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**Insurability of Fines and Sanctions  
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**Nordic Marine Insurance Day 2021  
19.05.2021**



# Agenda

1. Marine related fines
2. General approach in Europe
3. Reasoning for uninsurability
4. Consequences
5. Exemptions
6. P&I Rules
7. Arguments for insurability to the extend provided by P&I Clubs
8. Further Cover?
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# 1. Marine related Fines

## Pollution damage:

German water police ascertained in 2015 1.750 MARPOL violations, main reason: deficiencies in documentation; Average amount: EUR 473,00

(Source: Drucksache 19/2675 - <http://dipbt.bundestag.de/doc/btd/19/026/1902675.pdf>)

If oil is discharged in inland water

Up to EUR 25.000,00

(Source: Fines catalog , p. 602 -[https://www.elwis.de/DE/Schiffahrtsrecht/Verzeichnis-Rechtsverordnungen-Gesetze-Richtlinien/BVKatBin-See.pdf?\\_\\_blob=publicationFile&v=24](https://www.elwis.de/DE/Schiffahrtsrecht/Verzeichnis-Rechtsverordnungen-Gesetze-Richtlinien/BVKatBin-See.pdf?__blob=publicationFile&v=24) )

## Ballast water:

Up to EUR 25.000,00

(Source: Fines catalog , p. 541, 599 , 610: [https://www.elwis.de/DE/Schiffahrtsrecht/Verzeichnis-Rechtsverordnungen-Gesetze-Richtlinien/BVKatBin-See.pdf?\\_\\_blob=publicationFile&v=24](https://www.elwis.de/DE/Schiffahrtsrecht/Verzeichnis-Rechtsverordnungen-Gesetze-Richtlinien/BVKatBin-See.pdf?__blob=publicationFile&v=24))

## Customs related fines:

Tax evasion – amount fined/ imprisonment very much depends on the facts

## Sulphur cap:

Fines in Germany – EUR 750 – EUR 22.000,00

(Source: Fines catalog , p. 623,624 and attachment hereto - [https://www.elwis.de/DE/Schiffahrtsrecht/Verzeichnis-Rechtsverordnungen-Gesetze-Richtlinien/BVKatBin-See.pdf?\\_\\_blob=publicationFile&v=23](https://www.elwis.de/DE/Schiffahrtsrecht/Verzeichnis-Rechtsverordnungen-Gesetze-Richtlinien/BVKatBin-See.pdf?__blob=publicationFile&v=23))

# 1. Marine related Fines

**Cargo related fines:** short or over-delivery of **cargo**  
incorrect declaration or documentation

**Immigration:** breach of **immigration law** or regulations

**Sanctions:** Fines in relation to the breach of sanction laws

## 2. General approach in Europe

⇒ **Administrative fines are generally considered uninsurable**

**In some jurisdiction an express prohibition applies:**

Art. 12 of the Italian Insurance Code – „*prohibited operations*“:

*„...insurance having the object of transferring the risk of payment of administrative penalties...shall be prohibited. In the event of a breach of that prohibition the contract shall be void...“*

(Source: [https://www.ivass.it/normativa/nazionale/primaria/CAP\\_EN.pdf?language\\_id=3](https://www.ivass.it/normativa/nazionale/primaria/CAP_EN.pdf?language_id=3))

### 3. Reasoning for the uninsurability

**Administrative fines are generally considered uninsurable, because the insurance would be contrary to**

- the purpose of punishment
  - the purpose of prevention
- ⇒ An insurance of fines would offend public conscience/  
public policy/ ordre public and defeat the object of  
punishment

## 4. Consequences

➤ Insurance contract/ claim for indemnity, depending on the jurisdiction, is

- unenforceable as a matter of public policy or
- fully or partially void

and even if foreign law permitting the insurance of fines applies, ordre public may prevent the application of that permission.

