



**Report to the European
Commission on a possible
amendment of the
Directive 2002/59 for the
purpose of the
implementation of the
HNS Convention in the EU
Member States**

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

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Summary

The amendment of the Directive 2002/59 in order to monitor the movements of the HNS cargo and verify the reports of the receivers of such cargo for the purpose of the HNS Convention seems technically feasible, however it poses a certain number of difficulties and it requires the adoption of several additional measures:

- extending the shipper's obligation to provide information by additional elements,
- obliging the shipper to notify any changes in the information on the HNS cargo,
- extending the ship's operator's/ agent's/ master's obligation of HAZMAT notification by additional elements,
- introducing an additional notification by the receiver of the HNS cargo in the port of discharge.

The note contains two alternative proposals for an eventual amendment of the Directive:

1. to oblige the shipper to inform the ship's master about the port of discharge of the goods, oblige the master to add the port of discharge of the goods to his HAZMAT notification and oblige the receiver to submit a notification upon the receipt of the goods; or
2. to oblige the shipper to inform the ship's master about the port of discharge of the goods and the identity of their receiver, oblige the master to add the port of discharge of the goods and their receiver to his HAZMAT notification and oblige the receiver to submit a notification upon the receipt of the goods.

I. The HNS Convention

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

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

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

accounts: separate accounts for oil, LNG (liquefied natural gas) and LPG (liquefied petroleum gas) and a general account for bulk solids and other HNS.

4. The IOPC Fund developed a system called HNS Convention Contributing Cargo Calculator. Potential contributors can input data on receipts of individual substances, identify total receipts for each account and report those receipts to the competent authority in their State. The State will then transmit the aggregate data to the Fund. It is envisaged that this system will be the basis for invoicing by the HNS Fund. The Convention does not provide how the reporting should be done so it is up to the State Parties to organise it.

5. During the HNS workshop organised by EMSA in February 2006 in Brussels a proposal of self-reporting was submitted. Each receiver should himself inform the competent authority in the State about the HNS substances received by sea during the previous year. The States should however develop **verification mechanisms** in order to check if the receivers fulfil this obligation correctly. We are now looking for possible verification mechanisms. One of them could be the SSN system which provides access to the information notified on the basis of the Directive 2002/59. This directive should be however amended if it is to constitute a tool for the purpose of the HNS reporting.

II. Obligations of the shipper and ship's operator, agent or master in the Directive 2002/59

1. According to art. 12 of the Directive 2002/59, a shipper of dangerous or polluting goods has an obligation to provide the ship's operator or the master with the declaration containing information listed in Annex I(2).

According to point 2(a), Annex I of the Directive, the information in question is:

- the correct technical names of the dangerous or polluting goods,
- the United Nations (UN) numbers where they exist,
- the IMO hazard classes in accordance with the IMDG, IBC and IGC Codes and, where appropriate, the class of the ship as defined by the INF Code,
- the quantities of such goods and
- if they are being carried in cargo transport units other than tanks, the identification number thereof.

2. The goods referred to in the directive are equivalent to the goods referred to in the HNS Convention that developed the list of HNS substances on the basis of the same IMO codes (IMDG Code, IBC Code, IGC Code, Annexes I-III of MARPOL). The Directive however also

includes radioactive substances in reference to the INF Code which are out of the scope of the HNS Convention.

3. For the purposes of the HNS Convention the information required is the types and quantities of the HNS discharged and who the physical receiver is. According to the present Directive 2002/59, the shipper is only to inform the ship's operator or the master about the types and quantities of HNS which are offered for carriage in a port of a Member State. This means that information is only available in respect of HNS at the moment of loading on board. The information about the port of discharge and the receiver is not available.

4. Since the shippers are already obliged to surrender quite comparable information under Article 12, ref. Annex I(2), it would be useful to use the means provided by the Directive 2002/59 for the purpose of the HNS Convention. For that purpose shipper should provide the ship's operator or the master with additional information in relation to the present wording of the Article 12, ref. Annex I(2): to inform them about the identity of the receiver of the goods and the port of discharge or at least about the port of discharge. It is thus proposed to extend par. 2(a) of Annex I with the additional fields of "port of discharge" or "port of discharge" and "receiver".

5. The amended par. 2(a) should read as follows:

"(a) the correct technical names of the dangerous or polluting goods, the United Nations (UN) numbers where they exist, the IMO hazard classes in accordance with the IMDG, IBC and IGC Codes and, where appropriate, the class of the ship as defined by the INF Code, the quantities of such goods and, if they are being carried in cargo transport units other than tanks, the identification number thereof and the port of discharge"/ OR "the port of discharge and the receiver;"

6. The port of discharge of goods and especially the receiver can however change during the voyage of the vessel. For the purpose of the HNS Convention it would be useful to impose an additional obligation on the shipper to inform the ship's operator or the master about any such changes and correlate it with the similar obligation of the ship's master in par. 5 of the Annex III.

