

**HARMONIZATION OF THE LEGAL FRAMEWORK FOR INTERNATIONAL
INLAND WATER TRANSPORT**

The proposal for pan-European Rules on General Average

Submitted by the Republic of Serbia

Note by the secretariat

Reproduced below is the position paper of the Ministry of Infrastructure of the Republic of Serbia on the proposal to establish pan-European Rules on General Average, initially submitted in document ECE/TRANS/SC.3/2009/11/Add.1.

A. Reasons for pan-European Rules on General Average

1. Having in mind the need and benefit that would be achieved by unifying the Rules on General Average on the pan-European level, the Ministry of Infrastructure of the Republic of Serbia once again would like to underline one of the issues addressed in document ECE/TRANS/SC.3/2009/11/Add.1.
2. This meeting is a good opportunity to stress once again that the future pan-European Rules on General Average should be defined as being of the contractual nature. That means that the Rules will 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 in this sense in the existing rule XV of the International Association for the Rhine Ships Register (IVR) Rules on General Average, or in the definition of general average. The Ministry of Infrastructure of the Republic of Serbia also proposes to draft a model clause to this effect which could be included in the contracts.
3. The 1990 Danube Rules on General Average, concluded between the major ship owners' companies on the Danube at that time, constitute an example of a pre-made Agreement for implementation of general average. However, the Danube rules are part of the Bratislava Agreements, which, in the opinion of the Serbian Ministry of Infrastructure, are contrary to the provisions of Regulation 1017/68/EEC (*Regulation (EEC) No 1017/68 of the Council of 19 July 1968 applying rules on competition to transport by rail, road and inland waterway*) as they are creating a classic cartel, or a kind of liner conference in Inland Water Transport and such a practice in maritime transport, in accordance with Council Regulation (EC) No. 1419/2006 (*Regulation of the European Commission of 25 September 2006 repealing Regulation (EEC) No.*

4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport) is considered contrary to Article 85 and 86 of the Treaty establishing the European Community. For this reason, the Ministry of Infrastructure of the Republic of Serbia believes that domestic ship owners and agency companies should withdraw from the Bratislava agreements, which also means abandoning the Danube Rules on General Average.

B. Some of the major differences between IVR Rules and Danube Rules on general Average

4. Having in mind that the 1990 Danube rules are still in force and in connection with the official position of the Ministry of Infrastructure of the Republic of Serbia that the IVR 2006 Rules on General Average could be a excellent base for adopting the pan-European General Average Rules, it is necessary to point to some differences that exist between the Danube and the IVR rules:

a) Rule I of the Danube Rules, which gives a definition of the general average, states that the general average exists if the sacrifice or expenditure are reasonably and “intentionally” made and/or incurred. Rule I of the IVR Rules does not use the term “intentionally” although the commentary of the Rule I extensively explains that certain sacrifice or expenditure must be “intentional” as a pre-condition to be considered as general average.

b) The Danube Rules, as well as York-Antwerp Rules, contain provisions on particular sacrifice and expenses that are allowed in General Average (Rules 9 and 11). The above-mentioned Danube rules about damage to machinery and extinguishing fire on shipboard are not identical with the similar York-Antwerp Rules, but they express the same essence and content.¹ The IVR Rules do not mention particular sacrifice and expenses.

5. The Ministry of Infrastructure of the Republic of Serbia believes that these differences need to be discussed during the future work and that it will be necessary to find out why the IVR Rules do not include this kind of damages or expenditures that could be considered as the general average.

6. Notwithstanding the above mentioned observations, the official position of the Ministry of Infrastructure of the Republic of Serbia is that the text of the IVR Rules is a very modern text, fully compliant with the needs of the modern market, that the rules are quite clear and precise and they should be used as a basis for the development of the pan-European Rules on General Average.

C. Conclusion

7. The proposal for the adoption of pan-European Rules on General Average by the UNECE emerged from the practical desire to increase the application of this legal institute which is very important for all participants of the inland navigation transport market. The experts from IVR, during the long history of their association, gave their full contribution to the development of this institute and perhaps now is the time for UNECE countries to take advantage of the possibility to further unify the inland navigation laws under the UNECE auspices and develop pan-European Rules on General Average.

¹ For example, Rule 9 of the Danube Rules states that damage caused by the forcing of the engines as well as damage to the propeller, helm and towing systems, other machinery of a ship which is aground in endeavouring to afloat shall be allowed in general average. Furthermore, Rule 11 of the Danube Rules, similar to the Rule III of the York-Antwerp Rules, states that damage caused to a ship and / or cargo by water or any other way, including losses from stranding or scuttling a burning ship shall be considered as general average. Losses from smoke or heat however caused shall not be considered as funeral average.