



CONFERENCE DES REGIONS PERIPHERIQUES MARITIMES D'EUROPE
CONFERENCE OF PERIPHERAL MARITIME REGIONS OF EUROPE

6, rue Saint-Martin, 35700 RENNES - FR
Tel. : + 33 (0)2 99 35 40 50 - Fax : + 33 (0)2 99 35 09 19
email : secretariat@crpm.org - web : www.crpm.org

FEBRUARY 2016

TECHNICAL PAPER FROM THE CPMR GENERAL SECRETARIAT

MARITIME SAFETY AND ECOLOGICAL DAMAGE: CURRENT CPMR INITIATIVES

This Paper presents an overview of the CPMR's action regarding the recognition and compensation for ecological damage as a result of shipping accidents.

This issue directly affects coastal regions through major pollution incidents such as the Erika and the Prestige, as well as through regular pollution resulting from significant accidents or discharges from ships. The CPMR and its Member Regions take action on this issue through technical work and political initiatives.

The [Arcopol platform](#) project, which the CPMR participated in through its Atlantic Arc Commission, and [Baltic Master II](#), which involved several regions from the Baltic Sea area, are examples of technical work that aim to improve the knowledge of the ecological impact of pollution and means of intervention on land and at sea.

In addition, through the Erika IV¹ initiative led by Brittany Region, the CPMR is undertaking action to ensure better compensation for ecological damage through the European and international regulations². The Paper published in May 2013, "[Following the "Erika" ruling by the French Court of Cassation, what steps should be taken at European and international level?](#)" defined the CPMR's proposals, which have since been put forward to European and international institutions and various discussion fora³.

The following points reiterate the main elements put forward by the CPMR in these debates (I) and the state of play in the discussions on European and international regulations (II).

I. OVERVIEW OF THE ELEMENTS PUT FORWARD BY THE CPMR

The CPMR calls for explicit recognition and compensation for ecological damage at European and/or international level. This proposal is based on the following:

1. Ecological damage is not currently recognised at European and international level

At European level, the text that applies to ecological damage is the Environmental Liability Directive (ELD). Yet this text does not apply in the event of damage to marine waters resulting from shipping accidents. In this situation, the ELD refers to the application of CLC/IOPCF Conventions.

At international level, the CLC/IOPCF Conventions state the rules and procedures relating to compensation for damage resulting from shipping accidents. However, the current rules are limited to compensation for economic damage. This compensation includes the economic cost of restoring the environment, but does not cover the ecological damage itself, which refers in particular to the loss of biodiversity.

2. Ecological damage is in the process of being recognised by the national courts in several countries

The recent decisions of the Spanish and French courts regarding the Prestige and the Erika represent major legal developments allowing the recognition of ecological damage. Through its judgement on 26 January 2016, the Spanish Supreme Court recognised the damage to the environment and found the ship's captain, owner and insurer liable for this damage. In September 2012, with regard to the Erika, the French *Cour de Cassation*

¹ Cf. CPMR statement and maritime agenda

² The CPMR has observer status in the IOPCF

³ Cf. including the seminar organised by Surfriders on the [10th anniversary of the Prestige accident](#), the [final conference of the Arcopol platform](#), and the [SaferSeas 2015](#) seminar

recognised the existence of specific ecological damage and authorised compensation for it. Following this judgement, steps are underway in France to include the recognition of ecological damage in legislation. In parallel, the United States of America, which is not bound by the CLC/IOPCF Conventions, fully recognises ecological damage, particularly through the Oil Pollution Act, which ensures very substantial compensation for pollution.

It is likely that the courts of other countries, in Europe or in the world, will gradually recognise ecological damage.

3. In the interests of maritime transport companies, it is necessary to provide a framework for the recognition of ecological damage at European and international level

The recognition of ecological damage is currently possible only through specific interpretations of the CLC/IOPCF Conventions. These specific interpretations mean that the compensation rules for ecological damage can vary across countries. This generates a legal uncertainty for maritime transport companies, which, in the future, will be faced with increasingly different rules from country to country.

This necessitates the provision of a framework at European and/or international level which would help provide the opportunity to define clear rules for compensation, and allow the insurance sector to adapt in order to enable this risk to be covered. An international framework would have the advantage of directing claims for compensation for ecological damage to the IOPCF, which currently receives very few due to the priority that it gives to economic damage. Failing that, a European framework would be useful and has been considered by the European Commission, which proposed creating a European Compensation Fund in the scope of the negotiations on the Erika packages.

4. It is possible to provide a framework for the recognition of ecological damage at European and international level

Compensation for ecological damage requires the ability to assess such damage. Some methods exist today, including, for example, the method used in the United States of America for compensation for damage resulting from the Exxon Valdes accident, or more recently the oil rig accident in the Gulf of Mexico.

Scientific knowledge and methods available in Europe also help to assess and quantify this damage. This knowledge and methods should also be connected to the extensive work of defining the ecological status of European marine waters that is underway as part of the implementation of the Marine Strategy Framework Directive (MSFD). It would be paradoxical to ask the Member States to accurately assess this ecological status without relying on these assessments in order to define ecological damage.

STATE OF PLAY IN THE DEBATES AT EUROPEAN AND INTERNATIONAL LEVEL

I.1. At European level – towards a revision of the Environmental Liability Directive?

The European Commission is undertaking a review to analyse the implementation of the ELD. This process will lead to the publication of a report, expected in early 2016. The work carried out in this context, which the CPMR actively participated in, recognised the advantage of allowing ecological damage to be covered under the ELD, by stopping its non-application for the benefit of CLC/IOPCF Conventions. It is however likely that the European Commission will not propose amendments to the Environmental Liability Directive on this issue.

The publication of its report will nevertheless trigger reactions from other European institutions, including the European Parliament, which, in a [resolution](#) adopted on 8 September 2015 considered “*that a maritime safety “Erika IV” package should be launched to prevent further maritime disasters; considers that this package should recognise the ecological damage to marine waters in European legislation*”. In addition, the Member States of the European Union will also have to react.

At European level, the CPMR will continue to strive for ecological damage to marine waters to be covered by the ELD.

II.2. At international level – towards the development of compensation through CLC/IOPCF Conventions?

Specific work on the consideration of ecological damage by the international rules of the IOPCF shall begin at the IOPCF meetings on 25 April 2016. The launch of this work is interesting in itself. Through its observer status, the CPMR actively contribute in this work.