a) to properties of **(COUNTRY)**
- b) by pollution originating from the **(VESSEL NAME)**
- c) owing to salvage ship plus cargo in case of sinking during further transport under tugs assistance of mentioned **(VESSEL NAME)** from **(AREA)**.

The expression "a Judgement (which is not or no longer subject to appeal)" shall also include a Judgement by default rendered against the Principal Debtor, provided that such Judgement has been served upon the undersigned and provided that no appeal has been entered against such Judgement within six weeks after that service.

If the Principal Debtor is declared bankrupt or granted a suspension of payment or if a debt rescheduling scheme has been implemented regarding the Principal Debtor, the Creditor is entitled to bring legal proceedings against the undersigned in order to have the indebtedness of the Principal Debtor ascertained by the Court. In that event, the undersigned undertakes to pay the Creditor the entire indebtedness of the Principal Debtor as established by a Judgement (which is not or no longer subject to appeal) rendered in those proceedings.

This guarantee is hereby given without any prejudice whatever to the question of liability or to the amount involved or to any other matter in issue (including any question as to statutory limitation of liability), and for a maximum amount of **(F) (AMOUNT IN €)** for the purpose of the release from and/or the prevention of a conservatory attachment of **(G) (VESSEL NAME)** on account of the above mentioned claim(s).

This guarantee shall be governed by the law of **(COUNTRY)**. The undersigned and the Creditor submit to the jurisdiction of the competent Court of Law **(LOCATION)** for any disputes and claims hereunder.

This guarantee shall expire unless before or within **(H) (TIME-LIMIT)** months from the date of signing hereof legal proceedings have been instituted with relation to the aforesaid issue in a competent Court of Law having jurisdiction in the matter, or against the undersigned, as provided in the third paragraph above, or a Deed of Compromise has been signed or an appointment of one or more Arbitrators has been notified or requested or proposed under an arbitration clause, or an amicable settlement has been concluded between the parties.

This guarantee also expires if the proceedings before the Court or the Arbitration Proceedings, instituted by the Creditor within the time limit mentioned in the previous paragraph, have all led to a decision, not or no longer subject to appeal, that the Court or Arbitrator(s) is (are) incompetent or that the Creditor has no right to claim or that the claim of the Creditor is dismissed or that the proceedings are struck out for want of prosecution or if the proceedings have been finally withdrawn by the Creditor without an amicable settlement having been concluded.

Date of signing:

Signature

Appendix F EXAMPLE NOTIFICATION LETTER

TEL :

DDI :

Fax :

[NAME OF OWNERS]

Our Ref :

[FULL ADDRESS]

Date :

Dear Sirs

[SHIP NAME, INCIDENT, AND DATE]

[YOUR ORGANISATION] exercises [State] Government's responsibilities for taking, or co-ordinating measures to prevent, reduce and minimise the effects of marine pollution inside the [jurisdiction]. Actions are undertaken by the [your organisation] on behalf of the Secretary of State pursuant to [legal basis].

This letter is to inform you that we will shortly be submitting a claim pursuant to section [legal instrument], for the costs of measures reasonably taken by [State] in responding to the [INCIDENT TYPE] of the [VESSEL NAME]. The claim totals [] and a breakdown of the costs is enclosed together with supporting documents and vouchers. A full set of documents has also been forwarded to the P&I Club [NAME OF P&I].

Please acknowledge receipt of these documents by signing and returning the attached copy of this letter.

Yours faithfully

Appendix G LIST OF POLLUTION RESPONSE EQUIPMENT AND RATES (examples)

This table is an example of the methodology explained to calculate daily rates and is for demonstration purposes only.

The formula used to determine the daily hire rate is the following (see at paragraph 8.15):

$$\text{Rate per day} = (\text{list value})^2 / \text{life expectancy}$$

In this example the percentage used to calculate standby rate is 50%.

EQUIPMENT	LIST VALUE (LV) (€)	LIFE EXPECTANCY (LE) (DAYS)	DAILY RATE (=LV*2/LE) (€/DAY)	
			USE	STAND BY*
SKIMMER	43,587.9	180	484.31	242.15
POWER PACK	26,872.56	180	298.58	149.29
EASY TANK 10 M3	4,461.93	90	99.15	49.58
OCEAN BOOM (€/M)	672.21	90	14.94	7.47
SHORE BOOM (€/M)	112.86	30	7.52	3.76
PORT BOOM (€/M)	86.13	30	5.74	2.87

*RATE APPLIED WHILE BEING IN STANDBY, TRANSPORT, CLEANING OR REPAIR.

Appendix H EXAMPLE of MATRIX of STAFF DOCUMENTS

To be collated for support when compiling a claim following a shipping incident

Name	Expense	Overtime	Travel Time	Personal Log	Hire Car Docs	Mobile Phone Bill

Appendix I LIST of ACRONYMS

CLC	International Convention on Civil Liability for Oil Pollution Damage
CMWG	Claims Management Working Group
CTG MPPR	Consultative Technical Group for Marine Pollution Preparedness and Response
EEZ	Exclusive Economic Zone
EMSA	European Marine Safety Agency
ETV	Emergency Towing Vessel
EU	European Union
FPSO	Floating Production Storage and Offloading Vessels
FSU	Floating Storage Units
GT	Gross Tonnage
HNS	Hazardous and Noxious Substance
IAEA	International Atomic Energy Agency
IMF	International Monetary Fund
IMO	International Maritime Organization
IOPC Funds	International Oil Pollution Compensation Funds
ISU	International Salvage Union
ITOPF	International Tanker Owners Pollution Federation Ltd
LLMC	Limitation of Liability for Maritime Claims
LOF	Lloyds Open Form
LOU	Letter of Undertaking
MCA	Maritime and Coastguard Agency
MRCC	Maritime Response Co-ordination Centre
OECD	Organization for Economic Co-operation and Development
OPOL	Offshore Pollution Liability Agreement
OSINET	Oil Sample Identification Network
P&I Club	Protection and Indemnity Club
SCOPIIC	Special Compensation Protection and Indemnity Club Clause
SCR	Special Casualty Representative
SDR	Special Drawing Rights
STOPIA	Small Tanker Oil Pollution Indemnification Agreement
TOPIA	Tanker Oil Pollution Indemnification Agreement
UK	United Kingdom
US	United States

European Maritime Safety Agency

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emsa.europa.eu

