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Working Party on Inland Water Transport

Working Party on the Standardization of Technical and Safety Requirements in Inland Navigation

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Item 9 of the provisional agenda

Pan-European Rules on General Average and Limitation of Liability in Inland Navigation

Proposal on Pan-European Rules on General Average

Submitted by Serbia

I. Mandate

1. At its fifty-third session of the Working Party on Inland Water Transport (SC.3), Serbia proposed that SC.3 consider unifying rules of General Average in inland navigation at the Pan-European level, as part of its work on harmonizing the legal framework for international inland water transport (ECE/TRANS/SC.3/2009/11/Add.1). In response to this proposal, SC.3 asked the delegation of Serbia, in consultation with the International Association for the Rhine Ships Register (IVR), to examine the need and, if appropriate, the process for elaborating pan-European rules on General Average, and to report to the Working Party on the Standardization of Technical and Safety Requirements in Inland Navigation (SC.3/WP.3) (ECE/TRANS/SC.3/183, para. 28).

2. Following a series of consultations with IVR, the Ministry of Infrastructure of Serbia proposes below a special resolution on pan-European rules on general average. The Working Party may wish to consider this proposal and, if appropriate, to forward it to SC.3.

II. Proposal on Pan-European Rules on General Average

3. The Ministry of Infrastructure of Serbia refers to its earlier proposal to SC.3 on unifying rules of general average in inland navigation (ECE/TRANS/SC.3/2009/11/Add.1), and reiterates its position that considerable benefits would be achieved from unifying the

rules on general average at the pan-European level and from confirming the contractual nature of these rules.

4. The Ministry of Infrastructure of Serbia also confirms its opinion that pan-European rules on general average should be established on the basis of the rules of the International Association for the Rhine Ships Register (IVR).

5. Furthermore, the Ministry believes that future rules should be explicitly defined as being of a contractual nature. That means that the Rules should be applied only if their application is explicitly mentioned in the bill of lading, contract of carriage, or if the Parties agree in advance that the damage or expenditures will be resolved by the application of the a pan-European Rules on General Average. This could be achieved by inserting a provision to that effect in the existing rule XV of the IVR Rules on General Average, or in the definition of general average.

6. In the light of these considerations, the Ministry of Infrastructure of Serbia is submitting in the annex the draft resolution on Pan-European Rules of General Average.

Annex

Pan-European Rules of General Average in Inland Navigation

Resolution No. ...

(adopted by the Working Party on Inland Water Transport on ... October 201...)

The Working Party on Inland Water Transport,

Recalling that the one of the main strategic areas for action formulated in the Ministerial Declaration adopted by the Pan-European Conference on Inland Water Transport, held in Bucharest on 2006, is harmonization of civil law in order to facilitate the full utilization of inland water transport in Europe,

Having recognized the necessity and desirability of establishing of the unification of the legal regimes on all European main inland waterways under the auspices of the United Nations Economic Commission for Europe,

Noting the important role of the unification of all aspects of the inland navigation law, of which the institute of general average is an integral part,

Having recognized the long and positive history of the York-Antwerp Rules in the maritime navigation,

Having in mind that the General Average Rules of International Association for the Rhine Ships Register (IVR) have already a long tradition on the river Rhine and they have been widely adopted by the commercial community (ship and cargo owners) and insurers also in the Danube riparian countries,

Taking into account relevant national legislations of UNECE member States regarding General Average institute,

Recommends that Governments should

1. Take such steps as may be deemed necessary to harmonize its national legislation with rules contained in the annex to this resolution which aim, in the case of damage to the interests involved in common commercial adventure on the inland waterways which fulfil the requirements for the general average, and if the Parties involved agree before or after such incident occurs, to settle the damage as the general average, the enclosed IVR General Average Rules, edition 2006, will apply;
2. Undertake to recommend ship owners and operators of the ships flying its flag to include into the Contract of Carriage or Bills of Lading the clause which is read as follow: "In the case of general average the IVR General Average Rules, 2006 edition, shall apply" This clause shall be known as "Inland Navigation General Average Clause".

Annex

General Average Rules IVR, Edition 2006

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Rule I

General Average

Sacrifices and expenditure reasonably made and/or incurred, in extraordinary circumstances, for the purpose of saving a vessel and its cargo from a common peril are general average.

