

Session 5 – Reporting Requirements for States

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Obligations

Prior to entry into force

An expression of consent to be bound by this Protocol must be accompanied by the submission of the quantity of contributing cargo received during the preceding calendar year

After entry into force

Contributions will be levied on persons who have received, in a calendar year, contributing cargoes in quantities above the thresholds laid down in the Convention

Reporting is key



For the success of the system all the relevant parties (Contributors, States and HNS Fund) must receive and transmit:



The right information



To the right people



At the right time

Prior to entry into force

Contracting States' obligations & responsibilities



Reporting to the IMO (Article 45)

What is needed

- Separate reports of contributing cargo from each identified contributor in the State
- The submission of a compiled report of the total of all HNS contributing cargo to IMO by the State
 - at the time of ratification, and
 - annually until the Convention enters into force

IMO will not accept
instruments of ratification, accession or approval without HNS reports

Points to consider

- Failure by a Contracting State to submit such reports will result in their suspension from being a Contracting State until data is submitted
- Further decisions will be taken by the first HNS Fund Assembly regarding the reporting of contributing cargo

Tools available
Forms, Guidelines, HNS Finder have been developed to help States

How to identify potential contributors



Challenges

Different thresholds for the different types of bulk HNS

Self-reporting system by the industry with verification by the national authority

Time needed by States to identify potential contributors



Solutions

States to set up lower national thresholds for the different accounts for identification purposes

Potential contributors to be identified before the entry into force



Comparison between the thresholds

Total per contributor

	Proposed thresholds before entry into force	Thresholds established by the 2010 HNS Convention
General Account <ul style="list-style-type: none">• Bulk solids• Other HNS	15 000 tonnes	20 000 tonnes
Oil Account <ul style="list-style-type: none">- Persistent oil- Non-persistent oil	150 000 tonnes 15 000 tonnes	150 000 tonnes 20 000 tonnes
LPG Account	15 000 tonnes	20 000 tonnes
LNG Account	Any amount	Any amount

After entry into force

Member States' obligations & responsibilities



How to identify contributors



Challenges

Different types of contributors:

- Agent and principal (art. 1.4 (a));
- Titleholder for LNG cargo (art. 19.1 bis);
- Associated person (art. 16.6).

Difficult to identify contributors other than the physical receivers



Solutions

Physical receivers to provide list of persons with whom their commercial transactions fall under the categories

Authorities to set up rules for protecting commercially sensitive information from disclosure



Obligations

- ✔ State to annually inform the HNS Fund Secretariat of all contributors' contact details
- ✔ All contributors to submit reports to the State, using the individual HNS Fund reporting form
- ✔ State to confirm that the quantity of contributing HNS reported by contributors is correct
- ✔ Member States to ensure efficient financing and management of the HNS Fund



Reporting to the HNS Fund

After entry into force

All reports on contributing cargo from each contributor must be submitted to the State, confirmed and then submitted to the HNS Fund

HNS Fund Assembly to adopt internal regulations to implement full reporting and contribution system

Accounts and reports

After entry into force

	Threshold for Establishment of HNS account	Threshold per contributor for contribution
General Account <ul style="list-style-type: none"> Bulk solids Other HNS 	40 million tonnes*	20 000 tonnes
Oil Account <ul style="list-style-type: none"> Persistent oil Non-persistent oil 	350 million tonnes	150 000 tonnes 20 000 tonnes
LPG Account	15 million tonnes	20 000 tonnes
LNG Account	20 million tonnes	No minimum

Requirements to report to HNS Fund:

Name and address of receivers, quantities of cargo received by each of them

The image shows a sample of the IMB Receiver Model Reporting Form. The form is titled 'Receiver Model Reporting Form' and is to be submitted to the designated national authority. It includes fields for 'COMPANY', 'STATE', and 'YEAR'. Below these fields, it asks for 'RECEIPTS OF CONTRIBUTING CARGO' and provides a table for reporting quantities in metric tonnes. The table is organized into 'General' and 'Oil' categories, with sub-categories for 'Bulk solids', 'Other HNS', 'Persistent oil', and 'Non-persistent oil'. There are also sections for 'LPG' and 'LNG'. The form includes a 'SIGNATURE OF COMPANY OFFICIAL' section with fields for Name, Title, Address, Phone, and E-Mail, and a 'SEAL' area. At the bottom, it says 'Page 1 for Receiver Use'.

