



JUNE 11, 2009

CIRCULAR NO. 16/09

TO MEMBERS OF THE ASSOCIATION

Dear Member:

THIRD EUROPEAN UNION (EU) MARITIME SAFETY PACKAGE: “ERIKA III”

The legislative dossiers that constitute the Third EU Maritime Safety Package (known more commonly as “Erika III”) were published in the Official Journal of the European Union on May 28, 2009. They will enter into force on the twentieth day thereafter, that is to say on June 17, 2009, although they will not have effect in EU Member States until they have either been implemented into the domestic law of those States (where the legislation has been agreed in the form of a Directive), or their agreed application date has passed (where the legislation has been agreed in the form of a Regulation).

The agreement reached on the Third Maritime Safety Package (“the Package”) by the European Council and the European Parliament has drawn to a close over three years of intensive negotiations in Brussels on eight Regulations and Directives¹ that collectively make up the Package, following on from the adoption of two previous packages of maritime legislation in the wake of the ERIKA and PRESTIGE incidents.

The International Group of P&I Clubs has closely monitored the development of the Package and, over the last three years, has provided significant input into the process and made direct representations throughout to key parties and individuals in the European Parliament, the European Council, Member States and the European Commission involved in the negotiations of the three Regulations and Directives in the Package of direct interest to the Group. These are:

- Directive on the Insurance of Shipowners for Maritime Claims;
- Regulation on the Liability of Carriers of Passengers and their Luggage by Sea; and
- Amending Directive establishing a Community Vessel Traffic Monitoring and Information System.

The official versions of each of the texts of the dossiers that constitute the Package can be accessed at: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2009:131:SOM:EN:HTML>

Directive on the insurance of shipowners for maritime claims (Insurance Directive)

The Insurance Directive requires owners of vessels having a gross tonnage (GT) of 300 or greater to maintain insurance cover of the type provided by International Group clubs up to 1996 LLMC limits; that this cover be evidenced by a certificate or certificates of insurance when entering an EU port; and that this insurance cover maritime claims subject to limitation under LLMC.

¹ Port State Control Directive, Directive on the insurance of shipowners for maritime claims, Regulation on the Liability of Carriers of Passengers and their Luggage by Sea, Amending Directive establishing a Community Vessel Traffic Monitoring and Information System, Directive on compliance with Flag State Requirements, Accident Investigation Directive, the Regulation on common rules and standards for ship inspection and survey organizations and the Directive on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations

Initial discussions with a small number of Member States suggest that they will enforce the Directive through Port State Control by requiring vessels of 300 GT or more to maintain on board a standard P&I certificate of entry as evidence that the necessary insurance cover is in place under the Directive. In order to ensure that the Directive is implemented in a uniform manner across the EU, the Group is in the process of meeting with relevant administrations in a number of EU Member States, in conjunction with national shipowner associations, to clarify the Group's initial understanding on implementation and enforcement of the Directive.

The original text of the Directive proposed by the Commission in November 2005 contained provisions on flag state certification, direct action against the provider of financial security and amendments to the shipowner's right to limit liability. These controversial provisions were subsequently amended and made more onerous by the European Parliament during the negotiation phases on the pretext of improving safety at sea. The Council opposed the Commission's text for the proposed Directive and the Parliament's amendments thereto. With the input and advice provided by the Group and shipowner associations, the removal of all of these controversial provisions was subsequently accomplished in the final agreement reached with the Parliament.

The implementation of the Directive will not impinge on the existing international liability and compensation regimes already in force. They are required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before January 1, 2012.

Regulation on the Liability of Carriers of Passengers and their Luggage by Sea (PLR)

The PLR seeks to extend the provisions of the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 ("the Convention") to passenger ships engaged in domestic sea-going voyages and to certain classes of vessels engaged on inland waterways²; to extend the liability provisions of the Convention relating to loss of or damage to cabin luggage to mobility equipment; and to provide that the carrier shall make an advance payment sufficient to cover immediate economic needs where the death of, or personal injury to, a passenger is caused by a shipping incident³ as defined by the Convention.

The application of the Convention to domestic carriage and inland waterways by means of the Regulation is somewhat convoluted, but can be summarized as follows:

- Member States may apply the Regulation to all domestic sea-going voyages;
- Member States may decide to defer application of the Regulation to carriage within a single Member State on board ships of Class A as defined in EU Directive 98/18/EC until 31 December 2016 and to Class B until 31 December 2018;
- no later than 30 June 2013, the European Commission shall, if appropriate, present a legislative proposal in order, inter alia, to extend the scope of the Regulation to ships covered by Classes C and D.

The definition of Class A, B, C and D vessels is contained in the Annex to this Circular.

² The Convention itself applies only to "international carriage" i.e. carriage where the place of departure and the place of destination are situated in two different States.

³ "Shipping incident" means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship or defect in the ship.



The Group will, with national shipowner associations, keep in close contact with Member States to determine the application of the Regulation to the above mentioned classes of vessels amongst EU Member States. The Group is also in the process of meeting with the administrations in a number of Member States to determine how the entry into force of the Convention and the PLR will work in practice and the likely time frame for global entry into force of the Convention.

The Convention will enter into force following twelve months following ratification or accession by ten States. As of May 28, 2009 the Convention had been ratified by four States.

Amending Directive establishing a Community Vessel Traffic Monitoring and Information System Directive (VTM)

The VTM Directive amends the 2002 Directive establishing a vessel traffic monitoring and information system that provides, among other provisions, that Member States draw up plans to accommodate, if the situation so requires, vessels in distress in their ports or in any other protected place in the best possible conditions in order to limit the consequences of incidents at sea. The VTM Directive provides that such plans shall contain, among other information, the financial guarantee and liability procedures in place for vessels accommodated in a place of refuge.

The Directive also requires Member States to designate a competent independent authority with the power to take decisions concerning the accommodation of vessels in need of assistance. In accordance with the 2002 Directive, the authority may restrict the movement of such a vessel or direct it to follow a specific course; give official notice to the master of the vessel to put an end to the threat to the environment or maritime safety; deploy an evaluation team aboard the vessel to assess the degree of risk, instruct the master to put into a place of refuge or arrange for the vessel to be piloted or towed.

In accordance with the provisions of the Directive, the European Commission shall undertake a review and prepare a report by December 31, 2011 examining the mechanisms that exist in Member States to compensate ports for potential economic losses as a result of accommodating a vessel in distress that are not covered by existing compensation mechanisms, and to consider available policy options. The Group will keep in contact with the Commission on this issue.

Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by November 30, 2010.

If any Member requires further explanation of the foregoing, your Managers will be pleased to provide it.

Yours faithfully,

Joseph E. M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB

All Clubs in the International Group of P&I Clubs have issued similar circulars.

ANNEX TO CIRCULAR NO. 16/09 OF JUNE 10, 2009

**COUNCIL DIRECTIVE 98/18/EC
of 17 March 1998
on safety rules and standards for passenger ships**

Article 4

Classes of passenger ships

1. Passenger ships are divided into the following classes according to the sea area in which they operate:

'Class A' means a passenger ship engaged on domestic voyages other than voyages covered by Classes B, C and D.

'Class B' means a passenger ship engaged on domestic voyages in the course of which it is at no time more than 20 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height.

'Class C' means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 2,5 m significant wave height is smaller than 10 % over a one-year period for all-year-round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 15 miles from a place of refuge, nor more than 5 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height.

'Class D' means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 1,5 m significant wave height is smaller than 10 % over a one-year period for all-year-round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 6 miles from a place of refuge, nor more than 3 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height.