Rule II

Substituted expenses

Extra expenses occasioned by the adoption of a measure resulting in savings in general average allowances shall be allowed in general average up to the amount of the expenses thereby saved.

Disbursements incurred as a result of the substituted measure shall be regarded as extra expenses after the deduction of such expenses as would have been incurred in the normal course of the voyage.

Rule III

Effect of fault

When the event which necessitated the sacrifice or expenditure is the consequence of a fault committed by one of the parties to the adventure, there shall nevertheless be rights

to contribution but this shall not prejudice any remedies or defenses which may be open by reason of legal or contractual provisions against or to that party in respect of such fault.

Rule IV
Exclusions

1. Losses or damages suffered or expenses incurred through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatever, such as loss on exchange, shall not be allowed as general average.
2. In no case shall losses, damages or expenses incurred in respect of damage to the environment, in particular the cost of removing such damage, be allowed as general average. However, costs incurred in preventing or minimizing damage to the environment shall be allowed as general average if incurred as a condition of a general average measure.

Rule V
Proof

The burden of proof that a loss or expense should be allowed in general average is upon the party claiming such allowance.

Rule VI
Allowances – vessel

1. The extent of physical damages allowable in general average shall be determined on the basis of surveys as provided in Rule XIII.
2. From the sum allowable as general average the following shall be deducted in respect of “new for old”:
 - one fifth of the renewals to vessels, motors, machinery or boilers which have been in service from 1 to 5 years;
 - one fourth of the renewals to vessels, motors, machinery or boilers which have been in service from 6 to 10 years.
 - one third of the renewals to vessels, motors, machinery or boilers which have been in service over 10 years; no deduction for anchors and anchor chains. No deduction shall be made from the costs of temporary repairs, or from renewals to vessels, motors, machinery or boilers which have been in service for less than one year at the date of the accident.
3. Towing and coupling lines shall be allowed at their nett cost.
4. The deductions shall be made only from the cost of the new material or parts when finished and ready to be installed in the vessel.
5. When a vessel is afloat no loss or damage caused by the use of one or more anchors shall be allowed in general average.

Rule VII
Allowances – cargo

1. The amount to be made good as general average for damage to or loss of cargo sacrificed shall be the loss which the owner of the cargo has sustained thereby, based on the c.i.f. value on the last day of discharge of the ship or at the termination of the adventure, where this ends at a place other than the original destination.
2. Where all or part of the cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be allowed in general average shall be the difference between the nett proceeds of sale and the nett value in sound condition as computed in the first paragraph of this Rule.

Rule VIII

Allowances – freight

The amount to be made good as general average for unpaid freight in respect of cargo sacrificed shall be the gross freight lost.

Rule IX

Allowances – interest

Amounts allowable in general average shall bear interest, calculated from the date of their payment or from the moment when the party entitled thereto received or would have received the items sacrificed until three months after the date of adjustment.

Each year the Board of Directors of the IVR shall decide the rate of interest which shall apply.

This rate shall be based on the Euribor-rate and shall be used for calculating the interest accruing during the following calendar year.

Rule X

Allowances – survey costs, etc.

The costs of survey and investigation necessary for the preparation of the statement of general average as well as the fees and disbursements of the Average Adjusters and those of the IVR shall be allowed in general average.

Rule XI

Currencies

Disbursements shall be made good in the currency in which they were incurred. However, the carrier shall be compensated in his national currency, provided he/she has expressed such desire in the Average Bond.

Allowances to cargo shall be made in the currency in use at the place and at the moment of the termination of the adventure. Contributory values shall be calculated using rates of exchange at the termination of the adventure.

Rule XII

Contributory values

1. The contributory value of the vessel shall be based, in principle, on her value at the termination of the adventure and in the condition in which she is at that moment; in assessing this value, the commercial value shall only be taken into account by way of indication.
2. The contributory value of cargo shall be based, in principle, on its CIF value at the termination of the adventure and its condition at that time. The contributory value of the cargo sold during the voyage shall be its nett-proceeds of sale with the addition of any amount made good as general average.
3. From the values so determined shall be deducted all expenses subsequent to the event which gave rise to the general average, until the termination of the adventure as originally foreseen. Any special compensation which falls upon the ship by virtue of Article 14 of the International Convention on Salvage 1989 shall not be deducted from the value as referred to under paragraph 1 above.
4. To the values so determined shall be added the amounts made good in general average for physical damage.
5. Mails, provisions, passengers' luggage including checked luggage, and personal effects shall not contribute.