Why definition of Receiver is important

For the HNS Fund to be financed in a balanced method

Each State Party shall ensure that any person liable to pay contributions [...] appears on a list to be established and kept up to date by the Director [of the HNS Fund].

Article 21.2



Incorrect or missing reports will prevent the successful functioning of the system and may discourage other States from acceding to the Convention

Consequences of non-submission of HNS reports



Non-compliant States reported to other Member States during the Assembly



No compensation (except death / personal injury) shall be paid for any incident in a Contracting State that does not submit its HNS reports (Article 21.2bis)



Temporarily suspended from being a Contracting State, until the required data is submitted (Article 45.7)



If non-compliance results in a financial loss for the HNS Fund, that State Party is liable to compensate the HNS Fund (Article 21.1bis)



Practical implementation of the relevant articles in the Convention



Reports / Article 21

Who reports?

HNS Type	Party to report	Party to report if Agent / Principal option
Persistent oil	Physical receiver (same as for 1992 Fund)	
LNG trades	Physical receiver / titleholder	
Non-persistent oil	Physical receiver	Agent / Principal
LPG	Physical receiver	Agent / Principal
Bulk HNS (General Fund)	Physical receiver	Agent / Principal

Reports / Article 21

Practical steps

For Agent / Principal option

When negotiating contracts with Principal, Agent to:

1. Inform Principal that Principal's details will be passed to HNS Fund via State's Report
2. Inform Principal of possible liability to pay the relevant HNS levy raised

How can physical receiver pass on the costs? - solutions include:

- "HNS Clause" seeking indemnity for levy charged to Agent for Principal's HNS, to be inserted into standard contract
- Levy "allowance" included within standard contract price