7. According to art. 13 of the Directive 2002/59, the operator, agent or master of a ship, irrespective of its size, carrying dangerous or polluting goods and leaving a port of a Member State shall, at the latest at the moment of departure, notify the information indicated in Annex I(3) to the competent authority designated by that Member State.

If the vessel is coming from a port located outside of the Community and bound for the port of a Member State or an anchorage located in a Member State's territorial waters, its operator,

agent or master shall, at the latest upon departure from the loading port or as soon as the port of destination is known, notify the information indicated in Annex I(3) to the competent authority of the Member State in which the first port of destination or anchorage is located.

According to point 3.B(a), Annex I of the Directive, the information in question is:

- the correct technical names of the dangerous or polluting goods,
- the United Nations (UN) numbers where they exist,
- the IMO hazard classes in accordance with the IMDG, IBC and IGC Codes and, where appropriate, the class of the ship as defined by the INF Code,
- the quantities of such goods,
- their location on board and
- if they are being carried in cargo transport units other than tanks, the identification number thereof.

8. We can benefit from the Directive 2002/59 since the ship operator, agent or master are already obliged to surrender quite comparable information under Article 13, ref. Annex I(3). However the Directive has to be amended in order to include the additional HNS reporting information. This inclusion should give added value to the Directive 2002/59 since we should take advantage of the present situation and the SafeSeaNet system. Thus it is proposed the par. 3.B(a) of Annex I could be extended by two additional fields: "port of discharge" and "receiver". It has to be noted however that the purpose of the HAZMAT notification in the Directive 2002/59 and the SafeSeaNet system serving the exchange of the information collected on the basis of that Directive are the protection of the environment and the maintenance of safety at sea. Collecting commercial information, such as the name of the receiver of the goods would give SSN a completely different character. To avoid that, it is in this option proposed that par. 3.B(a) of Annex I could be extended by only one additional field: "port of discharge".

9. The amended par. 3.B(a) should read as follows:

"B. Cargo information :

(a) the correct technical names of the dangerous or polluting goods, the United Nations (UN) numbers where they exist, the IMO hazard classes in accordance with the IMDG, IBC and IGC Codes and, where appropriate, the class of the ship as defined by the INF Code, the quantities of such goods and their location on board and, if they are being carried in cargo transport units other than tanks, the identification number thereof and the port of discharge"/ OR "the port of discharge and the receiver;"

10. It is worth noting that par. 5 of the Annex III foresees that the master of the ship will forthwith inform the competent authority or port authority concerned of any change to the information notified pursuant to the Annex I. Therefore this paragraph will apply also to the amended par. 3.B(a) which means that that any change of the port of discharge (and the receiver if the second option was to be chosen) will be reported to the competent authority. Despite of the obligation of par. 5, it is not realistic to expect that the master will inform the competent authority of any change in the port of destination (especially in case of the vessel bound for an EU port from outside the EU which changes the port of destination to a port outside the EU).

11. In order to avoid basing the verification system on incorrect information, it is strongly recommended that a confirmation message be submitted by the receiver as soon as the vessel discharges the HNS at the designated port of discharge. The physical receiver is by commercial terms obliged to sign a proof of receipt. The confirmation message will be a new message which has to be further studied in order to clarify technical and procedural issues.¹

12. It has to be reminded that the information is to be stored by the National Contact Points of SSN for a period of 18 months. Thus during this period it can be retrieved and provided on request. Nevertheless the information will only be retrieved through SafeSeaNet system for 30 days because this is the period during which the information archived by the national systems can be accessed through SSN. For the purpose of the HNS Convention a regular monitoring of that information (less than every 30 days) by the relevant administration would thus be required in order to use the information for monitoring of the annual HNS reporting.

13. Finally it is noted that the reporting system must be reliable so that the contributors would have confidence in the system. The standards of SSN provide a framework for the functions of the national systems and the European system including the transmission of message, performance levels and operating procedures. Therefore it would be a benefit for the Member States to apply the same standards for the purposes of the HNS Convention. SafeSeaNet system complies with certain standards ensuring:

- Speed (timely exchange of messages);
- Reliability (distribution of message and system information in the event of failure of communication link or other);

¹ Some issues regarding practical application of the SSN need further clarification such as:

- The correlation and link between the confirmation message and the originated HAZMAT message;
- The access rights of the receiver allowing the access to the HAZMAT messages that he has the right to confirm;
- The checking rules that will allow the confirmation message to be sent only after the arrival of the vessels at the port of discharge;
- The mechanism for collecting and storing the information by the national SSN system used at the port of discharge so the national authorities could access the information when controlling the HNS reporting by the receivers.