6. To the extent that the freight is at the risk of the carrier, it shall contribute upon its gross amount. Insofar as unpaid freight is allowed in general average it shall contribute upon the amount so allowed.

Rule XIII

Surveys

1. In all cases giving rise to a demand for allowance in general average, the cause, nature and extent of the physical damages shall be ascertained in the following manner:

a) as to cargo: by survey conducted as soon as possible after the delivery of damaged goods. The concerned in the vessel are to be notified in order to enable them to participate in the survey. Failing such notice, or in case no demand for such a survey has been made within eight days after delivery, the cargo shall, subject to proof to the contrary, be presumed to have been delivered in good condition.

b) as to the vessel: by a survey by one or more surveyors as soon as possible after the accident and if possible before the commencement of a new voyage. The concerned in cargo are to be notified by a note in the Average Bond and may be represented at the survey.

2. In case of several surveyors attending and there being disagreement among them, another surveyor, whose decision shall be binding, shall be appointed by the President of the Average Committee of the IVR.

Rule XIV

The obligation to furnish required information

Parties to the general average shall provide the Average Adjuster with all information and documentation required by him/her for the preparation of the statement of general average within six months after he has requested them.

If they do not fulfil this obligation, the Average Adjuster will himself obtain the necessary information, the correctness of which shall be assumed subject to proof to the contrary.

Rule XV

The drawing up of the statement of general average

The shipowner has the right and, if one of the interested parties so demands, the duty to have the adjustment drawn up by an Average Adjuster.

Rule XVI

Contesting the statement of general average

All statements of general average with all supporting documents can be submitted for approval to the IVR. This procedure does not result in any renunciation by the parties concerned of a judicial proceeding or arbitration.

Rule XVII

Treatment of cash deposits and guarantees

When cash deposits have been collected as security for cargo's liability to contribute to general average, such deposits shall be paid, without any delay, into a special account in the joint names of the Average Adjuster and the IVR, with a bank indicated in the average bond.

The sum so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average or special charges payable by cargo in respect of which this security has been collected.

Payments on account or refunds of deposits may be made with the written approval of the average adjuster and the IVR. Such deposits, payments or refunds shall be without prejudice to the ultimate liability of the parties.

Sums so deposited shall bear interest at the rate mentioned in Rule IX, which interest shall be made good in general average, any bank interest earned being credited to the general average.

Costs incurred in putting up security for settling under the average statement, or for fulfilment of obligations towards salvors and others shall likewise be allowed in general average.

Payments on account made on the basis of the security shall also bear interest at the rate mentioned in Rule IX, which interest shall be made good in general average.

Rule XVIII
Voluntary stranding

Damage caused by and expenses incurred due to voluntary stranding, even when this is a general average act, shall only be made good in general average when the vessel has in fact been refloated and recognized as reasonably repairable.

Rule XIX
Raising a sunken vessel

If the vessel has sunk (unless this was brought about for the purpose of saving the vessel and the cargo from a common peril) the expenses of raising the vessel and cargo in one and the same operation together with the damage intentionally caused to the vessel and/or the cargo for that purpose are general average, but not the damages caused by the accident.

Rule XX
Assistance by towage etc.

1. Where towage assistance is rendered to a stranded vessel, constituting a general average act, the remuneration paid to the assisting vessel shall be admitted in general average, but may include only the following items:

a) indemnity due for proceeding to the place of the accident, remaining at that place, rendering services and returning therefrom.

b) the value of equipment lost, and/or the cost of repairing damage suffered by the assisting party during the course of the actual refloating operations. Save in exceptional circumstances the refloating operations commence at the moment the towing rope is attached and terminate at the moment when the towing rope is or can be released. For example, the situation when the assisting vessel herself, before attaching or after releasing the towing rope, is in the zone of danger in direct connection with the rendering of assistance, shall be considered as an exceptional circumstance.

c) indemnity for demurrage, but exclusively during the period the assisting vessel is immobilized for the execution of replacement or repair work as referred to above.

d) any loss other than personal injuries suffered by third parties during the refloating, including claims for demurrage, in so far as the assisting party has had to satisfy legally justified claims for indemnification.

