

Deutscher Verein für Internationales Seerecht

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Questionnaire on the General Review of the Rules on General Average (York-Antwerp Rules, YAR) – Submission of the German MLA

Dear Mr. President,

I refer to your letter of 15 March 2013, addressed to the Presidents of all national Maritime Law Associations. The German Maritime Law Association welcomes that all MLAs and stakeholders, in particular shipowners and property underwriters, do have the possibility of expressing their views and participating in the discussions before new YAR are developed and put up for voting by CMI. We think that this approach is to the benefit of CMI and the whole shipping community concerned.

The German MLA has established an internal working group in order to discuss the CMI-Questionnaire on the General Review of the Rules on General Average (York-Antwerp Rules, YAR). This working group comprised of maritime lawyers, shipowners, adjusters and insurers. Please find below the comments of the German MLA regarding the Questionnaire:

The German MLA generally supports and welcomes the efforts made by CMI to create a convergence of interests between the various stakeholders of General Average (GA) cases.

As is well known in practice, most shipowners and their Associations refer to the YAR 1994 in bills of lading and freight contracts, whilst marine insurers in general favour the YAR 2004. This has led to the result that the YAR 2004 have not found much acceptance in practice. A new version of the YAR has to find its way into bills of lading and charter parties and therefore has to be acceptable to all stakeholders.

The German MLA is strongly against the abolition of the YAR, which would, of course, not be a solution, although the GA Absorption Clause has proven its worth in practice.

The German MLA appreciates the efforts made by CMI to develop the present detailed Questionnaire on the General Review of the Rules on General Average. Nevertheless, we are of the opinion that a lengthy discussion of every aspect/detail of the YAR 2004 might result in an unnecessary widening of the debate towards issues of minor importance, whilst a concentration on the major issues, which have resulted in a non-application of the YAR 2004 in practice, seems favourable in order to achieve a satisfactory result.

For this reason, the German MLA prefers to focus its answer to the Questionnaire on main issues of general and practical importance. The German MLA is of the opinion that finding a common ground on these issues, which serves the interests of shipowners as well as insurers and be accepted by the various stakeholders, could benefit the future development of the YAR.

The German MLA would like to comment on the following six points:

- a. Rule VI. Salvage Remuneration
- b. Rule XI. Expenses at the Port of Refuge
- c. Rule XX. Commission of Funds
- d. Rule XXI. Interest on Losses
- e. Rule XXII. Bar Depot
- f. Rule XXIII. Time Bar

- a. Rule VI. Salvage Remuneration
and**
- b. Rule XI. Expenses at the Port of Refuge**

The German MLA regrets that - so far - it could not find an agreement with regard to the key issues on inclusion or exclusion of salvage remuneration in GA settlements (Rule VI), or on inclusion or exclusion of wages and maintenance of crew in GA at a port of refuge, when the common danger has been overcome (Rule XI).

The adjusters and the shipowners represented in the German MLA are in favour of the inclusion of salvage and of wages and maintenance in ports of refuge – also on grounds of practicability and costs, but moreover in order to achieve an equal treatment of interests. The inclusion of these costs in GA would conform to the “common benefit”-principle and this is regarded as a very important reason to include salvage remuneration and wages and maintenance costs in ports of refuge, as it is the case in YAR 1994.

The insurers represented in the German MLA would favour the YAR 2004 with regard to these questions. In their opinion, the inclusion of salvage remuneration would result in a delay in the procedure of GA settlements and an increase of costs of the insurers. The inclusion of crew costs in ports of refuge would, in their opinion, favour the shipowner because – as they argue, the party interested in the good could also not deduct a financial loss, such as a reduction in value of the good because of a delay of the voyage. They further argue that an inclusion of financial loss of both parties would result in undue delay of GA settlements.

c. Rule XX. Commission of Funds

The German MLA has discussed if the Commission should be maintained. Arguments in favor of maintenance and of non-maintenance were exchanged. If the majority of stakeholders favours to no longer provide for such allowances, the working group of the German MLA has so far not regarded this issue to be crucial for rejection or acceptance of amended YAR but welcomes further discussions on this issue.

d. Rule XXI. Interest on Losses

The German MLA supports a flexible handling of the interest rate in Rule XXI. In our opinion, a base interest rate, for instance LIBOR, and additionally a flexible interest rate seem to be preferable.

e. Rule XXII. Bar Depot

The adjusters represented in the German MLA proposed to follow the proposals for simplification, as outlined in the Questionnaire, with regard to Rule XXII and to allow for adjusters to hold deposits in trust accounts in their own name in the YAR.

f. Rule XXIII. Time Bar

The German MLA discussed the question if the time of limitation for GA settlements should possibly be prolonged, such a view in favour of prolongation could however not find a majority in the German MLA.

In addition, the German MLA would welcome it if the YAR include a binding wording for GA securities, possibly by way of attachment(s) to the Rules.

The German MLA regrets that it could not yet reach a consensus on decisive issues identified and therefore welcomes to keep the discussion of these major issues on the CMI agenda and to continue the work of the International Sub-Committee with the aim of finding a generally acceptable consensus before voting on new YAR.

Hamburg, 19 July 2013

Yours sincerely



Secretary German Maritime Law Association
(Tilo Wallrabenstein)