How to identify contributors

Actions taken by the current HNS Convention Contracting States

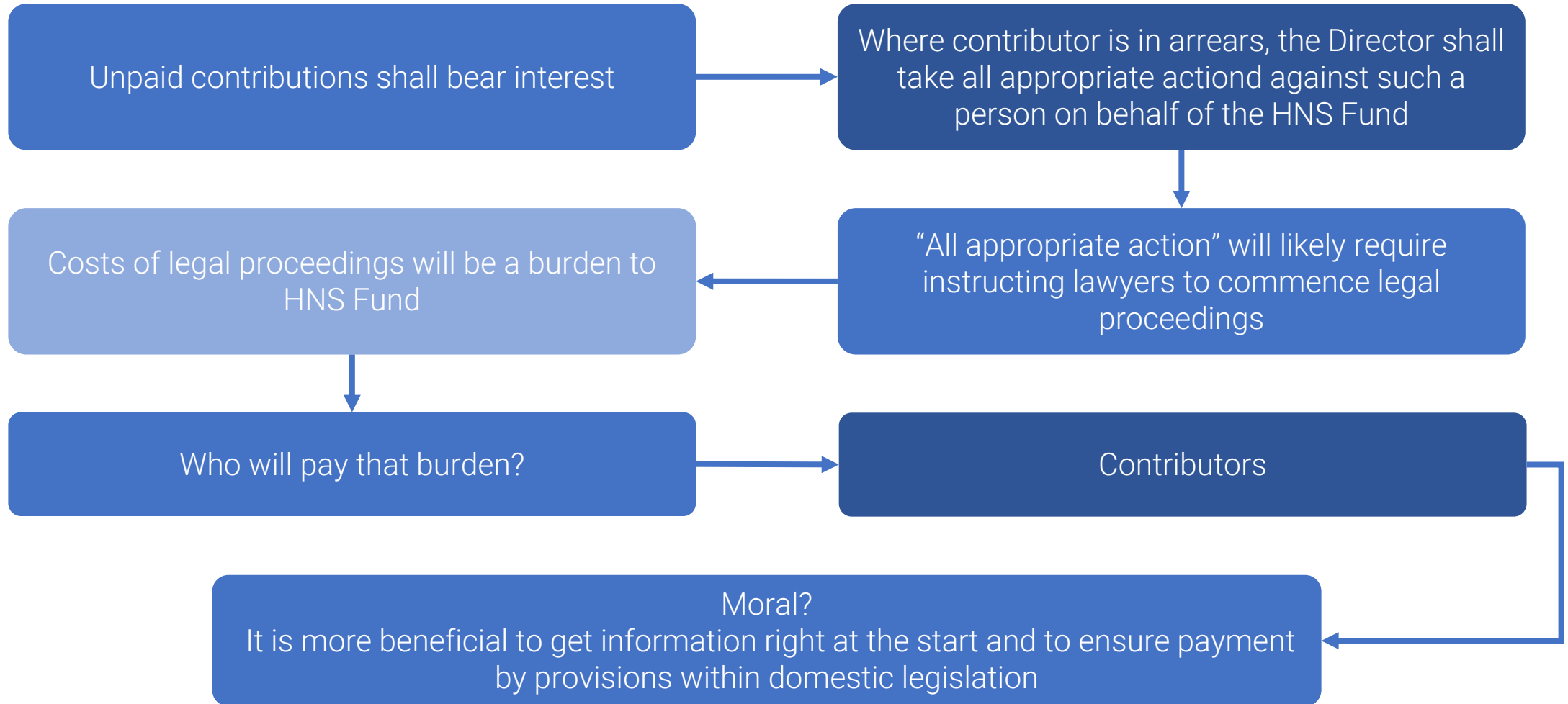
Sources of information

- Maritime administration
- Port authorities
- Other authorities in the Member State
- Storage companies
- Oil companies
- Chemical companies
- Organisations / Trade Associations within the oil / chemical industries
- Companies granted hazardous cargo handling certificates

Actions

- Informal meetings with the industry, organisations and other authorities to:
 - identify individual reporting companies
 - help disseminating information on the HNS Convention
 - providing with contact details on the relevant companies
- Establishment of a separate HNS Cargo reporting system

Non-payment of contributions / Article 22



Extracts from HNS Questionnaire on Reporting

Submitted to 12 States in 2023

Have you made the HNS reporting obligation a mandatory task in your domestic legislation?

Have you identified individual companies that will have to submit reports of HNS contributing cargo to the Government?

How do you currently or how do you plan to identify the individual reporting companies?

Using Article 1.4(a) as the basis for your legislation?

Using Article 1.4(b) as the basis of your legislation?

Would you consider using Article 1.4 (b) as described by the IOPC Fund?

Does your domestic legislation include anything regarding sanctions for not reporting HNS cargo?

Have you established the national authorities responsible for the management of HNS?

What source of information have you used to check the figures provided by the receivers?

National rules to facilitate the identification of contributors

Examples from the questionnaire

11 States have adopted sanctions for late or wrong information

- Violation of the relevant provisions may lead to 6 months **detention, community service or a criminal fine**
- Failure to report may lead to an order to report under threat of a **monetary penalty**
- Incorrect contributing cargo information may lead to **criminal charges, a fine or imprisonment**

12 States have identified or established national authorities to manage their HNS commitments

- Mostly authorities but not always
- One State has assigned HNS matters to the Secretariat of Shipping while the Environment Ministry deals with the IOPC Funds matters

Regulations example

Special enforcement provisions in primary legislation for motivating receivers to submit information



- For a juridical person - responsibility to report falls on the board of directors
- Authorities can (without a court order) require access to all relevant material at the premises of a receiver of HNS goods
- Authorities can enforce an estimated amount for late or missing information of contributing cargo
- Penalties can range from one year in prison to two years or more for intentional or gross negligence if other offence involved e.g. fraud
- Courts can confiscate economic benefit obtained through no-reporting

The IOPC Funds experience

Finding solutions with the support of Member States



Challenges

As with HNS Convention, reports form the basis for levying contributions

121 Member States - Small number never submit oil reports

287 active contributors in 2023 - All required to submit reports on oil receipts

Significant time and resources spent by Secretariat on engaging with, assisting and following up with contributors and Governments



Solutions

Strong engagement with Member States from outset, including training, assistance with implementation, supporting tools and regular meetings

Withhold compensation payments to State authorities until resolved (Resolution 12)

Authority to levy contributions based on estimates (Resolution 13)

Prevent election of State to Executive Committee or Audit Body

IOPC Funds' experience

International
compensation
regime a
**proven
success**

98%
of
contributing
oil reported

99.55%
contributions
paid



Equitable sharing of financial burden
among contributors and availability
of compensation for claimants

Tools to assist



Reporting form
for States and
contributors



HNS Finder
to identify
contributing cargo



HNS
contributing
cargo reporting
guidelines



Training and
assistance
in-person and
online

Conclusions

Accountability:
By contributors
By State

Accurate and timely reporting is key
to the success of the regime

IOPC Funds
45+ years of a successful compensation regime based on levies
it can be done again

Whatever issues there may be, can be overcome