

LNG worries blow up

An urgent call for the Nordic countries to ratify a convention that provides up to \$390m compensation for a chemical or gas carrier disaster is being made by shipowners' organisations.

The five Nordic shipowners' associations are pressing the alarm button over reports that key international convention minded countries such as the UK and Canada are having second thoughts about implementing the Hazardous and Noxious Substances (HNS) Convention of 1996.

The fear is that moves to revise the HNS convention will produce considerable delay and lead to the European Commission abandoning the principle that payment of compensation would be split between shipowners and cargo interests making owners 100% liable.



Worries centre on whether compensation funds can be collected from those who hold title to LNG cargoes immediately prior to discharge.

Under the convention as present drafted up to SDR 250m (\$390m) of compensation is available for a HNS disaster, with the shipowner contributing up to SDR 10m for a ship up to 2,000-gt, with the figure rising to a maximum of SDR 100m for vessels over 100,000-gt

The problem has flared up because of issues described as of a legal-technical nature by the Danish, Norwegian, Swedish, Finnish and Aland shipowners' associations whose directors have jointly sent a plea to their governments.

Ratification by the four countries would probably be sufficient to trigger the provisions for the entry into force of the HNS convention and so avert the fear it will be revised or abandoned.

The legal-technical issue mainly relates to the special treatment of LNG under the HNS conventions, although there are also some concerns about administrative issues relating to packaged chemicals.

LNG is regarded as a special category of hazardous cargo, so would have a separate fund from chemicals and other hazardous substances.

But the wording of the HNS convention crucially differs from the well established oil pollution conventions that were the model.

The cargo interest responsible for paying oil pollution compensation are the receivers of cargo. In the case of LNG it is the parties holding title to cargoes immediately prior to discharge.

There are fears that it may prove impossible to collect compensation from title holders for various reasons. The most obvious issue arises from title owners located in countries that are not parties to the HNS convention refusing to pay.

It appears that in such an eventuality the liability would unfairly fall on contributors to the general fund.

Norwegian Shipowners' Association legal chief, Karoline Bohler, says all conventions are compromises, but ratifying HNS is the fastest and best solution to replacing the present compensation system, based on the lower limits of the 1976 Limitation of Liability for Maritime Claims Convention.

"It is not necessary or a good thing to stop or postpone the ratification process. It is possible to solve any outstanding issues during the implementation process," she adds.

Bohler says that Oslo university professor, Erik Rosaeg and a HNS correspondence group that has played a key role in fleshing out the details of how the convention would work has come up with solutions to most or all of the questions about LNG.

The reports of the UK and Canada having second thoughts about HNS are regarded as particularly worrying as both are notably convention minded countries that have influence in maritime diplomatic circles.

By [Jim Mulrenan](#) in London

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To the Nordic Maritime Authorities and relevant ministries

Call for urgent ratification of the Hazardous and Noxious Substances Convention 1996

The Legal Committees/Maritime Law Committees of the Nordic Shipowners' Associations met on 26 September 2007 in Copenhagen in order to consider current maritime law matters.

The Associations agreed that high priority should be given to early ratification of the Hazardous and Noxious Substances Convention (HNSC) by all the Nordic countries. Thereby the entry into force of the 1996 HNSC can be ensured.

The HNSC is a very important convention for the following reasons:

- HNSC provides for a comprehensive coverage of damages caused by HNS substances which potentially may cause significant and catastrophic damages. Via strict liability, compulsory insurance and the HNS Fund, the HNSC ensures speedy and effective compensation.
- HNSC is of great importance to all stakeholders - those suffering HNS damage, those undertaking cleaning up measures, governments, shippers and carriers.
- HNSC supplements the liability and compensation regime for oil pollution damage caused by oil tankers established many years ago (The Civil Liability Convention (CLC) and the Fund Convention (FC)). In addition to pollution the HNSC also covers other kinds of HNS damage, e.g. poisoning, explosion, fire etc.
- HNSC provides for sharing of the costs of compensation between shipowners and cargo interests. This is very important and recognises the maritime chain of responsibility. It also secures the necessary amount of compensation in order to cover the major incidents.

- The geographic scope of the system is wide. The system applies to HNS damage, or threats of HNS damage, in a member State's exclusive economic zone (up to 200 miles from the shore), and to action taken outside that area to prevent damage within it. Moreover, HNS damage from passing vessels, which do not enter the ports of a member State, is covered.
- As long as the HNSC has not entered into force, carrier liability for HNS damage remains limited under the Global Limitation Convention (LLMC). This Convention, which applies to the generality of maritime claims, does not by far provide the same level of compensation as the HNSC or govern liability for HNS damage.

Unfortunately it has become clear that a number of governments are hesitant or even opposed to ratify the 1996 HNSC. Some governments argue that ratification cannot take place unless workable solutions are found on legal-technical problems, while others seem to have hesitations about the merit of the HNSC.

We strongly believe that entry into force of the HNSC is a question of having the necessary political will to implement the Convention. In fact, in Council Decision of 18 November 2002 EU has authorised the member States to ratify the HNSC if possible before 30 June 2006.

We are of the opinion that solutions of the legal-technical issues can be found later by the HNSC Assembly after the Convention has entered into force. In fact, many difficult questions under the oil pollution conventions have been solved by the FC Assembly over the years, and we see no reason why this can't be done also in this case.

However, non-submission of HNS reports seems to be one of the main issues of concern. Some countries do not accept that it is a legal-technical issue which could be solved by the HNS Fund Assembly after HNSC has entered into force. Similar problem has existed in the 1971/1992 IOPC Funds since their inception, but it does not appear to have hampered the successful operation of that system in any way, because the majority of non-reporting States would have submitted "nil" reports in any event. Moreover a sanction is included in Article 21(4) of the HNSC. If a State does not fulfil its reporting obligations and this result in a financial loss for the HNS Fund, the non-reporting State will be obliged to compensate the HNS Fund for such loss. Further, a practical way to ameliorate any possible effects would be for States to ratify at the same time so individual States (their chemical industry) are not overly exposed to potential payments.

The international nature of transport of dangerous goods by sea argues strongly in favour of a global approach to legislation regulating liability and compensation for HNS damage. By instigating or supporting a revision of the 1996 HNSC, governments run a very great risk that the result will be unacceptable: either a one-

sided convention only providing for shipowner liability and shipowner compensation or a complete failure to have an HNS Convention with devastating consequences to IMO, leaving the matter to regional or national regulation. That in turn may have dramatic and unpredictable consequences for the whole global limitation system.

HNSC is of vital importance to the shipping industry in all the Nordic countries and we strongly urge the Nordic countries to ratify the HNSC as soon as possible and to resist any attempt to have the HNSC revised.

We would appreciate very much to be advised how you will take this matter forward.

Copenhagen, 1 October 2007

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