2. The above provisions are likewise applicable in case of intervention by a pushboat.

Rule XXI
Lighterage

1. When the storage ashore or transshipment of all or part of the cargo constitutes a general average act, there shall be allowed in general average only:
 - a) expenses occasioned by the discharge, the period in lighters or on land and the reloading of the lightered cargo.
 - b) the value of material lost and/or the cost of repairing the damage sustained by the lighters in the course of the lighterage.
 - c) indemnity for demurrage corresponding exclusively with the period of immobilization of the lighter during the execution of replacement and/or repair work as referred to above.
 - d) damage sustained by the assisted vessel during these operations.
 - e) loss and damage sustained by the discharged cargo, in the course of the handling as well as during the storage on land or in the lighters.
 - f) the premium for insurance, if any.
2. When the vessel is lightered in the normal course of the voyage, there will be no general average.

Rule XXII
Wintering

Only expenses of entering and leaving, towage costs, port dues, and the expenses for guarding the loaded vessel shall be allowed as general average when, by reason of ice, the vessel is constrained to seek refuge in an intermediate harbor. There shall also be allowed the expenses of lightering and damage occasioned by lightering when, in order to lighten the vessel, the cargo is discharged, in whole or in part, into lighters.

Rule XXIII
Provisions applicable to Rules XX, XXI and XXII

1. Notwithstanding the restrictive provisions of the rules quoted above, indemnities which have been fixed by judicial decisions or at arbitration shall be allowed as general average.
2. All the provisions stated in these same Rules, as well as those stated in para. 1 of this Rule shall be applicable, without restriction, even when the assisting and the assisted ships belong to the same management.
3. The allowances provided for by these Rules are limited to losses and damages which are the direct consequences of assistance, lighterage or towage.
4. The general average allowances shall also include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimizing damage to the environment such as is referred to in art. 13 paragraph 1 (b) of the International Convention on Salvage, 1989 have been taken into account.

Special compensation payable to a salvor by the shipowner under Article 14 of the said convention to the extent specified in paragraph 4 of that article or under any other provision similar in substance shall not be allowed in general average.

Rule XXIV
Port of refuge

1. When, apart from the case mentioned by Rule XXII, the barge master performs a general average act by taking his vessel into a port and/or by remaining there, only the expenses of entering and leaving, towage costs, port dues and the expenses for guarding the loaded ship shall be allowed in general average.
2. However, when a vessel enters a port and/or remains there because of low water, this shall not justify any allowance in general average.

Rule XXV
Convoys

1. For the purpose of this Rule, a convoy is considered to be a group of vessels coupled with each other in such a way that none of the vessels has any freedom of independent movement.
2. When measures are taken to preserve a vessel and/or some or all vessels of such convoy and their cargo from a common peril, Rules I to XXIV shall be applied accordingly. A vessel forming part of a convoy is not in common peril with another vessel of that convoy, if by a mere uncoupling of the connection with such other vessel she can be placed in safety.
3. If a common peril exists Rules I to XXIV shall be applied as much for the profit as to the charge of those concerned in the vessels of the convoy and their cargoes.
4. For the calculation of contributory values and allowances the vessels will be considered to be 'the vessel' and the total cargo carried in those vessels will be considered to be 'the cargo' in the sense these words bear in Rules I to XXIV.

Rule XXVI
Trucks, Containers, Pallets and similar articles of transport

1. Whenever, in the preceding rules, reference is made to "cargo" this should be understood to include, irrespective of their individual ownership, trucks, containers, pallets, and similar articles of transport which are or may be used to consolidate goods.
 2. Allowances and contributory values in respect of the articles of transport mentioned in paragraph 1 shall be based upon their actual value on the last day of discharge from the vessel, or at the termination of the adventure in case this ends at a place other than the original destination, and not upon any CIF value as mentioned in Rules VII and XII.
 3. The provisions of Rule XIII shall apply to all damage surveys coming within the terms of Rule XIII 1 a), and involving the articles of transport mentioned in paragraph 1.
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