## 5. Consequences

- Possible action by the insurance supervisory body
  
- Fine/ penalty, e.g. according to violated sanction law



## 6. Exemptions

**The following is generally seen as being insurable:**

- ✓ Investigation costs
- ✓ Defence costs
- ✓ Costs of mitigating a breach, including public relations expenses
- ✓ Claims by third parties for consequences of the breach

usually subject to the exclusion of wilful misconduct or gross negligence

## 7. P&I Rules

### P&I Rules: Fines are insured to a certain extent

Fines, whether judicially imposed upon the Member, a member of the crew or a representative of the Member whom the Member may be liable to reimburse or reasonably reimburses with approval of the Association

- (a) fines imposed for short or over-delivery of **cargo**, or failure to comply with regulations concerning the declaration of goods, or documentation of cargo (other than fines or penalties arising from the smuggling of goods or cargo or any attempt thereat), provided that the Member is insured by the Association for liability in respect of such cargo and subject to the terms of the entry in respect of such cargo cover,
- (b) fines imposed for breach of any **immigration** law or regulation
- (c) fines imposed in respect of the **accidental** escape or discharge of oil or any other substance, provided that the Member is insured for **pollution** liability by the Association, and subject to the applicable limit of liability under Association entry,

## 7. P&I Rules

### P&I Rules: Fines are insured to a certain extent

**Other fines judicially imposed** may be recoverable provided that the Member has satisfied the Association that he took such steps as appeared to be reasonable to avoid the event giving rise to the fine or penalty. Any amount claimed in respect of such fines shall be recoverable **to such extent only as the Association in its absolute discretion** may determine without having to give any reason for its decision.

**Unless the board otherwise determines**, there shall be **no recovery** in respect of a fine imposed for or arising out of:

- (1) overloading
- (2) illegal fishing
- (3) any personal act or default on the part of the member or his managers**
- (4) wilful misconduct on the part of any person unless the member has been compelled by law to pay the fine

(Source: Various Rules of the members of the IG published on their Websites)

## 8. Arguments for insurability to the extend provided by P&I Clubs

- As long as insurance is in the „sole discretion of the insurer“ no claimable insurance cover
- Cover anyhow restricted to acts of a „prudent uninsured“ and Warranty of legality; e.g. Sec. 41 MIA: lawful adventure and must be carried out in lawful manner so far as the assured can control the matter
- No cover if the assured shipowner or his manager acted with fault.



## 8. Arguments for insurability to the extend provided by P&I Clubs

⇒ It appears that to a certain extend the insurance of fines in marine insurance is

generally rightfully accepted because the cover is designed in such a manner that is not contrary to the purpose of punishment and prevention of fines.

**⇒ Even further – claimable – cover possible?**

## 9. Further Cover?

### **Fines due to negligent Acts?:**

#### Arguments in favor of insurability:

- Purpose of prevention not violated – negligent acts are generally difficult to prevent
- Own interest of insured in “good reputation”
- Preventive effect of deductible

## 9. Further Cover?

**Cover for recourse claims in connection with fine notices issued against the Shipping company due to acts of an employee or Ship Manager?:**

Existence of recourse claim?

Arguments in favor of insurability:

- Insurance of a claim not the fine itself
- Preventive effect also due to lack of clarity of insurance cover from the perspective of the employee/ the ship manager and fear of recourse claim by the insurer(s)
- Preventive effect of deductible

## 9. Further Cover?

**Cover of fines that are based on foreign law conflicting with the public policy of the law applicable to the insurance contract and exaggerated fines?**

(P) Conflict with law applicable to the fine notice

=> Consequences for Insurers?



## 10. Solutions?

**Cover of fines only in so far as legally permitted according to the law applicable to the insurance contract ??**

**Cover only if no consequences for insurer(s) according to the law applicable to the fine ??**

- Sanction clauses
- (P) Unfair contract term - invalid due to ambiguity?

No disproportionate disadvantage for the assured.

# Thank you for your attention



If you are interested in an exchange  
on the subject, please revert to  
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