- Accuracy (correctness of information delivered);
- Efficiency (economic and smooth flow of message);
- Accountability (tracking of messages in the system);
- Security (confidentiality and authenticity).

III. The identity of the receiver

1. If the second option was to be chosen – to oblige the shipper and then the master/operator/agent to inform also about the identity of the receiver of the goods, it has to be noted that the information obtained through the means of the Directive 2002/59 would concern only the physical receiver of the goods in the port of discharge. It fulfils the requirements of the HNS Convention as according to its art. 4(a) “the receiver is the person who physically receives contributing cargo discharged in the ports and terminals of a State Party (...)”. However, if the physical receiver acts as an agent for another person and if the agent discloses the principal to the HNS Fund, the principal should be deemed the receiver for the purpose of the HNS Convention.

2. It is not going to be possible to track the principal through the SSN system. It is not necessary though. The physical receiver should still “disclose the principal to the HNS Fund” so the Fund could invoice the right person. In fact, according to the proposals of the self-reporting obligation, the physical receiver – regardless if he acted on his own or on someone else’s behalf – should inform the State Party about the amounts and types of the HNS substances that he brought by sea during the previous year and, if he acted on someone else’s behalf, about the identity of the principal. Consequently, the State Party using the SSN data as a verification mechanism should be aware that there might be two kinds of physical receivers: those that will be the contributors to the HNS Fund themselves and those that will pass this obligation further, to the principal. The SSN platform will not contain any indication as to that but ideally the State Party should receive this information directly from the receivers and use SSN only to verify it.

3. For practical reasons, art. 3 of the Directive 2002/59 should be extended by a definition of the “receiver”. It should read as follows: “*receiver*” means a person who physically receives dangerous or polluting goods discharged in the ports and terminals of a Member State.

IV. Conclusions and outstanding difficulties

1. The scope of the application of the Directive 2002/59 and HNS Convention slightly differ. The Directive applies to the goods in containers, to bulk chemicals and the radioactive goods

according to the INF Code while the HNS Convention applies mostly to substances in bulk and to substances covered by the IMDG Code, however transported.

2. According to the HNS Convention, in case of sea transport of liquefied natural gas, the person liable for contributions to the HNS Fund is a person who held a title to an LNG cargo prior to its discharge in a port or terminal of a State party. Thus the solutions proposed in points II and III of this note would not serve the purpose of verifying the reporting to the HNS Fund in relation to the transport of the LNG by sea. This could probably be solved by imposing in the national laws an obligation on the physical receiver of LNG to report (through the same reporting channels as mentioned in points III.1-2 above) who sold him the cargo. It is however out of the scope of the amendment of the Directive 2002/59.

3. Information submitted to SSN can be exchanged by the national administrations of all the participating States. That means that information on the type and volume of the cargo, the port of its discharge and eventually on its receiver would also be accessible through the SSN system for 30 days. Therefore if any national administration would like to use the SSN information for the purpose of monitoring of the annual HNS reporting, it would have to monitor the SSN on regular basis, more often than every 30 days.

4. Due to the fact that the HAZMAT notification is submitted before the actual discharge of the goods and, in case of an intra-EU voyage, it is submitted in the port of departure, as well as to the fact that the information is accessible through SSN only for 30 days, the whole procedure will not serve the purposes of the HNS Convention unless a supplementary notification of a receiver is introduced (see paragraph II.11). This however would require additional arrangements and it would be useful to examine the feasibility of this option more in depth before taking a final decision.

5. Two options of an eventual amendment of the Directive 2002/59 are therefore presented. The first option would be: (a) to oblige the shipper to inform the ship's master about the port of discharge of the hazardous or polluting goods, (b) to oblige the master to add the port of discharge of the goods to his HAZMAT notification and (c) to oblige the receiver to submit a notification upon the receipt of the goods. This amendment would allow to maintain the current character of the SSN by not adding any commercial information. However it would only direct to the port of discharge of the goods and the identity of the receiver in this port would only be known after the receiver himself sends a notification of the receipt of the goods.

The second option would be (a) to oblige the shipper to inform the ship's master about the port of discharge of the hazardous or polluting goods and the identity of their receiver, (b) to oblige the master to add the port of discharge of the goods and their receiver to his HAZMAT notification and (c) to oblige the receiver to submit a notification upon the receipt of the goods. This option would mean introducing commercial (not safety-related) information to SSN even if it was not designed for that purpose, however it would allow for correlation of the information

on the receiver of the goods from the moment of loading even if it has to be noted that this information is not always available upon loading and it might be subject to changes during the carriage.

Both options would involve imposing an additional obligation on the ship's operator/ master/ agent, who – under the HNS Convention – are not involved and bear no responsibility. Moreover, in both options the final burden of the confirmation of the receipt of goods is still on the receivers, who are at the same time obliged under the HNS Convention to report their receipt in the State Party of residence through the HNSCCC programme.