



## Economic and Social Council

Distr.: General  
11 April 2012  
English  
Original: Russian

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### Economic Commission for Europe

#### Inland Transport Committee

#### Working Party on Inland Water Transport

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

#### Forty-first session

Geneva, 20–22 June 2012

Item 8 of the provisional agenda

#### Pan-European Rules on General Average in Inland Navigation

#### Addendum

### Proposal by Ukraine

#### Note by the secretariat

The proposal by Ukraine to amend the General Average Rules of the International Association for the Rhine Ships Register (IVR) is reproduced below. The proposed new wording is given in italics and bold script, and text proposed for deletion has been struck out. In the interests of economy, Rules which have not been commented upon have been omitted, meaning that their wording will remain the same as in ECE/TRANS/SC.3/WP.3/2011/7.

**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 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 defences 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 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

**Rule I** General average

Sacrifices and expenditure reasonably and *intentionally* made and/or incurred, in extraordinary circumstances, for the purpose of saving a vessel, its cargo *and freight* from a common peril are general average. (See Rule VIII)

**Rule III** Effect of fault

When the event which necessitated the sacrifice or expenditure is the consequence of a fault committed *by one or more of the parties* to the adventure, there shall nevertheless be rights to contribution but this shall not prejudice any remedies or defences which may be open by reason of legal or contractual provisions against or to *that (those) party (parties)* in respect of such fault.

**Rule IV** Exclusions

***General average shall include only such damages, losses and expenses which are direct consequences of a general average act.***

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.

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*General Average Rules*

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*General Average Rules IVR, 2006 edition (ECE/TRANS.SC.3/WP.3/2011/7)*

*Proposals by Ukraine for a revised edition of General Average Rules*

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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.

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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.

**6. *The amount to be allowed as general average for loss or damage to a vessel's hull, engines, other machinery and/or equipment, shall be as follows:***

**6.1 *In the event of repair or replacement, the actual reasonable cost of repair or replacement of what has been damaged or lost;***

**6.2 *Failing repair or replacement, the reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repair.***

**7. *Where the vessel is an actual total loss or the cost of repairing the damage would exceed the value of the ship in good order, the amount to be allowed as general average shall be the difference between the estimated sound value of the vessel after deduction therefrom of the estimated cost of repairing damage which is not general average and the value of the vessel in its damaged state, which may be measured by the nett proceeds of sale.***

**8. *Compensation for damage to a vessel must not exceed the amount which would be payable if the vessel were a total loss.***

**9. *Compensation shall be payable under general average for damage arising on a vessel in distress as a result of accelerated running of the engines, and for damage to steering, propelling, towing and other devices and machinery arising during efforts by the vessel to refloat itself.***

**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 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.

**10. Damage caused to a vessel and/or cargo by water or otherwise, including damage due to the beaching or scuttling of a burning vessel, shall be allowed in general average. However, no compensation shall be payable for smoke or heat damage, however caused.**

**Rule IX Allowances – interest**

Amounts allowable in general average shall bear interest, calculated **at an annual rate of 7 per cent** from the date of their payment or from the moment when the party entitled thereto received or would have received the items sacrificed until **one month** 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 XI Currencies**

***The currency of the statement of the general average shall be determined by the Average Adjuster, specifically taking into account the currency of predominant general average expenses.***

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.

***The currency of payment of contributions shall normally be that of the expenses and losses admitted in general average, provided that this does not contravene international payment agreements or other currency legislation.***

Contributory values shall be calculated using rates of exchange at the termination of the adventure.

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*General Average Rules*

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**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 net-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 XVI** Contesting the statement of general average

All statements of general average with all supporting documents can be

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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 salvaged 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.
7. *The amount made good as general average for material loss shall be added to the contributory values of the vessel, cargo and freight if it has not already been included.*
8. *All means of consolidating cargo space shall contribute to the general average equally with the cargo.*
9. *The parties to general average are required to pay the compensation set by the statement of general average within 10 days of its entry into force.*

**Rule XVI** Contesting the statement of general average

~~All statements of general average with all supporting documents can be~~

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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.

*Proposals by Ukraine for a revised edition of General Average Rules*

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***A general average statement shall be binding on all the parties unless they submit claims to the Average Adjuster within 30 days of its receipt.***

***If the Average Adjuster revises the statement on the basis of claims submitted to him, he shall reissue it to all the parties. In that event, any of the parties who does not agree with the Average Adjuster's final decision shall be entitled to contest it through legal channels.***

**Rule XVII** Treatment of cash deposits and guarantees

***As security for contributions, a shipowner shall be entitled to require from shippers or their representatives cash deposits.***

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. ***Payments or refunds from cash deposits shall be made within 15 days of the general acceptance of the average statement.*** 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 shall be credited to the payments made in respect of this guarantee at the interest rate indicated in Rule IX, and such interest shall be allowed in 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 the 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 XXI** Lighterage

1. When the storage ashore or trans-shipment 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 lightening and damage occasioned by lightening when, in order to lighten the vessel, the cargo is discharged, in whole or in part, into lighters.

**Rule XVIII** Voluntary stranding

*Damage caused to a vessel and/or cargo by voluntary stranding or scuttling shall only be allowed in general average if the vessel has been refloated or raised after scuttling and is subject to reasonable repair.*

**Rule XXI** Lightening of a vessel

*If, as a result of damage, sacrifice or other extraordinary circumstances, it is necessary to discharge cargo from a vessel (lighten the vessel) and thereafter to store it, there shall be allowed in general average only:*

- (a) Expenses for discharging the cargo, the period *on a vessel* or on land and reloading cargo *discharged from the vessel*.
- (b) *Expenses for hiring the vessel carrying out the lightening.*
- (c) *Losses and expenditure for repairing damage sustained by the vessel carrying out the lightening and losses related to its withdrawal from service.*
- (d) *Damage suffered by the vessel being lightened during the lightening.*
- (e) *Losses and expenses related to loss of or damage to the cargo during its discharge, storage and reloading.*
- (f) The premium for insurance, if any.
- (g) *Expenses for entering and leaving, towage costs, port dues, and for guarding the loaded vessel carrying out the lightening.*

**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 harbour. (See new version of Rule XXI, Lightening of a vessel)

**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 XXIV** Port of refuge

1. *Compensation shall be payable in general average for expenses arising in case of flood, ice drift or sudden and rapid fall in the water level or in other circumstances related to the need to enter, stay in and exit from a port of refuge, including towage, expenses for guarding the loaded vessel and port dues. Compensation shall be payable for such expenses if a laden vessel has to return to the port of loading.*
2. *If a vessel is compelled to move from one port of refuge to another to undergo repairs, the provisions of paragraph 1 of this rule shall apply. Expenses in respect of the voyage, including repair costs and towage shall be included in general average.*
3. *If cargo destined for another port are discharged at a port of refuge, they shall contribute to general average as if they had remained on the vessel until its departure from that port. However, if a vessel's entire cargo is discharged at a port of refuge, compensation of expenditure under general average shall cease.*
4. *If flood or ice drift occurs after a laden vessel's arrival at a port of discharge and the vessel has to leave that port before handling is completed and find another safe port, that port shall be considered a port of refuge.*
5. *If, as a result of flood or ice drift, a vessel has to remain in a port after discharging the cargo destined for that port, that port shall be considered a port of refuge only as regards cargo destined for other ports.*
6. *If a vessel leaves a port of refuge independently, no compensation shall be payable for the expenses related thereto.*



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*General Average Rules*

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**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 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. ***For the calculation of contributory values and compensation in general average, the vessel and cargo shall be considered to be the total value of all the vessels in a convoy and the cargo in common peril.***