

## **1.15. GUIDELINES CONCERNING COSTS FOR ASSISTANCE AND CLAIMS MANAGEMENT IN THE CONTEXT OF THE BONN AGREEMENT**

### **1.15.1. Introductory considerations**

This chapter discusses the arrangements between Contracting Parties to the Bonn Agreement when assistance is required in the case of an incident and costs have to be settled. With regard to these financial arrangements a distinction is made between the costs involved for rendering assistance from one Contracting Party to another and the recovery of costs by the affected Contracting Party.

Costs for assistance would preferably be based on a contract between Contracting Parties, namely the requesting Contracting Party and the assisting Contracting Party.

In the unfortunate situation that a Contracting Party is confronted with a maritime incident requiring response measures in the widest sense the polluter will be held liable and responsible for appropriate measures and reimbursement for costs encountered by the affected Contracting Party. "Claims Management" covers all the legal and financial matters to be dealt with in an incident. In 2010 the European Maritime Safety Agency, in close cooperation with Member States, completed a first draft of "EU Guidelines for Claims Management" which can be found in the public domain of the EMSA website: <http://emsa.europa.eu/publications/guidelines-manuals-and-inventories/item/720-eu-states-claims-management-guidelines-claims-arising-due-to-maritime-pollution-incidents.html>. The Guidelines were updated in 2014.

### **1.15.2. The Bonn Agreement**

Articles 5 to 12 of the Bonn Agreement describe the communication between Contracting Parties and the aspects for assistance. When the Agreement was founded in 1969 the most important objective was the assistance, the mutual interest between Contracting Parties in combating a pollution.

Article 7 states:

*"A Contracting Party requiring assistance to deal with pollution or the prospective presence of pollution at sea or on its coast may call on the help of the other Contracting Parties. Contracting Parties requesting assistance shall specify the kind of assistance they require. The Contracting Parties called upon for help in accordance with this Article shall use their best endeavours to bring such assistance as is within their power taking into account, particularly in the case of pollution by harmful substances other than oil, the technological means available to them."*

When a Contracting Party in its zone of jurisdiction has to deal with a maritime incident it is the responsibility of that Contracting Party to take appropriate action, also involving the suspected polluter. With reference to the SafeSeaNet system and the POLREP communication system that is applied in the Bonn Agreement, the Contracting Party will inform either the Bonn Agreement Contracting Parties at large or only those that may be affected by the incident.

Through the EU system CECIS or through the POLFAC part of the POLREP system the countries can call for assistance. However, in practice direct telephonic communication will normally also be established between a requesting Contracting Party and other Contracting Parties to discuss assets available and financial implications.

If assistance is agreed, it is recommended to consider detailed paperwork. Any arrangement should be put on paper and signed by both parties. It is considered essential to maintain accurate notes and documents in order to satisfy the Claims Management process.

### **1.15.3. Polluter Pays Principle**

All Contracting Parties to the Bonn Agreement have implemented the “Polluter Pays Principle” in their Response Organisations. The principle is known and honoured or well respected by shipping as well as offshore industry and all conventions related to compensation for pollution understand the purpose.

In environmental law, the polluter pays principle is enacted to make the party responsible for producing pollution responsible for paying for the damage done to the natural environment. It is regarded as a regional custom because of the strong support it has received in most countries in both the Organisation for Economic Co-operation and Development (OECD), and in the European Union (EU). In international environmental law it is mentioned in Principle 16 of the Rio Declaration on Environment and Development.

### **1.15.4. Guidelines**

A Contracting Party that is in charge of handling a maritime casualty will define the response measures and also the type of assistance required. Within the Bonn Agreement network (as in other regional agreements) direct contact at personal level may be established to discuss the assistance required and options available.

The Common Emergency Communication and Information System (CECIS) will be an important tool for requesting and offering assistance. Assets can be disclosed and made available depending on the requirements defined by the requesting Contracting Party. By using CECIS and in the direct communication the availability of equipment can be checked with regard to the actual status of maintenance and readiness.

Although it is the sovereign decision of the assisting Contracting Party what costs will be charged to the requesting Contracting Party it is strongly recommended to provide a detailed overview of all costs involved, up to two decimals. No assistance should be offered free of charge. A government to government discount may be used against that assisting Contracting Party in another incident.

In the aftermath of the response operation and on completion of the incident the process starts for reimbursement of costs and it is recommended that all assisting Contracting Parties are compensated by the requesting Contracting Party. The Contracting Party that was in charge of handling the incident will claim all costs from the polluter, unless otherwise agreed between parties.

### **1.15.5. Types of assistance**

IMO approved in 2014 the International Offers of Assistance Guidelines. The purpose of the guidelines is to provide advice, strategies and considerations to any nation confronted with response to large or complex oil spill incidents as a tool to assist in managing both requesting spill response resources from other countries and in managing offers of assistance coming from other countries. In the Guidelines there is an important annex, a common lexicon of equipment terminology and proposals for common terminology to be utilized in existing international equipment inventories to facilitate international offers of response equipment. It is recommended that this common lexicon of equipment terminology is used within the Bonn agreement.

Depending on the type of assistance offered, the contractual documents should clearly state:

- The capacity of the offered system;
- The cost per hour in operation, in stand-by;
- Cost for cleaning and maintenance (repair);
- Cost per hour for vessels in operation and waiting. Also state extra costs for fuel and lubricants, possible crew change, hotel costs;
- Port fees, pilot service if deemed necessary;
- In the case of aircraft, state costs per flight hour (including or excluding crew); landing fee; fuel; hotel costs;
- Diplomatic clearance;
- Transportation costs;
- Custom clearance;
- In the case of staff and other experts, the costs per hour;
- State the duration of the assistance, even when this indicative;
- Define periodical payment. Invoices could be forwarded on a weekly basis; and
- Define VAT arrangements.

It is recommended that the requesting Contracting Party clearly describes what they expect the assisting Contracting Party to do and what administrative rules their staff has to comply with. A daily report is a suggested registering method that may provide essential input for the preparation of the cost overview.

#### **1.15.6. Evaluation and lessons learned**

Contracting Parties are invited to evaluate a maritime incident, for the purpose of this chapter, especially a case where assistance was requested and provided, and that lessons learned are reflected in further improvements of the issues addressed.